



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

### **ANNUAL REPORT 2018-2019**

#### **I. Governance**

We continue to update our website and Twitter account (@esil\_lawsea) with interesting IG-related and external events. We are proud to say that our Twitter presence has increased - we currently have 349 followers - and seems to have become a forum for law of the sea enthusiasts to share information on relevant news, publications, etc. As a side note, unfortunately, the convenors were told by the ESIL Board that IGs will not be receiving financial help for a more comprehensive remake of IG websites (financial help given in the past was a one-time-only offer).

#### **II. Events**

The ESIL LAWSEA IG co-organised a conference on 'The EU as a global actor in maritime security: Competences – Obligations – Accountability' in Leiden on 25-26 October 2018, together with the Europa Institute of the Leiden Law School and the ESIL Interest Groups on the EU as a Global Actor, on Migration and Refugee Law and on International Human Rights Law. The programme, as advertised on our website and our social media, is attached.

At the annual ESIL Conference in Athens, we organised a pre-conference workshop entitled 'Sovereignty at Sea: Repercussions in flux?' on 12 September 2019. We had three 'agitators', Joanna Mossop, Nilufer Oral (who also acted as chair), and Irini Papanicolopulu, who each gave a short presentation to start off lively discussions on, amongst others, the BBNJ negotiations, humans at sea and the effects of climate change. Sofia Galani was unfortunately unable to join us. The workshop programme, as advertised on our website and our social media, is attached.

#### **III. Plans for the future**

Our attempts to co-organise an event jointly with the Law of the Sea Interest Group of the American Society of International Law and the corresponding IG of the Latin American Society of International Law were until now unsuccessful. We continue to investigate the possibility to cooperate with other ESIL IGs and beyond.

10 October 2019

*For the ESIL LAWSEA IG*  
Maria Gavouneli  
Anthi Koskina  
Gabriela Oanta  
Jessica Schechinger



## Interest Group on the Law of the Sea

ESIL@Athens, 12 September 2019

11.00-13.30 – Faculty Club, Main Room

### Sovereignty at Sea: Repercussions in flux?

The sea offers the archetypal contradiction between the omnipresence of the State power, which remains the cornerstone of modern international law; and the vast emptiness of the high seas, the freedom of which remains one of the primordial myths of the discipline. As the codification of the old rules, tidily presented in the Law of the Sea Convention, reaches maturity almost 40 years after its original adoption, the international community is again involved in a law-drafting exercise, with all the pitfalls and challenges of a maritime story of old. The negotiations for a binding instrument on the conservation and sustainable use of marine biological diversity of areas beyond national jurisdiction, currently under way in the UN Headquarters, have reached the critical stage where abstract concepts must be transformed into contractual provisions, in essence regulating the effects of sovereignty in the maritime zones and beyond them.

As we gather in Athens for the ESIL@Athens2019 Conference, we ponder the repercussion of this jurisdictional tug-of-war. Starting with the recent book on *International Law and the Protection of People at Sea* (OUP, 2018) by Irini Papanicolopulu, we comment on the impact of human activity at sea in terms of maritime security; contemplate the latest developments concerning the Outer Continental Shelf beyond 200 miles and the interplay with State control over fisheries and genetic resources in the high seas; and assess the overall impact all such actions may have on climate change and the continued survival of the planet.

We invite you to a cordial, open-ended discussion on these and similar subjects, where a group of scholars coming from all over the world will act as agitators:

**Chair:** Nilufer Oral International Law Commission, Istanbul Bilgi University

Irini Papanicolopulu Università di Milano-Bicocca

Sofia Galani University of Bristol

Joanna Mossop Victoria University of Victoria; McCormick Fellow, University of Edinburgh

We hope to welcome you all in Athens for a most enjoyable meeting!

Maria Gavouneli, Anthi Koskina, Gabriela A. Oanta & Jessica Schechinger



Universiteit  
Leiden  
Europa Institute

ILS Interaction  
between  
Legal Systems



**CONFERENCE, LEIDEN, 25-26 OCTOBER 2018**

ORGANISED BY:

Europa Institute, Leiden University

Research focus area 'Interaction between legal systems', Research project 'Policing the high seas'

The organisation of this conference has been sponsored by the Leiden University Fund

IN COOPERATION WITH :

ESIL Interest Group on the EU as a Global Actor

ESIL Interest Group on Migration and Refugee Law

ESIL Interest Group on International Human Rights Law

ESIL Interest Group on the Law of the Sea

## **The EU as a Global Actor in Maritime Security**

### **Competences — Obligations — Accountability**

A secure global maritime domain in which freedom of navigation is guaranteed, marine resources and the environment are protected, and the rule of law is upheld is essential for international prosperity and peace. Ensuring maritime security involves combating threats posed by illicit activities, such as piracy against ships, drug trafficking, smuggling and trafficking in human beings, or illegal fishing, as well as by natural disasters, climate change, or conflict in and around coastal regions.

The EU has become increasingly active in this area. In 2014, the EU adopted a common framework for the development of a European response to maritime threats. This *Maritime Security Strategy* aims at enhancing the visibility of the EU in the global maritime domain by mainstreaming maritime security into EU policies as well as EU external relations. Involved in implementing the *Maritime Security Strategy* are not only the EU institutions and the Member States, but also more specialised bodies, such as the European Maritime Safety Agency (EMSA), the European Fisheries Control Agency (EFCA), or the European Border and Coast Guard Agency (EBCGA, commonly referred to as Frontex).

Activities by the EU include a broad range of measures spanning various internal policies as well as the Common Foreign and Security Policy (CFSP). As a global actor in maritime security, the EU for example cooperates with and supports relevant third states. It, for instance, assists states around the Gulf of Guinea to strengthen their maritime capabilities and provides financial assistance and training to the Libyan Coast Guard. The EU also set up various frameworks for information sharing such as the Common

Information Sharing Environment for the Maritime Domain (short 'CISE'), which aims at progressively interlinking existing information systems to facilitate rapid information sharing. In addition, the EU itself conducts maritime enforcement or similar operations. Among these are, in particular, two naval operations in the framework of the European Security and Defence Policy: EU NAVFOR Somalia ('Operation Atalanta') aimed at protecting vessels around the Somali coast from pirates and the more recent EU NAVFOR MED ('Operation Sophia') aimed at disrupting the business model of human smuggling and trafficking networks in the Southern Central Mediterranean. In addition, the latest joint border control operations at sea, 'Themis', carried out under the auspices of Frontex, has an explicit mandate to combat cross border crime in the Central Mediterranean.

The aim of the conference is to explore what competences the EU has to act in the maritime domain, what obligations it is bound to when doing so, and how judicial oversight over these activities can be ensured. Studying the EU's competences, obligations, and accountability in this respect informs the broader question of whether the EU, being neither a state nor a classic international organisation, has a role to play in the global maritime domain and how that role could be shaped.

## Draft Programme

### DAY 1, 25 October 2018

09:30 – 10:00	Registration	
10:00 – 10:45	<b>Opening Session</b>  Opening and Welcome: <i>Jorrit Rijpma (Leiden University)</i>  Key note lecture: <i>Anna Petrig (University of Basel)</i> <b>Unmanned maritime systems and maritime security</b>	
10:45 – 12:30	<b>PANEL 1: LAW ENFORCEMENT JURISDICTION AND HUMAN RIGHTS</b>	
	Chair: <i>Stefaan Smis (Free University of Brussels, University of Westminster)</i>	Discussant: <i>Marta Bo (T.M.C. Asser Institute)</i>
	<b>Maritime Security and Human Rights: The Role of the EU and its Member States in Protecting Human Rights in the Maritime Domain</b> <i>Sofia Galani (University of Bristol)</i>	
	<b>Maritime security operations and human rights obligations</b> <i>Ralph Wilde (University College London)</i>	
	<b>Universal Jurisdiction between East Africa and the European Union: The Conceptual and Practical Impact of Operation Atalanta</b> <i>Fulvia Staiano (Institute for Research on Innovation and Services for Development)</i>	
	<b>Appropriate Measures at Sea: Jurisdictional bases for enforcement measures against stateless migrant smuggling vessels</b> <i>Thea Coventry (Leiden University)</i>	

12:30 – 14:00	Lunch				
14:00 – 15:45	<b>PANEL 2: FISHERIES AND ENVIRONMENT</b> <table> <tr> <td>Chair: Arron Honniball (Utrecht University)</td><td>Discussant: Gwenaele Proutière Maulion (University of Nantes)</td></tr> <tr> <td colspan="2"> <p><b>Providing maritime security through the area of fisheries: insights from the EU's action against IUU fishing</b>  Mihail Vatsov (University of Edinburgh)</p> <p><b>The European Union and the conservation of marine environment and biodiversity</b>  Pascale Ricard (University Paris 1 Panthéon Sorbonne)</p> <p><b>Illegal, Unreported and Unregulated Fishing Activities: The Interplay of Exclusive Competences, Obligations of Due Diligence and Attribution of Conduct</b>  Lorenzo Gasbarri (University College London)</p> <p><b>The EU Maritime Security Strategy and Climate Change: The case of Maritime Transportation and new challenges ahead</b>  Borja Montes Toscano (University of Seville)</p> </td></tr> </table>	Chair: Arron Honniball (Utrecht University)	Discussant: Gwenaele Proutière Maulion (University of Nantes)	<p><b>Providing maritime security through the area of fisheries: insights from the EU's action against IUU fishing</b>  Mihail Vatsov (University of Edinburgh)</p> <p><b>The European Union and the conservation of marine environment and biodiversity</b>  Pascale Ricard (University Paris 1 Panthéon Sorbonne)</p> <p><b>Illegal, Unreported and Unregulated Fishing Activities: The Interplay of Exclusive Competences, Obligations of Due Diligence and Attribution of Conduct</b>  Lorenzo Gasbarri (University College London)</p> <p><b>The EU Maritime Security Strategy and Climate Change: The case of Maritime Transportation and new challenges ahead</b>  Borja Montes Toscano (University of Seville)</p>	
Chair: Arron Honniball (Utrecht University)	Discussant: Gwenaele Proutière Maulion (University of Nantes)				
<p><b>Providing maritime security through the area of fisheries: insights from the EU's action against IUU fishing</b>  Mihail Vatsov (University of Edinburgh)</p> <p><b>The European Union and the conservation of marine environment and biodiversity</b>  Pascale Ricard (University Paris 1 Panthéon Sorbonne)</p> <p><b>Illegal, Unreported and Unregulated Fishing Activities: The Interplay of Exclusive Competences, Obligations of Due Diligence and Attribution of Conduct</b>  Lorenzo Gasbarri (University College London)</p> <p><b>The EU Maritime Security Strategy and Climate Change: The case of Maritime Transportation and new challenges ahead</b>  Borja Montes Toscano (University of Seville)</p>					
15:45 – 16:15	Coffee break				
16:15 – 18:00	<b>PANEL 3: BORDER CONTROL AND SEARCH AND RESCUE</b> <table> <tr> <td>Chair: Eugenio Cusumano (Leiden University)</td><td>Discussant: Moritz Baumgärtel (Utrecht University, University College Roosevelt)</td></tr> <tr> <td colspan="2"> <p><b>Refoulement by Proxy and 'Remote Control': Italy's Involvement in Libyan 'Pullbacks' before the European Court of Human Rights</b>  Violeta Moreno Lax (Queen Mary University of London)</p> <p><b>Pulling Back Navies and Pushing Back Migrants: Questioning the EU's International Legal Responsibility in the Mediterranean Sea</b>  Richard Collins and Aphrodite Papachristodoulou (University College Dublin)</p> <p><b>Why Evolving Policies on SAR Obligations Threaten Merchant Shipping</b>  Richard Kilpatrick (Northeastern Illinois University)</p> </td></tr> </table>	Chair: Eugenio Cusumano (Leiden University)	Discussant: Moritz Baumgärtel (Utrecht University, University College Roosevelt)	<p><b>Refoulement by Proxy and 'Remote Control': Italy's Involvement in Libyan 'Pullbacks' before the European Court of Human Rights</b>  Violeta Moreno Lax (Queen Mary University of London)</p> <p><b>Pulling Back Navies and Pushing Back Migrants: Questioning the EU's International Legal Responsibility in the Mediterranean Sea</b>  Richard Collins and Aphrodite Papachristodoulou (University College Dublin)</p> <p><b>Why Evolving Policies on SAR Obligations Threaten Merchant Shipping</b>  Richard Kilpatrick (Northeastern Illinois University)</p>	
Chair: Eugenio Cusumano (Leiden University)	Discussant: Moritz Baumgärtel (Utrecht University, University College Roosevelt)				
<p><b>Refoulement by Proxy and 'Remote Control': Italy's Involvement in Libyan 'Pullbacks' before the European Court of Human Rights</b>  Violeta Moreno Lax (Queen Mary University of London)</p> <p><b>Pulling Back Navies and Pushing Back Migrants: Questioning the EU's International Legal Responsibility in the Mediterranean Sea</b>  Richard Collins and Aphrodite Papachristodoulou (University College Dublin)</p> <p><b>Why Evolving Policies on SAR Obligations Threaten Merchant Shipping</b>  Richard Kilpatrick (Northeastern Illinois University)</p>					
18:00 – 19:00	Reception				
20:00 – 22:00	Speakers' Dinner				

## DAY 2, 26 October 2018

09:30 – 11:15	<b>PANEL 4: ACTORS AND GOVERNANCE</b>	
	Chair: <i>Melanie Fink (Leiden University)</i>	Discussant: <i>Florin Coman Kund (Erasmus University Rotterdam)</i>
	<p><b>The Actorness of the European Union in International Maritime Security</b> <i>Raphael Oidtmann (University of Mannheim)</i></p> <p><b>The role of EU agencies in maritime security</b> <i>Charikleia Vlachou (University of Orléans)</i></p> <p><b>The role of third states in the EU Maritime Security Strategy: case study of the South Atlantic states</b> <i>André Panno Beirão (Naval War College, Brazil)</i></p>	
11:15 – 11:45	<i>Coffee break</i>	
11:45 – 12:45	<p><b>Closing Lecture: EU Maritime Security Strategy</b> <i>tbc</i></p>	
12:45 – 14:00	<i>Light Lunch</i>	