

SUMMER 2023

LAW OF THE SEA

INTEREST GROUP NEWSLETTER

Dear LOSIG members,

We hope you have all been able to enjoy some down time this summer and are staying cool!

We wish to convey our sincere thanks to everyone who was able to join us for the LOSIG Business Meeting at this year's American Society of International Law Annual Meeting. We enjoyed having a wide-ranging discussion about various topics within the LOSIG's cognizance, as well as the opportunity to meet many of you and get to know our members better. We also heard some great ideas for potential future LOSIG activities, and we look forward to pursuing those further.

We are also excited to announce that Brill | Nijhoff, a prestigious imprint dating back to the 19th century and the leading publisher in the Law of the Sea, is offering ASIL members a 20% discount on its book titles. Brill | Nijhoff has an [array of book series, journals and online publications](#) offering important research and scholarship in the Law of the Sea. LOSIG members can visit <https://www.brill.com> and enter discount code 71661 at checkout for the discount. Should you wish to discuss your Law of the Sea research or submit a publication proposal to Brill, please contact Ms. Marie Sheldon, Publishing Director, at marie.sheldon@brill.com.

Thanks for your participation in the LOSIG. As always, we welcome and encourage your continued [contributions to the newsletter](#).

Warmest regards,

Margaret Materna & Pieter Bekker, Co-Chairs

Recent Developments in the Law of the Sea:

- The 33rd [Meeting of States Parties to the United Nations Convention on the Law of the Sea \(UNCLOS\)](#) was held at United Nations Headquarters from June 12 to 15, 2023. The three bodies established by UNCLOS – the International Tribunal for the Law of the Sea, the International Seabed Authority, and the Commission on the Limits of the Continental Shelf – provided reports on their annual activities. Among the events, seven new judges were elected to ITLOS. A full report of the 33rd meeting is available on the [UNCLOS website](#).
- The International Court of Justice (ICJ) has finally settled a longstanding dispute between Nicaragua and Colombia pertaining to their maritime boundary in the Caribbean Sea. In its [July 13, 2023 judgment](#), the ICJ rejected Nicaragua's claim to a continental shelf beyond 200 nautical miles from the Nicaraguan coast originally lodged in September 2013, following the ICJ's fixing of the parties' maritime boundary up to 200 nautical miles in its judgment of November 19, 2012. In its Order of October 4, 2022, the ICJ considered that, before addressing Nicaragua's

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**LAW OF THE SEA
Interest Group**

CO-CHAIRS

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Views contained in this publication are those of the authors in their personal capacity. The American Society of International Law and this Interest Group do not generally take positions on substantive issues, including those addressed in this periodical.



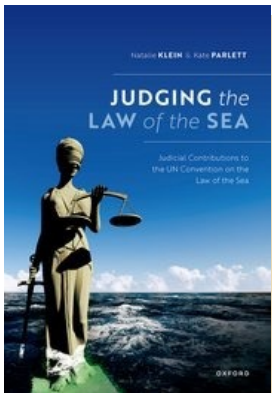
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latest submissions, it was necessary to determine, *first*, whether under customary international law (applicable because Colombia has not ratified the UNCLOS) a State's entitlement to a continental shelf beyond 200 nautical miles from the baselines from which the breadth of its territorial sea is measured may extend within 200 nautical miles from the baselines of another State and, *second*, what the criteria are under customary international law for the determination of the limit of the continental shelf beyond 200 nautical miles from the baselines from which the breadth of a State's territorial sea is measured, and if paragraphs 2 to 6 of Article 76 of the UNCLOS reflect customary international law. With regard to the first question, the ICJ concluded, based on its survey of relevant State practice, that, under customary international law, a State's entitlement to a continental shelf beyond 200 nautical miles from the baselines from which the breadth of its territorial sea is measured may not extend within 200 nautical miles from the baselines of another State. As regards the second question, the ICJ found that it follows from its conclusion on the first question that, regardless of the criteria that determine the outer limit of the extended continental shelf (ECS) to which a State is entitled, its ECS cannot overlap with the area of continental shelf within 200 nautical miles from the baselines of another State. In the absence of overlapping entitlements over the same maritime area, the ICJ decided, by 13 votes to four, that it could not proceed to a maritime delimitation in

this case and that there was no need for it to address the second question.

- The International Tribunal for the Law of the Sea (ITLOS) has announced that the [hearings in Case No. 31, Request for an Advisory Opinion submitted by the Commission of Small Island States on Climate Change and International Law](#), will open September 11, 2023. In December 2022, ITLOS received a [request](#) from the Commission of Small Island States on Climate Change and International Law to render an advisory opinion as to whether States Parties to UNCLOS have specific obligations to prevent and reduce pollution of the marine environment, and thereby prevent such climate change effects as ocean warming and sea level rise. 31 States Parties to the UNCLOS as well as eight intergovernmental organizations, including the United Nations and the International Seabed Authority, submitted written statements within the deadline of June 16, 2023. ITLOS has also accepted written statements of Rwanda and the Food and Agriculture Organization of the United Nations submitted after the expiry of the time-limit for the filing of written statements. An advisory opinion issued pursuant to Case No. 31 would be only the third in the history of ITLOS, and only the second issued by the full tribunal (the first was the advisory opinion issued in Case 21 addressing illegal, unreported and unregulated (IUU) fishing activities in April 2015). ■

New Book Announcement:



[Judging the Law of the Sea](#) was recently released by [Natalie Klein](#) and [Kate Parlett](#). The book focuses on the role of judges in interpreting and applying the United Nations Convention on the Law of the Sea (UNCLOS). The dispute settlement regime in UNCLOS has been in operation for well over twenty years with a steadily increasing number of

important cases. The book brings together an analysis of all the case law to the present day, while acknowledging the complex factors that are inherent to the judicial decision-making process. The role of the judge is central to the book's analysis, and the authors engage in an intensive study of their decisions to date and how those decisions have influenced the law of the sea and may do so in the future. The book is available through the Oxford University Press.



Opportunities:

- Center for Strategic and International Studies, Asia Maritime Transparency Initiative, Washington, DC: [Intern](#)
- Conservation Law Foundation, Boston, MA: [Senior Attorney, Clean Air & Water](#)
- Oceana, Washington, DC: [Senior Counsel](#) and [Senior Policy Advisor, Sustainable Fisheries](#)
- United Nations Environment Programme, Nairobi, Kenya: [Senior Legal Officer](#) (P5) and [Legal Officer](#) (P3)
- U.S. Climate Alliance, Washington, DC: [Senior Climate Analyst](#)

Recent ASIL Publications:

- American Society of International Law. "[The United States Agrees to Loss and Damage Fund at COP27](#)," *American Journal of International Law*, Vol. 117(2), pp. 330-335 (13 Apr 2023).
- Cymie R. Payne. "[The New High Seas Biodiversity Treaty Offers Conservation, Equity, and Regulatory Certainty](#)," *ASIL Insights*, Vol. 27(6) (02 Aug 2023).
- Donald R. Rothwell. "[Climate Change, Small Island States, and the Law of the Sea: The ITLOS Advisory Opinion Request](#)," *ASIL Insights*, Vol. 27(5) (12 May 2023).
- Justine N. Stefanelli. "[ICI Issues Decision in Maritime Boundary Dispute between Nicaragua and Colombia](#)," *International Law in Brief* (19 Jul 2023).

Other Reading of Interest:

- Bradford Dismukes & Barry Blechman. "[A New Strategy for the Black Sea](#)," *Lawfare* (14 Jun 2023).
- Catherine Redgwell & Antonios Tzanakopoulos. "[The Interaction of Treaty and Custom in the Concept of Offshore Archipelagos](#)," *International & Comparative Law Quarterly*, Vol. 72(3), pp. 573-599 (31 Jul 2023).
- Malgorzata Materna. "[Adjusting the Aperture: The International Law Case for Unmanned Vessels Qualifying as Warships](#)," *International Law Studies*, Vol. 100, pp. 452-482 (04 Aug 2023).
- Peter Dutton. "[China is Rewriting the Law of the Sea](#)," *Foreign Policy* (10 Jun 2023).