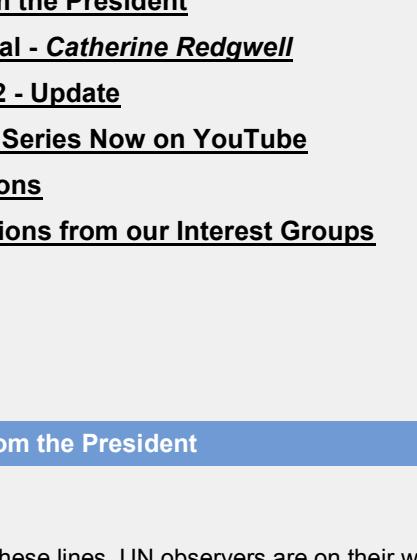


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ESIL Newsletter

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Vol. 6, May 2012

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Editorial Board
Laurence Boisson de Chazournes
(Geneva), Barbara Delcourt (Brussels)
and Geir Ulfstein (Oslo)

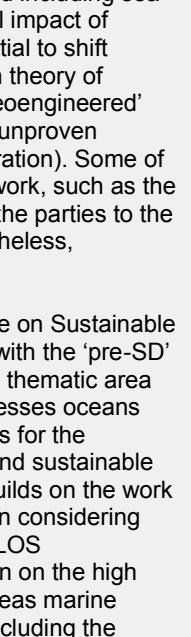
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1. Message from the President

Dear members,

While I am writing these lines, UN observers are on their way to Syria. The Human Rights Council has condemned the regime's human rights violations and has implicitly asked the Security Council to refer persons suspected of having committed crimes against humanity to the ICC. A presidential statement of the Security Council has been issued. The United Nations High Commissioner for Refugees has called for donations to help the more than 100,000 refugees.



And yet the killing continues, the ceasefire repeatedly being ignored. It is reported that the Syrian president's wife is hardly affected by sanctions since she places her shopping orders through a good friend in Paris. Are the actions of the international community sufficient? Or is it rather an organized hypocrisy, to borrow a term? And how, if at all, should we as a European Society of International Law react to this? Suggestions are welcome.

Since the last newsletter, the agora speakers for our conference in Valencia have been selected. The decisions of the selection panels were made according to specific criteria. It is a positive sign that a very high number of excellent proposals were submitted and, unfortunately, only a small number of them could be chosen. I fully understand the disappointment of those who did not make it this time, some of whom wrote to me, and I can assure you that everything was done to guarantee a fair selection procedure. We can all look forward to stimulating presentations and discussions during the conference.

In the meantime, ESIL has intensified its cooperation with other regional societies. A large number of ESIL members were present at the annual meeting of the American Society of International Law in Washington in March, and also appeared on panels. I also met the president of the Asian Society of International Law there and we talked about future joint events. Thanks to the initiative of an ESIL member, an ESIL event is being planned at the meeting of the International Law Association in Sofia in August 2012. I consider these types of encounters very enriching and encourage all members to come up with other suggestions for joint action.

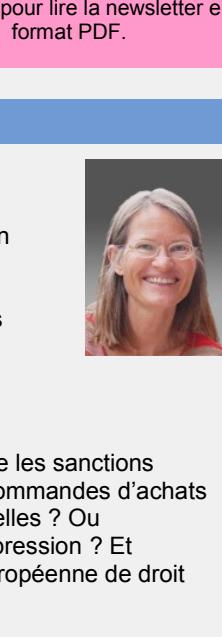
Elections to the board of the society will take place in Valencia and the board will be partly renewed. According to the ESIL constitution and by-laws, candidates can come forward up until 90 days before the election. The prerequisites are ESIL membership in the preceding year and the support of two other ESIL members. The society needs an active and diverse board in which the plurality of European legal and scholarly traditions is represented and which develops ideas for new activities and implements them. I therefore encourage all members to consider standing for election or to propose another member as a candidate.

I am looking forward to hearing from you,

Anne Peters

2. Guest Editorial

The 30th Anniversary of UNCLOS: still fit for purpose?



Catherine Redgwell - Professor of International Law, UCL

This year marks the thirtieth anniversary of the conclusion of the United Nations Convention on the Law of the Sea, an instrument which the President of the Conference Tommy Koh famously described as a 'constitution for the oceans'. As with any constitutional instrument the

question arises as to the continuing relevance of its provisions and of the ability of text crafted under different times and conditions to address current issues. We have already seen two instances of 'constitutional amendment' since 1982, first in the stripping away of some of the 1970s new international economic order trappings with the conclusion of the 1994 Implementation Agreement and then an attempt at addressing the tragedy of the commons to which unregulated high seas fishing of straddling and highly migratory stocks and weak enforcement gives rise (the 1995 Fish Stocks Agreement). The former was also designed to facilitate widespread participation in the Convention, though *universal* participation - a feat achieved by a UN treaty for the first time in 2009 with the 1985 Vienna Convention for the Protection of the Ozone Layer and 1987 Montreal Protocol - remains elusive. Nor has the 1995 Fish Stocks Agreement resolved all of the problems relating to the weakness of regional fisheries management organisations (RFMOs) and illegal, unreported and unregulated (IUU) fishing.

Indeed, in the first decade of the 21st century, many of the same issues confronting negotiators at UNCLOS III remain of acute concern such as overfishing, pollution, population rise and pressures on coastal and estuarine habitats, and depleting marine resources both within, and in areas beyond, national jurisdiction. And new issues have subsequently emerged including sea level rise and the plight of small island developing States, and the more general impact of climate change on a host of oceans issues. Such impact ranges from the potential to shift baselines and maritime boundaries, to the inundation of low features capable in theory of generating economic zones, increased acidification, and the impact of novel 'geoengineered' climate change mitigation responses such as ocean iron fertilization (an as yet unproven technique to stimulate plankton growth and their role in natural carbon sequestration). Some of these issues have already begun to be addressed outside the UNCLOS framework, such as the 2009 FAO Agreement on IUU Fishing and resolutions on ocean fertilization by the parties to the London Convention/Protocol and the Convention on Biological Diversity. Nonetheless, significant gaps remain in the post-1982 UNCLOS legal framework.

Some of these issues are on the agenda for the June 2012 'Rio+20' Conference on Sustainable Development (SD). In common with previous major SD summits (and, indeed, with the 'pre-SD' 1972 Stockholm Conference) concern for the state of the world's oceans is one thematic area for concern. The current (April) draft outcome text ('zero draft') for Rio+20 addresses oceans and seas and small island developing States and pledges to initiate negotiations for the conclusion of an Implementation Agreement to UNCLOS on the conservation and sustainable use of marine biological resources beyond areas of national jurisdiction. This builds on the work of the Ad Hoc Open-ended Informal Working Group, which since 2004 has been considering further UNCLOS gap-filling. If adopted this would add a 'third pillar' to the UNCLOS constitutional framework and further strengthen marine environmental protection on the high seas by the use, *inter alia*, of spatially-based management tools such as high seas marine protected areas. However, the obstacles to successful regulation are myriad, including the traditional problem of enforcement with respect to activities in high seas areas and the coordination of a wide range of international efforts already directed towards high seas marine environmental protection under the Biodiversity Convention and the FAO, to name a few. What UNCLOS offers is the potential to develop a general framework in order properly to address increasing pressures on marine space beyond national jurisdiction, and to develop a high seas 'responsible freedoms' analogue to its original innovation of 'responsible sovereignty' within 200 nautical miles.

3. Valencia 2012 - Update

The Valencia 2012 Biennial Conference is approaching and some recent news can be shared with all our members. The program has been subject to a few changes. Now, we welcome Daphna Shraga - former UN Principal Legal Officer - as discussant in Forum 5, and Professor André de Hoogh - from the University of Groningen - as new panelist in Forum 2. We are also trying to definitely confirm our closing Keynote speech, but recent changes in the Spanish Government do not yet permit us to confirm the presence of the Minister of Foreign Affairs of Spain. We will confirm this as soon as possible.

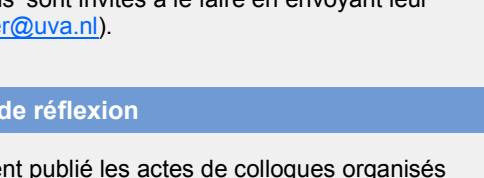
As commented by our President, the Agora selection process culminated with the completion of our Agora program. Twenty-four colleagues from around the world have been selected, in a very competitive process, among almost 200 excellent candidates. The final program is now available on the [conference website](#). Abstracts will be uploaded in the near future.

Please remember that registration for the conference is limited and that spaces will be allocated on a first-come, first-served basis. So move quickly and register yourself as soon as possible by clicking [here](#).

You can keep yourself updated on the 2012 Valencia Biennial Conference at [www.uv.es/esil2012](#). See you soon!

4. ESIL Lecture Series Now on YouTube

We are pleased to announce that video footage of the ESIL Lecture Series is now available and can be streamed from our new [Youtube Channel](#).



Launched in October 2011, the ESIL Lecture Series includes events hosted by ESIL in different corners of the world and aimed at engaging different professional and academic communities in debates about ongoing issues of global significance.

The Series already features three lectures on its YouTube Channel:

- Daniel Goldhagen, [Worse Than War](#), University of Basel, 26 October 2011

- David Kennedy, [Governance and the Return of Political Economy](#), American University in Cairo, 19 February 2012

- Armin Von Bogdandy, [Sovereign Debt Restructurings as Exercises of Public Authority](#), Universidad Autónoma de Madrid, 2 March 2012

Forthcoming: An interview with Bruno Simma, Oslo, 10 September 2012.

Members will receive regular updates on forthcoming lectures on the ESIL website.

5. ESIL Reflections

In the first half of 2012, ESIL will launch 'ESIL Reflections'. This is a new, online, publication that offers reflections on current topics or developments in international law in a way that is relatively accessible to non-experts.

Although 'Reflections' may relate to topical issues in practice (a major incident, new treaty, or judicial decision), they will not be limited thereto. 'Reflections' also may address current developments in international legal scholarship and theory.

'ESIL Reflections' will have more substance than a blog, but also will be shorter and less formal than a journal article (and will thus involve a great deal less work and preparation). 'Reflections' will have a length of about 2000 words, and appear regularly throughout the year.

Editors are Jan Klabbers, André Nollkaemper (editor in chief) and Thomas Skouteris.

The editors will invite experts to contribute a 'Reflection', but members who have an interest in contributing are encouraged to do so. Suggestions can be sent to André Nollkaemper at [P.A.Nollkaemper@uva.nl](#).

6. New Publications from our Interest Groups

Two ESIL Interest Groups have recently published proceedings of workshops held as part of ESIL's 4th Biennial Conference in Cambridge (Sept. 2010):

- The [Interest Group on International Environmental Law](#) has published a special symposium on 'Fairness in International Environmental Law' in the [Leiden Journal of International Law](#), edited by Mario Prost and Alejandra Torres Camprubi. The symposium includes articles by Jaye Ellis, Kishan Khoday, Usha Natarajan and Natasha Affolder. Access to the symposium is free online for a limited period of time.

- Le [Interest Group on International Legal Theory](#) has published a special issue in the [German Law Journal](#) on the theme of 'Ruptures in International Law'. The special issue - edited by Ignacio De La Rasilla Y Del Moral - includes contributions by John D. Haskell, Paavo Kotiaho, Leila Choukroune, Noemi Gal-Or & Cedric Ryngaert, Evan Fox-Decent & Evan J. Criddle, and Isobel Roele.

For more information about our Interest Groups and their activities, please click [here](#).

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Comité éditorial:
Laurence Boisson de Chazournes
(Genève), Barbara Delcourt (Bruxelles)
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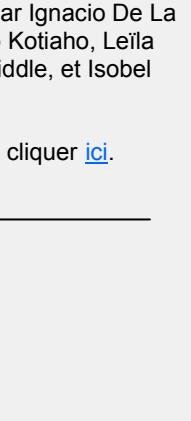
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1. Message de la Présidente

Chers membres,

Au moment où j'écris ces lignes, des observateurs des Nations unies sont en route pour la Syrie. Le Conseil des droits de l'Homme a condamné les violations des droits de l'Homme du régime et a implicitement demandé au Conseil de sécurité de référer les personnes suspectées d'avoir commis des crimes contre l'humanité devant la CPI. Le Conseil de sécurité a fait une déclaration présidentielle : le Haut Commissaire des Nations Unies pour les réfugiés a sollicité des dons afin d'aider plus de 100'000 réfugiés. Toutefois,



les tueries continuent, le cessez-le-feu est sans cesse rompu. J'ai pu lire que les sanctions touchaient à peine la femme du président syrien, laquelle fait passer ses commandes d'achats par un ami à Paris. Les activités de la communauté internationale suffisent-elles ? Ou représentent-elles plutôt une hypocrisie organisée, pour emprunter cette expression ? Et comment (si jamais) devrions-nous réagir face à cela en tant que Société européenne de droit international ? Vos suggestions seront les bienvenues.

Depuis la dernière lettre, la sélection des intervenants de la conférence à Valence a été faite selon une procédure formelle, conformément à des critères prédefinis. Un très grand nombre de propositions de contribution d'excellente qualité avait été soumis dont seule une petite partie a pu être retenue. Je peux très bien comprendre la déception de ceux qui n'ont pas été choisis cette fois-ci (certains m'ont écrit) et je peux vous assurer que tout avait été fait pour garantir une sélection juste et anonyme. On peut déjà anticiper des présentations et discussions stimulantes au cours de la conférence.

Les élections au Comité exécutif seront à l'ordre du jour à Valence. En effet, le Comité exécutif sera partiellement renouvelé. Conformément aux statuts et aux règlements d'application de la SEDI, des candidats peuvent être proposés jusqu'à 90 jours avant l'élection. La condition préalable est l'appartenance à la société durant l'année ayant précédé tout comme le soutien de deux autres membres de la SEDI. La société a besoin d'un Comité exécutif très dynamique et diversifié qui reflète la pluralité des traditions légales et académiques européennes et présente des idées pour de nouvelles activités qui seront ensuite mises en œuvre. Noras the 1995 Fish Stocks Agreement resolved all of the problems relating to the weakness of regional fisheries management organisations (RFMOs) and illegal, unreported and unregulated (IUU) fishing.

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2. L'éditorial de l'invité

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3. Valence 2012 - Nouvelles

La Conférence biennale de Valence se rapproche et nous voud