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Examination # \_\_\_\_\_

UNIVERSITY OF DAYTON SCHOOL OF LAW

INTERNATIONAL LAW

Final Examination

Professor Allen N. Sultan

Monday, December 8, 2003

9:00 – 12:00 Noon

INSTRUCTIONS

The proctor will first distribute the essay question and scrap paper. Forty-five minutes later you will receive the blue books. You then have two hours and fifteen minutes to answer the question(s).

Please make sure you have your examination number on each blue book and that they are sequentially numbered before you submit them to the proctor.

Answer the question, but do not repeat it

- WRITE ON ONE SIDE OF THE PAGE ONLY
- State your responses first, in the order of importance
- Do not repeat yourself, and be as detailed and specific as is possible
- Do not “survey” any area of the law: rather APPLY the law to the facts
- Write in ink

NO NOTES, BOOKS, OR OTHER MATERIALS MAY BE USED DURING THE EXAM; PLEASE LEAVE THEM IN THE FRONT OF THE ROOM.

GOOD LUCK!

The main island of Japan, Honshu, is located 350 nautical miles south of its northern-most island, Hokkaido. Waters surrounding the latter is one of the most abundant and valuable salmon fishing areas in the world. In 1992 Japan became an early signatory to the Law of the Sea Convention (LOS), and shortly after it came into force in 1994, Japan unilaterally proclaimed the waters between the two islands as being an “environmental protection zone” under their regulation and supervision.

In 1999, studies by the Secretariat of the Multilateral Treaty Concerning Pacific Salmon, to which both Japan and the United States are members, indicated that a certain valuable strain of salmon near Hokkaido (much favored by sushi lovers), was being fished to the point of near extinction. Japan and most other fishing countries hastily created a second “Convention on the Conservation and Management of Endangered Fish Stocks in the Western and Central Pacific Ocean.” It came into force on September 4, 2000, after an executive order by the President of the United States that it would not become a member.

Citing the latter treaty as well as its earlier unilateral proclamation regarding the “environmental protection zone,” Japan conferred relevant fishing licensing power for that strain of salmon to the “Authority” established at Montego Bay, Jamaica, that administers the LOS treaty regime. The licenses for a limited amount of catch are open to all ships owned by nationals of the member states of the LOS, and are necessary for fishing for that specific endangered strain of salmon. Policing of this requirement was placed in the Japanese Coast Guard by both the Montego Bay authority, and by all of the member states of the latter September, 2004 convention.

After being denied a license by the Montego Bay administration, the “Liberty,” a fishing vessel owned by a United States corporation flying the US flag, with a US captain and crew, undertakes to fish for the salmon anyway, citing its long forty-year history of doing so in those waters. It is boarded and impounded by the Japanese Coast Guard, and taken to Japan. The captain is imprisoned, and the crew, is given free Japan Air Line tickets to the United States, and placed on one of their flights to San Francisco.

After the usual diplomatic protests by both the United States and Japan, the two countries agree to submit the dispute to the International Court of Justice in the Hague.

What legal issues do the above facts present?

- 2 Using materials covered the semester, how will they be evaluated?
- 3 What is their possible resolution?
- 4 WHY will they be so resolved?