



## **Interest Group on Law of the Sea**

### **Workshop**

on the occasion of the 13th ESIL Annual Conference:

*'Global Public Goods, Global Commons and Fundamental Values: The Responses of International Law'*

Naples, 6 September 2017

Aula 35, Palazzo Pecoraro Albani, 14.00-18.00 hrs

### **Global Commons and Values in Oceans: What should be the role of the New Implementing Agreement under UNCLOS?**

The oceans include one of the largest global commons, the high seas, and are on a trajectory of significant degradation, as a result of overexploitation of marine resources and other human activities. This situation is also exacerbated by global climate change, which is exerting an increasingly negative influence on the sea. Moving the oceans from decline to recovery is a hugely complex problem involving a host of intersecting factors, including socioeconomic drivers, climate change and geopolitical issues. Law is not absent in this mixture; quite to the contrary, it is called to play a pivotal role in altering this trajectory and moving the regulatory agenda towards the sustainable use of the global goods and commons of the oceans.

At the centre of this endeavour stand the negotiations for a new implementing agreement under the United Nations Convention on the Law of the Sea. In 2015 the UN General Assembly adopted Resolution 69/292 calling for development of an international legally binding instrument under UNCLOS on the conservation and sustainable use of marine biological diversity in areas beyond national jurisdiction (ABNJ). Following the meetings of the Preparatory Committee (PrepCom) -the last planned to be held in July 2017- an intergovernmental conference will be convened to consider the recommendations of the PrepCom and draft the text of a binding agreement under UNCLOS.

Participants in this workshop will critically examine whether the current workings of the PrepCom are geared towards a positive direction, highlighting areas of agreement, disagreement and lack of clarity. At the same time, this workshop will evaluate how the global public goods, global commons and fundamental values of humankind are to be served better in ABNJ and how we can strike a balance between sustainable oceans and economic growth, especially in view of Goal 14 of the Sustainable Development Goals (SDGs). Moreover, it will address gaps and legal barriers in the management of global commons in ABNJ, including the lack of effective surveillance and enforcement tools concerning marine protected areas or other area-based conservation measures.

## PROGRAMME

### I. General principles in practice – 14.00 hrs

- *When “not undermining” undermines the BBNJ process: Possible effects of the “not undermining” clause on the outcome of the PrepCom and the upcoming legally binding instrument*

Catherine Blanchard, Netherlands Institute for the Law of the Sea (NILOS), Utrecht University, The Netherlands

- *A Regime Complex Approach to realising the New Implementing Agreement for the Conservation and Sustainable Use of Marine Biological Diversity of Areas Beyond national Jurisdiction*

Constance Johnson, Global Challenges Scholar, Australian National Centre for Ocean Resources & Security (ANCORS), University of Wollongong, Australia

- *The Common Heritage of Mankind and the BBNJ Implementing Agreement: The Case for an ITLOS Advisory Opinion*

Peter Tzeng, Law Clerk, International Court of Justice

*Discussant:* Professor Maria Gavouneli, National & Kapodistrian University of Athens

### II. Specific procedures in practice – 16.00 hrs

- *The notion of ‘the commons’ in the current negotiations concerning the New Implementing Agreement under UNCLOS*

Konrad Jan Marciniak, Ministry of Foreign Affairs of the Republic of Poland, Visiting Lecturer at the Cardinal Stefan Wyszyński University, Warsaw, Poland

- *Maritime genetic resources of the Area are part of the Common Heritage of Mankind: Some Justifications*

Maria Esther Salamanca Aguado, Assistant Professor of Public International Law, University of Valladolid, Spain

- *Capacity building and transfer of marine technology: How far can the new agreement go?*

Aikaterini Grymaneli, Université Panthéon-Assas Paris 2, France

*Discussant:* Dr Efthymios (Akis) Papastavridis, Fellow, Athens PIL & University of Oxford