

SUMMER 2022

LAW OF THE SEA

INTEREST GROUP NEWSLETTER

Dear LOSIG members,

LOSIG had a busy few months earlier this year preparing for the [ASIL Annual Meeting](#) in April. We are so grateful to all of you who were able to join us for our panel on “Uncharted Waters: Legal Considerations involving Unmanned Vessels and Autonomy at Sea.” It was great to meet and see some of you in person after such a long break, and we hope those of you who were able to attend enjoyed the Annual Meeting.

LOSIG also welcomed our new Co-Chair in April, Pieter Bekker. Pieter is currently a professor and Chair in International Law at the University of Dundee (UK) and a partner at UK law firm CMS Cameron McKenna Nabarro Olswang LLP. An active member of the New York Bar, Pieter has been an advocate on Law of the Sea matters before the International Court of Justice, the International Tribunal for the Law of the Sea, and *ad hoc* tribunals. We are excited to have Pieter serve as Co-Chair for the next three years!

Finally, while LOSIG will take a little break over the summer, we welcome any new ideas for events later this year and encourage your continued [contributions to the newsletter](#).

Warm regards,

Margaret Materna & Pieter Bekker, Co-Chairs

Recent Developments in the Law of the Sea:

- On April 21, 2022, the International Court of Justice (ICJ) delivered its final judgment in the case concerning [Alleged Violations of Sovereign Rights and Maritime Spaces in the Caribbean Sea](#) (*Nicaragua v. Colombia*). In its ruling, the ICJ found, *inter alia*, that, by interfering with fishing and marine scientific research activities of Nicaraguan-flagged or Nicaraguan-licensed vessels and with the operations of Nicaraguan naval vessels in Nicaragua’s exclusive economic zone (EEZ) and by purporting to enforce conservation measures in that zone, Colombia violated Nicaragua’s sovereign rights and jurisdiction in this maritime zone. The ICJ also found that, by authorizing fishing activities in Nicaragua’s EEZ, Colombia violated Nicaragua’s sovereign rights and jurisdiction in Nicaragua’s EEZ. Moreover, the ICJ found that the “integral contiguous zone” established by Colombian Presidential Decree 1946 (2013), as amended, and Nicaragua’s straight baselines established by decree after the ICJ’s November 19, 2012, boundary ruling are not in conformity with customary international law. No fewer than 10 judges appended individual declarations or opinions to the ICJ’s judgment. The Law of the Sea portion of the ruling is largely based on customary international law, since Colombia is not a party to UNCLOS. According to the ICJ, Article 7 UNCLOS reflects contemporary

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LAW OF THE SEA Interest Group

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Margaret Materna

&

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customary international law (para. 242), meaning Article 7 is applicable whether or not UNCLOS applies as treaty law between the countries concerned, and the ruling provides interpretative guidance, especially what is meant by “fringe of islands” (from para. 234). In the ICJ’s view, the principle of restrictive interpretation applies in the case of straight baselines. The ICJ also confirmed that Article 33 UNCLOS reflects customary international law on the contiguous zone (para. 155). Another ICJ case remains pending between Nicaragua and Colombia ([Question of the Delimitation of the Continental Shelf between Nicaragua and Colombia beyond 200 nautical miles from the Nicaraguan Coast](#)).

- Fisheries Ministers from countries comprising the Caribbean Regional Fisheries Mechanism (CRFM) met in Belize on April 22, 2022, to advance the institution’s

strategic actions to build resilience and boost sustainable fisheries and aquaculture production, through targeted initiatives aimed at maximizing sustainable blue economic growth and improving access to international markets, while tackling the scourge of illegal, unreported and unregulated (IUU) fishing and transnational organized crime in the industry. During the April Meeting of the Ministerial Council, the Ministers reiterated the crucial importance of moving ahead with the research, as it would provide an invaluable evidence base to drive informed blue economic development across the region, and expedite the region’s economic rebound and recovery from the adverse impacts of the COVID-19 pandemic on the fisheries and aquaculture sector, which is already beginning to show positive signs of revitalization with more fishers and vessels returning to sea. More information can be found on the [CRFM Secretariat’s website](#). ■

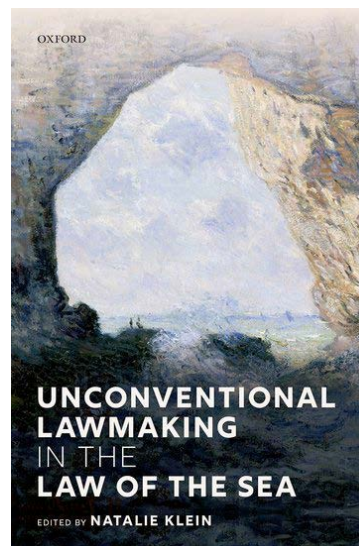
Opportunities:

- American Society of International Law, Washington, DC: [Executive Director](#)
- Earthjustice, Seattle, WA: [Senior Attorney, Oceans](#)
- International Tribunal for the Law of the Sea, Hamburg, Germany: [Personal Assistant to the President](#)
- United Nations, Office of Legal Affairs, New York, NY: [Legal Officer](#)
- U.S. Department of State, Bureau of Oceans and International Environmental and Scientific Affairs, Office of Conservation and Water, Washington, DC: [Foreign Affairs Officer](#)

New Book Announcements:

Robin Churchill, Vaughan Lowe and Amy Sander, *The Law of the Sea* (Manchester University Press, fourth edition, 2022).

[Unconventional Lawmaking in the Law of the Sea](#), edited by Natalie Klein, was recently published by Oxford University Press. The book brings together an impressive group of women law of the sea scholars, who explore the



ways that actors operating at the international level develop standards of behavior to regulate varied maritime activities beyond traditional lawmaking. Other than conventions and customary international law, the book examines a plethora of international agreements that influence international conduct. This ‘soft law’ or ‘informal law’ is now prolific in ocean governance, and the book

considers its significance for the law of the sea. Informal lawmaking is examined in relation to ocean resources, maritime security, shipping and navigation, and the marine environment.

Unconventional Lawmaking in the Law of the Sea surveys the scope of informal lawmaking in the law of the sea and evaluates the significance of this activity for the UN Convention on the Law of the Sea, as well as for ocean governance more broadly, now and in the future.

Member Reports:

Our sincere thanks to Cymie Payne for providing this update on the High Seas Biodiversity Treaty.

Fourth - but Not Final - Negotiating Session for High Seas Biodiversity Treaty

Following a two-year interruption due to COVID-19, delegates convened on March 7, 2022, both in person in New York and virtually, to continue negotiation of an international legally binding instrument under the UN Convention on the Law of the Sea (UNCLOS) on the conservation and sustainable use of marine biological diversity of areas beyond national jurisdiction (BBNJ), based on the revised draft text of November 2019 (A/CONF.232/2020/3). The negotiation of a new treaty for high seas biodiversity did not conclude on March 18, 2022, despite hopes that agreement might be obtained and a final text adopted at the Fourth Intergovernmental Conference (IGC). Negotiations are expected to resume August 15-26, 2022, again at United Nations Headquarters in New York, subject to approval by the UN General Assembly. IGC President Rena Lee has proposed to advance the process with a fresh draft text in May.

Within the UN premises, strict COVID measures were in place, requiring masks and within the conference room allowing no more than two delegates per State and even more limited IGO presence during the first week; NGOs were allowed to enter the UN buildings and to have limited access to the conference room during the second week.

Some progress was made on particular issues as States and regional blocs worked together on joint proposals. The institutional structure began to take shape, with a Conference of the Parties (COP), a Secretariat, a Scientific and Technical Body, and a Clearing-House Mechanism. Yet some of the key stumbling blocks remain, including the practicalities of access and benefit-sharing (ABS) (with monetary versus non-monetary benefits still a matter of discussion), the powers of the COP to establish area-based management tools (ABMTs), including marine protected areas (MPAs), transparency, scope, and internationalization of environmental impact assessments (EIAs), and the equities and practicalities of access to and benefit sharing of marine genetic resources (MGR).

IUCN's delegation, including members of the WCEL-Ocean Law Specialist Group, WCPA, and the Marine and Polar Programme, supported and influenced negotiators guided by [WCC 2020 Res 128](#) "Acting for the conservation and sustainable use of marine biological diversity in the ocean beyond national jurisdiction". IUCN's delegation shared the WCEL/ELC commentary on draft revised text, key messages from two workshops on "Area-Based Management Tools in Marine Areas Beyond National Jurisdiction" (2019 and 2020), and briefing papers prepared for IGC4 (all available [here](#)). IUCN's delegation also submitted text proposals as Conference Room Papers, convened and participated in bilateral meetings, and delivered a closing statement (which can be seen [here](#)).

IUCN's closing words on the final day of the meeting adjured delegates: "now is the time to be bold, visionary, and pragmatic for the benefit of humankind." While recognizing the significant progress made, IUCN highlighted the need to: finalize the agreement in 2022; enable the COP to create effective MPAs; bring transparency and consultation on impacts that affect ABNJ with rigorous EIA procedures; recognize equity in sharing benefits of marine genetic resources; provide effective financial support, including a Standing Committee on Finance; strengthen the ability of existing international frameworks and bodies to conserve marine biodiversity in ABNJ and to use it sustainably; foster engagement with civil society, the scientific community, indigenous peoples and local communities, and the broader public; and recognize the importance of marine science to increase biodiversity knowledge and understanding of ABNJ by providing adequate resources to the UN Decade of Ocean Science.

Resources: Official IGC4 documents are available here <https://www.un.org/bbnj/content/fourth-substantive-session>; Statements provided to the UN Division of Oceans and Law of the Sea at IGC4 by States, IGOs and NGOs can be found here <https://www.un.org/bbnj/statements>; The IISD Earth Negotiations Bulletin's reporting is available here <https://enb.iisd.org/marine-biodiversity-beyond-national-jurisdiction-bbnj-igc4>; IUCN's BBNJ resource page is [here](#) (Note: Conference Room Papers, the text proposals submitted during IGC4, are not public documents).



Other Reading of Interest:

- Clive Schofield, Pieter Bekker, and Robert van de Poll, "[The World Court Fixes the Somalia-Kenya Maritime Boundary: Technical Considerations and Legal Consequences](#)," ASIL Insights, 08 Dec 2021.
- Massimo Lando and Jessica Joly Hebert, "[How to Complicate a Simple Case: The Judgment on the Merits in Maritime Delimitation in the Indian Ocean \(Somalia v. Kenya\)](#)," The International Journal of Marine and Coastal Law, 22 Apr 2022.
- Raul (Pete) Pedrozo, "[China's IUU Fishing Fleet: Pariah of the World's Oceans](#)," International Law Studies, Vol. 99, pp. 319-353 (2022).
- Staff Judge Advocate, U.S. Southern Command, "[Transit Rights Through the Panama Canal](#)," International Law Studies," Vol. 99, pp. 369-374 (2022).