

Marking Scheme to Offshore Issues Portion of March 2006 III-2 Examination

7.a John Seldon (see Mukherjee p. 4)

- date = 1639
- wrote Mare Clausum
- sea could be bounded and enclosed; or denied that sea was inexhaustible

7.b Harry Truman (see Mukherjee p. 5 & 6)

- date = 1945
- wrote Truman Proclamation
- claimed continental shelf to the 100 fathom line as belonging to the US (and generally for any State)

7.c Amb. Pardo (see Mukherjee p. 6)

- date = 1967
- speech at UN General Assembly
- led to General Assembly Resolution that sea-bed and ocean floor and its subsoil beyond national jurisdiction were for "common heritage of mankind"

8. Establishing new baselines along Labrador (see Mukherjee p. 7, 8, 15, 21-24, UNCLOS articles 1-16)

- UNCLOS requires charts depicting baselines to be deposited at UN, or a list of coordinates with geodetic datum stated to be deposited at UN
- Identify points in old Order in Council on the new charts
- identify new points that need to be added
- check spacing, bay closing lines, etc.
- do they meet the intent of the UNCLOS provisions?
- what is the geographic name of the feature?
- charted position
- elevation? above high tide, drying (Low tide elevation), submerged at all tides
- does the point contribute to establishing the outer limit of the territorial sea?
- is it a single feature or part of a straight baseline system?
- what is the reference (source for your information, e.g., chart number)

9. Use of Proportionality Test in Hudson Bay (see Mukherjee, p. 38-39), North Sea cases (Mukherjee p. 33-34)

There is no "right" answer

- mark for stating which position you are supporting

If use of proportionality

- identify relevant area
- identify relevant coasts
- jurisprudence (used in North Sea Cases)
- other points
- literary style

If not to use proportionality

- can't identify relevant area
- can't identify relevant coasts
- jurisprudence (not used in some international tribunals)
- other points
- literary style

10. BNA Act, BC Reference, Nfld Court of Appeal (Mukherjee, p. 44, 45, 51, 52, 53)

BNA Act

- federal jurisdiction (2 marks)

BC Reference

- Territorial Sea is federal (2 marks)

Nfld Court of Appeal

- Provincial out to 3 nautical miles, then federal (2 marks)

11. Establishing the continental shelf limit (Mukherjee p. 13, UNCLOS Article 76)

- minimum distance 200 n.m. (370.4 km)

outer bound the greater of 350 n.m. or 100 nm from the 2500 m isobath

- where is the 2500 m isobath (309.375 km)
- where is 100 n.m. from the 2500 m isobath (494.6 km)
- where is the 350 n.m. from TS baseline (648.2 km)
- where is the outer bound (constraint line) (648.2 km)

actual limit defined by 60 n.m from foot of slope or where the sedimentary rock thickness is 1% of distance to foot of slope

- where is the foot of slope (350 km) [You have to plot the profile out to see this]
- where is 60 n.m from the Foot of Slope (461 km)
- where does the 1% of distance from foot of slope intersect the sedimentary rock thickness profile (489.1 km)
- where is the actual outer limit (489.1 km)

- Is this actual outer limit less than the constraint line? (Yes, 489.1 km < 648.2 km)

- Conclusion: outer limit of continental shelf is 489.1 km

12. Arctic Waters (Mukherjee, p. 8, 14, 16, 17)

Arctic Waters

- baselines are continuous around islands
- internal waters landward of baselines
- treaties
- historic waters
- Nunavut Act

Threats

- ice melting
- sea level rise
- ships using waters as international straits
- foreign military operations
- oil and gas exploration & exploitation-
- other ideas

What CLS can do

- advice to government (individually or as a professional group)
- public relations
- calculations, surveys & maps
- other ideas