

SUMMER 2024

LAW OF THE SEA

INTEREST GROUP NEWSLETTER

Dear LOSIG members,

We are grateful to all of you who were able to join us for our panel on “Arctic Update: Current Issues with Law of the Sea Implications” featuring guest speaker Cornell Overfield from the Center for Naval Analyses (CNA) at the ASIL Annual Meeting in April of this year. It was great to meet some of you in person, and we hope those of you who were able to attend enjoyed the Annual Meeting.

LOSIG also welcomed our newly elected Co-Chair in April 2024, Dr. Bimal Patel. Bimal is currently a professor and the Vice-Chancellor at Rashtriya Raksha University in India. He is also an elected member of the International Law Commission of the United Nations. The ILC has two important Law of the Sea related topics within its current program of work, namely, Sea-Level Rise in relation to International Law and Prevention and Repression of Piracy and Armed Robbery. We are excited to have Bimal serve as Co-Chair for the next three years! We are immensely grateful to outgoing Co-Chair Margaret Materna of the U.S. Navy for her dedicated service and contributions over the past three years.

Finally, we welcome any new ideas for events and encourage your continued contributions to the newsletter. We are grateful to those members who have contributed content for the present newsletter.

Warmest wishes,

Peter Bekker and Bimal Patel, Co-Chairs

Spotlight: *India and the Law of the Sea*

The Government of India has taken important initiatives in safeguarding maritime interests and strengthening security in the Indian Ocean Region (IOR) in order to ensure a favorable and positive maritime environment. India remains committed to promoting a free, open, and rules-based order, rooted in international law and undaunted by coercion. As a State Party to the UNCLOS, India promotes respect for the UNCLOS. India develops its maritime cooperation with regional partners in consonance with the Government’s vision of Security and Growth for All in the Region (SAGAR). The Government of India has implemented various schemes related to the Law of the Sea to safeguard maritime interests and strengthen security in the Indian Ocean Region (IOR). Some of the key initiatives include the following:

- **National Fisheries Policy, 2020:** This policy encompasses the entire land and the Exclusive Economic Zone (EEZ) of India. It aims to sustain marine fisheries and improve monitoring, control, and surveillance. The policy also focuses on managing fisheries in the Indian rivers and their floodplains, natural lakes, and wetlands.

INSIDE THIS ISSUE

Recent Developments in the Law of the Sea

3

News from LOSIG Members

4

New Book Announcement

4

Other Reading of Interest

5

.....

LAW OF THE SEA Interest Group

CO-CHAIRS

Pieter Bekker

&

Bimal Patel

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.

—continued on page 3



Spotlight: India and the Law of the Sea *—continued from page 1*

- **The Indian Marine Fisheries Bill, 2021:** This bill aims to regulate and manage marine fisheries in India. It was drafted after consultations with stakeholders and is currently under consideration.
- **O-SMART (Ocean—Services, Modelling, Application, Resources, and Technology) Scheme:** Implemented by India's Ministry of Earth Sciences, this scheme aims to aid scientific and technological explorations and breakthroughs in the ocean. It recognizes that oceans play an essential role in almost all aspects of human existence and holds immense potential for scientific exploration with a wide variety of living and non-living resources.
- **Subsidies for Fishers:** The Government of India provides indirect subsidies to fishers, which include financial assistance through welfare schemes, construction of ports, fishing harbors and fish landing centers, development of post-harvest and market infrastructure, tax exemptions, investments in fisheries corporations and enterprises, grants for disaster and safety preparedness, and exports.

As a peninsular country with a vast coastline and an extensive EEZ, India has a significant stake in the Law of the Sea. It has been actively engaging with other like-minded States to ensure maritime security, freedom of navigation, and sustainable use of marine resources. Key activities/initiatives that India has undertaken with various countries until 2024 include the following:

1. **USA:** India and the USA have conducted joint maritime security exercises, such as "Sea Defenders2024," in order to bolster bilateral cooperation. These exercises enhance maritime cooperation and interoperability between the two forces. The maritime exercise MILAN-2024 being one of the strategic initiatives including Japan, Australia, France and other 50 like-minded States.
2. **France:** India and France have established a partnership on the blue economy and ocean governance. This partnership aims to make the blue economy a driver of progress for their societies while respecting the environment and coastal and marine biodiversity.
3. **Germany:** India and Germany have emphasized the significance of a free, open, and inclusive Indo-Pacific. They have underlined the importance of unimpeded commerce and freedom of navigation in accordance with International Law, notably the UNCLOS, in all maritime domains.
4. **Japan:** India and Japan have conducted joint naval exercises in the Indian Ocean, one of them being the recent Dosti Exercise in early 2024. They have emphasized the safety and security of the maritime domain, freedom of navigation and overflight, unimpeded lawful commerce, and peaceful resolution of disputes in accordance with international law.
5. **Sri Lanka:** The maritime forces of India and Sri Lanka have collectively addressed the issue of Illegal, Unregulated and Unlawful (IUU) fishing activities and have amicably resolved disputes by transferring the fishers to the law enforcement agencies. Both countries have ratified the UNCLOS, and it is crucial to apprehend, arrest and punish the fishers engaged in illegal fishing activities after crossing international maritime boundaries.
6. **Bangladesh:** India and Bangladesh have resolved their maritime delimitation dispute through adjudication, thereby setting an example for the world. They have provided infrastructural support for port development. The fourth edition of the Bilateral Exercise between the Indian Navy and the Bangladesh Navy, BONGOSAGAR-23, and the fifth edition of Coordinated Patrol (CORPAT) by the two navies was conducted in the Northern Bay of Bengal from November 7 to November 9, 2023. The exercise involved various operations at sea and aimed at enhancing interoperability.
7. **Mauritius:** India has extended its support to Mauritius by establishing an air support facility in the northern Agalega Islands. This facility enhances the capabilities of the Mauritian Defense Forces in safeguarding their interests in the Outer Island.
8. **Seychelles:** India has been assisting Seychelles in enhancing maritime security and coastal surveillance. India has donated fast-patrol vessels to Seychelles and has upgraded its defense ties.

—continued on page 4



Spotlight: India and the Law of the Sea —continued from page 2

9. **Australia:** India and Australia have emphasized the importance of adhering to international law, especially the UNCLOS, to address maritime challenges, including those in the South China Sea. They maintain a robust bilateral relationship through Australia-India Security Cooperation Framework, regular ministerial dialogues, and various senior official meetings such as Defense Policy Talks and Australia-India Maritime Dialogue.

Indonesia, Myanmar, Madagascar, and other IOR

states: Through joint naval exercises, maritime domain awareness activities, search and rescue operations, maritime security dialogues, and cooperation, India actively engages with these countries to ensure maritime security, freedom of navigation, and sustainable use of marine resources.

Additionally, India is committed to upholding a rule-of-law-based international order in the Indo-Pacific through diplomatic, military, and economic strategies that foster collaboration, seeking to prevent destabilizing claims or exclusive authority that could threaten regional stability. India's contributions aim to safeguard global maritime security, ensuring that emerging regimes align with international legal frameworks like UNCLOS.

Furthermore, Rashtriya Raksha University (RRU) recently hosted the 3rd Colombo Security Conclave – Maritime

Law Workshop, where international maritime experts had gathered to discuss maritime domain awareness, grey zone activities, non-traditional threats, and cybersecurity. The conclave fostered knowledge-sharing, and promoting best practices in maritime security. Vice Admiral G. Ashok Kumar (NSCS, India) highlighted the need for maritime law enforcement and multinational collaboration. Admiral R. Hari Kumar (CNS, India) called for continued regional cooperation for maritime security. Prof. Bimal N. Patel (Vice-Chancellor, RRU) emphasized the importance of joint maritime exercises and the role of the International Law Commission in addressing sea level rise and piracy.

Looking ahead, RRU is set to host the first RRU Indian Ocean Coastal and Maritime Law and Practice Academy (RIO-CMLPA) in December 2024. This event is expected to be a dynamic forum for international maritime discourse, and will feature panel discussions, debates, crisis management exercises, and excursions. The focus will be on the historical and geopolitical significance of maritime security, ocean property regimes, military security, critical maritime issues, marine biodiversity, environmental conservation at sea, and polar maritime strategy and affairs. Jurists, judges, port and ship authorities, academia and other global maritime professionals will participate with a view to fostering a deeper understanding of maritime issues and promoting collaborative solutions for future challenges. ■

Recent Developments in the Law of the Sea

- As mandated in United Nations General Assembly [resolution 78/272](#) of April 24, 2024, the Preparatory Commission established by that resolution to prepare for the entry into force of the *Agreement under the United Nations Convention on the Law of the Sea on the Conservation and Sustainable Use of Marine Biological Diversity of Areas beyond National Jurisdiction* (BBNJ Agreement), and to prepare for the convening of the first meeting of the Conference of the Parties to the Agreement, held a three-day organizational meeting at United Nations Headquarters in New York on June 24-26, 2024. The purpose of the meeting was to discuss organizational matters, including the election of the Co-Chairs and a

Bureau of the Commission, the dates of the meetings of the Commission and the programme of work of the Commission. The meeting elected Ms. Janine Coye-Felson, Deputy Permanent Representative of Belize to the United Nations, and Mr. Adam McCarthy, Chief Counsel and First Assistant Secretary at the Department of Foreign Affairs and Trade of Australia, as Co-Chairs of the Commission. It also elected a Bureau of the Commission composed of 15 members. The meeting further decided that the Commission would meet for at least two sessions of two weeks each in 2025, including from April 14, 2025, to April 25, 2025, and from August

—continued on page 4



Recent Developments in the Law of the Sea —continued from page 2

18, 2025, to August 29, 2025, and for at least one session of two weeks in 2026. The General Assembly endorsed that decision on August 13, 2024. In addition, the Preparatory Commission decided to request the Co-Chairs, in consultation with the Bureau, to prepare the provisional programme of work of the Preparatory Commission on basis of a clusters of issues extensively discussed during the meeting and on the understanding that matters to be addressed by the Conference of the Parties at its first meeting as expressly set out in the Agreement would be given priority in the work of the Commission. The outcomes of this three-day organizational meeting are recorded in document [A/AC.296/2024/4](#), entitled “Statement of the co-Chair of the Preparatory Commission at the closing of the organizational meeting” (with thanks to Athina Chanaki of DOALOS for this contribution).

- On May 21, 2024, the International Tribunal for the Law of the Sea (ITLOS) issued a landmark Advisory Opinion addressing the obligations of States under the United Nations Convention on the Law of the Sea (UNCLOS) concerning climate change impacts on the marine environment. According to the ITLOS, States have a substantive obligation under Article 194 of the UNCLOS to take “all necessary measures” to prevent, reduce, and control marine pollution, including from Greenhouse Gas (GHG) emissions. It clarified that these measures must be determined objectively, incorporating best available scientific evidence, international rules and standards, and the practical capabilities of each State. The ITLOS emphasized that compliance with the 2016 Paris Climate Agreement alone does not suffice to meet

the obligations under the UNCLOS. It also highlighted the “continuing nature” of certain obligations, such as to prevent, reduce, and control marine pollution from anthropogenic GHG emissions as well as obligations regarding monitoring and surveillance of marine pollution. Even though it is not legally binding, the Advisory Opinion offers authoritative guidance to the 169 UNCLOS States Parties and they will be expected to implement legislation and take effective enforcement steps in order to ensure compliance with their obligations under the UNCLOS. [Full details click here.](#)

- In the advisory proceedings on the *Obligations of States in respect of Climate Change* before the International Court of Justice (ICJ), the principal judicial organ of the United Nations, 62 written comments have been filed in the ICJ Registry and public hearings are scheduled to open at the Peace Palace in The Hague, the seat of the Court, on December 2, 2024.
- The ICJ will hold public hearings on the merits in the case concerning *Land and Maritime Delimitation and Sovereignty over Islands (Gabon/Equatorial Guinea)* at the Peace Palace from September 30, 2024, to October 4, 2024.
- On August 2, 2024, the Assembly of the International Seabed Authority (ISA), an autonomous intergovernmental organization mandated by the UNCLOS to manage the mineral resources of the seabed beyond national jurisdiction for the shared benefit of humankind, elected Ms. Leticia Carvalho of Brazil as the new Secretary-General for a three-year term (2025-2028), replacing Michael W. Lodge.

News from LOSIG Members

- **Peter Dutton** will be departing the Naval War College Stockton Center for International Law and cease teaching at New York University School of Law in order to take a full-time research position with the Paul Tsai China Center at Yale Law School, effective September 1, 2024. He will remain an affiliate at NYU Law School’s US-Asia Law Institute and the Harvard University Fairbank Center for China Studies.

New Book Announcement

Alexander Lott (ed.), [Maritime Security Law in Hybrid Warfare | Brill](#) (Brill 2024).



Other Reading of Interest

- Ángeles Jiménez García-Carriazo, “A Flexible Approach to Reach an Equitable Solution: The Application of Principles to the Delimitation of the Continental Shelf,” 103 *International Law Studies* 512 (2024), U.S. Naval War College Stockton Center for International Law.
- Peter Alan Dutton, “Oceans Under Pressure: China’s challenge to the maritime order,” *Britain’s World*, London: Council on Geostrategy, January 23, 2024, available at: <https://www.geostrategy.org.uk/britains-world/oceans-under-pressure-chinas-challenge-to-the-maritime-order/>
- Peter Alan Dutton, “Testing the Boundaries: A Research Report for the Maritime Dispute Resolution Project,” available at https://static1.squarespace.com/static/55d21f1fee4b0d22e803fdca1/t/5f4d04bf7c705f1341679876/1598883015894/Testing_the_Boundaries_Research_Report.DuttonP.pdf
- U.S.-Asia Law Institute at New York University School of Law, Maritime Dispute Resolution Project, comprising 19 Case Studies, available at: <https://usali.org/maritime-dispute-resolution-project>.
- Klaas Willaert, “Protest at Sea against Deep Sea Mining Revisited: the MV *Coco* Case,” *The International Journal of Marine and Coastal Law*, 16 Aug 2024.
- Hilde Woker and Leonardo Bernard, “A New Constraint to the Entitlement of a Continental Shelf beyond 200 Nautical Miles? – Implications of the Recent Case Law,” *The International Journal of Marine and Coastal Law*, 16 Aug 2024.
- Momoko Kitada and Mariamalia Rodriguez-Chaves, “Advancing Gender Equality in Contemporary Ocean Affairs,” *The International Journal of Marine and Coastal Law*, 27 Aug 2024.
- Peter Ehlers, “A Success Story? Fifty Years of MARPOL,” *The International Journal of Marine and Coastal Law*, 27 Aug 2024.
- Kimberley J Graham, “Turning the Tide on Remnants of War at Sea? Toward the Principles for Protection of the Environment in Relation to Armed Conflicts,” *The International Journal of Marine and Coastal Law*, 27 Aug 2024.
- Sofia Neto Oliveira, “The Role of General Assembly Resolutions in the Identification of Customary International Law and the Chagos Archipelago Advisory Opinion,” *International Community Law Review*, 27 Aug 2024.
- Christina Zournatzi, “Towards the International Unification of Maritime Law on Recognition and Enforcement of Judicial Sales of Ships,” *European Journal of Comparative Law and Governance*, 19 Aug 2024.