

## Sea-Level Rise and International Law: Preliminary Remarks

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Dear Co-Chairs Mr Aurescu and Madam Oral, I congratulate you for the work in progress and take this opportunity to extend congratulations to the Bureau and will offer my congratulatory remarks in the plenary. I take this opportunity to make some remarks on the Sea-Level Rise and International Law. This is beside the paper which I have furnished and which the Study-Group included in the formal document and I am very grateful for the same.

The phenomenon of rising sea levels also has enormous effects on the populations living in the affected territories. The mobility of people out of the areas where they live have led to the emergence of new concepts such as ‘climate displacement’, ‘climate refugees’ or ‘climate statelessness’ who have no legal framework in international law. There are already debates as affected people do not want to be identified as refugees nor states want to designate them as such. As rising sea levels encroach on physical coastlines, there potential impact on legal baselines, inundating parts of the coast and therefore leading to the loss of land territory as well as shifting the maritime limits inland, and impacting the extent of, for example, Exclusive Economic Zones (EEZ) can lead to several national security issues. These issues might include that other states may challenge maritime boundaries of coastal states, due to sea-level rise, especially in places with already overlapping claims. Severe impacts on the fishing communities and countries that are dependent on marine resources are certainly expected.

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As per the submission and recent the international law commission (ILC) work, it emerges that many of these States support the idea to freeze baselines and outer limits of maritime zones, as a means of reaffirming their international subjectivity at least through the control of extensive maritime areas and their natural resources, whose entitlement would vanish in the event of complete submergence of the land territory.

ILC has included the topic of “Sea-level rise in relation to international law” in its long-term programme of work. The study group identified 3 topics to be included in the programme which are as follow:

- a. Issues related to law of the Sea which focuses on the several aspects of ‘legal stability’ of baselines and maritime zones that may be affected by sea level rise.
- b. Issues related to sea level rise in relation to statehood.
- c. Issues related to protection of persons affected by rising sea level.

The Commission has in detail deliberated on several conflicts that might arise in context law of the sea with regards to phenomena of sea level rise. The majority of which determines the aspect of legal stability of baselines and maritime zone along with maritime rights that flow through this stability. In reference to this the Commission has observed the following:

1. The majority opinion from all the state submission can be summarized as the UN Convention on the Law of the Seas (UNCLOS) allows for freezing of once duly established, published and deposited baselines and outer limits of maritime zones - Article 7(2) Straight Baselines are fixed. Legal stability can be achieved through the preservation of maritime zones and the rights and entitlements that flow from them despite climate change-related sea-level rise. State Parties are not obligated to update their coordinates or charts once deposited and in this regard what Mr Huang has said remains very valid.

2. The principle of stability and respect of existing boundaries – their immutability – reflects, one can say, customary international law. The same principle of stability and respect of existing boundaries would apply to maritime boundaries which share the same function of demarcating the extent of the sovereignty as well as sovereign rights of a State. In relation to sea-level rise and maritime boundaries, the main preliminary observation is the importance given to ensuring continuity of pre-existing boundaries in the interest of stability and preventing conflict. However, while such an assertion in favour of stability is necessary, the Commission has a mandate to consolidate the state practice, interpretations and develop the law, based on precedents, doctrine and jurisprudence, on this matter. In this regard, the non-updation of baseline charts, nautical charts and navigation charts also lead to certain practical challenges. **The freezing of baselines, and the consequent non-obligation to report on updated baselines could pose hazards to safety of navigation and could potentially be in contravention of other Safety Conventions at Sea such as the Safety of Life at Sea Convention 1974.**
3. The history of Article 62, paragraph 2 sub-paragraph (a) of the Vienna Convention on Law of the Treaties, excluding boundaries from the application of fundamental change of circumstances to terminate or suspend a treaty, shows that its object and purpose was the maintenance of stability of boundaries in the interest of peaceful relations. For a State to unilaterally invoke sea-level rise as a fundamental change of circumstance to terminate an existing treaty creates a risk of conflict and disturbing the international relations. The widespread impact of sea-level rise could create many new disputes among States over settled maritime boundaries. This would not be in the interest of preserving stability and peaceful relations and as several

colleagues have mentioned can directly affect the international peace and security.

4. The permanent character of the outer limits of the continental shelf under UNCLOS, if the necessary conditions are met, means that in the case of a landward shift of the baseline, the outer limits of the continental shelf will remain fixed. This is an example where the land dominates the sea principle does not apply. Thus, the land dominates the sea principle is not absolute. Further, a discussion could also take place on the nexus of sea level rise with the work of the Commission on the Limits of the Continental Shelf (CLCS) and the likely effect it will have on the claim and establishment of Continentals Shelf of States where the CLCS recommendation is pending or such applications are pending.

It is key to reflect upon the next steps, and the outcome the Commission is envisioning on the topic. The report has in many ways summarized the existing and evolving positions of States, and the Commission now needs to develop a consolidated version of the practice and develop legal justifications. However, the Commission must also take a longer-term view of the evolving situation in terms of creating legal fictions and must not be guided by myopic considerations. Some questions which arise are, how does the international community sustain the legal fiction of States who unfortunately are not able to sustain their territory due to sea level rise? In this regard, previous members alluded to the point of creating a *sui generis* area for submerged land, and I agree that more reflection and deliberation is required on the merit of such a *sui generis* area.

Madam Chair, Sea-level rise affects nearly all aspects of India's maritime security, either directly or indirectly. Every fraction of a meter of rise in sea level, compounded by an increase in probability of extreme sea-level events (such as high tides, storm

surges, and cyclones), poses a direct threat to the infrastructure and population along India's 7516 km long coastline.

We are also at the interesting junctures, should I say, because advisory opinions which would directly affect our work or our work would affect the advisory proceedings are being pursued at the International Court of Justice and International Tribunal for the Law of the Sea. It would be useful for the Study Group to note this and like several other topics in the past where the courts and tribunals were dealing with the subject matter and at the same time Commission was also studying the subject matter in a larger context, to be very reflective on the same. I am also of the opinion that as we are still grappling with the precise nature of questions and hoping to get statements from states, to wait for the intended outcome of our work.

Madam Chair, having participated in several scholarly events that are used for feeding into policy of states in Asia and Africa and the Indian Ocean Rim Association Member States, I have come to a conclusion that our work will also add on the debate on the 4<sup>th</sup> conference on law of the sea. As Mr Grossman mentioned whether the topic is studied in other associations like International Law Association or Institut droit international and are we expecting to take note of the developments there. The pace with which the sea-level rise problem is being discussed and alarms raised across the globe, are we seeing a possibility of development of instantaneous customary international law or some sort of international instrument in the very near future? Developments of treaties and even instantaneous customary law in the domain of cyber law and space law developments come to mind in this regard.

Reflecting on what my colleague Mr Asada mentioned and I agree that these are the issues that have evolved over the period of application of the UNCLOS and therefore study is fully justified like many other topics most prominent Articles on State

Responsibility for International Wrongful Acts (ARSIWA). The Commission work may potentially influence both stabilization but also destabilization of treaties and treaty law and to an extent rule of international law already determined. For example several states have delimitation land-boundary and maritime border agreements, as Ambassador Fife mentioned, with several states how the study work will affect remains to be closely studied. To what an extent our work will affect the fragmentation of international law and the possible or potential fragmentation will impact the rule based international oceanic order is also a question which comes to my mind at this stage.

These are some preliminary remarks and I congratulate the Study Group and all co-chairs for dealing with, what I would say, a mammoth project touching upon the aspects of codification as well as progressive development of international law. Besides governments, the whole international community is looking forward to the ideas and analysis of our work and I am sure our work will also be commented upon and will be enriched from the input from government as well as non-government actors.

Thank you, Madam Chair.