

First International Foundation for the Law of the Sea (IFLOS) Academy 2007

**Projectpartner: Internationale
Stiftung für Seerecht (IFLOS),
Hamburg**



The First Summer Academy organized by the International Foundation for the Law of the Sea (IFLOS)¹ took place from 29 July to 26 August 2007 in the Villa Schröder at the seat of the International Tribunal for the Law of the Sea (ITLOS) in Hamburg, Germany. The theme of this First Academy was “Uses and Protection of the Sea – Legal, Economic and Natural Science Perspectives” with a special and interdisciplinary focus on marine environmental protection from the particular point of view of climate change and the ocean. By expanding and deepening the participants’ knowledge within a variety of disciplines, it was the aim of the Academy to enhance the participants’ skills at interpreting and developing the existing legal system governing the use and preservation of the oceans.

In order to provide varying views of different disciplines on the theme, lecturers were selected from a broad variety of backgrounds. Extensively experienced professionals and scholars with specialized knowledge, the lecturers travelled to Hamburg from different parts of the world to contribute to the Academy.

Applications were received from all over the world, and, ultimately, 33 participants - some supported by IFLOS scholarships - represented 28 different countries. Participants were both graduate students conducting research on law of the sea and maritime law as well as specialists working for governmental authorities and non-governmental organizations. This broad variety of professional experience among the participants was of great importance in framing different issues during the discussions in the lectures.

The schedule of the Academy included a combination of lectures, workshops, excursions, visits and working groups. Divided into two main areas of focus, lectures addressed approaches under legal systems or, alternatively, economics and natural sciences. With regard to lectures examining legal systems, the law of the sea and maritime law were treated separately. Law of the sea and public international law systems were focused upon the first two weeks whereas maritime law issues were addressed during the last two weeks.

Due to the necessity of introducing the general principles of law of the sea before proceeding with more detailed issues, lectures and discussions during the first week of the Academy focused on basic legal principles which have been embraced in and arise out of the United Nations Convention on the Law of the Sea (UNCLOS) regime. The first lecture was on the development of the UNCLOS regime and was held by Professor Thomas A. Mensah, former President and Judge (Ghana) of ITLOS. Professor Mensah gave a most interesting overview on the three UN Conferences on the Law of the Sea. He also shared his experience during the negotiations of the UNCLOS which ultimately resulted from the third Conference. Professor Mensah also delivered the lecture on maritime zones where he analyzed the achievements and failures of the 1st and 2nd UN Conferences on the Law of the Sea in addition to the regime of the UNCLOS on maritime zones. Professor Jean-Pierre Cot, Judge (France) of ITLOS, gave a comprehensive lecture on the rights and duties of flag states, which was followed by a heated discussion reflecting opposing viewpoints on the present role of the flag states. A detailed lecture on the dispute settlement system of the UNCLOS held by Professor Rüdiger Wolfrum, President of ITLOS and Director of the Max Planck Institute for Comparative Public Law and International Law², emphasized the basic principles of Part XV of the UNCLOS with special attention given to the procedures adopted therein. In particular, Professor Wolfrum stressed the importance of utilizing peaceful means to solve the conflicts between states and discussed the foundation of ITLOS for settling cases emerging out of law of the sea disputes.

Furthermore, a special emphasis was laid during the first week upon the issues of marine environmental protection. The lecture on the development as well as general principles concerning marine environmental protection was delivered by Louise A. de La Fayette, international lawyer and Director of Oceans and Environment International³. Her lecture covered the main issues of development of the marine environmental

¹ Internationale Stiftung für Seerecht, www.iflos.org.

² Heidelberg, Germany; <http://www.mpil.de/>.

³ London, England.

law started in 1954 and then continued with the UNCLOS system and general principles embodied in the UNCLOS as well as in international environmental law regarding the protection of the marine environment. Effects of pollution on the marine environment were explained by Alan Simcock, former Executive Secretary of the OSPAR⁴ Commission, with a special focus on the main sources of marine pollution, namely dumping, land-based sources and hazardous substances. His lecture further considered general and regional approaches which have been adopted to help confront the problem.

Since vessels are one of the important sources in marine pollution, the complicated system established by the most important legal instruments to minimize the vessel source pollution, namely MARPOL⁵, AFS Convention⁶ and BWM Convention⁷ was explained in detail by Professor Rainer Lagoni, Director of the Law of the Sea and Maritime Law Institute at the University of Hamburg⁸. Professor Lagoni further addressed questions of land-based pollution with a stress on the UNCLOS regime and regional conventions, particularly the OSPAR and Helsinki⁹ Conventions. Finally, in order to provide insight on the enforcement of the relevant provisions, Professor Peter Ehlers, President of the German Federal Maritime and Hydrographic Agency (BSH)¹⁰ gave a lecture on the problems which have been faced during the enforcement of the relevant rules and regulations. Professor Ehlers' lecture covered the most important issues of pollution from land-based sources, from sea-bed sources, by dumping and from vessels. After the lecture, the participants of the Academy had the opportunity to visit the laboratory of the BSH. There, valuable information on the ways to detect marine pollution, particularly with regard to oil and bunker pollution, were outlined for the participants of the Academy by natural scientists employed by the BSH.

Since the Academy's programme was designed to provide interdisciplinary information, the lecture from an economic point of view was delivered by Professor Manfred Zachcial, Director of the Institute of Shipping Economics and Logistics¹¹. Professor Zachcial stressed the economic importance of the maritime sector with a focus on container shipping management and the underlying economic factors of shipping.

After the lectures of the first week were completed, participants had the chance to explore the city of Hamburg over their first weekend. Additionally, one of the activities organized by the IFLOS for participants was an excursion to the beautiful Hanseatic City of Lübeck: participants had a guided tour around the historic centre of the city and enjoyed the pleasant weather at the Timmendorfer beach.

The second week of the Academy was focused on the threshold issues of offshore resources and climate change and its effects on the oceans. Professor Hartmut Graßl from the Meteorological Institute at the University of Hamburg¹² and the Max Planck Institute for Meteorology¹³ explained the basic facts and developments with regard to the climate change. His lecture analyzed causes and effects of the climate change, especially focusing on the effects upon the system of global ocean currents and the sea level rise. Professor Graßl further stressed the necessity to take global action immediately. Dr. Nele Matz-Lück, Senior Research Fellow at the Max Planck Institute for Comparative Public Law and International Law¹⁴, delivered a lecture on the existing legal regime on climate change with a particular emphasis upon the Kyoto Protocol¹⁵. Dr. Matz-Lück additionally identified some unforeseen problems under the present regime, e.g. the question regarding the refugee right for environmentally displaced persons.

⁴ The Convention for the Protection of the Marine Environment of the North-East Atlantic, signed and ratified by all the parties to the Oslo and Paris Conventions and known as the "OSPAR Convention", as for more information visit the <http://www.ospar.org/> web site.

⁵ International Convention for the Prevention of Pollution from Ships, 1973 as amended by the Protocol of 1978 relating thereto and known as MARPOL 73/78.

⁶ International Convention on the Control of Harmful Anti-Fouling Systems on Ships, 2001.

⁷ International Convention for the Control and Management of Ships' Ballast Water and Sediments, 2004.

⁸ <http://www.jura.uni-hamburg.de/institute/issr/>.

⁹ Convention on the Protection of the Marine Environment of the Baltic Sea Area, 1992. The Helsinki Commission was established by this Convention; as for more information on the Commission see <http://www.helcom.fi/>.

¹⁰ Bundesamt für Seeschifffahrt und Hydrographie, Hamburg; www.bsh.de.

¹¹ Bremen, Germany, <http://www.isl.org/>.

¹² <http://www.mi.uni-hamburg.de/>.

¹³ <http://www.mpimet.mpg.de/>.

¹⁴ See *supra* note 2.

¹⁵ The Kyoto Protocol of 1997 is an amendment to the United Nations Framework Convention on Climate Change and the result of the 1992 Earth Summit in Rio de Janeiro. The texts of the Convention and the Protocol and more information on the Kyoto Protocol regime can be found at its website <http://unfccc.int>.

At the same time, it is a well-accepted fact that the issues of climate change and marine environment are highly dependant on political action taken (or not taken) by states. Consequently, a lecture on the political agenda with respect to those issues was delivered by Dr. Karsten Sach from the Federal Ministry for the Environment, Nature Conservation and Nuclear Safety in Berlin, Germany, and by Dr. Gabriela von Goerne, climate change expert working for Greenpeace Germany. The conclusion to be drawn from their lecture is that, unfortunately, the immediate global action urged by natural scientists cannot be taken due to the economic interest argument put forth by some states.

The second week also included additional lectures on offshore resources. These lectures were designed to present participants with a variety of perspectives from multiple disciplines. A scientific perspective concerning petroleum and mineral resources was provided by Dr. Robin Cleverly, Law of the Sea Consultant with the United Kingdom Hydrographic Office¹⁶ and by Dr. Hermann-Rudolf Kudraß from the Federal Institute for Geosciences and Natural Resources¹⁷. This lecture outlined underlying scientific knowledge associated with offshore resources such as geological prerequisites for petroleum as a source, technological and economic requirements for exploration, the origin of marine minerals and the economic value of these resources. Dr. Peter M. Swift, Managing Director of Intertanko¹⁸ delivered an interesting lecture on the economic perspectives of the issue. His lecture stressed the demand for energy and the oil and gas production necessary to meet this demand, thus detailing the economic importance of the offshore resources. Dr. Swift further emphasized maritime aspects arising out of the transportation of oil and gas by sea, including an economic correlation between the world demand and freight rates as well as pollution problems and attempts by the industry itself to prevent this problem.

The lecture on the legal perspective for analyzing the UNCLOS provisions regarding the continental shelf and the international sea bed area was delivered by Professor Alexander Proelß from the Faculty of Law, Christian-Albrechts-Universität zu Kiel¹⁹, Germany. Professor Proelß first explained the development and the present regime regarding the continental shelf and afterwards the regime of the international seabed area which was developed following the 1960's and established by the UNCLOS provisions. Finally, Mr. Satya Nandan, Secretary-General of the International Seabed Authority²⁰ gave a very well received guest lecture in the ITLOS main courtroom, also open to the public, which covered various aspects and current issues related to deep seabed mining.

Another pleasurable component offered by the Academy schedule consistent with its purpose of interlinking legal theory and practice, was the workshop on maritime delimitation, which was supervised by Dr. Robin Cleverly from the United Kingdom Hydrographic Office²¹. During this workshop participants were taught how to draw a median line between two states with coasts opposite to each other on provided navigational charts by using straightedges and compasses. Another highlight of the second week was the visit of two container terminals at the port of Hamburg. As Europe's second biggest container port, this visit proved itself one of the most interesting experiences for the participants.

Among other activities, the opportunity to attend the final hearings of Case No. 14 and Case No. 15 held at ITLOS on the 6th of August, 2007 was probably the most exciting event for the participants. These two cases had been brought to the Tribunal by the Flag State of two fishing vessels, Japan, against the Coastal State by whom the vessels were detained, the Russian Federation. Following the detention Japan had filed an application for the prompt release of the vessels. The Tribunal decided that the Russian Federation must promptly release the "Hoshinmaru" and its crew. Contrarily, the Tribunal decided in "Tomimaru" case that the application of Japan no longer has an object, since Japan is no longer the Flag State of the vessel owing to the confiscation decision reached by a Russian Court²².

After a week filled with exciting events, participants visited the North Sea Coast, specifically the cities of Husum and St. Peter-Ording at the second weekend. This visit also was organized by IFLOS. On this occasion, the participants visited the Maritime Museum of North Friesland in Husum and enjoyed the beauty of the famous and very wide beach of St. Peter-Ording.

¹⁶ Somerset, England; <http://www.ukho.gov.uk/>.

¹⁷ Hannover, Germany; <http://www.bgr.bund.de/>.

¹⁸ International Association of Independent Tanker Owners, London, England; www.intertanko.com.

¹⁹ <http://www.uni-kiel.de/>.

²⁰ ISA, www.isa.org.jm/.

²¹ See *supra* note 16.

²² The texts of the judgements can be found on the Tribunal web site www.itlos.org. Additionally, it should also be noted that the decisions rendered by the Tribunal are final according to Article 296 of UNCLOS.

The third and fourth weeks of the Academy dealt in particular with maritime law issues. The third week started with a broad introductory lecture by Professor John Hare from the University of Cape Town²³ who gave an overview on maritime law, including its historical development, ship types and shipping market actors. Professor Hare, furthermore, delivered another lecture on the arrest of ships, salvage and towage. Regarding the arrest subject, he specifically referred to the last two cases decided by ITLOS and made a distinction between detention by governmental authorities under the port state control regime as opposed to the arrest of ships. On other issues regarding the arrest, e.g. maritime claims, sistership arrest and wrongful arrest, he explained the system of the Arrest Convention, 1952²⁴. Regarding towage and salvage, Professor Hare stressed the tanker phenomenon and the development of one of the milestones of towage and salvage law, namely “special compensation”.

The contractual issues of maritime law, namely legal issues arising out of charterparties and bills of lading, were explained by Filippo Lorenzon, Lecturer at the Institute of Maritime Law at the University of Southampton²⁵. The selected issues he focused on were different types of charterparties, vessel-related clauses and laytime, demurrage and safe port clauses embodied in charterparties. Mr. Lorenzon also explained the carrier’s main duties under the Hague-Visby Rules²⁶, rights and liabilities for cargo claims, maritime lien and arrest of a vessel as a result of carriage of cargo claims.

Moreover, the participants of the Academy also had the chance to listen to a lecture delivered by Professor Jürgen Basedow, Director of the Max Planck Institute for Comparative and International Private Law²⁷, focusing on the limitation of liability, one of the core issues of maritime law. Professor Basedow explained first why the concept of limitation of liability exists in transport law. Afterwards, he outlined different types of limitation and the relevant conventions’ systems²⁸. Furthermore, he emphasized the regime established by the LLMC 1976. Finally, Professor Basedow discussed one of the most interesting issues in respect of the limitation of liability, namely breaking the limits. The lecture delivered by Professor Basedow was held at the Max Planck Institute and the participants of the Academy had the opportunity to visit the Institute’s extensive library after the lecture.

Since a special focus of the Academy was marine environmental protection, there were also some lectures on private law issues relating to pollution by vessels, most particularly oil pollution. The legal framework of the international regime for civil liability for oil pollution damage was introduced by Mans Jacobsson, former Director of the International Oil Pollution Compensation Funds²⁹. Mr. Jacobsson also gave another lecture on compensation for various types of damage caused by tanker oil spills. He explained the complex system established by the CLC '92, FUND '92 and Protocol of 2003 to the FUND '92 (Supplementary Fund Protocol) as well as compensation for various types of damage caused by tanker oil spills. Under the CLC '92 regime, every tanker-owner has to have liability insurance. As the liability insurance for shipowners is covered by P&I³⁰ Clubs, the comprehensive lecture on insurance issues arising from oil spills was delivered by Nigel Carden, Deputy Chairman of Thomas Miller P&I Limited, London. Mr. Carden particularly stressed the importance of P&I insurance as regards oil spill compensation.

Professor Richard S. J. Tol, Senior Research Officer at the Economic and Social Research Institute³¹, gave the last lecture on the climate change and the oceans, looking at economic costs arising from and consequences of the climate change. Another guest lecture open to the public was delivered in the third week of the Academy.

²³ South Africa; <http://www.uct.ac.za/>.

²⁴ International Convention relating to the Arrest of Sea-Going Ships, 1952. The recent convention adopted by the UN/IMO Conference in 1999, namely the International Convention on Arrest of Ships, has not yet entered into force.

²⁵ <http://www.iml.soton.ac.uk/>.

²⁶ International Convention for the Unification of Certain Rules of Law relating to Bills of Lading, 1924 (“Hague Rules”) as amended by Protocol to Amend the International Convention for the Unification of Certain Rules of Law Relating to Bills of Lading, 1968 (“Visby Rules”).

²⁷ Hamburg, Germany; www.mpipriv.de.

²⁸ Convention on the Limitation of Liability for Maritime Claims, 1976 (LLMC 1976), International Convention on the Civil Liability for Oil Pollution Damage, 1969 (CLC '69) and 1992 (CLC '92), International Convention on the Establishment of an International Fund for Oil Pollution for Damage, 1971 (FUND '71) and 1992 (FUND '92), International Convention on Liability and Compensation for Damage in connection with the Carriage of Hazardous and Noxious Substances by Sea, 1996 (HNS Convention 1996), International Convention on Civil Liability for Bunker Oil Pollution Damage, 2001 (Bunker Convention 2001).

²⁹ www.iopecfund.org.

³⁰ Protection and Indemnity. These are mutual insurance organizations and are called as “P&I Clubs”. They cover shipowners’ liability towards third parties.

³¹ Dublin, Ireland; <http://www.esri.ie/>.

Namely, Mr. Augustín Blanco-Bazán, Senior Deputy Director of the International Maritime Organization³², spoke on the freedom of navigation concept. As with the previous presentation open to the public, this guest lecture was also held in the main courtroom of the Tribunal.

After another week of comprehensive lectures, participants enjoyed a boat trip on the River Elbe on their third weekend. Although the participants had enjoyed the view of the Elbe every day, given that the seat of the ITLOS is along the riverside of the Elbe, the boat trip further supplied the participants with an opportunity for visiting the Vierlande region.

Lectures of the fourth and final week of the Academy focused on maritime law issues exclusively. On Monday, Dr. Kay-Uwe Bahnsen, Attorney at Law and member of the German Maritime Arbitration Association³³ and Dr. Friedrich Strube, Attorney at Law and Chairman of the GMAA shared their broad experience on the important topics of conflict of maritime laws and commercial arbitration. Dr. Bahnsen analyzed the conflict of laws issue by dividing the subject into two spheres. On the area of harmonization of national private international law, he explained the system of the Rome Convention, 1980³⁴. Dr. Bahnsen subsequently referred to the international conventions on the harmonization of substantive maritime law, such as the Brussels Convention of 1910³⁵. With regard to the maritime arbitration, Dr. Strube explained the basics of arbitration, enforcement of arbitral awards and arbitration clauses embodied in the charterparties. Further, he outlined the institutions which specialize in maritime arbitration.

On Tuesday, an excursion to the Hanseatic City of Wismar was organized in order to visit the shipyard of Aker Yards³⁶. There the participants attended an interesting presentation on new trends and challenges in shipbuilding by Stefan Säuberlich, Senior Vice President of the Aker Yards. Additionally, a lecture on economic concepts and bank transactions, namely ship-finance and mortgages was delivered by Harald Kuznik, Head of Shipping of the HSH Nordbank in Hamburg. After the lectures, participants attended another exciting event, the visit of Aker Yards shipyard. Furthermore, participants of the Academy were welcomed by the mayor at a reception at the Town Hall of the Hanseatic City of Wismar. Afterwards, participants were offered a guided tour through the city.

On Wednesday, participants attended a lecture on another topic of great current interest, namely the role of classification societies in the shipping industry and their liability, the speakers being Rainer Schöndube, Member of the Executive Board of Germanischer Lloyd³⁷ and Gesa Heinacher-Lindemann, Director of the Corporate Unit for Legal Affairs and Insurance of GL. Mr. Schöndube conveyed information on the historical and present role of the classification societies within the industry, specifically referring to GL and its activities. Ms. Heinacher-Lindemann especially dealt with the liability issue after addressing the legal relationship between classification societies and their clients. As the final lecture of the Academy, Professor Marian Paschke from the Law of the Sea and Maritime Law Institute at the University of Hamburg delivered a lecture on liner conferences and cabotage under European Union law. His lecture analyzed the question of legality of the liner conferences under the European Union's competition law requirements, which, in fact, is another highly contested issue of maritime law.

After the lectures had been completed, a Moot Court competition was held in the main courtroom of the Tribunal. Comprising two sets of applicants and two sets of respondents, four teams - formed within the first working group - claimed and defended their arguments on the "Oryx case" in front of the Moot Court Panel consisting of Professor Doris König from the Bucerius Law School³⁸ in Hamburg, Professor Rainer Lagoni, ITLOS-Judge José Luis Jesus (Cape Verde) and Mr. Hartmut von Brevern, Attorney at Law, Remé Rechtsanwälte.

On the 24th of August, 2007, a reception was held for the participants of the first Summer Academy at the Town Hall of the Free and Hanseatic City of Hamburg. On this occasion, certificates of attendance were distributed to the participants. Moreover, a Resolution drafted by the second working group which had been supported by Professor Ehlers was read out both in English and in French.

³² IMO, www.imo.org.

³³ GMAA, www.gmaa.de.

³⁴ Convention on the Law Applicable to Contractual Obligations, 1980; see <http://www.rome-convention.org/>.

³⁵ Convention for the Unification of Certain Rules of Law with respect to Collisions between Vessels, 1910.

³⁶ <http://www.akeryards.com/>.

³⁷ GL, www.gl-group.de.

³⁸ <http://www.law-school.de/>.

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In conclusion, the First Summer Academy proved an interesting, productive and delightful month for all its participants. Thus, the participants are grateful to the International Foundation for the Law of the Sea for organizing this Summer Academy and to the contributors who helped make such an ambitious academic and social event possible.

Report by Duygu Damar, Participant at the first IFLOS Summer Academy

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