International Tribunal for the
Law of the Sea

Hamburg Model United Nations
“Shaping a New Era of Diplomacy”
28th November – 1st December 2019
Welcome Letter by the Secretary Generals

Dear Delegates,

we, the secretariat of HamMUN 2019, would like to give a warm welcome to all of you that have come from near and far to participate in the 21st Edition of Hamburg Model United Nations. We hope to give you an enriching and enlightening experience that you can look back on with joy.

Over the course of 4 days in total, you are going to try to find solutions for some of the most challenging problems our world faces today. Together with students from all over the world, you will hear opinions that might strongly differ from your own, or present your own divergent opinion. We hope that you take this opportunity to widen your horizon, to, in a respectful manner, challenge and be challenged and form new friendships.

With this year’s slogan “Shaping a New Era of Democracy” we would like to invite you to engage in and develop peaceful ways to solve and prevent conflicts. To remain respectful and considerate in diplomatic negotiations in a time where we experience our political climate as rough, and to focus on what unites us rather than divides us. As we are moving towards an even more globalized and highly military armed world, facing unprecedented threats such as climate change and Nuclear Warfare, international cooperation has become more important than ever to ensure peace and stability.

During the last year our team has worked tirelessly to turn HamMUN into a platform for you, where you can grow as a person, step out of your comfort zone and be the best delegate you can possibly be. We can’t wait to share it with you and are looking forward to an unforgettable time.

Yours Sincerely,

Leah Mathiesen & Tobias Hinderks

Secretary Generals
Introduction Letter by the Chairs

Dear delegates,

First of all, we’d like to introduce ourselves to you, as we welcome you to HamMUN’s 2019 Edition! Our committee will be composed by two chairs, Bruna and Natalie. We are both thrilled to welcome you to this year’s event.

I, Bruna, will be chairing at HamMUN in my first ever experience both at the event and as a chair in a university-level conference. As you may know by reading the website, my experience stands as a Brazilian Law student completely passionate about Model United Nations, especially international conferences. I have only started MUN last year, but have already been to 9 conferences counting 2020 WorldMUN, in which 5 happened in completely different parts of the world. It will be my second time in Germany and second in an European conference and I’m more than excited to have the opportunity of being part of this and meeting you all.

I, Natalie, on the other hand, will be returning to HamMUN for a second time to chair ITLOS, after having chaired UNEP last year. I am 3rd year International Relations student with a passion for international law, focusing on it (and international history) in my studies. This is my first time chairing a legal committee, adding onto a somewhat lengthy list of different positions I hold in nearly 4 years of my MUN career – delegate to GA, crisis and legal committees, crisis chair, backroom, chair, photographer, public relations director and now soon-to-be secretary general.

We welcome you both to this debate with open arms to understand the working and topics coordinated and analysed by ITLOS. This year’s International Tribunal for the Law of the Sea (ITLOS) will be discussing two really interesting and important points to the debate over international property and the collective effects caused by its use.

On topic A, the delegates will analyse the unsolved case of underwater cultural heritage on international law. Even though in 2001 UNESCO created and gave space to discussion over legal terms on the topic, the articles are way too wide and thus unable to solve potential conflicts regarding the property over the underwater heritage. It is expected that, by the end of the sessions regarding topic A, the delegates reach a conclusion through an Advisory Opinion, equally incorporating the roles of judges. Delegates will have to consider the
contemporary and past cases regarding the subject, as well as factors such as the importance of the underwater property and the possible variations of the problem, such as change of borders and uprising of new states and its effects on the property titles.

Topic B, on the other hand, will demand you to take roles as either lawyers or judges, in a trial on the Montara Oil Spill between Australia, Indonesia, Thailand and Timor Leste. The multitude of actors that are connected to each other in a variety of ways make this – albeit never treated by ITLOS as of now – an interesting case which could set an important precedent international environmental law.

See you in December,

Bruna and Natalie

Chairs of the International Tribunal for the Law of the Sea

HamMUN 2019
Introduction to the Committee

The International Tribunal of the Law of the Sea was first established at the 1982 UN Convention for the Law of the Sea (hereafter UNCLOS). It was created as an intergovernmental organization and an independent judicial body that adjudicates disputes arising out of the interpretation and application of the United Nations Convention on the Law of the Sea, having jurisdiction over those matters as well as over all matters specifically provided for in any other agreement which confers jurisdiction on the Tribunal.

The Tribunal is open to States Parties to the Convention and, in certain cases, to entities other than States Parties. Under any disputes, the parties are free to choose one of more of the four alternative means for the settlement of disputes: ITLOS, ICJ, an arbitral tribunal constituted in accordance with Annex VII to the Convention or a special arbitral tribunal constituted in accordance with Annex VIII to the Convention. The jurisdiction of the Tribunal comprises all the disputes (contentious jurisdiction) and legal questions (advisory jurisdiction) submitted to it. While the contentious function is provided through one only mechanism, the Advisory jurisdiction might happen through two different entities: the Seabed Disputes Chamber and the full Tribunal, as recently decided on the Request for an Advisory Opinion Submitted by the Sub-Regional Fisheries Commission (SRFC Advisory Opinion). The options comprehend different situations and must follow the procedures previewed by the Rules of the Tribunal.

The committee, as noted before, will debate two fictional cases, each one regarding two of the different hypotheses of use of the tribunal: one of the Tribunal Advisory Opinion and the other of Contentious Jurisdiction. Delegates are encouraged to read cases and Rules of Procedure specific to the Tribunal, in which they can correctly understand how the situations work in real life. On the first case, Topic A, they shall all act as judges providing a collective opinion; while on Topic B they will be divided into lawyers or judges, and must provide the Trial as requested by the responsible state party.

The possibility of incorporating the International Tribunal for the Law of the Sea is one of a kind experience, especially when talking about doing it in Hamburg, the city where the Tribunal is located.
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Topic A: Advisory Opinion on Underwater Cultural Heritage

1. Introduction

The Convention for the Law of the Sea (hereafter UNCLOS III) was created based on the initial expression of the growing interest in the possibility of commercially exploiting offshore resources\(^1\). The absence of any regulation under commercial interests along with the increasing number of states and the fear of developed countries that industrialized states would freely and contentiously explore the region created a common need of regulating the terms further than the resolution made under UNCLOS I\(^2\). UNCLOS was defined as the main international law apparatus regarding the governance of the world’s ocean, including a wide branch of subjects related to the main idea\(^3\).

The Convention was the first international legal instrument to include the idea of Underwater Cultural Heritage (UCH)\(^4\). UCH is not a new topic – having documents proving that the practice has been happening since 17\(^{th}\) Century. Thus, until the invention of the Aqualung in the 1940’s there was no massive practice, being it limited to adventurous and sport activities. The creation of breathing underwater equipment expanded in the middle of 20\(^{th}\) century as a recreational practice that, in the absence of legal regulation, freely explored shipwrecks and other archaeological sites\(^5\). With the advances, the world went through breaking news when four Dutch East Indiamen were discovered, along with more than one colonial-era Spanish shipwreck, containing millions of dollars in gold, and British warship HMS Victory, around 1980s\(^6\).

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\(^6\) Ibid.
Modern technology was developed in order to improve the treasure-hunting activity, becoming able to map the seabed and discover thousands of lost ships and archaeological treasures. The advances and new discoveries brought up the debate of the interference of commercial-related activities in the marine environment with archaeological evidence, and how would that infringe the protection over international cultural heritage, creating a risk to its own maintenance.

Several countries, both before and starting from the creation of the international regulations, passed varying domestic laws for legislating sea-related matters. Nevertheless, only a few of them contemplate specific laws regarding UCH protection. Even in one of the most conflictive areas for the topic, the South China Sea, only China and Vietnam hold laws regarding the subject.

Although UNCLOS was responsible for first addressing the topic, as response to the ever-growing interest and commercial potential, it does not give a complete and proper approach to the subject. The Convention refers to UHC with a vagueness on its definition, without addressing relevant topics as the dangers of environmental threats, and with a lack of provision regarding UCH found in the waters between the outer edge of the contiguous zone.

The awareness of cultural values and the increasing number of litigation and domestic protection over underwater cultural heritage, along with the breaches of UNCLOS, proportionated the International Law association handing over to UNESCO a draft text for a treaty on UCH protection. The draft later became the Convention on the Protection of the Underwater Cultural Heritage, adopted in 2001. Taking a legal shape, the UCH lies at the

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9 Ibid.
interface between three distinct branches of law: admiralty/private maritime law, the law of the sea and cultural heritage law.\(^{14}\)

The 2001 UNESCO Convention on the Underwater Cultural Heritage (hereafter “Convention”), entering into force in 2009, defines UCH as “all traces of human existence having a cultural, historical or archaeological character which have been partially or totally underwater, periodically or continuously, for at least 100 years”\(^{15}\). It is responsible for providing important information about past human life, history, nature and life interactions through ages, not to mention the documents, objects other sources of richness found in shipwrecks and sunken areas. Thus, despite the wide range of subjects considered by the Convention, still unsolved issues remained after the final drafting of the convention, including the relationship between the Convention and UNCLOS, specifically regarding creeping jurisdiction and immunity of sunken state vessels\(^{16}\). Recent conflicts include also the treatment of sunken state vessels under the Convention, outlining regarding claims of former colonies and the necessity of consent before any action is taken; the recent centennial of World War I and the handling of important underwater gravesites related to it; and the abuse of underwater cultural heritage as means to claim dispute territorial waters, which lack a global policy\(^{17}\).

It is interesting to observe that using UCH as a political mechanism is slightly controversial with the terms of the Convention, which enhances the positive cooperation and collaboration amongst nations and states opposition of use of the activity as grounds of territorial dispute on its articles 2 (11) and 19. The maritime boundaries are therefore a non-solved subject on the topic of underwater cultural heritage\(^{18}\), what creates a huge gap and arising of problems in the contemporary age of maritime law.

One of the main principles posed by the Convention refers to the goal of reaching the strengthening of regional cooperation\(^{19}\). Article 6 of the Convention opens the way to an international level of protection of underwater cultural heritage, enhancing coordination

\(^{17}\) Ibid.
\(^{18}\) Ibid, pp. 249 and 250.
\(^{19}\) Ibid., p. 225.
between regional and sub-regional level treaties as a criterion for better protection\textsuperscript{20}. States bordering enclosed or semi-enclosed areas are a featured case for this kind of protection, considering it usually embodies common historical roots, civilizations and may share areas or stand conflicts about it\textsuperscript{21}.

2. South China Sea

There are three major cases regarding sovereignty over maritime territory that currently have been affected by the idea of Underwater Cultural Heritage: Russia’s annexation of Crimea; Canadian sovereignty over the Northwest Passage in the Arctic Archipelago; and disputes over the South China Sea\textsuperscript{22}.

The last one, specifically, has developed an entire series of conflicts that involve all the countries and islands touched by the maritime area. Taiwan, Indonesia, Malaysia, Philippines, Vietnam, Brunei and China own disputes including islands, reefs, banks, boundaries and, in summary, control over the territory\textsuperscript{23}, which allows them to acquire rights over commercial activities such as fishing and potential oil and gas exploitation, and control of important shipping lanes.

Connecting the Andaman Sea and the Pacific Ocean, the South China Sea was historically used as a seaborne trade route, which is also called “Maritime Silk Road”\textsuperscript{24}. More than 2,000 sunken ships are estimated to exist in the region, and some major archaeological events have been staged in there\textsuperscript{25}.

As an internationalized region at the beginning of 20\textsuperscript{th} Century, the South China Sea Region has been at least partially controlled by several powers over the years. During the 1930s, historical accounts note that France had controlled some features over the territory along with

\textsuperscript{22} SARID, Op.Cit., p. 250.
\textsuperscript{23} Ibid., p.251
\textsuperscript{24} NITIRUCHIROT, Op.Cit., p. 50.
\textsuperscript{25} Ibid.
other nations, for example\textsuperscript{26}. The most notable occupation, though, was made by the Empire of Japan during World War II, through the use of the region for military purposes\textsuperscript{27}. Since the area was neither occupied or claimed by any other country by then, Imperial Japan was deeply motivated to officially gain the control by the time of 1951 Treaty of San Francisco\textsuperscript{28}. It is important to outline that during the period, the status of the islands was not a question; a reason why it was not profoundly debated.

Japan’s claims have thus failed, since the 1951 treaty negotiations and the 1958 first Taiwan Strait Crisis brought up the interest of the People’s Republic of China on reassuring its own control over the territory\textsuperscript{29}. It was official in domestic laws and decisions the idea of control and sovereignty of China over the sea after Japan’s removal: Kuomintang government already supported the belief of control and, after 1949, the taking over of the Communist Party of China led to the adoption of the nine-dashed-line, defended until nowadays by the nation\textsuperscript{30}.

The second half of the Century faced a long history of conflicts over Paracel and Spratly Islands\textsuperscript{31}, in which the international community, treaties and organizations had a great role. The period dealt with the rearrangement of territories, gaining of power from monitoring the situation and the existence of areas categorized as \textit{terra nullius}\textsuperscript{32}. The division faced an equilibrium since the 1990s, since the division did not change much: China controlling all of

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\textsuperscript{26} SAMUELS, Marwyn.\textit{ Contest for the South China Sea.} London: Routledge, 2013, pp. 55–65

\textsuperscript{27} ZHIGUO, Gao; Bing Bing, Jia.\textit{ The Nine-Dash Line in the South China Sea: History, Status, and Implications.} The American Journal of International Law, 2013, pp. 98–124.


\textsuperscript{31} NGUYEN, Hong Thao.\textit{ Vietnam’s Position on the Sovereignty over the Paracels & the Spratlys: Its Maritime Claim.} Journal of East Asia International Law, 2012.

the features in the Paracels; and in the Spratlys, Vietnam controlling 29 of the features, the Philippines 8, Malaysia 5 and China 1.

Thus, since 2013, The People’s Republic of China has been taking actions to build and occupy islands in the Spratly Islands and the Paracel Islands region, which evolved into a condemnation under international Law. The uprising of the conflict started once an Indian ship allegedly friendly entering Vietnamese coast waters in the South China Sea was identified as entering Chinese waters. The act created put a strain on the relationship between China and Vietnam, settled with an agreement seeking to contain the dispute. The attempt of peace showed useless: shortly after the resolution, India’s state-run Oil and Natural Gas Corporation ships started action in partnership with PetroVietnam for the exploitation of oil in the South China Sea.

The commercial exploitation brought up a possession position in the Chinese government. The state started claiming its “indisputable sovereignty over the South China Sea and the islands”, based on historical facts and international law. The new overlook on the situation saw the agreements and the division as friendly consultations from China, which on its own benevolence agreed on contributing to tranquillity in the area; and marked the country’s opinion against oil and gas exploitation activities “in waters under China’s jurisdiction”.

Since that, China has been directing its efforts towards physically and commercially occupying the area, taking Philippines to enter into an arbitration procedure under UNCLOS in July 2016. Although not recognized neither by China or Taiwan, the Tribunal ruled against their

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36 Ibid.
38 Ibid.
maritime claims on the area – without ruling on the ownership of the islands or delimiting maritime boundaries. In July 2019, Beijing published a Chinese White Paper, “China’s National Defense in the New Area”, in which it reaffirms the deployment of strength in the South China Sea. Its acts have therefore continued in the area, along with its rejection to the sovereignty division and the reaffirmation of the nine-dashed-line.

Recently, it was confirmed that China not only has been installing civil locations but, based on the claims over the "nine-dash line", has been building military installations on artificial islands there. The action is a breakthrough to the previously existent conflict, aggravating the tension between the countries and lowering the safety of the area. The claims regarding military actions in the area is not restricted to installations, as to missile tests and launches. Beijing has not yet confirmed the launches, but it drives the attention of militarized countries as the United States and the United Kingdom. The countries allege that China is contrary to bringing peace to the region and reach a negotiation, and actions like this are seen as coercive acts meant to intimidate other claimants.

Underwater Cultural Heritage has been recently used as a mean to produce evidence of the historical occupation, and may help the extension of power of China over the territory, allowing legal military occupation and action, along with possible cessation of free navigation. China routinely accuses the US Navy of provocation and interference in regional matters, while the

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40 Tribunal rules against Beijing in South China Sea dispute. Financial Times, July 12, 2016. Available in <https://www.ft.com/content/3dceb42-4814-11e6-8d68-72e9211e86ab>
45 Ibid.
46 Ibid.
US has long been critical of what it says is China's militarisation of the region and routinely angers Beijing with so called freedom of navigation missions\(^\text{48}\).

### 3. Conflict

South China Sea is a focus of worldwide attention on international conflicts over the economic resources available in the area. Nonetheless, along with the commercial importance of the area, there is an important and interesting potential within its borders in what refers to underwater cultural heritage\(^\text{49}\). Under the current composition and property debates over territory in the South China Sea, the disputes over jurisdiction over UCH are shown as inevitable.

The South China Sea is a semi-enclosed area located between the coastal area of the States of Taiwan, Indonesia, Malaysia, Philippines, Vietnam, Brunei, China and Indonesia\(^\text{50}\). As located in a relatively small area, and surrounded by land in almost all of its shape, the sea is part of several claims over the division of the EEZs\(^\text{51}\), which became a grey area for the International Law of the Sea. Historically, the territory has already been subject of a number of official conflicts: on the international arbitration between the Philippines and China; the Paracel Islands are disputed between China and Vietnam; while Philippines, Malaysia, Brunei, Vietnam and China claim islands or maritime zones in the Spratly Islands\(^\text{52}\).

Although recently the disputes may be related to the existent oil localized in the area, its importance is not new – the South China Sea was one of the centres of the Silk Route, as it was part of an ancient maritime civilization right on the encounter of Eastern and Western civilisations\(^\text{53}\). Research conducted by the National Museum of China declares the existence of thousands of shipwrecks in the South China, which, despite being currently protected, are part of the relevant discussion of disputed areas, especially between China, Vietnam and

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\(^{49}\) JING; LI. Op Cit.


\(^{51}\) Op. Cit.


Philippines. The historical importance of the maritime and sailing area in the South China Sea left a rich legacy of shipwrecks from not only the Chinese Empire, but also from Western countries, that sank during their age of discovery and colonization. The Battle of Yemen by itself is reported to have resulted in the sinking of over 2,000 warships.

Under the mantle of the law of salvage and the law of the finds, the principle of returning ships and cargo to the stream of commerce and without any proper regulation of UCH, a considerable number of commercial investigations took place in the area, resulting on the recovery of a considerable number of artefacts such as porcelain, gold and bronze, that were than auditioned and sold, generating millions of dollars for the individuals that conducted the exploitation. Those ended up being responsible for the destruction of the archaeological sites, afraid that their location could be ascertained. The destruction of the ships and the expensive rates the artefacts were sold at raised the question over the difficulty faced by developing nations in preserving and regulating their underwater activities in some distance from their shorelines, along with the lack of state funding and proper cultural protection of the sunken objects. The UCH remained unprotected and underdeveloped for several years, with the commercial value being maximized in detriment of the historical value.

The territorial changes and the structural modifications caused by the intense occupation of the islands, the different processes of colonization and decolonization and other factors that have caused migration and ownership movements gave the geopolitical seascape and organization a completely different look. The situation of a major shift in the geographical position of

54 JING; LI. Op Cit.
55 Ibid.
57 Ibid
countries and the reorganization of new countries in the 19th and 20th Century completely erased the extensive power the empire of China had throughout the seascape of the South China Sea\textsuperscript{60}. The changes created a situation of non-consensus over the division not only of the territories, but over the extension of their sea power\textsuperscript{61}. Even after the creation of the UN Convention on the Territorial Sea and the Contiguous Zone, the Convention on the Continental Shelf, the Convention on the High Seas and the Convention on Fishing and Conservation of the Living Resources of the High Seas, China continued to reflect its position with reference to the called nine-dash line\textsuperscript{62}. The map was produced by China in 1947, as a result of the geopolitical reorganization of the area, and since then has been considered as the official division by the country\textsuperscript{63}.

As UNCLOS arose and became a unified source of the Law of the Sea, a new parameter regarding sovereignty claims over the sea territory was settled. UNCLOS determined the limits of territorial, a new maritime zone for archipelagic states and the rights of a country over its continental shelf\textsuperscript{64}. The South China Sea, as a complex geographical nature, share numerous disputes arising from a complex historical, economic and geopolitical matrix, which can be generally grouped into disputes over territorial and maritime disputes.

The approach to underwater cultural heritage is intrinsically connected to the territorial and maritime disputes in the region. Claims regarding islands and land territory represent an important question as China holds the ambitious claim of the nine-dash-line; which interferes in the EEZ claims of a number of states and results in a significant effect on all of the states. As in 2013 Philippines tried to bring the subject into arbitration and China refused to recognize the jurisdiction of the tribunal, it failed clarify its claims over the nine-dash-line and the control

\textsuperscript{60} KIM, Jihyun. Territorial Disputes in the South China Sea: Implications for Security in Asia and Beyond. Strategic Studies Quarterly, v.9, no.2, 2015, p. 111.
\textsuperscript{63} Ibid.
over South China Sea territory. Underwater Cultural Heritage may have a substantial role when defining the claims and the uncertainties of possession of the islands of the South China Sea.

The dominance over islands may happen through a few means, between which one can point occupation (or prescription)\(^ {65} \). Those means require that the state prove the intention and will to act as a sovereign, and has in fact done so continuously and peacefully, historical evidence is significant. It points that the longer the duration of possession or occupation, the more substantial the justification for a continuous display of authority. When defending the legal occupation of the land, underwater cultural heritage is able to support such territorial claims\(^ {66} \).

Historic title was addressed in the law of the sea prior to the adoption of UNCLOS, in 1928, when the ICJ justified the Norwegian method of straight baselines\(^ {67} \). Even though it is not officialised as a mechanism in the UNCLOS, it is recognized by it in certain aspects when considering the delimitation of the territorial sea between states with adjacent or opposite coasts and in archipelagic states, without saying how it is to be determined and applied\(^ {68} \).

Recently, especially after arising questions over entitlement of the region, China started launching technology capable of finding underwater archaeological evidence of its sovereignty over the territories based on historical reasons\(^ {69} \). The action has been questioned along with the uprising of suspiciousness of the fake implementation of archaeological tools by China\(^ {70} \). In the meantime, alongside the challenge posed by China’s claims and actions, the threats of unauthorized savage exploiting actions keep being a real concern.

Cooperation, as established by UNCLOS in 1982, along with the importance of the area as one of the world’s busiest international sea-lanes, are threatened by the instability of the region and


\(^ {66} \) Ibid.


\(^ {68} \) Ibid.


\(^ {70} \) Beijing’s South China Sea Aggression Is a Warning to Taiwan. Foreign Policy. September 16, 2019. Available in <https://foreignpolicy.com/2019/09/16/beijings-south-china-sea-aggression-is-a-warning-to-taiwan/>
the inability of dialogue shown by the nations. It is important to recall that all the littoral States of the region are parties to the UNCLOS – which, in article 303 (1), states the duty of protection of “objects of an archaeological and historical nature found at sea”, regardless of the maritime zone. Thus, the countries are not parties to the 2001 Convention71, which creates a legislative vacuum on the region, that desperately need a regulation or an agreement.

4. Advisory Opinion Request

Based on the conflict of territory and on the general confusion concerning the interpretation of international law, on the 21st of September of 2019, ITLOS received the Request for an Advisory Opinion Submitted by the Commission on the Limits of the Continental Shelf (CLCS) (Annex 1). As China is not a signatory country of the 2001 convention and has its own conservation centre, the questions should not be binding or give any clear effect to the specific case, but it might help on the disputes and involve several questions that remain unclear in general terms. The intention of the Commission is to understand the context of the dispute in the international law scenario and give potential background to other involved countries, along with understanding the new interpretations to 1982 UNCLOS.

The Advisory Opinion Request results from a recent find of a shipwreck in the area, that has shaken the coastal countries of the region and its dispute of control. A Qing Dynasty shipwreck has been found in one of the most controversial areas of the South China Sea. Not only one, but many of the countries claim their sovereignty over the area, identified around the Spratly Islands, being the most controversial ones by China and the Philippines (Annex 2). Besides the regional questions, member countries of both UNCLOS and the 2001 Convention have been publicly questioning how to investigate the finding, once the sovereignty on UCH found in EEZs is one of the most controversial questions when combining the existence of both treaties.

The recent acts taken by China in the region and the aggravation of the conflict with the United States lead the other countries to suspect of Beijing’s artificial efforts to move the shipwreck to the area, guaranteeing its legitimacy over historical evidence. The level of distrust amongst countries is higher than ever, and any

radical action might lead to actual military conflict, especially if taken by China. The United States of America, in between its current commercial relationship with China, has offered and positioned its own military around the South China Sea to prevent any “abusive acts” from happening and interfering in freedom of navigation – claimed by most Occidental and non-part of the conflict countries.

As shown by the Conference on cooperation for underwater cultural relics protection in Taiwan Strait in 2010, and by the amount of academic and news production, the matter is now not only a governmental concern, but also a civil one. China’s attitude towards the international regulation of Underwater Cultural Heritage is an important concern for other countries, having been closely watched by other countries.

5. Committee Expectations

There are several possible positions associated with theoretical approaches and countries’ interests within the committee, that may shape what path you choose to defend and pursue within the debate. What resolution you strive to take depends on your interpretation of the international legislation relating to maritime and sovereignty rights and the history of the area. Keep in mind that this is not an easy conflict, but one that has been going on for quite some time and that may originate new problems in the area accordingly to the current presence and interference of the United States in South China Sea. The sooner you reach a solution, the sooner you will be able to stabilize the area.

Your resolution is expected to answer the questions made in the advisory opinion above, reaching a conclusion on the shape of the recently approved full tribunal Advisory Opinions of ITLOS. The resolution is expected to be delivered by the end of the committee sessions regarding topic A, along with the other delegates of the committee as made by ITLOS, representing a collective opinion of the Tribunal.

We wish you good luck in your studies and a great conference. We are beyond excited to see how the debate goes and see the delegates get a consensual opinion under what is the correct decision for the conflict. Any doubts or questions, you are more than welcome to send an email to bruna.alves.goncalves@usp.br.
6. Annex 1

Request for advisory opinion from the
International Tribunal for the Law of the Sea

New York, 29th October 2019

Sir,

I have the honour to inform you that, at its Fifty-First Session*, held on 29th of October of 2019*, in New York, United States of America, the Commission on the Limits of the Continental Shelf (CLCS) took a decision authorizing the executive head of the entity, Mrs. Bruna Gonçalves, pursuant to article 138 of the UNCLOS to request an advisory from the International Tribunal for the Law of the Sea on the following questions:

1. Can findings of evidence of life on the underwater territory determine sovereignty under the justification of historical rights and claims? Talking about South China Sea, could this affect the conflict and implement the nine-dashed-line?

2. Considering the finding of Underwater Cultural Heritage in EEZs, what should be the jurisdiction over it? Which measures should be taken (a) by the finder country; (b) by the one entitled to the EEZ?

3. Considering the threats of war in the South China Sea, what are the risks for Underwater Cultural Heritage? Would the legislation have any power to protect UCH or debate its international qualification? What are the possible uses of UCH as an argument for international navigation and division?

4. What are the elements that compose the division of sovereignty on the South China Sea?

In accordance with that decision, I have the honour to submit this request for an advisory opinion to the Tribunal pursuant to article 21 of the Statute of the Tribunal and article 138 of the Rules of the Tribunal.

Yours faithfully,

Bruna Gonçalves

*Fictional
7. Annex 2: News*

South China Sea: 18th Century Imperial Battleships found may lead to conflict

Tensions in the South China Sea, could escalate into conflict and war if countries start stationing their warships in the area, Malaysia’s Prime Minister, Mahathir Mohamad, has said. “China has every right to go wherever they want to go, but please don’t prevent ships from passing through the Straits of Malacca and the South China Sea,” he told BBC Hardtalk’s Zeinab Badawi on Monday. “Our policy is to not have battleships and warships in the South China Sea because if people start stationing their warships there, there will be tension, there will be conflict and it may result in a war,” Mr Mahathir said.

On Monday, 14 of October, 2019, a 300 year old Qing dynasty shipwreck has been found in one of the most tensioned area of South China Sea, as shown on the map, by a Philippine task force. The territory is historically disputed by six countries with different competing claims in the South China Sea. Several areas correspond to the sovereignty and Economic Areas (EEZ) of multiple countries. Recently, the debate has aggravated as China, regardless of the international decisions on its behavior, continued occupying claimed areas militarily and civically. The act generated reasonable doubts whether the wreck and treasures found were cause of a disaster of artificially put in the place by China, as a form to prove its historical sovereignty rights over the region of the Spratly Islands, as the question is still not clear for specialists. States question, now, what is the power given to each one considering the disputes of EEZs, the origin of the wreck and the finding state; and which effect […]
[...] does it give to the dispute.

Tensions have increased in recent years and China has backed its claims with island-building and naval patrols and the interference of the United States in the region. The US, which says it does not take sides in territorial disputes, has sent military ships and planes near disputed islands, calling them "freedom of navigation" operations to ensure access to key shipping and air routes.
Topic B: Montara oil spill

1. Introduction

1.1. The Simulation

The Montara oil spill which took place in August to November 2009 has had long lasting effects on the ecosystem in the Timor Sea. It had an impact on Australia, Indonesia, Timor Leste and Thailand to varying extents. The present case will strongly resemble the Montara oil spill, however, we will simulate a case that takes place five years after the actual spill. By having the spill happen six years after the “original” – in 2015 instead of 2009 – we are able to add an additional actor to the case, Timor Leste. The “time jump” will take place in 2004, so five years before the oil spill happened, in order to create a realistic timeline of events leading up to the oil spill. Any changes in national legislation or policy regarding off-shore oil production, such as new precautionary measures, which is directly or indirectly a result of the oil spill will therefore not be considered.

1.2. The context

Australia has relatively limited oil reserves and its energy production is diversified. However, the oil production industry employs around 20’000 people and oil production represents around 2.5% of the national GDP.72 Australian petroleum is mainly used as transport fuel, as it is a light crude oil and the majority of the oil gets exported to Asia. The majority of the country’s oil production takes place in off-shore facilities on the north-west coast.73

The Montara Oil Spill is up to this date the third largest oil spill in Australian history, releasing in between 400 to 1500 barrels of oil each day. The leak lasted in total for 74 days, covering at its greatest extension an area of 11’000km². While the light crude is less damaging to the environment than heavy crude, the Montara oil spill had a devastating effect on animal life in the region, in especially birds and fish.

2. Facts of the case

2.1. The oil spill

2.1.1. Leading up to the oil spill

The Montara Development Project started in 2003 with the acquisition of the Newsfield Australia Group of Companies, including the Retention Lease of the Montara Oilfield by the Australian company Coogee Resources. Coogee Resources submitted the Montara Field Final Development Plan which included the permission to drill three development wells to the respective authorities in October 2012. The plan was approved in March 2013. Later, the company also submitted a request for the drilling of two additional wells, which was also approved.\(^{74}\)

In February 2015, Coogee Resources was acquired by PTTEP and renamed to PTTEPAA. At that time, the Montara Oilfield included four production wells as well as one gas injection well. The wells were drilled by ATLAS, a Singapore based company in January/February 2015. ATLAS returned on site in August 2015 to complete the drilling and to connect the wells to the platform.\(^{75}\) The cementing of the casing shoe was assisted by specialists of Halliburton, an American oil field service company which was also subcontracted by PTTEPAA. In preparation for the connection of the well to the platform, a pressure containing cap was removed.\(^{76}\)

2.1.2. The oil spill

Within a few hours after the removal of the aforementioned cap, in the early hours of the 21st of August 2015, the oil spill on the Montara wellhead platform started. The oil spill was caused by a weak platform base. The oil was able to flow up the primary well control barrier, as there was only one of the two secondary well control barriers installed at the time.\(^{77}\) The National Offshore Petroleum Safety and Environmental Management Authority of Australia (NOPSEMA) reported that the way that the installation of the well – so the hole drilled in order

\(^{74}\) Ibid. p. 36.
\(^{75}\) Ibid. pp. 36-37.
to extract oil—didn’t follow safety precaution rules. The PTTEPAA’s own safety rulings were ignored and the primary well control barrier wasn’t pressure tested. The PTTEPAA personnel responsible for the installation of the well control barrier have noted the issues that arose during the installation, but have not reacted according to safety procedures. The one secondary well control barrier installed at the time of incident was also not tested, despite the producer’s instructions that it has to be tested on site. The 69 workers which were on the platform as well as on the construction vessel, the Java Constructor, during the incident were evacuated immediately from the platform and none of them were seriously injured.

2.1.3. Immediate reaction

On the 21st of August 2015, PTTEPAA contacted ALERT Well Control (Asia) Pte Ltd (hereinafter ALERT) in order to assist with measures to stop the flow of oil. ALERT came on site on the 22nd of August. On the 23rd of August 2015, the Australian Maritime Safety Authority (AMSA) has started using chemical dispersants in order to clean up the oil spill that formed around the platform. The dispersants were supposed to “accelerate natural evaporation and weathering of the oil.” The AMSA has also employed other techniques to contain the oil spill, such as the skimming of the oil off the water surface. However, this technique is very time and labour intensive and cannot be used to clean up a spill in the size of the present one.

PTTEPAA also initiated the instalment of a second rig to create a relief well. The West Triton rig, which arrived on the 10th of September, had to first undergo rigorous cleaning to avoid contamination of the Australian waters with alien species. The relief well was jacked up 2km away from the West Atlas and started to drill on the 15th of September. Until finally breaking through the steel casing of the 1st November, the West Triton rig tried multiple times to intercept the steel casing of the well bore. On the same day, the West Triton oil rig started to pump heavy

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80 Ibid. P. 20.
81 Ibid. P. 39.
well fluid into the west atlas well bore in order to stop oil from escaping on the West Atlas oil rig. Despite liberal estimates on how much heavy well fluid was necessary, it became apparent that even when using all fluid, it wasn’t enough to block gas from escaping, albeit it was heavily reduced. Still, the gas ignited.⁸⁴

2.1.4. Fire on the West Atlas oil platform

On the 1ˢᵗ of November 2015, the uncontrolled release of gas into the air around the West Atlas caused a fire, resulting in the complete destruction of the platform.⁸⁵ Another 4'000 barrels of heavier mud was prepared and pumped into the well on the 3ʳᵈ of November. The gas leak was successfully intercepted and the fire starved due to a lack of fuel.⁸⁶

On the 5ᵗʰ of November 2015, the Minister for Resources and Energy of Australia, Hon Martin Ferguson AM MP, announced the Commission of Inquiry in order to establish the facts to the case. The commission had near full powers and was able to require companies and individuals to provide relevant documents and was also able to summon witnesses and to take sworn evidence.⁸⁷

2.1.5. Removal of the platform

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On the 2\textsuperscript{nd} of December 2015, a team from PTTEPAA and Alert Well Control set two isolation plug sets into the H1 well of the Montara Oil well. On the 3\textsuperscript{rd} of December, the team also plugged the relief well, making it possible to demobilise the West Triton rig on the 5\textsuperscript{th} of December. On January 13\textsuperscript{th} 2016, PTTEPAA reported that the H1 well is secured.\textsuperscript{88}

In August 2016, the West Atlas oil rig was towed by a private contractor that sold it as scrap metal in Singapore.\textsuperscript{89}

\textbf{2.1.6. Geography and environmental impact of the oil spill}

The Montara Oil field is located in the Timor Sea, around 250km away from the Australian coast and around 50km away from the international maritime border between Australia and Indonesia. The closest landmass to the oil field are the Hibernia Reef, the Ashmore Reef and the Cartier Reef, all located around 100km to 150km from the Montara well. During the oil spill, the abovementioned reefs were all enclosed by oil slick.\textsuperscript{90}

The oil spill also drifted into the adjacent EEZ of Indonesia. It is also reported by local fishermen in Indonesia that their sea weed farms were affected by the spill. Locals in East Timor reported similar incidents. However, neither the coast of Indonesia nor the coast of East Timor and adjacent waters have been scientifically searched for oil spills and instances of oil were self-reported by locals.\textsuperscript{91}

While most of the oil stayed within around 35km of the well, a thin oil slick covered a much greater extent of the Timor Sea. This affected a variety of organisms living under the sea, in especially regarding submerged banks and shoals. As they are far away from larger islands or mainland Australia, they aren’t well observed. Emergent reefs such as the Ashmore Reef, Cartier Reef and the Hibernia Reef have on the other hand been studied more extensively.\textsuperscript{92}

\textbf{2.1.7. Affected locations in Indonesia and Timor Leste}

\hspace{1cm}\textsuperscript{88} Ibid. P. 264.
\hspace{1cm}\textsuperscript{90} Burns, Kathryn, and Ross Jones. 2016. “Assessment of sediment hydrocarbon contamination from the 2009 Montara oil blow out in the Timor Sea.” Environmental Pollution 214-225.
\hspace{1cm}\textsuperscript{91} Ibid.
\hspace{1cm}\textsuperscript{92} Ibid.
The island of Rote, off the coast of West Timor has been reported to be particularly affected. The damage extents to both damage to seaweed farms, to damages in fishing, human health and witnessing oil off the coast. The islands of Landu, Usu, Semau and Lembatu were also reported to be affected. In Timor Leste, the enclave of Oecusse has been reported to have suffered damage. The communities of the above-mentioned regions experienced oil washing into seaweed farms, onto beaches, onto boats and sticking to nets. The oil spill was also reported to have destroyed seaweed which turned yellow, then white before falling of its ropes. Coral was reported to turn white, and mangroves which were keeping villages save from flooding were destroyed as well. Some of the communities also reported issues regarding health such as skin conditions and food poisoning following the incident.93

According to the Indonesian Centre for Energy and Environmental Studies, the fishing and seaweed industries had suffered an economic loss of around AU$1.5 billion per year since the oil spill from oil washing up onto the coast as well as the chemical dispersant used when cleaning up the oil spill. (Mitchell, 2015, p. 59) While there were studies undertaken by Indonesian officials regarding the impacts of the Montara oil spill in Indonesia, there is as of now no comprehensive investigations accepted by the Australian government or by PTTEPAA.94

The studies conducted by the Australian Montara Commission Enquiry and PTTEPAA have been insufficient in addressing transboundary harm in Indonesia or Timor Leste. While the PTTEPAA claims that no oil has reached either of the coasts, the observations on which the company relies have not been conducted close enough to the coast of either Indonesia nor Timor Leste to be conclusive on an absence of oil.95

2.2. Referral to ITLOS

On the 7th of December 2017, Indonesia has filed a written application to submit the case to ITLOS according to Rule 54 of the Rules of the Tribunal. Indonesia claims the violation of Articles 192, 193, 194, 195, 198, 199, 200, 204, 206 and 208 of UNCLOS. After the publication of the written application, both

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94 Ibid. P. 3.
95 Ibid. P. 125.
Thailand and Timor Leste submitted an application for permission to intervene according to Article 31 of the Statute of the International Court of Justice on the 5th of January and 11th of January 2018 respectively.

3. The parties to the case

**Indonesia** accuses Australia of leniency regarding the oil spill in the Montara oil field that took place in 2015, in especially concerning the evaluation of the damage caused by the oil spill. They further claim that Australia has violated UNCLOS, as the oil spill was caused by non-compliance with security measures. Indonesia further claims that Australia violated UNCLOS for spraying toxic dispersants on the water.

**Australia** claims to have done everything in their power to prevent the oil spill, and that the oil spill has not reached the Indonesian coast, according to independent studies conducted by the Australian Department of Sustainability, Environment, Water, Population and Communities.

**East Timor** also accuses Australia, as well as the Thai company that owned the Montara platform of leniency regarding the oil spill and wants to seek compensation from both the company and Australia.

**Thailand** is refuting the claims of East Timor and of Indonesia that they are liable for the oil spill. According to Thailand, PTTEP Australasia Pty Ltd (herein after “PTTEPAA”), subsidiary of PTT Exploration and Production Company Limited (hereinafter PTTEP), itself a subsidiary of PTT, a state-owned company based in Bangkok, Thailand, has followed all regulations applicable to such a platform and that the failure to prevent the spill cannot be attributed to the PTTEPAA.

4. Useful legal texts and concepts

Responsibility of States for Internationally Wrongful Acts:


- **Prevention:** Prevention is a general principle in international environmental law that has first been stated in the Stockholm declaration of 1972. It has been endorsed by the International Court of Justice as a “part of the corpus” of international law in the 1996 advisory opinion on the legality of Nuclear Weapons. It has also been reiterated in
the 1997 ICJ Judgement on the Gabcikovo-Nagymaros case, as well as in the Judgement of the 2000 Pulp Mills case. In the Pulp Mills case, the ICJ connected the prevention principle with the principle of due diligence and defined the need of an environmental impact assessment that needs to be done before, during and after the project has been carried out.

- **Precaution**: Precaution is closely related to prevention, but it doesn’t necessitate a certain level of certainty to be carried out. The most progressive jurisprudence regarding precaution was passed by the Seabed disputes chamber of ITLOS with its Advisory Opinion on the Responsibilities and obligations of States with respect to activities in the Area. (Responsibilities and obligations of States with respect to activities in the Area, Advisory Opinion,, 2011)

The Mox Plant Case (Ireland v. United Kingdom)

- Provisional Measures of the 3rd December 2001:
  

Gabcikovo-Nagymaros Case (Czech Republic v. Hungary)

- Judgement of the 25th of September 1997
  
  https://www.icj-cij.org/files/case-related/92/092-19970925-JUD-01-00-EN.pdf
5. Further Readings and Relevant Reports

The documents below are mainly there to assist with finding technical details regarding the case which weren’t elaborated on in the present Study Guide, but which may be important in order to solve the case.


6. Glossaries

As the case at hand necessitates a relatively extensive knowledge of technical vocabulary, here three websites with glossaries for vocabulary commonly used in the field:

- [https://www.glossary.oilfield.slb.com/](https://www.glossary.oilfield.slb.com/)
Information about the Conference

1. Conference Schedule

Please note: This schedule is subject to change. For the most up-to-date schedule, please check: hammun.de/conference-schedule
2. Rules of Procedure

HamMUN 2019 session will follow the Rules of Procedure which can be found here: http://hammun.de/rops/.

For first time delegates we recommend participating in the Rules of Procedure workshop on Thursday.

3. Emergency Phone Numbers

Police: 110
Fire Brigade: 112
Casualty doctor: 112

4. Important Addresses

Conference venue: Edmund-Siemers-Allee 1, 20146 Hamburg (and other places at Hamburg University main campus)
Opening ceremony: Laeiszhalle, Kleiner Konzertsaal, Johannes-Brahms-Platz, 20355 Hamburg
Registration: Audimax Garderobe, Von-Melle-Park 4, 20146 Hamburg
Committee Evening: Different places, your chairs will inform you
Silent Disco: Club Hamburg, Reeperbahn 48, 20359 Hamburg
Delegate Ball: Gruenspan, Große Freiheit 58, 22767 Hamburg

5. Public Transport

During the conference, your badge will be your ticket. Please have your badge with you all the time! Public Transport in Hamburg will provide you with busses, tubes and city railroads.

Service Times:
   Wednesday + Thursday: Service stops at 1 am, afterwards you can only take night busses
   Friday – Sunday: Whole night service

Stops near to conference venues:
   Conference venue + Registration + Committee Evening:
   (different places at Hamburg main campus)
S-Bahn Station **Dammtor**: Lines S11, S21, S31

Bus Station **Dammtor**: Line 109

Bus Station **Universität/Staatsbibliothek**: Lines 4, 5

**Opening Ceremony:**

Walking distance from Registration: 20 Minutes

Bus Station **Johannes-Brahms-Platz**: Line 3

Tube Station **Messehallen**: Line U2

Silent Disco (*Fridays Social*) + Delegates Ball (*Saturdays Social*):

S-Bahn Station **Reeperbahn**: Lines S1, S2, S3

Bus Station **Davidstraße**: Line 111

Tube Station **St. Pauli**: Line U3

6. **HamMUN App**

HamMUN is proud to offer a mobile app during the conference. You can get it on your phone by typing this URL [https://hammun.lineupr.com/2019](https://hammun.lineupr.com/2019) into your mobile browser.

Please note that the app is not to be installed via your app store but is a desktop shortcut of a mobile website!

7. **Water Supply**

In case you are thirsty (or sober), don’t worry. Water out of the tap is perfectly drinkable!

8. **Please bring cash!**

Unlike in other European nations, many stores, cafeterias and especially the social venues often do not accept credit cards! Make sure to have cash with you.