

# International Environmental Law (Spring 2013)

## Tentative Schedule

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\* This is an advanced course in international law. The students should have a basic knowledge of international law generally or should come to the class prepared by reading relevant parts of international law textbooks.

\* This course is a research/presentation oriented class. The students are required to do an extensive research on the relevant topics and make presentations in the class. The "Reading Material" listed here are only the basic ones, which all participating students must read before coming to the class.

### Schedule (as of 9 April 2013)

Dates	Themes	Reading material	Reporters
2013			
4/8	No class	Preparation for 4/15	
4/15	0. Introduction 1. ICJ Whaling in the Antarctic Case: International Legal Issues	(1) Application of Australia instituting the case before the International Court of Justice; (2) Mossop, "Australia v Japan: Whaling in the International Court of Justice," <i>New Zealand Yearbook of International Law</i> , Vol. 7 (2009), pp. 169-177.	
4/22	2. Understanding the ICRW regime: its origin, development (moratorium and sanctuaries) and current problems	(1) Birnie, <i>International Regulation of Whaling, Vol. I and Vol. II</i> (1985), pp. 168-204 (and pp. 600-634). (2) Park, "Japanese Scientific Whaling in Antarctica: Is Australia Attempting the Impossible?" <i>New Zealand Journal of Public and International Law</i> , Vol. 9-2 (2011), pp. 193-221.	
5/13	3. Scientific Permit under ICRW: Right or Abuse of Right?	(1) Kanehara, "Japanese Practice concerning the International Regulation of Whaling," <i>Japanese Annual of IL</i> , No.46 (2003), pp.127-148. (2) Triggs, "Japanese Scientific Whaling: An Abuse of Right or Optimum Utilization?" <i>Asia Pacific Journal of Environmental Law</i> , Vol.5-1 (2000), pp.33-59. (3) Park (2011), <i>op.cit.</i> .	
5/20	4. Scientific Permit under ICRW: Discussion	Additional documents may be identified during the previous classes.	
5/27	5. Standing before the ICJ: Jurisprudence	(1) Kawano, "Standing of a State in the Contentious Proceedings of the International Court of Justice," <i>Japanese Yearbook of International Law</i> , Vol.55 (2012), pp.208-236. (2) ICJ Precedent: <i>Obligation to Prosecute or Extradite</i> (Belgium v Senegal), Judgment, July 20, 2012.	
6/3	No class	Preparation for 6/10	
6/10	6. Standing before the ICJ: The Australian case: Discussion.	Additional documents may be identified during the previous classes.	
6/17	7. TBA		
6/24	8. TBA		
6/26-7/17	9~11. The Hague session: Observing the Oral Proceedings		
7/22	12. Final presentations		

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## Preparation, Documents, and Presentation

\* The students are required to download all basic documents by themselves and bring them to the class for their reference (either in paper or in PC). Many of the basic treaties can be found in Malcolm Evans ed, *Blackstone's International Law Documents* (10th ed., 2011) <available in multiple at the Kobe Univ. library>.

### 1. Basic Knowledge of International Law

(1) Relevant fields: sources of international law; the law of treaties; state responsibility; the law of the sea; Antarctic law; conservation of natural resources (or international environmental law); peaceful settlement of disputes (particularly judicial settlement and ICJ).

(2) Relevant international law courses: Undergraduate level-international law courses (学部の国際法講義); 神戸大法学部・国際機構法 (南極法) (2012, 2013); GSICS- international cooperation law (国際協力法) (2012, 2013); international environmental law (国際環境法) (2012).

(3) Relevant sections from international law textbooks:

Cf: Malcolm Shaw, *International Law* (6<sup>th</sup> ed., 2008): Sections 3 (sources); 10 (territory- polar regions); 11 (the law of the sea); 14 (state responsibility); 15 (international environmental law); 16 (the law of treaties); 18 (the settlement of disputes by peaceful means); 19 (the International Court of Justice).

浅田正彦編『国際法第2版』(東信堂、2013年): 第2章(法源・慣習法)、3章(条約法)、10章(海洋法)、14章(国家責任法)、15章(国際環境法)、16章(紛争解決)。

(4) Basic documents:

United Nations Charter (国連憲章) < <http://www.un.org/en/documents/charter/>>

The Vienna Convention on the Law of Treaties (条約法条約)

< <http://treaties.un.org/pages/CTCTreaties.aspx?id=23&subid=A&lang=en>>

Antarctic Treaty (南極条約) < [http://www.ats.aq/e/ats\\_keydocs.htm](http://www.ats.aq/e/ats_keydocs.htm)>

The Statute of the ICJ and its Rules (国際司法裁判所規程及び規則)

< <http://www.icj-cij.org/documents/>>

United Nations Convention on the Law of the Sea (国連海洋法条約)

< <http://treaties.un.org/pages/CTCTreaties.aspx?id=21&subid=A&lang=en>>

ILC Articles on Responsibility of States for Internationally Wrongful Acts (国家責任条文) < [http://untreaty.un.org/ilc/texts/9\\_6.htm](http://untreaty.un.org/ilc/texts/9_6.htm)>

Convention on International Trade in Endangered Species of Wild Fauna and Flora (野生動植物取引規制条約) < <http://www.cites.org/eng/disc/text.php>>

Convention on Biological Diversity (生物多様性条約)

< <http://www.cbd.int/convention/text>>

(4) Reference Reading:

・ J.G. Merrills, *International Dispute Settlement* (5<sup>th</sup> ed., 2011).

・ 杉原高嶺『国際裁判の研究』(1986年)第2章「一般利益に基づく国家の出訴権」

### 2. ICJ Whaling in the Antarctic Case

(1) Basic documents:

- < <http://www.icj-cij.org/docket/index.php?p1=3&p2=1&code=aj&case=148&k=64>>  
Australian Application instituting the proceedings (豪請求書) (31 May 2010)  
New Zealand Declaration of Intervention (NZ 訴訟参加宣言) (20 Nov. 2012)  
ICJ Order on the NZ declaration (ICJ 命令 NZ 訴訟参加受理) (6 Feb. 2013)

(2) Reference readings (in English and Japanese):

- Natalie Klein "Whales and Tuna: The Past and Future of Litigation between Australia and Japan," 21 *Geo Int'l Env'tl L Rev* (2009), p. 143.
- Donald K. Anton, "Dispute Concerning Japan's JARPA II Program of 'Scientific Whaling' (Australia v. Japan)," *ASIL Insight*, Vol. 14-20 (2010)  
< <http://www.asil.org/insights100708.cfm> >
- 大谷良雄「国際法方々(5)(6)—調査捕鯨とオーストラリアの訴訟提起(上)(下)」『時の法令』1864号(2010)52-54頁、1865号(2010)49-54頁。
- 長岡さくら「日本の調査捕鯨と国際司法裁判所への提訴」『福岡工業大学環境科学研究所所報』5号(2011)31-37頁。

3. International Convention on Regulation of Whaling (ICRW) and International Whaling Commission (IWC)

(1) Basic Documents:

- <<http://iwc.int/convention>> <<http://iwc.int/iwc-documents>> <<http://iwc.int/resolutions>>  
International Convention for the Regulation of Whaling and its Schedule (国際捕鯨取締条約及びその附表)  
IWC Annual Reports and Resolutions (国際捕鯨委員会年次報告書、決議)

(2) Reference Readings:

- Patricia Birnie (ed.), *International regulation of whaling : from conservation of whaling to conservation of whales and regulation of whale-watching, Vol. I and II* (New York : Oceana Publications, 1985).
- Patricia W. Birnie, "International Legal Issues in the Management and Protection of the Whale: A Review of Four Decades of Experience," *Natural Resources Journal*, Vol. 29, Issue 4 (1989), pp. 903-934.
- William T Burke, "Memorandum of Opinion on the Legality of the Designation of the Southern Ocean Sanctuary by the IWC," 27(3) *Ocean Dev & Int'l L* (1996), p. 315.
- Maria Clara Maffei "The International Convention for the Regulation of Whaling" 12(3) *Int'l J. Marine & Coastal L* (1997), p. 287.
- William C Burns, "The International Whaling Commission and the Future of Cetaceans: Problems and Prospects" 8 *Colo J Int'l Env'tl L & Poly* (1997), p. 31.
- Michael Heazle, "Scientific uncertainty and the International Whaling Commission: an alternative perspective on the use of science in policy making," *Marine Policy*, Vol.28 (5) (2004), p.361.
- Michael Bowman, " 'Normalizing' the International Convention for the Regulation of Whaling," 29 *Michigan Journal of International Law* (2007-8), pp.293-500.
- Joji Morishita, Dan Goodman, "The IWC moratorium on commercial whaling was not a value judgment and was not intended as a permanent prohibition," *Aegean Review of the Law of the Sea and Maritime Law*, Vol.1 (2) (2011), p. 301.
- 小松正之編著 『くじら紛争の真実—その知られざる過去・現在・そして地球の未来—』(地球社、2001)。

- ・ 喜多義人「鯨類資源の管理と国際法」『日本法学』第 71 巻 3 号 (2006) 915-946 頁。
- ・ 喜多義人「国際捕鯨委員会と商業捕鯨の禁止」『日本法学』第 71 巻 4 号 (2006) 1515-1539 頁。
- ・ 真田康弘「1972 年捕鯨モラトリアム提案とその帰結—米国のイニシアティブと各国の対応を事例として」『環境情報科学論文集』第 20 号 (2006) 283-288 頁。
- ・ 喜多義人「商業捕鯨の必要性和合法性」『日本法学』第 73 巻 2 号 (2007) 887-919 頁。
- ・ 児矢野マリ「捕鯨問題と国際法」神奈川大学 国際常民文化研究機構『国際シンポジウム報告書 I 海民・海域史からみた人類文化』(2010) 105-112 頁。

#### 4. Scientific Whaling and Japan

##### (1) Basic Documents:

<<http://iwc.int/permits>>

Report of the JARPA Review Workshop <<http://iwc.int/jarpa>>

Resolution on JARPA, IWC Res 2007-1 (2007).

Resolution on JARPA 1, IWC Res 2005-1 (2005).

Resolution on Whaling under Special Permit, IWC Res 2003-2 (2003).

Resolution on Southern Hemisphere Minke Whales and Special Permit Whaling, IWC Res 2003-3 (2003).

Resolution on Special Permits for Scientific Research, IWC Res 1986-Appendix 2 (1986).

Japan's Institute of Cetacean Research <<http://www.icrwhale.org/>>

Paris Panel (International Panel of Independent Legal Experts) on Special Permits Whaling under International Law (2007)

<<http://cbialdia.mardecetaceos.net/archivos/download/ParisPanelReportui21169.pdf>>

##### (2) Reference Reading:

- ・ Reuben B Ackerman "Japanese Whaling in the Pacific Ocean: Defiance of International Whaling Norms in the Name of 'Scientific Research', Culture and Tradition," 25 *BC Int'l & Comp L Rev* (2002) , p. 323.
- ・ Nobuyuki Yagi, "The Status of Scientific Research Whaling in International Law," 8 *ILSA J Int'l & Comp L* (2002), p.487.
- ・ Eldon VC Greenberg, Paul S Hoff and Michael I Goulding, "Japan's Whale Research Program and International Law," 32 *CAWILJ* (2002), p.151.
- ・ Tanya Wansbrough, "On the Issue of Scientific Whaling: Does the Majority Rule?" 13(3) *RECIEL* (2004), p. 333.
- ・ Sand, Peter H., "Scientific Whaling: Whither Sanctions for Non-Compliance with International Law," *Finnish Yearbook of International Law*, Vol. 19 (2008), pp. 93-126.
- ・ Dan Goodman, "Japan's Research Whaling is Not Unlawful and Does Not Violate CITES Trade Rules," *Journal of International Wildlife Law and Policy*, Vol. 13 Issue 2 (2010), pp.176-182.
- ・ Vassili Papastavrou & Patrick Ramage, "Commercial Whaling by Another Name: The Illegality of Japan's Scientific Whaling: Response to Dan Goodman," 13 *Journal of international wildlife law and policy* (2010), p.183.
- ・ 喜多義人「国際捕鯨問題と日本」須藤英章編『現代日本の法と政治 粕谷進先

生古稀記念』(星雲社、2007)。

- 真田康弘「科学的調査捕鯨の系譜--国際捕鯨取締条約第 8 条の起源と運用を巡って」『環境情報科学論文集』第 22 号 (2008) 363-368 頁。
- 鈴木亮太郎「捕鯨をめぐる問題—調査捕鯨問題を中心に」『ジュリスト』 1365 号 (2008) 56-64 頁。

#### 5. International law principles and other relevant treaties: UNCLOS, CITES

- BO Iluyomade, "The Scope and Content of a Complaint of Abuse of Right in International Law," 16 *Harvard Intl LJ* (1975), p. 47.
- Michael Byers, "Abuse of Rights: An Old Principle, A New Age," 47 *McGill L J* (2002), p. 389.
- Patricia W. Birnie, "Marine Mammals : Exploiting the Ambiguities of Article 65 of the Convention on the Law of the Sea and Related Provisions : Practice under the International Convention for the Regulation of Whaling," in David Freestone, Richard Barnes and David M. Ong (eds.), *The law of the sea : progress and prospects* (Oxford University Press, 2006), pp.261-280.
- Peter H Sand "Japan's 'Research Whaling' in the Antarctic Southern Ocean and the North Pacific Ocean in the Face of the Endangered Species Convention (CITES)" 17 *RECIEL* (2008), p. 56.
- Yasuhiro Shigeta, "Obligation to Protect the Environment in the ICJ's Practice: To What Extent *Erga Omnes*?" *Japanese Yearbook of International Law*, Vol. 55 (2012), pp.176-207.

(as of 9 April 2013)