



FORUM

## Foreword by the Co-Editors of the ICLQ Forum on the Law of the Sea

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### Abstract

This foreword introduces the inaugural International and Comparative Law Quarterly (ICLQ) Forum, a new initiative designed to provide in-depth analysis of a particular field of law within the ICLQ's sphere of interest. The first Forum focuses on the law of the sea, a subject with which the journal has been closely associated since its inception. The choice of theme reflects both the ICLQ's historic contributions to maritime scholarship and the renewed urgency of ocean-related legal challenges. The collected contributions examine contemporary developments, including the implementation of the Agreement on Marine Biological Diversity of Areas Beyond National Jurisdiction, climate change and sea-level rise, maritime security, fisheries governance and human rights at sea. Together, they assess the continuing vitality of the United Nations Convention on the Law of the Sea as a 'living treaty' and interrogate its capacity to respond to shifting geopolitical, environmental and technological realities. Beyond charting doctrinal evolution, the Forum highlights the law of the sea's systemic significance for the development of international law more broadly. It invites reflection on whether the traditional State-centric framework can sustain effective ocean governance in the face of accelerating global pressures.

**Keywords:** law of the sea; UNCLOS; BBNJ Agreement; ocean governance; climate change; maritime security; human rights at sea; autonomous shipping; maritime boundary delimitation; marine pollution; plastics; sea-level rise

### 1. Introduction to the ICLQ Forum

This publication marks the launch of a new initiative, the International and Comparative Law Quarterly (ICLQ) Forum, a series of special issues of the ICLQ which focus on thematic topics falling within the scope of the journal. Each Forum will

focus on a single subject area, exploring emerging issues and new perspectives and drawing on a broad range of expertise, with the aims of increasing knowledge, stimulating thought and encouraging new avenues of research, supported by rigorous academic scrutiny and the ICLQ editorial process.

The ICLQ was formed in 1952 by the merger of the *Journal of Comparative Legislation* and the *International Law Quarterly*, with a view to both addressing questions of contemporary importance and fostering the movement of knowledge across the boundaries between complementary fields of legal study.<sup>1</sup> Since then, the ICLQ has played a pivotal role in sharing and developing research across various fields of law. The ICLQ Forum continues this tradition by providing a new space for exchanging and debating ideas in what is the most major innovation in the format of the ICLQ since its inception. The Forum complements but does not replace the quarterly issues, which will continue to be published in their current, highly regarded format. By inaugurating the Forum, the Editorial Board is keen to foster the drawing together of reflections and analysis on major thematic areas of law which are currently addressed by the ICLQ in ways which offer new opportunities for detailed, comparative and cross-disciplinary engagement.

## 2. Inaugural theme: the law of the sea

This inaugural ICLQ Forum issue is entitled ‘Law of the Sea: Present Challenges and Future Directions’. Co-edited by former ICLQ General Editor Professor Sir Malcolm Evans, ICLQ Editorial Board Member Professor Richard Barnes, invited experts Dr Rozemarijn Roland Holst, and Dr Constantinos Yiallourides and Dr Jack Kenny of BIICL, it explores and reflects upon both current developments in the law of the sea and scans emerging horizons.

Given the breadth of subject-matter falling within the scope of the ICLQ, the Forum could have focused upon many topics, including human rights, comparative commercial law, conflicts of law, humanitarian law, European Union law, environmental law, investment law, or much else besides. However, the choice of the law of the sea was motivated by three reasons. First, since its very first issue, the law of the sea has been a mainstay of the ICLQ, and the journal has made a significant contribution to the development of the international law of the sea. Since 1952, the ICLQ has published over 130 full-length and short articles directly addressing the subject, alongside numerous current legal development surveys and case analyses touching upon it more indirectly. Whilst like the seas themselves, there has been ebb and flow across the years with high and low points, overall there has been an impressive mean of articles published which have reflected the changing interests in the law of the sea itself, and the density of the law bearing upon it.

Early volumes of the ICLQ appeared at the time when the International Law Commission was developing its drafts that would later feed into the four 1958 Geneva Conventions that resulted from the UNCLOS I Conference, and this was well reported and commented upon in the pages of the journal. It is, perhaps, difficult today to recall the importance of academic journals as a means of keeping their readers abreast

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<sup>1</sup> AT Denning, ‘Foreword’ (1952) 1 ICLQ 1.

of legal developments in the pre-electronic and pre-internet era. Indeed, the very first issue of the ICLQ included a note by Douglas Johnson on Icelandic fishery limits, expressing the ultimately frustrated expectation that the UK and Iceland would settle their differences through negotiation: predicting future directions in law and in the settlement of legal disputes has always been a risky business, and particularly as the growth of fora for dispute settlement has ushered in a somewhat more litigious era.<sup>2</sup>

The journal's first full article on the law of the sea was by the Australian scholar, Louis Goldie, seeking to justify Australian claims in respect of sedentary fisheries on its continental shelf in light of threatened litigation by Japan.<sup>3</sup> This prefigured what became a recurrent theme in the years that followed,<sup>4</sup> in which there were an increasing number of articles assessing claims to expanded authority over ocean space,<sup>5</sup> or delimiting the extent of such claims. As contributions to this Forum highlight, these still remain important challenges which show no sign of diminishing.

Needless to say, landmark developments in the law of the sea have also featured prominently, including a series of three articles by David Anderson chronicling issues relating to the entry into force of the 1982 United Nations Convention on the Law of the Sea (UNCLOS, Convention).<sup>6</sup> More recently, attention has turned to the third UNCLOS implementing agreement, the Agreement on Marine Biological Diversity of Areas Beyond National Jurisdiction (BBNJ Agreement), which has been discussed by Efthymios Papastavridis in the ICLQ<sup>7</sup> and is also the subject of comment in the present Forum, and which at the time of writing is on the cusp of entry into force. The careful observer may also note that, across the decades, there has been stubborn resistance of some issues regarding better governance, such as delinquent flag State control,<sup>8</sup> or effective fisheries management; issues which seem as intractable today as they have always been. In recent years, attention has rightly become focused on the lack of human rights protections at sea, but this too is not without precedent, as Sir Arthur Watts showed in his 1958 article on the protection of seafarers.<sup>9</sup>

Articles published in the ICLQ in more recent years have become less focused on charting developments in the law of the sea and more engaged with steering our understanding on how it should develop. This has, in part, been driven by developments in technology, such as the emergence of autonomous ships,<sup>10</sup> or in scientific

<sup>2</sup> D Johnson, 'International Organisation. Icelandic Fisheries Limits' (1952) 1 ICLQ 71.

<sup>3</sup> LFE Goldie, 'Australia's Continental Shelf: Legislation and Proclamations' (1954) 3 ICLQ 535.

<sup>4</sup> M Evans, 'Maritime Delimitation and Expanding Categories of Relevant Circumstance' (1991) 40 ICLQ 1.

<sup>5</sup> See, e.g. RY Jennings, 'The Limits of Continental Shelf Jurisdiction: Some Possible Implications of the North Sea Case Judgment' (1969) 18 ICLQ 819.

<sup>6</sup> DH Anderson, 'Efforts to Ensure the Universal Participation in the United Nations Convention on the Law of the Sea' (1993) 42 ICLQ 654; DH Anderson, 'Further Efforts to Ensure the Universal Participation in the United Nations Convention on the Law of the Sea' (1994) 43 ICLQ 886; DH Anderson, 'Legal Implications of the Entry into Force of the UN Convention on the Law of the Sea' (1995) 44 ICLQ 313.

<sup>7</sup> E Papastavridis, 'The Negotiations for a New Implementing Agreement under the UN Convention on the Law of the Sea concerning Marine Biodiversity' (2020) 69 ICLQ 585.

<sup>8</sup> See, e.g. A van Zwanenberg, 'Interference with Ships on the High Seas' (1961) 10 ICLQ 785; IA Shearer, 'Problems of Jurisdiction and Law Enforcement against Delinquent Vessels' (1986) 35 ICLQ 320.

<sup>9</sup> AD Watts, 'The Protection of Alien Seamen' (1958) 7 ICLQ 691.

<sup>10</sup> N Klein et al, 'Marine Autonomous Vehicles: New Frontiers in the Law of the Sea' (2020) 69 ICLQ 719.

understandings of new forms of harm to the marine environment.<sup>11</sup> The need for broader perspectives to be brought to bear on the subject, which has at times appeared rather ‘insulated’ from more general developments in international law, has become increasingly important as different fields of law intersect, as evidenced in Douglas Guilfoyle’s contributions to debates on piracy and human rights<sup>12</sup> or Richard Barnes’ exploration of refugee protection at sea.<sup>13</sup>

These trends in scholarship touch upon the second reason for selecting the law of the sea as the topic for this inaugural ICLQ Forum: it enables reflection upon the significant contribution that the law of the sea has made and continues to make to our wider understanding of international law *as a system*. To give some examples from the past, law of the sea practice and jurisprudence infused Campbell McLachlan’s highly influential article on treaty interpretation and systemic integration.<sup>14</sup> Alan Boyle engaged with similar concerns in his two articles concerning the fragmentation of dispute settlement (bequeathing to the world the concept of dispute salami-slicing) and developing the law of the sea.<sup>15</sup> Catherine Redgwell and Antonios Tzanakopoulos have explored the interplay of treaty and custom in the regime for offshore archipelagos.<sup>16</sup> Adopting an even wider perspective, Reece Lewis has examined how UNCLOS can continue to best fulfil its so-called ‘constitutional’ function.<sup>17</sup> It is this tradition that the Forum seeks to further build upon.

A final reason for focusing on the law of the sea is one of timing. In recent years, there has been a resurgence in law of the sea scholarship. Indeed, the UK House of Lords has undertaken an inquiry into the state of the law of the sea and its capacity to meet contemporary challenges.<sup>18</sup> In part, this resurgence has been driven by contemporary developments: the negotiation, adoption and entry into force of the BBNJ Agreement, the emphasis on ‘Blue Growth’ and the intensified use of the oceans as a site of potential economic prosperity, and the ocean as a site where law can play a role in addressing planetary crises like climate change. As the Advisory Opinions on climate change delivered by the International Tribunal for the Law of the Sea (ITLOS) in 2024<sup>19</sup> and the

<sup>11</sup> KN Scott, ‘International Regulation of Undersea Noise’ (2004) 53 ICLQ 287.

<sup>12</sup> D Guilfoyle, ‘Piracy Off Somalia: UN Security Council Resolution 1816 and IMO Regional Counter-Piracy Efforts’ (2008) 57 ICLQ 690; D Guilfoyle, ‘Counter-Piracy Law Enforcement and Human Rights’ (2010) 59 ICLQ 141.

<sup>13</sup> R Barnes, ‘Refugee Law at Sea’ (2004) 53 ICLQ 47.

<sup>14</sup> C McLachlan, ‘The Principle of Systemic Integration and Article 31(3)(c) of the Vienna Convention’ (2005) 54 ICLQ 279.

<sup>15</sup> A Boyle, ‘Dispute Settlement and the Law of the Sea Convention: Problems of Fragmentation and Jurisdiction’ (1997) 46 ICLQ 37; A Boyle, ‘Further Development of the Law of the Sea Convention: Mechanisms for Change’ (2004) 54 ICLQ 563.

<sup>16</sup> C Redgwell and A Tzanakopoulos, ‘Interaction of Treaty and Custom in the Concept of Offshore Archipelagos’ (2023) 72 ICLQ 573.

<sup>17</sup> R Lewis, ‘The “Constitution for the Oceans”? The Law of the Sea Convention as a Living Treaty’ (2025) 74 ICLQ 1.

<sup>18</sup> Select Committee on International Relations & Defence, *UNCLOS: The Law of the Sea in the 21st Century* (HL 2021–22, 159–II).

<sup>19</sup> *Request for Advisory Opinion submitted by the Commission of Small Island States on Climate Change and International Law* (Advisory Opinion) (Case No 31, 21 May 2024) <[www.itlos.org/fileadmin/itlos/documents/cases/31/Advisory\\_Opinion/C31\\_Adv\\_Op\\_21.05.2024\\_orig.pdf](http://www.itlos.org/fileadmin/itlos/documents/cases/31/Advisory_Opinion/C31_Adv_Op_21.05.2024_orig.pdf)>.

International Court of Justice (ICJ) in 2025<sup>20</sup> demonstrate, understanding the systemic connections between branches of international law is crucial not only to the functioning of international law, but also to its ability to address existential global problems. In part, this also reflects increasing concern with how the law of the sea is associated with past injustice and inequity, and with a need to revisit and learn from this. Alex Green and Margaretha Wewerinke-Singh's recent article on the continuity of States in light of sea-level rise is a case in point.<sup>21</sup> The law of the sea provides an ideal opportunity to look to the future with a critical eye on the past. At the same time, the seas are becoming flashpoints for other forces at work, which threaten to unsettle elements of the established international legal order, such as the challenge of migration at sea, the (in)security of cables and pipelines, changing geopolitical and strategic tensions, militarisation and surveillance. As ever, as times change, so do our interests in the ocean spaces, their uses and their legal regulation.

Finally, it should also be recalled that the ICLQ is the journal of the British Institute of International and Comparative Law (BIICL). BIICL too has a longstanding record of leadership in law of the sea scholarship. Among its most influential contributions in more recent times are its report on 'State Obligations under Articles 74(3) and 83(3) of UNCLOS'<sup>22</sup> and the book *UNCLOS as a Living Treaty*,<sup>23</sup> both of which have been quoted with approval before the ICJ and ITLOS.<sup>24</sup> Other important BIICL projects include studies on joint development agreements,<sup>25</sup> offshore methane hydrates,<sup>26</sup> climate litigation<sup>27</sup> and the mitigation of climate change impacts in South Pacific small island States.<sup>28</sup> In short, both the Institute and its journal have longstanding

<sup>20</sup> *Obligations of States in respect of Climate Change* (Advisory Opinion) (General List No 187, 23 July 2025) <<https://www.icj-cij.org/sites/default/files/case-related/187/187-20250723-adv-01-00-en.pdf>>.

<sup>21</sup> A Green and M Wewerinke-Singh, 'State Continuity, Self-Determination, and Sea-Level Rise' (2025) 74 ICLQ 555.

<sup>22</sup> N Burke and J Barrett, 'Report on the Obligations of States under Articles 74(3) and 83(3) of UNCLOS in respect of Undelimited Maritime Areas' (BIICL, 30 June 2016) <[www.biicl.org/publications/report-on-the-obligations-of-states-under-articles-743-and-833-of-unclos-in-respect-of-undelimited-maritime-areas?utm\\_source=](http://www.biicl.org/publications/report-on-the-obligations-of-states-under-articles-743-and-833-of-unclos-in-respect-of-undelimited-maritime-areas?utm_source=)>.

<sup>23</sup> J Barrett and R Barnes (eds), *Law of the Sea: UNCLOS as a Living Treaty* (BIICL 2016) <<https://www.biicl.org/books/law-of-the-sea---unclos-as-a-living-treaty>>.

<sup>24</sup> See, e.g. *Dispute Concerning Delimitation of the Maritime Boundary between Ghana and Côte d'Ivoire in the Atlantic Ocean (Ghana/Côte d'Ivoire)* (Judgment) [2017] ITLOS Rep 4 (Separate Opinion of Judge Paik); *Question of the Delimitation of the Continental Shelf between Nicaragua and Colombia beyond 200 Nautical Miles from the Nicaraguan Coast (Nicaragua v Colombia)* (Judgment) [2023] ICJ Rep 413 (Dissenting Opinion of Judge Tomka). Several States and international organisations have cited *Law of the Sea: UNCLOS as a Living Treaty* (n 22) in their submissions for the climate change Advisory Opinion proceedings before ITLOS and the ICJ, including the United Kingdom, Canada, Portugal, Nauru, ClientEarth and the World Wide Fund for Nature.

<sup>25</sup> H Fox, *Joint Development of Offshore Oil and Gas* (BIICL 1989) <[www.biicl.org/publications/joint-development-of-offshore-oil-and-gas](http://www.biicl.org/publications/joint-development-of-offshore-oil-and-gas)>.

<sup>26</sup> C Yialourides and RA Partain, *Offshore Methane Hydrates in Japan: Prospects, Challenges and the Law* (BIICL-JSPS 2019) <[https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=3601849](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3601849)>.

<sup>27</sup> I Alogna, C Bakker and JP Gauci (eds), *Climate Change Litigation: Global Perspectives* (Brill Nijhoff 2021).

<sup>28</sup> EU Wagner (ed), *Intangible Cultural Heritage within the Laws and Policies of South Pacific Small Island States in the Climate Crisis* (BIICL, 6 September 2023) <[www.biicl.org/publications/intangible-cultural-heritage-within-the-laws-and-policies-of-south-pacific-small-island-states-in-the-climate-crisis](http://www.biicl.org/publications/intangible-cultural-heritage-within-the-laws-and-policies-of-south-pacific-small-island-states-in-the-climate-crisis)>. See also P Butler, JP Gauci and G Greville (eds), *Small States and International Law* (Brill Nijhoff 2025).

and deep-seated commitments to the law of the sea, underscored by it being the focus of this first ICLQ Forum.

### 3. Bringing the Forum on the law of the sea together

Having identified the topic for the Forum, the next step was to ensure that the content of the Forum reflected the traditions of scholarship that exemplify the ICLQ, including fostering and promoting the work of both early career and established academics. This was facilitated by combining an open call for contributions with a small number of directly targeted invitations to contribute, which also helped ensure a suitable spread of subject coverage in light of the response received.

The open call welcomed submissions on a range of preidentified topics including, but not limited to, climate change and sea-level rise, human rights at sea, militarisation and maritime security, the protection of maritime communication infrastructures, the deep seabed mining regime, the implementation of the BBNJ Agreement, governance of marine living resources and developments in maritime delimitation.<sup>29</sup> In order to help structure the contributions, the Co-Editors emphasised the importance of articles drawing out systemic issues connecting the law of the sea with broader questions of international law, and of having a reflective, forward-looking perspective.

This approach has allowed the Co-Editors to curate the Forum issue to ensure that key topics have been addressed, whilst also allowing the contributors to draw on their expertise and perspectives on the matters considered. It has also facilitated the inclusion of articles focusing on policy and practice alongside the more doctrinal and analytical approaches. All articles were assessed by the Co-Editors on the basis of their academic merit and ‘fit’ with the concept underlying the Forum before being competitively selected following a double-blind peer-review process. Crucially, this has resulted in attracting new authors to the journal and has helped to ensure that there is a variety of academic voices in various discursive registers. The Co-Editors are delighted that the result embraces good gender and geographic balances, as well as a good range of early career and established scholars.

The Forum contains 17 articles, which canvas topics including geoengineering, shipping, offshore infrastructures, security and conflict at sea, maritime delimitation, sea-level rise and climate change, fisheries, protection of the marine environment and human rights. In ordering the Forum articles for publication, the Co-Editors focused not on thematic grouping but on the flow of connections. Thus, it opens with Catherine Redgwell’s forward-looking article examining the influence of technological change on the law, using geoengineering as a case study.<sup>30</sup> This leads into a series of articles informed by other technological developments—namely, Efthymios Papastavridis’ reflections on the use of maritime surveillance and

<sup>29</sup> ‘ICLQ Forum on Law of the Sea: Present Challenges and Future Directions: Call for Papers’ (21 May 2024) <[www.cambridge.org/core/journals/international-and-comparative-law-quarterly/announcements/call-for-papers/call-for-papers-icq-forum-on-law-of-the-sea](http://www.cambridge.org/core/journals/international-and-comparative-law-quarterly/announcements/call-for-papers/call-for-papers-icq-forum-on-law-of-the-sea)>.

<sup>30</sup> C Redgwell, ‘Technological Change and the Law of the Sea: The Challenge of Marine Geoengineering’ (2025) 74(Supp) ICLQ 11.

enforcement<sup>31</sup> and Barbara Stępień and Mauro Arturo Rivera León's article on autonomous shipping<sup>32</sup>—before Alexander Lott examines the threats posed to the increasing modern dependence on offshore infrastructure and its legal and security vulnerabilities.<sup>33</sup> This then links into the reflections by Christian Bueger, Timothy Edmunds and Jan Stockbruegger concerning the diverse governance frameworks that can be used to address such security challenges,<sup>34</sup> and then to Makoto Seta's consideration of the relationship between UNCLOS and the laws on armed conflict at sea.<sup>35</sup>

The next two articles return to issues which have been of long-standing concern and which States have been reluctant to address: Eduardo Cavalcanti de Mello Filho provides a scathing commentary on the continued willingness of some flag States to tolerate (or even solicit) the operation of substandard vessels in ways that threaten order at sea.<sup>36</sup> Yunjun Li then explores how the law of the sea concerning maritime boundary delimitation still struggles to reconcile itself with geological realities.<sup>37</sup> These failures to face realities then lead into a series of articles, by Nilüfer Oral, Eirik Bjorge, and Sebastián Rioseco, which consider emerging realities that are also marked by a reluctance to address them head on, namely the impacts of climate change and sea-level rise.<sup>38</sup> These provoke the thought that perhaps the principle of 'the land dominates the sea' is not so clear cut as is usually claimed. Indeed, given its influence on rising tides, it may be that the moon has an increasing claim to domination!

The following four articles address challenges with the governance of areas beyond national jurisdiction. Whilst David Freestone, Fae Sapsford and David Vousden,<sup>39</sup> So Yeon Kim and Youngdawnng Moh,<sup>40</sup> and Shirley Scott and Nengye Liu<sup>41</sup> focus on the potential impacts of the BBNJ Agreement, Neil Craik et al highlight that existing international law of the sea institutions face challenges due to their lack of good

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<sup>31</sup> E Papastavridis, 'The Use of Earth Observation Tools for the Surveillance and Enforcement of Marine Protected Areas on the High Seas' (2025) 74(Supp) ICLQ 27.

<sup>32</sup> B Stępień and MA Rivera León, 'Law Enforcement in Autonomous Shipping: Rethinking Jurisdictional Challenges under UNCLOS' (2025) 74(Supp) ICLQ 47.

<sup>33</sup> A Lott, 'Conventional Jurisdictional Approaches to Protecting Submarine Pipelines and Cables' (2025) 74(Supp) ICLQ 63.

<sup>34</sup> C Bueger, T Edmunds, and J Stockbruegger, 'UNCLOS under Fire: Recalibrating Maritime Security Governance' (2025) 74(Supp) ICLQ 85.

<sup>35</sup> M Seta, 'UNCLOS during Armed Conflict: Due Regard in the Exclusive Economic Zones of Neutral Coastal States' (2025) 74(Supp) ICLQ 103.

<sup>36</sup> E Cavalcanti de Mello Filho, 'From "Flags of Convenience" to "Flags of Deceit": The Future of the Law Governing the Nationality of Ships' (2025) 74(Supp) ICLQ 121.

<sup>37</sup> Y Li, 'Constraining the Continental Shelf beyond 200 Nautical Miles in Maritime Delimitation Cases' (2025) 74(Supp) ICLQ 139.

<sup>38</sup> N Oral, 'Sea-Level Rise and Maritime Boundaries: From Uncertainty to Clarity?' (2025) 74(Supp) ICLQ 163; E Bjorge, 'The Régime of Islands and Sea-Level Rise' (2025) 74(Supp) ICLQ 179; S Rioseco, 'The ITLOS Advisory Opinion on *Climate Change and International Law*: A Deep Dive into External Rules and Materials' (2025) 74(Supp) ICLQ 195.

<sup>39</sup> D Freestone, F Sapsford and D Vousden, 'Navigating the BBNJ Treaty: Some Experiences from the Sargasso Sea' (2025) 74(Supp) ICLQ 215.

<sup>40</sup> SY Kim and Y Moh, 'Due Regard Obligations in Areas beyond National Jurisdiction' (2025) 74(Supp) ICLQ 235.

<sup>41</sup> S Scott and N Liu, 'The Prospects of the High Seas Treaty Decisively Reducing the Negative Biodiversity Impacts of Distant Water Fishing Operations' (2025) 74(Supp) ICLQ 235.

administrative procedures, focusing on the International Seabed Authority as an illustration.<sup>42</sup> A concern with proper procedure informs the article by Aleke Stöfen-O'Brien concerning the negotiations for a plastics treaty, albeit from a law creation perspective.<sup>43</sup> Whilst there might appear to be a disjuncture between this and the final chapter by Reece Lewis and Sofia Galani, examining the difficulties of protecting human rights at sea, both are united by their focus on the roles that can be played by non-State actors in ensuring better protections through engagement with law of the sea institutions.<sup>44</sup>

#### 4. Present challenges and future directions in the law of the sea

UNCLOS is often described as a 'living treaty'.<sup>45</sup> As a dynamic and creative field of study, the law of the sea is able to respond to newly emergent interests and issues. Yet we are faced with challenges that stretch the law's capacity to effectively govern the oceans in the face of systemic challenges such as climate change, intensified use of ocean space and resources and increasing insecurity at sea, whether from geopolitical instability, environmental degradation or exploitation of people. In the face of such challenges, it is timely to reflect upon how the law of the sea can respond.

Taken in combination, these various articles help to highlight, and illustrate, some of the central challenges facing the law of the sea today. The centrality of UNCLOS is nowadays taken as a given from which all else flows. Whilst it is not immutable, it is certainly foundational. Change occurs through accretion and addition, but not through fundamental re-appraisal. Yet this orthodoxy is not entirely correct. New zonal concepts—or at least, new zonal apparatus—continue to emerge, as with the concept of Marine Protected Areas, now morphing into 'Area-based Management Tools' under the BBNJ Agreement. Of course, this begs the question: tools for what? And for whom?

It is difficult to read much of the text of UNCLOS, and particularly those articles whose origins derive from the earlier 1958 Conventions, and not be struck by how very different they are from those of the subsequently adopted 'implementation' agreements under UNCLOS, and in particular the BBNJ Agreement. For all the lack of clarity concerning some of the provisions of UNCLOS, the general thrust of each of its parts—their spheres of regulation, the underlying principles applicable to their subject-matter and their inter-relationship with other elements of the Convention framework—are relatively clear and provide a 'grounding framework' for the ordering of the oceans. Fast forward to the BBNJ Agreement and its very subject-matter and scope of application is as opaque as its mechanisms for achieving them. On one level, this merely reflects the increasing levels of scientific knowledge and technical capacity which can now be brought to bear upon the resolution of the problems which the structures of the law of the sea are designed to address. In the very broadest of terms these can properly be summed up in non-legal language as 'who can do what, and where'? And for all its

<sup>42</sup> N Craik *et al.*, 'The International Seabed Authority, the Problem of Disregard and the Case for Administrative Accountability' (2025) 74(Supp) ICLQ 267.

<sup>43</sup> A Stöfen-O'Brien, 'Negotiating Plastics Futures: The Law of the Sea and the Role of Non-State Stakeholders' (2025) 74(Supp) ICLQ 291.

<sup>44</sup> R Lewis and S Galani, 'Addressing the Challenges of Applying Human Rights Law at Sea' (2025) 74(Supp) ICLQ 305.

<sup>45</sup> See, e.g. Lewis (n 17); Barrett and Barnes (n 23).

complexity, the BBNJ Agreement, like the other Implementing Agreements before it, still seeks to address those questions from within the traditional paradigm of the law of the sea—which is that of the freedom of the seas in areas beyond national jurisdiction, but with those freedoms being progressively and consensually curtailed by States in order to acknowledge and address emergent issues related to the governance of activities in the maritime space of an increasingly fine-grained nature.

The latter observation is significant: the trend has been towards the need to regulate and balance potentially conflicting interests and usages in increasingly technical fields by the importation of expertise that sits outside the general law of the sea framework. As a result, what are often referred to as interstitial principles have provided the legal vehicles through which this occurs. But does this run the risk of undermining the clarity that effective management of ocean governance and operations at sea requires? And who manages, and for whom? Are the interests of States—some, perhaps, fixed on the abiding significance of international trade, some on resource exploitation, others on resource management whilst others are looking to sea-level rise as an existential threat—really all to be ‘balanced’ off according to the various diplomatic capacities of those States within international fora? Can the vital interests of one State in the shared maritime sphere so readily be set aside by the decisions of others in ways which would not be possible in the terrestrial domain? It may be that the interface between the ordering principles of the law of the sea and needs of ocean governance are becoming increasingly strained.

Standing back from the detail of these contributions, perhaps the overarching question that needs to be faced is exactly that: does the current approach to the law of the sea, as reflected in these Forum articles, reflect the inevitable tensions inherent in legal change and development over time, or do they point towards more fundamental challenges to the essentially State-centric interests’ approach upon which the subject is founded? And if they do, are they qualitatively different from similar challenges concerning terrestrial spaces? It is not obvious that they are. The law of the sea has been a proving ground for varied approaches to legal regulation over time: perhaps the time has come to think further about how lessons learnt from the law of the sea might be of use in addressing problems currently facing the application of international law more generally. Such reflections add to the pertinence of this collection, whilst suggesting also that a return to these themes may well be needed in a future ICLQ Forum or regular submissions to the journal.

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