



# UNCHARTED WATERS

A Legal Compass to Guide Climate Action

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As part of the UMRE 2024, **Prof. Simone Borg** presented her research on governance in an era of climate change. Given the unprecedented challenges facing the world due to rising sea levels and other impacts of climate change upon our seas and oceans, there is a dire need to address the gaps in the current international legal framework to deal with these lacunas.



**Prof. Simone Borg**  
*Photo by Kurt Mizzi*

**P**rof. Simone Borg's independent research into how ocean governance can adapt to address the consequences of climate change faces uncharted territory. The existing legal framework is wholly inadequate to address the growing challenges. Nonetheless, in her role as a professor of law as well as Malta's Ambassador for Climate Action at a time when Malta sits on the United Nations Security Council, Borg is well placed to contribute to the crucial ongoing discussions on how these challenges might be addressed on an international level. Malta, after all, played a historically key role in 1988 in the United Nations, leading to its acknowledgement of climate change.

### **GOVERNANCE IN AN ERA OF CLIMATE CHANGE**

Borg states that 'law can be as innovative as technology. Every single human action, in one way or another, needs to be regulated. As science continues to inform us about the links between climate change and the negative impacts on our oceans, in turn, it means we need to update our legal frameworks so that we can address the damage. In my research, I explore what the applicable laws are and whether they are adequate to deal with the issues, or whether we need new treaties, for example.'

The United Nations Convention on the Law of the Sea (UNCLOS) was established in 1982 and was itself inspired in part by Malta through its UN Ambassador, Arvid Pardo, who proposed that the ocean seabed beyond national maritime borders be considered 'the common heritage of mankind'. The UNCLOS codified new practices on the governance of ocean space. It also outlined broad

responsibilities for preserving the marine environment and ensuring the freedom of scientific research on the high seas while establishing a pioneering legal framework for regulating mineral resource extraction in deep seabed areas.

Nonetheless, it was not written to account for climate change because, at the time, there was no awareness of the climate crisis in legal and political spheres. Borg states that the UNCLOS articles, which refer to the obligations of states not to pollute the oceans, are today being understood with reference to carbon dioxide and other greenhouse gases as pollutants. Carbon dioxide affects the oceans through acidification, deoxygenation, and warming, with consequences that include the mass die-offs of krill populations, which underpin the ocean food chain. Furthermore, climate change is impacting the stability of the Atlantic meridional overturning circulation, which is responsible for the world's current climate, precipitation, and even underwater nutrient distribution. This opinion on greenhouse gases was formalised by the International Tribunal on the Law of the Sea, which states that greenhouse gases are a form of marine pollution. It has therefore laid out governments' legal obligations to reduce that contamination and thus limit global warming.

However, with international agreements like the United Nations Framework Convention on Climate Change, the Kyoto Protocol, and the Paris Accord focused on reducing greenhouse gas emissions, Borg highlights areas of ocean governance which remain unaddressed through this preventative approach. International law is thus far not specialised in handling the challenges of climate change unique to the oceans. Through its seat on the United Nations Security Council, Malta is therefore promoting a dialogue to discuss the legal impacts of sea-level rise. ➔

## RIGHTS OF SUBMERGED NATIONS

Borg warns of huge political issues related to rising sea levels because, under International law, a state is a state if it has a territory and a population. Borg elaborates: 'If territories disappear due to rising sea levels, where does that leave the nation-state? What will the future of these countries be? Will they lose their nationhood, and will its citizens lose their nationality? The law as it is at present does not provide for a situation where a country loses its territory to nature. We have never before had such a similar situation. This is a very serious threat to global peace and security.'

Current maritime law, which delineates maritime borders for countries and their ownership over the continental shelf, is only possible because these zones are measured from the coastline. If a country's coast retreats, the baselines also retreat, and legally, these countries would thus have reduced maritime zones as they shrink. Borg warns that some countries are reluctant to discuss the issue but reaffirms that Malta is at the forefront of these discussions along with other sympathetic and vulnerable countries.

New Zealand and Australia are already taking action by entering into agreements with some small island states in the Pacific so that if they lose their territory, their people can migrate and retain their rights and nationality. Borg warns, however, that from a legal standpoint, the future of coastal nations impacted by sea-level rise is still very ambiguous, and that ambiguity does not serve these vulnerable nations or their people.

Malta, backed particularly by Pacific and Caribbean island nations, is proposing that no coastal state should lose any of its existing rights as a result of sea-level rise. These changes are not inflicted deliberately by the coastal state concerned, and furthermore, many of the most affected countries are those bearing the least historical responsibility for causing the problem.

Borg therefore declares that 'at this stage, the most important thing is to identify what is going to happen and to have a legal framework which anticipates these changes. We must sustain the rights of states set to lose territory. The international community needs to agree that these submerged countries will not lose their rights as nationals

of that nation, and that as nationals, they will continue to hold rights to exclusive maritime zones which they may benefit from and exploit.'

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While issues of maritime zones and sovereignty are at the forefront of Borg's research, she acknowledges a wide range of issues that sea-level rise will impact and which require continued focus and attention. One such issue will be the destruction of infrastructure, much of which functions based on its relationship with the coast. The arising complications will start with drainage systems and may be exacerbated to affect harbours, roads, and coastal property.

When asked about the possibilities and threats of deep-sea mining, particularly with reference to the recent discovery of evidence of dark oxygen being produced at the abyssal seafloor, Borg warns that Malta's stance has always been to adopt what is formally referred to as a precautionary approach. The science indicates that deep-sea mining is likely to cause irreparable harm as the resulting turbidity would alter the deep-sea habitat for a very long time, given the lack of currents at that level to disperse it. Economic needs cannot be addressed by resolving one problem only to create another. As there is no certainty around how deep-sea mining will affect other parts of the ocean, and as many life forms are still being discovered, there are not enough facts to make such drastic decisions. Furthermore, current technology does not allow for the necessary damage mitigation measures. So long as the science tells us that not enough precautions may be taken to exclude significant damage, it is better to play it safe.

Borg concludes by emphasising that we find ourselves in the uncharted waters of numerous problems and challenges. Nonetheless, we are explorers, even in the legal sense. The most important thing is not to give up. Giving up is never an option, no matter how unsurmountable the problems appear. Borg underlines the importance of being able to say that at least we tried. Looking ahead, the great hope is that humanity will succeed in cooperating, for this is not a problem which any individual or individual nation can address alone. 