

RISE ABOVE THE TIDE:

*Examining the Adequacy of International Law
to Safeguard Maritime Rights of Coastal States*

Amidst Rising Sea Levels

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**A thesis originally submitted in partial fulfillment of the requirements
for the degree of Juris Doctor,**

and submitted to the FLP Dissertation Writing Contest

ABSTRACT

At its core, international law must serve not only to preserve sovereignty and legal certainty, but also to empower States, especially the most vulnerable, to thrive amid global challenges. Today, that mandate is tested by the relentless rise in sea levels caused by climate change. As land erodes and coastlines recede, coastal and low-lying island States face the grave risk of losing maritime zones that are vital to their economic development, environmental security, and territorial integrity. For archipelagic nations like the Philippines, where sea-level rise outpaces the global average, the stakes are especially high.

This Study critically examines whether the current international legal framework, particularly the United Nations Convention on the Law of the Sea (UNCLOS), is equipped to protect the entitlements and sovereign rights of States confronting these existential threats. Through a doctrinal analysis of UNCLOS and State practice, the Study investigates whether existing legal norms can uphold stability and prosperity in the face of disappearing shorelines. It argues that the Convention's silence on the legal effects of sea-level rise leaves a normative gap—one that threatens not just entitlements, but the very survival of communities and States.

To address this, the Study advances the theory of fixed baselines, a legal approach that preserves maritime zones despite physical changes to coastlines. By anchoring maritime entitlements in legal certainty rather than shifting coastlines, it protects the sovereign and economic rights of vulnerable coastal States. Rooted in principles of equity and sovereign dignity, this proposal envisions a forward-looking interpretation of UNCLOS—one that reflects the enduring values of justice and solidarity in international law. The Study calls on the international community to adopt a United Nations General Assembly resolution supporting this interpretation, to seek an Advisory Opinion from the International Tribunal for the Law of the Sea, and to explore amendments to the Convention as part of a longer-term solution.

In advocating for fixed baselines, this Study urges international law to rise in defense of liberty, sovereignty, and shared prosperity. As a coastal and archipelagic State, the Philippines must help lead this response. Securing maritime zones protects not just territory, but the future of our people. As seas rise, so too must the rule of law—lifting the hopes of nations determined not just to endure, but to thrive with dignity in a just and resilient global community.

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CHAPTER ONE: INTRODUCTION

*“Rising seas are sinking futures.
Sea-level rise is not only a threat in itself.
It is a threat-multiplier.”*

— United Nations Secretary-General António Guterres¹

I. BACKGROUND OF THE STUDY

A. SEA-LEVEL RISE AND THE CHALLENGE TO INTERNATIONAL LAW

Rising seas are reshaping coastlines, endangering lives, and confronting international law with urgent, unanticipated questions.² Once viewed as a distant threat, sea-level rise has become an existential reality for coastal and low-lying island States, risking not only lives and livelihoods but sovereignty, maritime entitlements, and territorial integrity.³ The stakes are highest for small island developing States⁴ like the Maldives⁵ and archipelagic nations like the Philippines,⁶ where millions live in coastal zones already experiencing land loss, saltwater intrusion, and storm surges.

This phenomenon is not merely environmental; it is legal. As baselines shift and land disappears, maritime zones under the United Nations Convention on the

¹ U.N. Secretary General António Guterres, Secretary-General’s remarks to the Security Council Debate on Sea-level Rise: Implications for International Peace and Security (Feb. 14, 2023).

² NASA Sea Level *citing* Frederikse, et al., *The causes of sea-level rise since 1900* in NATURE 584, 393–397 (Aug. 19, 2020) and NASA’s Goddard Space Flight Center.

³ Intergovernmental Panel on Climate Change, *Climate Change 2021: The Physical Science Basis*, Contribution of Working Group I to the Sixth Assessment Report of the Intergovernmental Panel on Climate Change (Masson Delmotte, et. al. eds., 2021), pp. 21 & 25.

⁴ Meetings Coverage, Security Council, Climate Change-induced Sea-Level Rise Direct Threat to Millions around World, Secretary-General Tells Security Council, U.N. Press Release SC/15199 (Feb. 14, 2023).

⁵ Storlazzi, C. et al., *Most atolls will be uninhabitable by the mid-21st century because of sea-level rise exacerbating wave-driven flooding*, 4 SCIENCE ADVANCES 4 (April 25, 2018), p. 5.

⁶ Cariaso, B., Manila sea level rising by 2.6 cm/year – study, The Philippine Star (July 18, 2024), <https://www.philstar.com/nation/2024/07/18/2370965/manila-sea-level-rising-26-cmyear-study>; CRUZ, R., ET. AL., PHILIPPINE CLIMATE CHANGE ASSESSMENT: IMPACTS, VULNERABILITIES, AND ADAPTATION (2017) [*hereinafter* “2017 PH Climate Change Assessment”], p. 64.

Law of the Sea [“UNCLOS”] may contract or vanish altogether.⁷ In the absence of clear legal norms, the rights of States to their exclusive economic zones [“EEZs”], continental shelves, and even statehood may be jeopardized.⁸ What was once stable is now threatened by silence in the legal regime.

The Philippines is especially vulnerable. With over 60% of its population residing in coastal areas,⁹ sea-level rise—accelerated by subsidence in cities like Manila¹⁰—poses grave risks to national security, economic stability, and environmental resilience. The loss of maritime zones would undermine not only territorial claims but the ability to sustainably manage marine resources and protect communities. Preserving these entitlements is essential to securing both liberty and prosperity in the face of climate change.

B. THE GLOBAL LEGAL LANDSCAPE

The international legal order has only begun to grapple with the implications of sea-level rise. While UNCLOS remains silent on the legal effects of receding coastlines,¹¹ various legal bodies have initiated critical—but incomplete—conversations. The International Law Association [“ILA”]¹² and the UN’s International Law Commission [“ILC”] have placed the issue on their agenda, recognizing its complexity and urgency.¹³

Courts and tribunals are also responding. In May 2024, the International Tribunal for the Law of the Sea [“ITLOS”] issued an Advisory Opinion on climate change, affirming State obligations to mitigate emissions.¹⁴ It, however, left

⁷ Press Release, Security Council, Climate Change-induced Sea-Level Rise Direct Threat to Millions around World, Secretary-General Tells Security Council, U.N. Press Release SC/15199 (Feb. 14, 2023).

⁸ *Id.*

⁹ 2017 PH Climate Change Assessment, p. 64.

¹⁰ 2017 PH Climate Change Assessment, p. 45.

¹¹ United Nations Conference on the Law of the Sea, Official Records, Volume I: Preparatory Documents, A/CONF.13/37 (Feb. 24 – April 27 1958).

¹² International Law Association, Minutes of the Meeting of the Executive Council (Nov. 10, 2012), at 5.

¹³ U.N. GAOR., 73rd Sess., Supp. No. 10 (U.N. Doc. A/73/10), ¶369 (2018) [*hereinafter* “**Report of the International Law Commission**”].

¹⁴ *Advisory Opinion on Request submitted by the Commission of Small Island States on Climate Change and International Law*, Case No. 31, May 21, 2024, https://www.itlos.org/fileadmin/itlos/documents/cases/31/Advisory_Opinion/C31_Adv_Op_21.05.2024_ori.pdf, ¶202 [*hereinafter* “**ITLOS Advisory Opinion**”].

unresolved key questions on the status of maritime zones affected by rising seas. *What happens when a baseline submerges? Do maritime entitlements endure? Can a State without inhabitable territory retain its sovereignty?*

This Study engages these legal dilemmas. It argues that international law must evolve—affirming the rights of vulnerable States, preserving maritime entitlements, and reinforcing global stability. In doing so, it calls for a future where international law rises to meet the tides, ensuring that those most at risk are not left behind, but empowered to endure and even thrive.

II. STATEMENT OF THE PROBLEM

A. THE LEGAL ISSUE

This Study confronts a fundamental question: *Can international law, as it stands today, protect the sovereignty and maritime entitlements of coastal States facing the existential threat of sea-level rise?*

It seeks to answer:

1. Does the current international legal framework, especially UNCLOS, adequately safeguard the rights of States disproportionately affected by rising seas?
2. If not, what legal interpretations or reforms can fill this gap and ensure that no State loses its entitlements or dignity due to a crisis it did not cause?

B. THE THESIS STATEMENT

This Study argues that international law, in its current form, lacks explicit safeguards against the territorial and legal erosion caused by sea-level rise. Yet within UNCLOS and customary international law lies untapped potential: the interpretive space to affirm fixed baselines—a doctrine that stabilizes maritime zones even as coastlines shift.

By grounding this approach in legal certainty, equity, and the right of States to exist with dignity, this Study offers not just a legal fix, but a principled stand. It calls on the international community to uphold the rule of law in service of those most

vulnerable, ensuring that rising tides do not wash away hard-won sovereignty and the promise of prosperity for generations to come.

III. OBJECTIVES OF THE STUDY

This Study seeks to uphold the sovereignty and prosperity of coastal States by critically assessing whether international law, particularly UNCLOS, offers adequate protection against the destabilizing effects of sea-level rise. It aims to empower legal frameworks to respond proactively to one of the greatest threats facing the global community. Specifically, the Study pursues the following objectives:

1. To evaluate how sea-level rise affects baselines and maritime entitlements under international law;
2. To identify legal gaps within UNCLOS regarding the stability of maritime zones amid environmental change;
3. To analyze State practice and jurisprudence for emerging trends and responses;
4. To assess the legal soundness of the fixed baselines theory as a solution grounded in equity and legal certainty;
5. To propose actionable legal strategies, including progressive interpretation, institutional engagement, and treaty reform, to safeguard the rights and future of vulnerable coastal States.

IV. SIGNIFICANCE OF THE STUDY

Under the UNCLOS, baselines serve as the foundational reference from which the outer limits of maritime zones are measured.¹⁵ Coastal States have various options for determining these baselines, including normal baselines,¹⁶ straight baselines,¹⁷ archipelagic baselines,¹⁸ or combinations of these methods tailored to their unique geographical and physical characteristics. Of these, normal baselines are the default¹⁹ and most commonly employed approach,²⁰ defined under Article 5 of UNCLOS as “the low-water line along the coast as marked on large-scale charts officially recognized by the coastal State.”²¹ Despite this structured framework, the unprecedented challenge of sea-level rise raises critical questions about the stability of baselines and the adequacy of existing legal provisions to address such dynamic environmental changes.

In response to sea-level rise, two dominant theories have emerged regarding the interpretation of baselines: the fixed baselines theory and the ambulatory baselines theory. The fixed baselines theory posits that once baselines and associated maritime zones are legally established, they should remain unaffected by physical changes to the coastline.²² This theory emphasizes stability and predictability, protecting the maritime entitlements of States regardless of environmental changes. In contrast, the ambulatory baselines theory suggests that baselines should shift in tandem with the physical coastline, maintaining an alignment between geographic realities and legal entitlements.²³ Both approaches have been the subject of academic debate, with implications for the sovereignty, territorial integrity, and maritime rights of coastal States, particularly those most vulnerable to sea-level rise.

¹⁵ United Nations Convention on the Law of the Sea, Dec. 10, 1982, 1833 U.N.T.S. 397 [*hereinafter* “UNCLOS”], arts. 3, 33(2), 57 & 76(1).

¹⁶ UNCLOS, art. 5.

¹⁷ UNCLOS, art. 7.

¹⁸ UNCLOS, arts. 47 & 48.

¹⁹ Beckman, Robert & Schofield, Clive, *Moving Beyond Disputes Over Island Sovereignty: ICJ Decision Sets Stage for Maritime Boundary Delimitation in the Singapore Strait* 40 (10) OCEAN DEVELOPMENT AND INTERNATIONAL LAW 1 (2009), 5.

²⁰ Schofield, Clive, *Parting the Waves: Claims to Maritime Jurisdiction and the Division of Ocean Space* 1 PENN STATE JOURNAL OF LAW AND INTERNATIONAL AFFAIRS 40 (2012), 55.

²¹ UNCLOS, art. 5.

²² KAPOOR, DC & KERR, ADAM, A GUIDE TO MARITIME BOUNDARY DELIMITATION 31 (1986) [*hereinafter* “KAPOOR”].

²³ PURCELL, KATE, GEOGRAPHICAL CHANGE AND THE LAW OF THE SEA 44–48 (2019) [*hereinafter* “PURCELL”].

This Study offers a timely and necessary intervention in international legal scholarship by advancing a treaty-consistent, rights-affirming response to sea-level rise. While much of the discourse has focused on institutional reform or treaty amendment,²⁴ this work reframes the conversation: it argues that UNCLOS, when properly interpreted, already contains the normative foundation to preserve maritime entitlements through the fixed baselines theory.

For the Philippines—a State whose identity, economy, and security are deeply tied to the sea—this interpretive pathway holds particular promise. It strengthens the legal footing of coastal and archipelagic States against the destabilizing effects of climate change, upholding their sovereignty, dignity, and capacity to prosper under the rule of law.

V. RESEARCH METHODOLOGY

This Study employs a combination of comparative legal review and doctrinal analysis to assess the adequacy of international law, particularly UNCLOS, in addressing the impacts of sea-level rise on maritime entitlements.

First, a comparative review of literature draws on both traditional and supplementary sources of international law, including treaties, customary norms, general principles, judicial decisions, and scholarly writings under Article 38(1) of the International Court of Justice’s Statute. The Study also examines UN General Assembly resolutions, State submissions, and emerging legal proposals to capture the full scope of contemporary discourse. This method provides both a theoretical and practical foundation by evaluating how States and tribunals interpret and apply the law in real-world contexts.

Second, a doctrinal legal approach²⁵ is applied to critically examine the structure, coherence, and interpretive flexibility of existing legal norms. This method

²⁴ Soons, Alfred, *The Effects of a Rising Sea Level on Maritime Limits and Boundaries*, 37 NETH. INT’L L.R. 207 (1990) [*hereinafter* “**Soons**”]; Freestone, David & Pethick, John, *Sea Level Rise and Maritime Boundaries: international implications of impacts and responses*, 5 INTERNATIONAL BOUNDARIES; FRESH PERSPECTIVES 73 (1994) [*hereinafter* “**Freestone & Pethick**”]; GERRARD, MICHAEL & WANNIER, GREGORY (eds.), *THREATENED ISLAND NATIONS: LEGAL IMPLICATIONS OF RISING SEAS AND A CHANGING CLIMATE* (2013) [*hereinafter* “**GERRARD**”]; ÁRNADÓTTIR, SNIJÓLAUG, *CLIMATE CHANGE AND MARITIME BOUNDARIES* 5 (2022) [*hereinafter* “**ÁRNADÓTTIR**”].

²⁵ BHAT, P. I., *IDEA AND METHODS OF LEGAL RESEARCH* 143 – 168 (2020).

enables a close reading of treaty texts, State practice, and jurisprudence to assess whether they can support the fixed baselines theory and protect the sovereignty of vulnerable coastal States.

By integrating these methodologies, the Study provides a rigorous, principle-based analysis that is both grounded in legal tradition and responsive to the evolving realities of climate change.

VI. SCOPE AND LIMITATIONS

This Study focuses on the legal implications of sea-level rise on maritime entitlements under international law, with particular emphasis on UNCLOS and customary international law. It examines whether current frameworks sufficiently protect the maritime zones of coastal States amid changing coastlines, using the legal concepts of baselines and maritime zones as its analytical foundation.

The analysis centers on two (2) dominant approaches: the fixed baselines theory and the ambulatory baselines theory, which represent the primary competing paradigms in current legal discourse. Other alternative models are acknowledged but not explored in depth, as they fall outside the Study's focused objective of evaluating the most relevant legal responses within existing frameworks.

While the issue of statehood is briefly referenced for context, this Study does not delve into the legal consequences of total land loss or the extinction of States. Its scope is limited to scenarios in which coastal States retain some territory despite rising seas. The Study deliberately excludes broader environmental concerns, general climate change discussions, and questions of liability or attribution. It is a focused legal inquiry into the continuity and protection of maritime entitlements under sea-level rise and not a comprehensive survey of all related legal or environmental issues.

Limitations include the evolving nature of both environmental realities and legal norms, and the reliance on secondary sources rather than field data. Although geographically inclusive in scope, this Study is not global in application. Its findings aim to inform legal development while recognizing that implementation depends on political will, an essential but external factor to this research.

CHAPTER TWO: INTERNATIONAL LAW OF THE SEA AND MARITIME ENTITLEMENTS

This Chapter outlines the legal framework governing maritime entitlements under international law, emphasizing the foundational role of UNCLOS and relevant customary norms. It highlights how the law of the sea, though robust in scope, must evolve to confront new realities such as sea-level rise, especially for vulnerable States like the Philippines.

I. EVOLUTION OF THE INTERNATIONAL LAW OF THE SEA

The law of the sea has developed from customary norms²⁶ into a structured legal system, culminating in the adoption of UNCLOS,²⁷ widely regarded as the “Constitution of the Oceans.”²⁸ Ratified by 170 States,²⁹ including the Philippines, it establishes comprehensive rules for maritime zones, navigation, resource use, and dispute settlement.³⁰

While UNCLOS built on earlier conventions, it introduced key innovations, such as recognizing archipelagic States,³¹ defining the EEZ,³² and affirming the seabed beyond national jurisdiction as the common heritage of mankind.³³ Although no formal amendments have been made since its entry into force,³⁴ State practice,

²⁶ Treves, Tullio, *Historical Developments of the Law of the Sea* in THE OXFORD HANDBOOK OF THE LAW OF THE SEA (Rothwell, D., et. al., eds., March 1, 2015) [hereinafter “Treves”], 85 – 86.

²⁷ Treves, *supra* note 26, 102.

²⁸ United Nations Division for Oceanic Affairs and the Law of the Sea, *The United Nations Convention on the Law of the Sea (A Historical Perspective)* (1998), https://www.un.org/depts/los/convention_agreements/convention_historical_perspective.htm.

²⁹ United Nations Treaty Collection, United Nations Convention on the Law of the Sea, https://treaties.un.org/Pages/ViewDetailsIII.aspx?src=TREATY&mtdsg_no=XXI-6&chapter=21&Temp=mtdsg3&clang=_en#1 (last accessed Aug. 15, 2024).

³⁰ UNCLOS, pmb1.

³¹ UNCLOS, Part IV.

³² UNCLOS, Part V.

³³ UNCLOS, Part XI.

³⁴ United Nations Treaty Collection, United Nations Convention on the Law of the Sea, https://treaties.un.org/Pages/ViewDetailsIII.aspx?src=TREATY&mtdsg_no=XXI-6&chapter=21&Temp=mtdsg3&clang=_en#1 (last accessed Aug. 15, 2024).

judicial decisions, and implementing agreements have continuously shaped its application.

The law of the sea has also continued to develop through case law and customary international law since UNCLOS came into effect. This evolution has been necessary to interpret some of the less explicit provisions, such as those related to maritime delimitation.³⁵ The legal framework for maritime delimitation has undergone substantial evolution, shaped significantly by various international judicial bodies, notably the ICJ and the ITLOS. These bodies have contributed to a more structured and predictable approach to maritime boundary disputes through a series of landmark decisions.

The ICJ's judgments in the *North Sea Continental Shelf Cases* between Germany, Denmark, and the Netherlands established that maritime boundaries should be determined by equitable principles rather than solely by equidistance, particularly in the absence of an explicit agreement.³⁶ This principle was further refined in the *Libya/Malta Case*, where the ICJ endorsed the equidistance/special circumstances rule, suggesting that while equidistance might be the starting point, adjustments might be necessary to achieve an equitable outcome.³⁷ The application of this methodology was demonstrated in the *Black Sea Case*, where the ICJ considered both the geographical configuration and historical claims to establish a definitive maritime boundary.³⁸

Similarly, ITLOS has made substantial contributions to the methodology of maritime delimitation. In *Bangladesh/Myanmar*, ITLOS clarified the approach to delimiting maritime boundaries when territorial waters, EEZs, and continental shelves overlap, emphasizing adjustments to the equidistance line to account for equitable considerations.³⁹ The Tribunal's decision in *Ghana/Côte d'Ivoire*

³⁵ UNCLOS, arts. 74 & 83.

³⁶ *North Sea Continental Shelf Cases* (Ger./ Den. and Ger./ Neth.), Judgment, 1969 I.C.J. Rep. 3 (Feb. 20), ¶85 [hereinafter "*North Sea Continental Shelf*"].

³⁷ *Case Concerning the Continental Shelf* (Libyan Arab Jamahiriya v. Malta), Judgment, 1985 I.C.J. Rep. 13 (June 3), ¶¶ 43 – 44 [hereinafter "*Libya/Malta*"].

³⁸ *Maritime Delimitation in the Black Sea* (Romania v. Ukraine), Judgment, 2009 I.C.J. Rep. 61 (Feb. 3), ¶¶ 116 – 121 [hereinafter "*Black Sea*"].

³⁹ *Dispute Concerning Delimitation of the Maritime Boundary Between Bangladesh and Myanmar in the Bay of Bengal* (Bangladesh/Myanmar), Case No. 16, Judgment of March 14, 2012, ITLOS Rep. 4, ¶¶ 182 – 184 [“*Bangladesh/Myanmar*”].

reinforced the use of equidistance as the primary method for delimitation, while also acknowledging the importance of maintaining the stability and predictability of long-established *de facto* maritime practices accepted by the involved parties.⁴⁰ These decisions collectively underscore a trend towards a more structured and predictable regime for resolving maritime disputes through the application of consistent legal principles.

All these show how the law of the sea has adapted to contemporary challenges, particularly caused by the changing marine environment. The evolving jurisprudence on maritime delimitation—favoring equitable outcomes over rigid formulas—reflects a deeper commitment to justice, especially for developing States.

II. MARITIME ZONES AND THEIR RESPECTIVE ENTITLEMENTS

UNCLOS defines a range of maritime zones, each with specific rights and responsibilities, allowing coastal States to exercise varying degrees of jurisdiction. These zones are central to a State's sovereign capacity to govern, develop, and protect its marine spaces. These capacities are increasingly jeopardized by sea-level rise.

A. INTERNAL WATERS

Internal waters lie landward of baselines⁴¹ and fall under full State sovereignty.⁴² For archipelagic States like the Philippines, internal waters include waters enclosed by archipelagic baselines.⁴³ These waters are treated as part of the land territory, with no right of innocent passage for foreign vessels unless specifically permitted.⁴⁴ This sovereignty reflects the foundational principle that States must retain control over their own geography and resources.

⁴⁰ *Dispute Concerning Delimitation of the Maritime Boundary Between Ghana and Côte d'Ivoire in the Atlantic Ocean* (Ghana/Côte d'Ivoire), Case No. 23, Judgment of September 23, 2017, ITLOS Rep. 4, ¶215.

⁴¹ UNCLOS, art. 8(1).

⁴² UNCLOS, art. 2(1).

⁴³ UNCLOS, art. 50.

⁴⁴ UNCLOS, art. 52.

B. TERRITORIAL SEA

The territorial sea is a maritime zone under the territorial sovereignty of the coastal State up to a limit not exceeding 12 nautical miles measured from baselines.⁴⁵ Coastal States exercise sovereignty over the territorial sea,⁴⁶ subject only to the right of innocent passage.⁴⁷ UNCLOS protects both national control and global mobility by balancing enforcement powers with duties to ensure safe, non-discriminatory passage, preserving peace while supporting trade.

C. CONTIGUOUS ZONE

The contiguous zone is a maritime zone contiguous to the territorial sea, in which the coastal State may exercise the control necessary to prevent and punish infringement of its customs, fiscal, immigration or sanitary laws and regulations within its territory or territorial sea.⁴⁸ The contiguous zone may not extend beyond 24 nautical miles from the baselines from which the breadth of the territorial sea is measured.⁴⁹ Though not as extensive as territorial sovereignty, this enforcement zone remains essential for coastal security and governance.

D. EXCLUSIVE ECONOMIC ZONE

The EEZ is an area beyond and adjacent to the territorial sea, not extending beyond 200 nautical miles from the baseline of the territorial sea.⁵⁰ The EEZ grants coastal States sovereign rights to explore, exploit, conserve, and manage natural resources.⁵¹ While third States retain freedoms like navigation and overflight,⁵² the EEZ empowers States to develop marine wealth, reinforcing their economic self-determination. Environmental and resource protection obligations⁵³ also highlight the balance between liberty and responsibility in international law.

⁴⁵ UNCLOS, art. 3.

⁴⁶ UNCLOS, art. 2(3).

⁴⁷ UNCLOS, art. 17.

⁴⁸ UNCLOS, art. 33(1).

⁴⁹ UNCLOS, art. 33(2).

⁵⁰ UNCLOS, arts. 55 & 57.

⁵¹ UNCLOS, art. 56(1)(a).

⁵² UNCLOS, arts. 69 & 70.

⁵³ UNCLOS, arts. 61 & 62.

E. CONTINENTAL SHELF

The continental shelf is an area adjacent to a continent or around an island extending from the low-water line to the depth at which there is usually a marked increase of slope to greater depth.⁵⁴ The coastal State has inherent sovereign rights over its continental shelf for resource exploitation, including minerals and sedentary species.⁵⁵ These rights exist *ipso facto* and do not require proclamation.⁵⁶ The legal regime affirms that coastal States, especially those with fragile coastlines, should not lose access to seabed resources due to physical changes brought by climate threats.

F. HIGH SEAS

Article 86 of the UNCLOS defines the high seas as “all parts of the sea which are not included in the EEZ, in the territorial sea or in the internal waters of a State, or in the archipelagic waters of an archipelagic State.”⁵⁷ Beyond national jurisdiction, the high seas are governed by freedom of use⁵⁸ and flag State control.⁵⁹ UNCLOS maintains that all States have equal access to these areas, but must use them for peaceful purposes⁶⁰ and in accordance with the UN Charter.⁶¹

G. THE AREA

The Area, comprising the seabed beyond national jurisdiction,⁶² is the common heritage of mankind.⁶³ Activities here are regulated by the International Seabed Authority for the benefit of all States,⁶⁴ with an emphasis on equitable sharing of economic gains and peaceful use. This framework exemplifies how international law can enshrine both equity and cooperation.

⁵⁴ CCS, arts. 1 – 3.

⁵⁵ UNCLOS, art. 77.

⁵⁶ *North Sea Continental Shelf*, ¶19.

⁵⁷ UNCLOS, art. 86.

⁵⁸ UNCLOS, art. 89.

⁵⁹ UNCLOS, art. 92(1).

⁶⁰ UNCLOS, art. 88.

⁶¹ UNCLOS, art. 301.

⁶² UNCLOS, art. 1(1).

⁶³ UNCLOS, art. 136.

⁶⁴ UNCLOS, art. 137(2).

CHAPTER THREE: THE LEGAL IMPLICATIONS OF SEA-LEVEL RISE

Having discussed the current maritime rights enjoyed by coastal States as determined by international law, this chapter delves into the legal implications of sea-level rise, a pressing issue with profound effects on the law of the sea and State sovereignty. As sea levels rise, the legal foundations of maritime entitlements, statehood, and human rights face unprecedented stress. This chapter discusses the implications across three interconnected areas identified by the ILC:⁶⁵ [I] sovereign rights in maritime zones, [II] challenges to statehood, and [III] the protection of persons affected by sea-level rise. While this Study focuses on maritime entitlements, these dimensions provide essential context for a holistic legal response.

I. SOVEREIGN RIGHTS IN MARITIME ZONES

The law of the sea is built on the assumption that coastlines are stable—that maritime boundaries can be measured with certainty, and jurisdictional zones will not change.⁶⁶ But this assumption no longer holds in an era of accelerating sea-level rise. When UNCLOS was adopted, the world had not yet reckoned with the legal consequences of climate change.⁶⁷ As a result, UNCLOS contains no clear guidance on how shifting shorelines affect maritime entitlements.⁶⁸

Maritime zones are deeply rooted in a State’s sovereignty over land.⁶⁹ As the ICJ has affirmed, maritime entitlements are extensions of land territory.⁷⁰ Normally, baselines drawn from the low-water mark along the coast serve as the legal starting

⁶⁵ Report of the International Law Commission, Annex B.

⁶⁶ Stephens, Tim, *Warming Waters and Souring Seas: Climate Change and Ocean Acidification* in THE OXFORD HANDBOOK OF THE LAW OF THE SEA (Rothwell, D., et. al., eds., March 1, 2015), p. 1064 [*hereinafter* “Stephens”].

⁶⁷ Boyle, Alan, *Law of the Sea Perspectives on Climate Change* in THE 1982 LAW OF THE SEA CONVENTION AT 30: SUCCESSES, CHALLENGES AND NEW AGENDAS (Freestone, D., ed., 2013) 157.

⁶⁸ UNCLOS, art. 7(2).

⁶⁹ *Aegean Sea Continental Shelf* (Greece v. Turkey), Judgment, 1978 I.C.J. Rep. 3 (Dec. 19), ¶86 [*hereinafter* “*Aegean Sea Continental Shelf*”].

⁷⁰ *Libya/Malta*, ¶49.

point for calculating maritime zones.⁷¹ But as coasts erode and features submerge, this geographic foundation becomes unstable, placing maritime rights at risk.

Under the UNCLOS, Article 76(8) provides a degree of protection: if a State deposits its continental shelf claim with the UN Secretary-General, its delimitation becomes permanent.⁷² This allows the State to retain its seabed rights even if coastlines later recede.⁷³ However, this safeguard only applies to States that have made such a submission, and many of the most climate-vulnerable countries have not.⁷⁴ As of August 2024, only 87 of 170 UNCLOS parties have submitted these claims.⁷⁵ Notably absent are small island States like Antigua and Barbuda, Barbados, Dominican Republic, and Maldives.

This legal gap has serious consequences. States with continental shelves extending naturally beyond 200 nautical miles retain rights based on the seabed's natural prolongation. But States whose shelves fall within 200 nautical miles, and who have not submitted delimitation data, risk seeing their maritime zones shrink as their coastlines move.⁷⁶ In the worst case, submergence before submission could mean forfeiting all continental shelf claims.

Unlike continental shelves, EEZs under UNCLOS are not permanent.⁷⁷ As sea levels rise, EEZs, which are home to critical marine resources, are expected to shift.⁷⁸ The stakes are high. Continental shelves and EEZs contain over 87% of the world's subsea hydrocarbons and valuable minerals.⁷⁹ They also support fisheries that are

⁷¹ Alexander, Lewis, *Baseline Delimitations and Maritime Boundaries*, 23 VA. J. INT'L. 503 (1983), 535 [hereinafter "Alexander"].

⁷² UNCLOS, art. 76(8).

⁷³ UNCLOS, art. 76(9); Soons, *supra* note 24, pp. 216 – 217.

⁷⁴ Soons, *supra* note 24, p. 217.

⁷⁵ United Nations Division for Ocean Affairs and the Law of the Sea, List of Charts Deposited with the United Nations, <https://www.un.org/depts/los/LEGISLATIONANDTREATIES/depositpublicity.htm> (last accessed Aug. 16, 2024).

⁷⁶ Soons, *supra* note 24, p. 217.

⁷⁷ Caron, David, *When Law Makes Climate Change Worse: Rethinking the Law of Baselines in Light of a Rising Sea Level*, 17 ECOLOGY L.Q. 621, 634 (1990) [hereinafter "Caron"].

⁷⁸ Caron, *supra* note 77, 634; Soons, *supra* note 24, p. 220.

⁷⁹ United Nations Division for Oceanic Affairs and the Law of the Sea, *The United Nations Convention on the Law of the Sea (A Historical Perspective)* (1998), https://www.un.org/depts/los/convention_agreements/convention_historical_perspective.htm.

vital to the economies of many small island States.⁸⁰ For example, licensing fees from fishing rights form a substantial part of government revenue in Kiribati and Tuvalu.⁸¹ If baselines shift and EEZs recede, these resources could fall into high seas jurisdiction—where governance is weaker, and conservation harder to enforce.

The threat is not just environmental or economic; it is legal and geopolitical. The loss of maritime zones may lead to conflicts over access, diminish sovereign control, and weaken States' ability to manage and protect their resources. Already, disputes like those involving Bangladesh in the Bay of Bengal illustrate the friction that can arise over shifting maritime boundaries.⁸²

To protect their rights, coastal and island States must act urgently. Legal certainty over maritime zones is essential to safeguarding sovereignty, preserving prosperity, and ensuring peace in the face of rising seas. The international legal system must evolve, grounded in equity and foresight, to meet this defining challenge of our time.

II. CHALLENGES TO STATEHOOD

Under customary international law,⁸³ a State must have a permanent population, a defined territory, a government, and the capacity to engage in international relations.⁸⁴ Rising seas challenge these criteria, particularly territorial definition, and raise fears that low-lying States could disappear from the legal map.

⁸⁰ McDonald, Tim, *Pacific islands wants a bigger share of fishing income*, BBC News (Nov. 24, 2015), <https://www.bbc.com/news/business-34897585>.

⁸¹ Fishing License Revenues in Kiribati, Ministry of Fisheries and Marine Resource Development and Ministry of Finance and Economic Development (2017), <https://www.mfed.gov.ki/sites/default/files/Fishing%20License%20Revenues%20in%20Kiribati%20Report%202017.pdf>; Robert Gillett, *Marine Fishery Resources of the Pacific Islands*, FAO Fisheries and Aquaculture Technical Paper, 44 (2010), <http://www.fao.org/docrep/012/i1452e/i1452e00.pdf>; Tuvalu Fisheries Department – 2020 Annual Report, Tuvalu Fisheries Department (2020), <https://tuvalufisheries.tv/wp-content/uploads/2021/08/TFD-ANNUAL-REPORT-2020-FINAL.pdf>, pp.38 – 39.

⁸² Becker, Michael A. & Sanchez, Ernesto J., *International Law of the Sea*, 44 INT'L LAW. 519, 524–25 (2010).

⁸³ CRAWFORD, JAMES, *THE CREATION OF STATES IN INTERNATIONAL LAW* 45 – 46 (2nd ed., 2007) [*hereinafter* “CRAWFORD”].

⁸⁴ Montevideo Convention on the Rights and Duties of States, Dec. 16, 1933, 165 L.N.T.S. 19, art. 1.

In practice, the requirement of a defined territory has been applied flexibly.⁸⁵ Precedents show that States can retain recognition despite unstable borders or partial loss of control.⁸⁶ However, the complete physical submersion of a State's landmass presents a profound legal and symbolic challenge to the notion of sovereignty. Though the term "State extinction" lacks formal legal status, it reflects the existential anxieties voiced by nations like the Maldives⁸⁷ and Nauru.⁸⁸ Similar concerns have been echoed in General Assembly resolutions⁸⁹ and by several countries, including France,⁹⁰ Portugal,⁹¹ Lebanon,⁹² and Australia.⁹³ Additionally, a collective statement by the Group of 77 and China,⁹⁴ along with 14 island States,⁹⁵ has reiterated these sentiments.

The international community must clarify whether Statehood endures despite territorial loss, and how legal personality, rights, and entitlements can be preserved. In doing so, it must center justice, equity, and continuity over rigid geography.

III. PROTECTION OF PERSONS AFFECTED BY SEA-LEVEL RISE

Sea-level rise affects not only States, but the people who call vulnerable coastlines home. With over 70 nations at risk, communities face erosion, flooding,

⁸⁵ HIGGINS, ROSALYN, PROBLEMS AND PROCESS: INTERNATIONAL LAW AND HOW WE USE IT 40 (1994) [*hereinafter* "HIGGINS"].

⁸⁶ *Sovereignty over Certain Frontier Land* (Belgium v Netherlands), Judgment, 1959 ICJ Rep. 209 (June 20), ¶¶212–13 & 229; *North Sea Continental Shelf*, ¶32; *Question of the Monastery of Saint-Naoum* (Albanian Frontier), Advisory Opinion, 1924 P.C.I.J. (ser. B) No. 9, at 10 [*hereinafter* "*Question of the Monastery*"; CRAWFORD, JAMES, BROWNLIE'S PRINCIPLES OF PUBLIC INTERNATIONAL LAW 128 (8th ed., 2012)].

⁸⁷ Maldives, Submission to the Office of the United Nations High Commissioner for Human Rights Human Rights Council Resolution 7/23 'Human Rights and Climate Change' (Sept. 25, 2008) 21, 47, *available at* http://www.ohchr.org/Documents/Issues/ClimateChange/Submissions/Maldives_Submission.pdf.

⁸⁸ U.N. G.A.O.R., 85th plen. mtg. at 2, U.N. Doc. A/63/PV.85 (June 3, 2009) [*hereinafter* "**Follow-Up to the Outcome of the Millennium Summit**"].

⁸⁹ G.A. Res. 59/311 (July 14, 2005); G.A. Res. 60/194 (Dec. 22, 2005); G.A. Res. 61/196 (Dec. 20, 2006); G.A. Res. 62/191 (Dec. 19, 2007); G.A. Res. 63/213 (Feb 10, 2009).

⁹⁰ U.N. Security Council, Maintenance of International Peace and Security, 6587th mtg., UN Doc S/PV.6587, at 14 (July 20, 2011) [*hereinafter* "**Maintenance of International Peace and Security**"].

⁹¹ Maintenance of International Peace and Security, at 20.

⁹² Maintenance of International Peace and Security, at 16.

⁹³ Follow-Up to the Outcome of the Millennium Summit, at 7 & 16.

⁹⁴ Maintenance of International Peace and Security, at 28.

⁹⁵ Maintenance of International Peace and Security, at 22; Follow-Up to the Outcome of the Millennium Summit, at 5.

water contamination, food insecurity, and eventual displacement.⁹⁶ Some populations may adapt in place,⁹⁷ but others will be forced to migrate, internally or across borders.⁹⁸

The scale of this challenge is vast. By 2100, up to 146 million people could be displaced by sea-level rise.⁹⁹ Displacement on this scale threatens to deepen inequality, destabilize regions, and overwhelm systems of protection. Current international law lacks clear safeguards for those affected.

In response, States must act collectively and urgently. Cooperation is not just a moral imperative; it is a legal one, recognized in the Draft Articles on the Protection of Persons in the Event of Disasters.¹⁰⁰ International law must evolve to guarantee dignity, rights, and sustainable futures for those who bear the brunt of climate change.

⁹⁶ Report of the International Law Commission, Annex B, ¶1; Mimura, Nobuo, *Sea-level rise caused by climate change and its implications for society* 89 PROCEEDINGS OF THE JAPAN ACADEMY, SERIES B PHYSICAL AND BIOLOGICAL SCIENCES, 291–295 (2013) [*hereinafter* “Mimura”].

⁹⁷ Oliver-Smith, Anthony, *Sea Level Rise and the Vulnerability of Coastal Peoples: Responding to the Local Challenges of Global Climate Change in the 21st Century*, 7 INTERSECTIONS, 28 (2009).

⁹⁸ Internal Displacement and Monitoring Centre, GRID 2020: Global Report on Internal Displacement (2020), available at <https://www.internal-displacement.org/publications/2020-global-report-on-internal-displacement-grid/>, p.1.

⁹⁹ ANTHOFF, DAVID ET AL., GLOBAL AND REGIONAL EXPOSURE TO LARGE RISES IN SEA-LEVEL: A SENSITIVITY ANALYSIS (Jan. 2006).

¹⁰⁰ Report of the International Law Commission, ¶¶48-49.

CHAPTER FOUR: ASSESSING INTERNATIONAL LAW'S PROTECTION OF MARITIME RIGHTS AMIDST THE SEA-LEVEL RISE CRISIS

As sea-level rise reshapes coastlines, it also destabilizes the legal boundaries that define sovereign maritime rights. This chapter assesses how current international law, especially UNCLOS, responds to the shifting geography, and explores whether existing doctrines are adequate or must evolve to uphold the rights of vulnerable coastal States.

I. EMERGING THEORIES AND THE RELEVANCE OF BASELINES

Maritime entitlements stem from a State's land territory.¹⁰¹ As discussed in Chapter Two of this Study,¹⁰² under UNCLOS, these entitlements—territorial seas, contiguous zones, EEZs, and continental shelves—are measured from baselines drawn along the coast.¹⁰³ While States may employ different types of baselines (normal, straight, or archipelagic),¹⁰⁴ all are legally tethered to coastal geography.¹⁰⁵ Rising seas now threaten to redraw that geography, raising the question: how stable are maritime entitlements when the land itself is vanishing?

Traditionally, baselines are ambulatory, adjusting over time to follow the low-water mark.¹⁰⁶ This was the prevailing view during the drafting of UNCLOS¹⁰⁷ and reflects broad State practice, domestic legislation,¹⁰⁸ and tribunal interpretations.¹⁰⁹ The ambulatory approach aligns baselines with natural change, ensuring

¹⁰¹ UNCLOS, arts. 13(1), 60(80), 121(1); *South China Sea* (Philippines v. China), Merits, XXXIII RIAA 153 (July 12, 2016), ¶508 [hereinafter "*Philippines v. China*"].

¹⁰² *Supra* Chapter 2, Part II.

¹⁰³ UNCLOS, art. 2(1).

¹⁰⁴ UNCLOS, art. 14.

¹⁰⁵ UNCLOS, arts. 7, 9, 10 & 47; *Libya/Malta*, ¶49.

¹⁰⁶ PURCELL, *supra* note 23, 44–48; United Nations General Assembly, International Law Commission, 72nd session, Sea-level rise in relation to international law, U.N. Doc. A/CN.4/740 (Feb. 28, 2020), ¶172 [hereinafter "*ILC First Issues Paper*"]; Murphy, Sean, *Ambulatory Versus Fixed Baselines Under the Law of the Sea* (2023) 38 AMERICAN UNIVERSITY LAW REVIEW 3, 723.

¹⁰⁷ International Law Association Committee on Baselines under the International Law of the Sea, *Baselines under the International Law of the Sea* (Sydney Conference, 2012), p. 22.

¹⁰⁸ ILC First Issues Paper, ¶101.

¹⁰⁹ *North Sea Continental Shelf*, ¶¶3 & 96; ILC First Issues Paper, ¶101.

geographical accuracy but offering little legal stability.¹¹⁰ As coastlines recede, so too would maritime zones, undermining the sovereign rights of the States most at risk.

In contrast, the fixed baselines theory argues that once baselines are established and published, they should remain legally binding, even if the physical coastline changes.¹¹¹ Scholars like Kapoor and Kerr have long defended this view, stating that “once the normal baseline is established and represented on large-scale charts, it continues to stand until it is formally revised, regardless of any physical shifts in the actual low-water line.”¹¹² According to this viewpoint, the chart serves as the definitive legal document that establishes the position of the normal baseline. This interpretation holds even if the actual coastline undergoes changes; the legal baseline remains as delineated on the published chart unless and until a new chart is issued. Thus, even if the coastline changes and these changes are not officially recorded and published, the recognized legal baseline remains unchanged as per the existing published chart.¹¹³

The UNCLOS also contains specific provisions that allow for the establishment of permanent baselines or maritime zones, regardless of changes in the coastline over time. For example, Article 7(2) of the UNCLOS acknowledges that in areas with highly unstable coastlines, such as deltas, a straight baseline may be set and remain effective despite any subsequent shifts in the low water line.¹¹⁴ Similarly, Article 76(8) states that once the limits of a State’s continental shelf beyond 200 nautical miles are set based on a recommendation from the CLCS, these limits are “final and binding,”¹¹⁵ suggesting a permanency even if coastal regression occurs later. However, this concept of permanency is not universally applicable across all baseline-related provisions of the Convention, indicating a nuanced approach to the relationship between baselines and changing coastlines.

¹¹⁰ Wendebourg, Mara R., *Interpreting the Law of the Sea in the Context of Sea-Level Rise*, 35 J. ENVIRON LAW 499, 501–502 (Aug. 16, 2023); ILC First Issues Paper, ¶104(b).

¹¹¹ KAPOOR, *supra* note 22, at 31.

¹¹² *Id.*

¹¹³ CARLETON, CHRIS & SCHOFIELD, CLIVE, DEVELOPMENTS IN THE TECHNICAL DETERMINATION OF MARITIME SPACE: CHARTS, DATUMS, BASELINES, MARITIME ZONES AND LIMITS 24 (Furness, ed., vol. 3, 2001).

¹¹⁴ UNCLOS, art. 7(2).

¹¹⁵ UNCLOS, art. 76(8).

The tension between these approaches—flexibility versus certainty—has become more pressing in the era of climate change. While ambulatory baselines may reflect geographic reality, they risk erasing maritime zones along with eroded coastlines. Fixed baselines, on the other hand, offer legal stability and help ensure that vulnerable States do not lose access to vital marine resources or face questions of entitlement in the future. Given these challenges, this Study supports a shift in interpretation: that UNCLOS permits the adoption of fixed baselines as a treaty-consistent, equity-driven response to sea-level rise. Such a shift would align with the vision of law as a tool to safeguard liberty and prosperity for all States, especially those with the most to lose.

II. LEGAL UNCERTAINTY AND THE LIMITS OF REBUS SIC STANTIBUS

Maritime boundaries, generally considered permanent¹¹⁶ under the principle of *pacta sunt servanda*,¹¹⁷ are typically regarded as stable and enduring once established.¹¹⁸ This stability of maritime boundaries is further reinforced by the *res judicata* principle for judicially-decided boundaries.¹¹⁹

To be clear, the principle of *pacta sunt servanda* does not imply that all agreements remain inviolable until the end of time.¹²⁰ Treaties are based on the presumption that certain foundational circumstances will remain constant, and it is under these conditions that parties establish their mutual expectations and agreements. The principle of *pacta sunt servanda* is designed to protect these expectations.¹²¹ This rule, however, is meant to promote legal stability, not at all costs, but in a manner grounded in justice.¹²² Therefore, States can be released from

¹¹⁶ *Frontier Dispute* (Burkina Faso/Republic of Mali), Judgment, 1986 ICJ Rep. 554 (Dec. 22), ¶46.

¹¹⁷ Vienna Convention on the Law of Treaties, May 23, 1969, 1155 U.N.T.S. 33, art. 26 [hereinafter “VCLT”].

¹¹⁸ ÁRNADÓTTIR, *supra* note 24, 168.

¹¹⁹ Kulick, Andreas, *Article 60 ICJ Statute, Interpretation Proceedings, and the Competing Concepts of Res Judicata*, 28(1) LJIL 73 (2015), 74.

¹²⁰ Müllerson, Rein, *The ABM Treaty: Changed Circumstances, Extraordinary Events, Supreme Interests and International Law*, 50 ICLQ 509 (2001), 525.

¹²¹ Stein, Eric & Carreau, Dominique, *Law and Peaceful Change in a Subsystem: “Withdrawal” of France from the North Atlantic Treaty Organization*, 62 AJIL 577 (1968), 617 [hereinafter “Stein”].

¹²² United Nations Conference on the Law of Treaties, Official Records, First Session, U.N. Doc. A/CONF.39/11 (26 March - 24 May 1968), ¶542.

their treaty obligations through peaceful methods if the original circumstances change significantly and the obligations become excessively burdensome.¹²³

Particularly, Article 62 of the Vienna Convention on the Law of Treaties [“VCLT”], which codified the customary doctrine of *rebus sic stantibus*, allows for treaty termination due to fundamental changes in circumstances unforeseen by treaty parties if it affects the essential basis of the treaty and radically transforms obligations still to be performed.¹²⁴ This raises questions about whether coastal States could unilaterally adjust treaties as sea levels rise, altering baselines and therefore impacting maritime boundaries.¹²⁵

Article 62(1) of the VCLT implies that changes must be unforeseeable and essential to the treaty’s basis.¹²⁶ A party that opts to suspend the operation of a treaty, whether in whole or in part, on the ground of a ‘fundamental change of circumstances’ must demonstrate that such a change was not foreseen by the parties at the time of the treaty’s conclusion.¹²⁷ This change must significantly alter the parties’ obligations under the treaty and invalidate the original reasons for their consent to the treaty.¹²⁸ This makes the application of *rebus sic stantibus* to sea-level rise challenging as the phenomenon of sea level rise is a widely known consequence of climate change; therefore, it is unsure whether such can be considered as an unforeseen circumstance.

The ICJ has rejected the invocation of *rebus sic stantibus* several times when these requirements were not present. In *Fisheries Jurisdiction*, Iceland’s claim that advancements in fishing techniques constituted a fundamental change¹²⁹ was rejected, as it did not radically alter the 1961 Exchange of Notes’ obligations.¹³⁰ Similarly, in *Gabčíkovo-Nagymaros Project*, Hungary’s argument that the prevalent political conditions impacted the 1977 treaty’s object and purpose was dismissed, as

¹²³ Stein, *supra* note 121, 617.

¹²⁴ VCLT, art. 62.

¹²⁵ Soons, *supra* note 24, p. 227.

¹²⁶ VCLT, art. 62(1).

¹²⁷ VCLT, art. 62; *Gabčíkovo-Nagymaros Project* (Hungary v Slovakia), Judgment, 1997 I.C.J. Rep. 7 (Sept. 25), p. 65 [hereinafter “*Gabčíkovo-Nagymaros*”].

¹²⁸ *Gabčíkovo-Nagymaros*, p. 65.

¹²⁹ *Fisheries Jurisdiction* (United Kingdom v. Iceland), Judgment, 1973 I.C.J. Rep. 3 (Feb. 2), ¶37.

¹³⁰ *Id.*, ¶¶40-43.

these changes did not affect the parties' consent or radically alter their obligations.¹³¹ The Court also dismissed Hungary's argument on unforeseen environmental developments, emphasizing the importance of foreseeability.¹³²

Notably, the co-chairs of the ILC study concluded that sea level rise should not be seen as a fundamental change of circumstances since it is not a "sudden phenomenon."¹³³ Sea-level rise is a well-documented impact of climate change and cannot be considered an unforeseen circumstance outside the parties' contemplation,¹³⁴ rendering the claim of an unforeseeable fundamental change untenable. Further, the rise in sea level cannot be deemed so closely linked to the object and purpose of the UNCLOS as to fundamentally alter a state party's consent to the treaty.

Moreover, Article 62(2)(a) of the VCLT specifically excludes boundary treaties from the application of *rebus sic stantibus*,¹³⁵ suggesting a preference for the permanence of maritime delimitations despite environmental changes. In fact, the ILC's Study Group have indicated, after a preliminary study of the issue, that all maritime boundaries are exempt from termination due to fundamental changes.¹³⁶ Nonetheless, scholars like Árnadóttir have argued for a nuanced interpretation, distinguishing between territorial and non-territorial maritime boundaries, suggesting that non-territorial boundaries might be renegotiated under certain circumstances.¹³⁷

Despite these arguments, international jurisprudence and practice emphasize the stability and permanence of agreed upon maritime boundaries. In *Aegean Sea Continental Shelf*, the ICJ reinforced that maritime treaties, especially those delineating boundaries, are intended to be immune to changes in circumstances, promoting stability and peace over adaptability.¹³⁸ The *Bay of Bengal* tribunal similarly upheld this interpretation, concluding that maritime boundaries must

¹³¹ *Gabčíkovo-Nagymaros*, pp. 64-65.

¹³² *Id.*

¹³³ ILC First Issues Paper, ¶119.

¹³⁴ *Id.*

¹³⁵ VCLT, art. 62(2)(a).

¹³⁶ ILC First Issues Paper, ¶119.

¹³⁷ ÁRNADÓTTIR, *supra* note 24, 169.

¹³⁸ *Aegean Sea Continental Shelf*, ¶85.

remain definitive and that climate change or its potential effects cannot jeopardize the established boundaries worldwide.¹³⁹

While the principle of *rebus sic stantibus* offers a theoretical avenue for renegotiating maritime boundaries in light of drastic environmental changes like sea-level rise, practical and legal constraints largely negate this possibility. The international community's emphasis on the stability and permanence of maritime boundaries underlines a collective commitment to maintaining legal certainty, even in the face of changing physical realities. Thus, States might consider incorporating adaptive measures into future maritime treaties to account for environmental changes, which could offer a more practical and legally permissible approach to managing the impacts of sea-level rise on maritime boundaries. States that are losing land and maritime zones cannot simply rely on treaty termination to protect their rights. Instead, the path forward lies in proactive legal innovation—not treaty exit.

¹³⁹ Bay of Bengal Maritime Boundary Arbitration between Bangladesh and India (Award) (7 July 2014) PCA Case 2010-6, 69.

CHAPTER FIVE: RESOLVING THE IMPLICATIONS OF SEA-LEVEL RISE TO THE MARITIME RIGHTS OF COASTAL STATES

Sea-level rise challenges the very foundation of maritime entitlements. As coastlines erode and island features submerge, the need for legal and adaptive solutions becomes urgent, particularly for coastal and archipelagic States whose sovereignty and prosperity are tied to their maritime zones. This chapter argues for a [I] shift in interpretation toward fixed baselines and presents both legal and [II] physical strategies to ensure that international law remains a bulwark of stability and justice in an age of environmental disruption.

I. A CASE FOR ADHERENCE TO THE FIXED BASELINES THEORY IN MARITIME DELINEATION

Ambulatory baselines—those that shift with the natural coastline—may reflect geography, but they undermine legal certainty. As basepoints submerge, States risk losing maritime zones, resource rights, and even the ability to maintain valid territorial claims. This is especially threatening for low-lying and archipelagic States that rely on outlying islands and reefs to generate EEZs and continental shelves.¹⁴⁰ According to the ILC's First Issues Paper on Sea-level Rise in Relation to International Law, shifting baselines landward due to the submersion of base points would also cause maritime zones to move inward.¹⁴¹ This shift could result in a substantial alteration or reduction of maritime entitlements, particularly for baselines established from small island features at risk of submersion due to rising sea levels.¹⁴² For instance, the disappearance of an island situated 24 nautical miles from a baseline could lead to a reduction in the territorial sea by as much as 1500 km².¹⁴³

The challenge with ambulatory baselines, particularly in the context of sea-level rise, becomes evident when baseline shifts result in corresponding movements in the outer boundaries of maritime zones. This can significantly affect areas such as low-tide elevations and fringing reefs which, when located within 12 nautical miles of

¹⁴⁰ Goyal, Tanishk & Gupta, Dhruv, *Sea Level Rise and Its Implications in International Law*, *Opinio Juris* (April 9, 2020), available at <https://opiniojuris.org/2020/09/04/sea-level-rise-and-its-implications-in-international-law/>.

¹⁴¹ ILC First Issues Paper, ¶172.

¹⁴² *Id.*

¹⁴³ ILC First Issues Paper, ¶172.

land, contribute to baseline formation and subsequently enhance the area of territorial sea claimed.¹⁴⁴ Conversely, the permanent submergence of these features could lead to a considerable reduction in maritime zones for many States. This is particularly critical for archipelagic States, as defined under Articles 46(b) and 47 of the UNCLOS.¹⁴⁵ These States, which rely on archipelagic baselines connecting the outermost points of their islands and drying reefs, may struggle to meet the stringent requirements of the UNCLOS if sea-level rise eliminates these critical features.¹⁴⁶

The permanence of islands plays a pivotal role in maritime delineations. An island capable of sustaining human habitation or economic life generates full maritime zones, including an EEZ and continental shelf.¹⁴⁷ However, if an island becomes uninhabitable or is reduced to a mere rock, it would only generate a territorial sea if located within 12 nautical miles of the mainland or another qualifying island.¹⁴⁸ Beyond this range or if submerged, it loses all maritime zone entitlements.¹⁴⁹ For example, if Kapingamarangi in the Federated States of Micronesia [“FSM”] becomes uninhabitable and is reduced to a rock, not only would its inhabitants lose their homes, but the FSM would also lose over 30,000 square nautical miles of EEZ,¹⁵⁰ underscoring potential massive geopolitical and resource-based conflicts.¹⁵¹

In response to these vulnerabilities, some States have undertaken measures to reinforce natural features to preserve them from inundation or erosion, thereby maintaining their status as basepoints for maritime claims. In the South China Sea, Vietnam, China, Malaysia, and the Philippines have transformed relatively minor features like sand cays and small rocks into military installations equipped with runways, barracks, and helipads to support their claims to EEZs.¹⁵² International law

¹⁴⁴ UNCLOS, arts. 6 & 13.

¹⁴⁵ UNCLOS, arts. 46(b) & 47.

¹⁴⁶ PRESCOTT, VICTOR & SCHOFIELD, CLIVE, *THE MARITIME POLITICAL BOUNDARIES OF THE WORLD* 176 (2005).

¹⁴⁷ UNCLOS, art. 121(3).

¹⁴⁸ UNCLOS, art. 121(3).

¹⁴⁹ Soons, *supra* note 24, pp. 216 – 217.

¹⁵⁰ Niering, W.A., *Terrestrial Ecology of Kapingamarangi Atoll, Caroline Islands*, 33 *ECOL. MONOGR.* 131 (1963), 131–160; Frost, et. al., *Redrawing the Map of the Pacific*, 95 *MAR. POLICY* 306 (2018), 306; Pineda, Eduardo Jimenez, *The ‘Disappearing Island State’ phenomenon: A challenge to the universality of the International Law of the Sea*, 12(5) *EUROPEAN SOCIETY OF INTERNATIONAL LAW CONFERENCE PAPER SERIES*, Conference Paper No. 11/2018 (September 2018), p. 7.

¹⁵¹ Lusthaus, Jonathan, *Shifting Sands: Sea Level Rise, Maritime Boundaries and Inter-State Conflict*, 30 *POLITICS* 113 (2010).

¹⁵² Whiting, David, *The Spratly Islands Dispute and the Law of the Sea*, 26 *DENV. INT’L J. L. & POL’Y* 897 (1998).

generally accepts such reinforced natural features as valid basepoints for generating maritime zones. However, artificial islands, which are increasingly constructed for various infrastructural and residential purposes, like the island of Hulhumalé in the Maldives,¹⁵³ do not confer maritime zones under Article 60(8) of the UNCLOS.¹⁵⁴

Since the UNCLOS does not address the legal resolution for changes in coastlines or the disappearance of features that establish baselines and base points, A.H.A. Soons proposed in 1990, and several scholars have since supported,¹⁵⁵ that coastal States may *maintain* the outer limits of their territorial sea and EEZ as they were defined at a specific time according to the prevailing rules.¹⁵⁶ In essence, the fixed baseline theory forwards that States may permanently fix the boundaries of all maritime zones on the basis of presentably accepted baselines. By locking in the coordinates of legally established baselines, States can safeguard their maritime zones even as their physical coastlines change. This approach ensures that small island nations do not lose sovereign entitlements due to climate change—a crisis they did not cause.

Permanent fixation of baselines can prevent resource conflicts between States. Under the UNCLOS, all States are limited to their entitled maritime resources, ensuring that no State gains more than its due. Fixing boundaries helps avoid the costs associated with adjusting to frequently changing baselines and the associated expenses of updating nautical maps.¹⁵⁷

By freezing baselines, the principles and agreements relating to maritime zones and boundaries that were negotiated by States under the UNCLOS are upheld, promoting stability in the location of maritime zone limits and in maritime delimitation agreements—both bilateral and multilateral. The ICJ emphasized in the *Temple of Preah Vihear* case that one of the main goals of establishing a frontier is

¹⁵³ Tsaltas, Grigoris, et. al., *Artificial Islands and Structures as a Means of Safeguarding State Sovereignty Against Sea Level Rise: A Law of the Sea Perspective*, paper presented at the 6th Advisory Board on the Law of the Seas Conference (October 25–27, 2010), available at <http://www.gmat.unsw.edu.au/ablos/ABLOS10Folder/ABLOS.htm>.

¹⁵⁴ UNCLOS, art. 60(8).

¹⁵⁵ Rayfuse, R., *International Law and Disappearing States: Utilizing Maritime Entitlements to Overcome the Statehood Dilemma*, 52 UNIVERSITY OF NEW SOUTH WALES LEGAL RESEARCH SERIES 1 (2010), 1–13 [hereinafter “Rayfuse”]; Caron, *supra* note 77, 623, 640–641.

¹⁵⁶ Soons, *supra* note 24, p. 225.

¹⁵⁷ Rayfuse, *supra* note 155, p. 6; Caron, *supra* note 77, 647.

to ensure stability and finality.¹⁵⁸ The Division of Ocean Affairs' Handbook on Maritime Delimitation also advocates for the permanence and stability of maritime boundary delimitation agreements.¹⁵⁹

It is posited by the Proponent that, while UNCLOS does not explicitly address the impacts of sea-level rise on maritime entitlements, its framework provides sufficient interpretive flexibility to support solutions such as the fixed baselines approach. The legal basis for fixed baselines lies in the interpretive flexibility of UNCLOS and in State practice that reflects emerging custom. It is argued that [A] an application of the rules on treaty interpretation and [B] an examination of the evolving practice of States and the principles of customary international law increasingly align with the validity of fixed baselines under international law.

A. APPLYING RULES ON TREATY INTERPRETATION

The interpretation of treaties, including the UNCLOS, is guided by established rules under international law. These rules, codified in the VCLT,¹⁶⁰ serve as a framework for understanding the meaning and intent of treaty provisions. The ICJ has upheld these rules as customary;¹⁶¹ therefore, it is binding upon VCLT States Parties and non-Parties alike.

Articles 31 and 32 of the VCLT emphasize a textual approach, requiring interpretation based on the ordinary meaning of treaty terms, their context, and the object and purpose of the treaty,¹⁶² while also allowing recourse to supplementary means, such as the *travaux préparatoires*, when the meaning remains ambiguous or leads to absurd results.¹⁶³ In the context of UNCLOS, applying these interpretive rules is essential for addressing the legal challenges posed by sea-level rise, particularly in relation to the determination and stability of maritime baselines. The Proponent will explore how these rules can be utilized to uncover the intent of

¹⁵⁸ *Temple of Preah Vihear* (Cambodia v. Thailand), Judgment, 1962 ICJ Rep. 6 (June 15), p. 34 [*hereinafter* “**Temple of Preah Vihear**”].

¹⁵⁹ U.N. DIVISION FOR OCEAN AFFAIRS AND THE LAW OF THE SEA, HANDBOOK ON THE DELIMITATION OF MARITIME BOUNDARIES (2000), ¶322 [*hereinafter* “**UN HANDBOOK ON DELIMITATION**”].

¹⁶⁰ VCLT, pmb1.

¹⁶¹ *Avena and Other Mexican Nationals* (Mexico v. United States of America), Judgment, 2004 I.C.J. Rep. 12 (Mar. 31), ¶83.

¹⁶² VCLT, art. 31.

¹⁶³ VCLT, art. 32.

UNCLOS’s drafters and to reconcile its provisions with the evolving realities of climate change and its impacts on maritime entitlements.

Pursuant to Article 31(1) of the VCLT, Article 5 of the UNCLOS must be interpreted in good faith, based on the ordinary meaning of its terms in their context and in light of the treaty's object and purpose.¹⁶⁴ Ordinary meaning refers to the commonly understood meaning of the words and phrases used, without requiring specialized or technical interpretation.¹⁶⁵ This approach ensures that treaties are interpreted in a straightforward and predictable manner, thereby fostering legal certainty and stability in international relations.¹⁶⁶

While the low-water line is inherently ambulatory, shifting naturally with changes to the coastline, a plain reading of Article 5 indicates that the “legal baseline” is the low-water line as represented on a coastal State's officially recognized nautical charts.¹⁶⁷ This means that even if the physical low-water line has moved landward due to erosion or sea-level rise, the legally recognized baseline remains the “charted low-water line” rather than the “actual low-water line.”¹⁶⁸ The ILA Baselines Committee has emphasized the importance of these nautical charts in stabilizing the depiction of baselines, which is essential for defining maritime zones and ensuring legal certainty in maritime boundary delimitation.¹⁶⁹

It is notable that UNCLOS does not impose an obligation on coastal States to continuously update their nautical charts or review their baselines in response to physical changes in the coastline.¹⁷⁰ Accordingly, absent a prohibition to the contrary,¹⁷¹ UNCLOS can reasonably be interpreted as permitting coastal States to

¹⁶⁴ VCLT, art. 31(1).

¹⁶⁵ Fitzmaurice, Malgosia, *The Practical Working of the Law of Treaties*, in INTERNATIONAL LAW (Malcolm Evans ed., 2008) [*hereinafter* “Fitzmaurice”].

¹⁶⁶ Fitzmaurice, *supra* note 165.

¹⁶⁷ LATHROP, COLTER G. ET AL., *BASELINES UNDER THE INTERNATIONAL LAW OF THE SEA 44-47* (2019) [*hereinafter* “LATHROP”].

¹⁶⁸ LATHROP, *supra* note 167, 44.

¹⁶⁹ Int’l Law Ass’n, *International Law Association Athens Conference (2024): International Law and Sea Level Rise*, 45 (2024) [*hereinafter* “ILA Athens”].

¹⁷⁰ ILA Athens, at 45.

¹⁷¹ *S.S. Lotus* (Fr. v. Turk.), Judgment, 1927 P.C.I.J. (ser. A) No. 10, at 46 (Sept. 7).

maintain their baselines along the “charted low-water line,” regardless of physical changes to the “actual low-water line,” until the State chooses to update its charts.¹⁷²

The fixing of baselines also aligns with UNCLOS's overarching object and purpose of promoting peace, stability, and equity in the seas. In *Kasikili/Sedudu Island*, the ICJ emphasized that the meaning of a treaty must be interpreted in light of its object and purpose¹⁷³ to fulfill the broader goals it is designed to achieve.¹⁷⁴ In determining a treaty's object and purpose, reference is made to its preamble.¹⁷⁵

The preamble of UNCLOS highlights the treaty's goals of establishing a comprehensive “legal order for the seas,” “maintenance of peace and stability,” and “the equitable and efficient utilization of [marine] resources.”¹⁷⁶ The fixed baselines approach supports these goals by reducing legal uncertainties, preserving stability, and ensuring equitable outcomes.¹⁷⁷ With regard to the maintenance of peace and stability, the ILC First Issues Paper highlights that chart submissions under Article 5 of UNCLOS provide a stable reference point for baseline delineation, even in ambulatory systems.¹⁷⁸ These charts enable neighboring coastal States to have a common framework for determining maritime boundaries, minimizing disputes, and fostering a stable regime for managing shared maritime resources.¹⁷⁹ By addressing potential conflicts arising from shifting baselines due to sea-level rise, the fixed baselines approach contributes to the stability that UNCLOS seeks to uphold.

On the principle of equity, international bodies such as the ILC,¹⁸⁰ the International Public Policy Association,¹⁸¹ and the UN General Assembly¹⁸² have recognized the disproportionate impact of sea-level rise on Small Island Developing States [“SIDS”]. These nations face significant losses of maritime entitlements and resources as coastlines recede. The fixed baselines approach ensures that their

¹⁷² KAPOOR, *supra* note 22, at 31.

¹⁷³ *Kasikili/Sedudu Island* (Bots./Namib.), 1999 I.C.J. Rep. 104, ¶23 (Dec. 13) [*hereinafter* “*Kasikili/Sedudu Island*”].

¹⁷⁴ *Kasikili/Sedudu Island*, ¶¶18 & 20.

¹⁷⁵ *Kasikili/Sedudu Island*, ¶22.

¹⁷⁶ UNCLOS, pmb1.

¹⁷⁷ Alexander, *supra* note 71, 535.

¹⁷⁸ ILC First Issues Paper, ¶¶91-92.

¹⁷⁹ Holst, Johan, *Imaginary Coastlines: Analysing Baseline Fixation under the Law of the Sea* (2024) (Graduate Thesis, Lund University).

¹⁸⁰ LATHROP, *supra* note 167, 44-45.

¹⁸¹ U.N. GAOR, 76th Sess., 22nd mtg., UN Doc GA/L/3648 (Nov. 1, 2021).

¹⁸² *Id.*

maritime entitlements are preserved despite physical changes to their coastlines, embodying a fair and equitable interpretation of UNCLOS. This interpretation not only safeguards the rights of vulnerable States but also aligns with the treaty's purpose of fostering equitable utilization of marine resources and maintaining a stable legal framework for the seas.

Further, Article 31(3) of the VCLT also permit reference to subsequent practice as a primary tool of treaty interpretation,¹⁸³ as it constitutes objective evidence of the parties' common understanding regarding the meaning of the treaty.¹⁸⁴ In several cases,¹⁸⁵ the ICJ affirmed the significance of subsequent practice in treaty interpretation. According to the ILC, not all parties need to engage in a particular practice for such practice to inform the interpretation of a treaty.¹⁸⁶ Instead, the relevance of the practice is determined by the number of States engaged in the practice, alongside the silence, inaction, or acquiescence of other States.¹⁸⁷

The 2024 Report of the ILA on Sea-Level Rise identifies abundant practice by States fixing baselines, reflecting it in their nautical charts, and regarding it as permanent.¹⁸⁸ This practice is most evident in the Pacific Island States¹⁸⁹ (comprised of 22 States), and the Alliance of Small Island States (comprised of 39 States)¹⁹⁰ which have enacted or proposed domestic legislation in relation to fixing baselines. Aside from domestic legislation in Fiji, Tuvalu, and Antigua Barbuda, the Pacific Islands Forum Members' Declaration emphasized the non-obligation to review or update baselines, notwithstanding climate change-related sea level-rise.¹⁹¹ Such

¹⁸³ VCLT, art. 31(3)(b).

¹⁸⁴ *Report of the International Law Commission on the work of its seventieth session*, 73 U.N. GAOR Supp. No. 10, at 30, U.N. Doc. A/73/10 (2018), reprinted in [2018] 2(2) Y.B. Int'l L. Comm'n 1, U.N. Doc. A/CN.4/SER.A/2018/Add.1 (Part 2).

¹⁸⁵ *Pulp Mills on the River Uruguay* (Arg. v. Uru.), Judgment, 2010 I.C.J. Rep. 14, ¶65 (Apr. 10); *Maritime Delimitation and Territorial Questions between Qatar and Bahrain* (Qatar v. Bahrain), Judgment, 1995 I.C.J. Rep. 6., ¶¶31-35 (Feb. 15).

¹⁸⁶ *Report of the International Law Commission on the work of its seventieth session*, 73 U.N. GAOR Supp. No. 10, at 65, U.N. Doc. A/73/10 (2018), reprinted in [2018] 2(2) Y.B. Int'l L. Comm'n 1, U.N. Doc. A/CN.4/SER.A/2018/Add.1 (Part 2).

¹⁸⁷ *Temple of Preah Vihear*, at 23.

¹⁸⁸ ILA Athens, at 42.

¹⁸⁹ Pacific Island Forum, Declaration on the Continuity of Statehood and the Protection of Persons in the Face of Climate Change-related Sea-Level Rise (November 9, 2023), available at <https://forumsec.org/publications/2023-declaration-continuity-statehood-and-protection-persons-face-climate-change>, ¶8 [hereinafter "PIF Declaration"].

¹⁹⁰ Int'l Law Ass'n, ILA Lisbon Conference (2022): International Law and Sea Level Rise, 523–526 (2022).

¹⁹¹ PIF Declaration, ¶8.

declaration was made to address the long-standing concern in the region of protecting the sovereign rights and entitlements.¹⁹² It bears emphasizing that although the ILC acknowledges the non-unanimity in the subsequent practice of fixed baselines, the rapid emergence of a fixed baselines approach developed among numerous states,¹⁹³ coupled with acquiescence and declarations of other States in the context of rising sea levels, can be seen as an accepted interpretation of UNCLOS.¹⁹⁴

Article 32 of the VCLT allows for the use of supplementary means of interpretation, including the preparatory works (*travaux préparatoires*) of treaties, to confirm the meaning derived from the application of Article 31.¹⁹⁵ In the case of UNCLOS, a review of its *travaux préparatoires* supports the interpretation that primacy is placed on the “charted low-water line” rather than the “actual low-water line” as the basis for defining normal baselines.

The origins of this principle can be traced back to the 1930 Hague Conference for the Codification of International Law, where early discussions about baselines emphasized a “visual representation” of the coast, as depicted on officially recognized charts, over reliance on the physical coastline itself.¹⁹⁶ This drafting history reflects a deliberate intention to create a clear and practical standard for defining baselines, one that could address ambiguities in identifying the precise location of the low-water line.¹⁹⁷ By anchoring the legal baseline to the charted low-water line, the drafters of Article 5 of UNCLOS sought to establish a consistent and accessible reference point for both States and mariners.¹⁹⁸

The selection of a chart-based definition was not merely a matter of convenience but a practical solution to ensure uniformity and stability in maritime delimitation.¹⁹⁹ This approach reflects the understanding that the charted low-water

¹⁹² PIF Declaration, ¶8.

¹⁹³ *Dispute regarding Navigational and Related Rights* (Costa Rica v. Nicar.), Judgment, 2009 I.C.J Rep. 213 (Jul. 31).

¹⁹⁴ *Report of the International Law Commission on the work of its seventieth session*, 73 U.N. GAOR Supp. No. 10, at 63, U.N. Doc. A/73/10 (2018), reprinted in [2018] 2(2) Y.B. Int’l L. Comm’n 1, U.N. Doc. A/CN.4/SER.A/2018/Add.1 (Part 2).

¹⁹⁵ *Libya/Malta*, ¶¶ 41–43; ANTHONY AUST, MODERN TREATY LAW AND PRACTICE (3rd ed. 2013).

¹⁹⁶ ROTHWELL, DONALD R. & STEPHENS, TIM, THE INTERNATIONAL LAW OF THE SEA, 4-5 (2nd ed., 2016).

¹⁹⁷ M François (Special Rapporteur), Report of the Second Committee: Territorial Sea, 24(30) AJIL 234, at 247 (1930) [*hereinafter* “2nd Report on Territorial Sea”].

¹⁹⁸ *Id.*

¹⁹⁹ *Id.*

line, once legally established, would serve as the default baseline for delineating maritime zones.²⁰⁰ Even in the face of physical changes to the coastline caused by phenomena such as climate change-induced sea-level rise,²⁰¹ States are under no legal obligation to update their baselines to reflect these changes unless they choose to revise their nautical charts.

Notably, the drafting process for UNCLOS originally included a provision that allowed for the shoreline to serve as a fallback baseline in situations where a low-water line chart was unavailable.²⁰² The inclusion of this alternative underscores the drafters' recognition of the charted low-water line as the primary and preferred method for defining baselines. Although the shoreline provision was ultimately removed in subsequent drafts, the emphasis on the charted baseline as the default legal standard remained central to the framework established by UNCLOS.

Thus, when applying the general rules of treaty interpretation to Article 5 of UNCLOS, it becomes clear that the concept of the normal baseline is fundamentally tied to the “charted low-water line” rather than the “actual low-water line.” This interpretation is not a radical deviation—it is a principled evolution. It responds to changing environmental conditions while honoring the foundational goals of UNCLOS and international law: certainty, equity, and peaceful coexistence.

B. EXAMINING CUSTOMARY INTERNATIONAL LAW

Article 38(1) of the ICJ Statute includes “international custom, as evidence of a general practice accepted as law” as a source of obligation.²⁰³ To establish customary international law, the twin requirements of an objective element (state practice) and a subjective element (*opinio juris*), as interpreted in the *North Sea Continental Shelf Cases*, must be established.²⁰⁴ The elements of custom are not mutually exclusive, but instead they are interchangeable along a sliding scale where the intensity of one element is dependent on the issue at hand and the desirability of the norm asserted; therefore, when the norm is more destabilizing, the more easily

²⁰⁰ 2nd Report on Territorial Sea, at 247.

²⁰¹ KAPOOR, *supra* note 22, at 31.

²⁰² Int'l Law Comm'n, Rep. on the Work of Its Sixth Session, U.N. Doc. A/2693, at 14 (1954).

²⁰³ ICJ Statute, art. 38(1)(b).

²⁰⁴ *North Sea Continental Shelf*, ¶¶32 & 77.

one element of customary international law will be substituted for the other.²⁰⁵ Hence, the Proponent will focus on State practice to illustrate the crystallization of custom under international law, leaning in favor of fixed baselines.

In identifying state practice, attention must be given to specially affected states²⁰⁶ as it is the practice of those States which must demonstrate the requisite uniformity and generality to establish a rule of customary international law.²⁰⁷

Preliminarily, specially affected states refer to those states whose interests are most impacted by a rule of international law.²⁰⁸ In the context of delineating maritime boundaries, specially affected states are those states geographically exposed to the immediate and disproportionate consequences brought about by sea-level rise.²⁰⁹ The ILA identified low-lying SIDS as specially affected by sea-level rise due to their geographical characteristics.²¹⁰ As of 2023, the UN reported that SIDS comprise of 57 countries, with 29 SIDS located in the Caribbean, 20 in the Pacific, and 8 in the Atlantic, Indian, and West Philippine Sea region.²¹¹

Beginning mid-2022, following the Interim Report of the ILC Study Group on Sea Level Rise in International Law, a noticeable shift occurred among several major maritime and industrialized nations concerning their stance on the stability of baselines and maritime zone limits in response to coastline changes from climate change-induced sea level rise. This shift involved new policy strategies or legal interpretations by some coastal States, including those previously adherent to the ‘ambulatory’ baselines method.

For instance, certain States have clarified that their existing practices or laws regarding ‘ambulatory’ baselines were not specifically crafted with sea level rise in

²⁰⁵ Kirgis, Frederic, *Custom on a Sliding Scale*, 81 AM. J. INT’L L. 146, 149 (1987).

²⁰⁶ *Report of the International Law Commission on the work of its seventieth session*, 73 U.N. GAOR Supp. No. 10, at 101, U.N. Doc. A/73/10 (2018), reprinted in [2018] 2(2) Y.B. Int’l L. Comm’n 1, U.N. Doc. A/CN.4/SER.A/2018/Add.1 (Part 2).

²⁰⁷ *Id.*

²⁰⁸ *North Sea Continental Shelf*, ¶74.

²⁰⁹ *Report of the International Law Commission to the General Assembly*, 74 U.N. GAOR Supp. No. 10, at 101, U.N. Doc. A/78/10 (2023).

²¹⁰ ILA Athens, 48.

²¹¹ U.N. DEP’T OF ECON. & SOC. AFFAIRS, POPULATION DIVISION, POPULATION PROSPECTS OF COUNTRIES IN SPECIAL SITUATIONS, at 41-54, U.N. Doc DESA/POP/2023/TR/NO. 6. (2023).

mind. Echoing a point made by Romania during the 2021 Sixth Committee debate,²¹² Ireland explicitly stated in 2022 that its approach to ‘ambulatory’ baselines had not been developed in anticipation of sea level rise.²¹³ Ireland further articulated in a 2023 statement that baselines set according to the UNCLOS should be viewed as permanently established.²¹⁴ Ireland argued that this permanence is essential for ensuring legal stability and preventing future conflicts.²¹⁵

In their 2021 submission to the ILC, Antigua and Barbuda emphasized the connection between legal stability and fixed baselines, arguing that “Fixed baselines adhere to international law, whereas ambulatory baselines could contravene principles of international law [...] Interpreting baselines as fixed aligns more closely with international law’s emphasis on certainty and stability.”²¹⁶ Furthermore, statements from at least 18 Member States between 2020 and 2022 consistently express a universal concern for maintaining legal stability, security, certainty, and predictability regarding maritime zones and entitlements.²¹⁷

The Philippines has also expressed reservations about assuming ambulatory baselines without clear evidence of State practice and *opinio juris*, emphasizing that “proceeding on the basis of legal stability, security, certainty, and predictability in international law is a welcome approach.”²¹⁸ Particularly, the Philippines favored “the application of principles of public international law which could favor permanent maritime boundaries [...]”²¹⁹

²¹² International Law Association Committee on International Law and Sea-Level Rise, Interim Report (June 2022), at 529.

²¹³ Statement by Ireland at the Sixth Committee, 77th session, 27th mtg., (October 28 2022), available at https://www.un.org/en/ga/sixth/77/pdfs/statements/ilc/27mtg_ireland_2.pdf.

²¹⁴ Statements by the UN Member States, 78th session, 23rd to 28th meeting (October 23–27, 2023), available at <https://www.un.org/en/ga/sixth/78/summaries.shtml>.

²¹⁵ *Id.*

²¹⁶ Submission of Antigua and Barbuda on the effects of sea-level rise on the law of the sea, 72nd session (July 5 – August 6 2021), available at https://legal.un.org/ilc/sessions/72/pdfs/english/slr_antigua_barbuda.pdf, ¶¶ 10 & 13.

²¹⁷ International Law Commission, Sea-level rise in relation to international law, Additional paper to the first issues paper (2020), U.N. Doc. A/CN.4/761 (Feb. 13, 2023), ¶33; Statement of the Pacific Islands Forum, 72nd session (July 5 – August 6 2021), available at https://legal.un.org/ilc/sessions/72/pdfs/english/slr_pif.pdf.

²¹⁸ Statement of the Philippines, 23rd plen. mtg., U.N. Doc. A/C.6/76/SR.23 (November 2021), available at https://www.un.org/en/ga/sixth/76/pdfs/statements/ilc/23mtg_philippines_2.pdf, pp. 2-3.

²¹⁹ *Id.*

In November 2023, leaders of the Pacific Island Forum [“PIF”] members, based on their discussions, adopted the Declaration on the Continuity of Statehood and the Protection of Persons in the Face of Climate Change-related Sea-Level Rise. This declaration acknowledges the principle that under international law, a state is generally presumed to continue existing, retaining its status and effectiveness, without the prospect of statehood cessation due to climate change-induced sea-level rise.²²⁰ The PIF leaders affirmed that the statehood and sovereignty of the Pacific Islands Forum members will persist, along with all rights and duties associated, despite the effects of climate change-related sea-level rise.²²¹ The Pacific Island Forum is comprised of 18 countries, namely Australia, Cook Islands, FSM, Fiji, French Polynesia, Kiribati, Nauru, New Caledonia, New Zealand, Niue, Palau, Papua New Guinea, Republic of Marshall Islands, Samoa, Solomon Islands, Tonga, Tuvalu, and Vanuatu.²²²

Significant advancements have also been made regarding the adoption of new policies, initiated by the United States’ announcement in September 2022 of its new approach to sea level rise and maritime zones. As detailed by the US in the Sixth Committee in 2022, this policy acknowledges evolving trends in state practices and the necessity for stable maritime zones despite sea level rise.²²³ The US committed to collaborate with other nations to lawfully set and maintain baselines and maritime zone limits, pledging not to contest those that are not updated despite sea-level changes due to climate change.²²⁴ The US confirmed that this policy aligns with the approaches of the PIF and the Alliance of Small Island States,²²⁵ and reiterated in 2023 its commitment to not challenge legally established baselines, urging other nations to make similar commitments to enhance stability, security, certainty, and predictability of maritime entitlements at risk from sea-level rise.²²⁶

In February 2023, Japan adopted a significant official stance, as declared by its Foreign Minister, stating that in response to climate-change-related sea-level rise,

²²⁰ PIF Declaration, ¶8.

²²¹ PIF Declaration, at ¶13.

²²² Who we Are, Pacific Islands Forum (2024), *available at* <https://forumsec.org/pacific-islands-forum>.

²²³ Statement by the United States, Sixth Committee, 77th session, 27th mtg. (October 28, 2022), *available at* https://www.un.org/en/ga/sixth/77/pdfs/statements/ilc/27mtg_us_2.pdf.

²²⁴ *Id.*

²²⁵ Statement by the United States in the UN Security Council, U.N. Doc. S/PV.9260 (Feb. 14, 2023), at 15.

²²⁶ Statement by the United States, Sixth Committee, 78th session, 24th mtg. (October 24, 2023), *available at* https://www.un.org/en/ga/sixth/78/pdfs/statements/ilc/24mtg_us_1.pdf.

Japan supports preserving existing baselines and maritime zones as defined by the UNCLOS, despite coastline regression.²²⁷ This position was further elucidated in the Sixth Committee debate in October 2023, where Japan cited State practices such as the PIF declaration on preserving maritime zones,²²⁸ affirming that such an interpretation is legitimate and promotes legal stability and predictability, especially for Small Island Developing States.²²⁹

The European Union [“EU”], representing itself and its 27 Member States, expressed a similar viewpoint in the Sixth Committee in October 2023. It concurred with an increasing number of States that the UNCLOS does not prohibit the preservation of baselines and maritime zone limits established and filed with the Secretary-General in response to climate change-induced sea level rise, viewing this as a lawful method to maintain the zones’ legal stability.²³⁰ This stance received additional backing from 11 EU Member States, which provided further details supporting this position.²³¹ Additionally, in 2023, similar perspectives in favor of

²²⁷ Ministry of Foreign Affairs of Japan, Foreign Minister Hayashi’s Meeting with the Delegation of the Pacific Islands Forum (Feb. 6, 2023), *available at* https://www.mofa.go.jp/press/release/press1e_000369.html.

²²⁸ Statement by Japan, Sixth Committee, 78th session, 28th mtg. (Oct. 27, 2023), *available at* https://www.un.org/en/ga/sixth/78/pdfs/statements/ilc/28mtg_japan_1.pdf.

²²⁹ Statement by Japan in the UN Security Council, UN Doc. S/PV. 9260 (Feb. 14, 2023), at 18.

²³⁰ Statement of the European Union and its Member States on Sea Level Rise in Relation to International Law, Sixth Committee, 78th session, 23rd mtg. (October 23, 2023), *available at* https://www.un.org/en/ga/sixth/78/pdfs/statements/ilc/23mtg_eu_1.pdf.

²³¹ Statement by Bulgaria, Sixth Committee, 78th session, 28th plen. mtg. (October 27, 2023), *available at* https://www.un.org/en/ga/sixth/78/pdfs/statements/ilc/28mtg_bulgaria_1.pdf; Statement by Cyprus, Sixth Committee, 78th session, 28th plen. mtg. (October 27, 2023), *available at* https://www.un.org/en/ga/sixth/78/pdfs/statements/ilc/28mtg_cyprus_1.pdf; Statement by Germany, Sixth Committee, 78th session, 24th plen. mtg. (October 24, 2023), *available at* https://www.un.org/en/ga/sixth/78/pdfs/statements/ilc/24mtg_germany_1.pdf; Statement by Greece, Sixth Committee, 78th session, 27th plen. mtg. (October 27, 2023), *available at* https://www.un.org/en/ga/sixth/78/pdfs/statements/ilc/27mtg_greece_1.pdf; Statement by Hungary, Sixth Committee, 78th session, 24th plen. mtg. (October 24, 2023), *available at* https://www.un.org/en/ga/sixth/78/pdfs/statements/ilc/24mtg_hungary_1.pdf; Statement by Ireland, Sixth Committee, 78th session, 25th plen. mtg. (October 25, 2023), *available at* https://www.un.org/en/ga/sixth/78/pdfs/statements/ilc/25mtg_ireland_1.pdf; Statement by Italy, Sixth Committee, 78th session, 23rd plen. mtg. (October 23, 2023), *available at* https://www.un.org/en/ga/sixth/78/pdfs/statements/ilc/23mtg_italy_1.pdf; Statement by Portugal, Sixth Committee, 78th session, 24th plen. mtg. (October 24, 2023), *available at* https://www.un.org/en/ga/sixth/78/pdfs/statements/ilc/24mtg_portugal_1.pdf; Statement by Romania, Sixth Committee, 78th session, 25th plen. mtg. (October 25, 2023), *available at* https://www.un.org/en/ga/sixth/78/pdfs/statements/ilc/25mtg_romania_1.pdf; Statement by Slovenia, Sixth Committee, 78th session, 27th plen. mtg. (October 27, 2023), *available at* https://www.un.org/en/ga/sixth/78/pdfs/statements/ilc/27mtg_slovenia_1.pdf; Statement by Spain, Sixth

fixed baselines have been voiced by various UN Member States from various regions, namely Fiji (on behalf of 18 PIF Member States),²³² Denmark (on behalf of the Nordic Countries: Denmark, Finland, Iceland, Norway and Sweden),²³³ Singapore,²³⁴ Australia,²³⁵ Brazil,²³⁶ France,²³⁷ Liechtenstein,²³⁸ the United Kingdom of Great Britain and Northern Ireland,²³⁹ Austria,²⁴⁰ Poland,²⁴¹ Estonia,²⁴² Switzerland,²⁴³ Bangladesh,²⁴⁴ Chile,²⁴⁵ Ecuador,²⁴⁶ Thailand,²⁴⁷ South Africa,²⁴⁸

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- Committee, 78th session, 27th plen. mtg. (October 27, 2023), *available at* https://www.un.org/en/ga/sixth/78/pdfs/statements/ilc/27mtg_spain_1.pdf.
- ²³² Statement by Fiji (on behalf of the Pacific Island Forum), Sixth Committee, 78th session, 23rd plen. mtg. (October 23, 2023), *available at* https://www.un.org/en/ga/sixth/78/pdfs/statements/ilc/23mtg_pif_1.pdf;
- ²³³ Statement by Denmark (on behalf of the Nordic Countries: Denmark, Finland, Iceland, Norway and Sweden), Sixth Committee, 78th session, 23rd plen. mtg. (October 23, 2023), *available at* https://www.un.org/en/ga/sixth/78/pdfs/statements/ilc/23mtg_nordic_1.pdf.
- ²³⁴ Statement by Singapore, Sixth Committee, 78th session, 23rd plen. mtg. (October 23, 2023), *available at* https://www.un.org/en/ga/sixth/78/pdfs/statements/ilc/23mtg_singapore_1.pdf.
- ²³⁵ Statement by Australia, Sixth Committee, 78th session, 23rd plen. mtg. (October 23, 2023), *available at* https://www.un.org/en/ga/sixth/78/pdfs/statements/ilc/23mtg_australia_1.pdf.
- ²³⁶ Statement by Brazil, Sixth Committee, 78th session, 23rd plen. mtg. (October 23, 2023), *available at* https://www.un.org/en/ga/sixth/78/pdfs/statements/ilc/23mtg_brazil_1.pdf.
- ²³⁷ Statement by France, Sixth Committee, 78th session, 23rd plen. mtg. (October 23, 2023), *available at* https://www.un.org/en/ga/sixth/78/pdfs/statements/ilc/23mtg_france_1.pdf.
- ²³⁸ Statement by Liechtenstein, Sixth Committee, 78th session, 23rd plen. mtg. (October 23, 2023), *available at* https://www.un.org/en/ga/sixth/78/pdfs/statements/ilc/23mtg_liechtenstein_1.pdf.
- ²³⁹ Statement by the United Kingdom of Great Britain and Northern Ireland, Sixth Committee, 78th session, 23rd plen. mtg. (October 23, 2023), *available at* https://www.un.org/en/ga/sixth/78/pdfs/statements/ilc/23mtg_uk_1.pdf.
- ²⁴⁰ Statement by Austria, Sixth Committee, 78th session, 24th plen. mtg. (October 24, 2023), *available at* https://www.un.org/en/ga/sixth/78/pdfs/statements/ilc/24mtg_austria_1.pdf.
- ²⁴¹ Statement by Poland, Sixth Committee, 78th session, 24th plen. mtg. (October 24, 2023), *available at* https://www.un.org/en/ga/sixth/78/pdfs/statements/ilc/24mtg_poland_1.pdf.
- ²⁴² Statement by Estonia, Sixth Committee, 78th session, 24th plen. mtg. (October 24, 2023), *available at* https://www.un.org/en/ga/sixth/78/pdfs/statements/ilc/24mtg_estonia_1.pdf.
- ²⁴³ Statement by Switzerland, Sixth Committee, 78th session, 24th plen. mtg. (October 24, 2023), *available at* https://www.un.org/en/ga/sixth/78/pdfs/statements/ilc/24mtg_switzerland_1.pdf.
- ²⁴⁴ Statement by Bangladesh, Sixth Committee, 78th session, 24th plen. mtg. (October 24, 2023), *available at* https://www.un.org/en/ga/sixth/78/pdfs/statements/ilc/24mtg_bangladesh_1.pdf.
- ²⁴⁵ Statement by Chile, Sixth Committee, 78th session, 24th plen. mtg. (October 24, 2023), *available at* https://www.un.org/en/ga/sixth/78/pdfs/statements/ilc/24mtg_chile_1.pdf.
- ²⁴⁶ Statement by Ecuador, Sixth Committee, 78th session, 24th plen. mtg. (October 24, 2023), *available at* https://www.un.org/en/ga/sixth/78/pdfs/statements/ilc/24mtg_ecuador_1.pdf.
- ²⁴⁷ Statement by Thailand, Sixth Committee, 78th session, 25th plen. mtg. (October 25, 2023), *available at* https://www.un.org/en/ga/sixth/78/pdfs/statements/ilc/25mtg_thailand_1.pdf.
- ²⁴⁸ Statement by South Africa, Sixth Committee, 78th session, 25th plen. mtg. (October 25, 2023), *available at* https://www.un.org/en/ga/sixth/78/pdfs/statements/ilc/25mtg_southafrica_1.pdf.

Viet Nam,²⁴⁹ Cuba,²⁵⁰ Canada,²⁵¹ Samoa (on behalf of Alliance of Small Island States),²⁵² Sierra Leone,²⁵³ Malta,²⁵⁴ Colombia,²⁵⁵ the FSM,²⁵⁶ Indonesia,²⁵⁷ Guatemala,²⁵⁸ Papua New Guinea,²⁵⁹ Argentina,²⁶⁰ the Republic of Korea,²⁶¹ Côte d’Ivoire,²⁶² Jamaica,²⁶³ Tonga,²⁶⁴ and the Philippines.²⁶⁵

This growing consensus was aptly summarized by New Zealand in its October 2023 statement at the UN, noting that since the 2021 PIF Declaration, over 100 States have supported the approach of not updating baselines for as long as such baselines were declared and/or established in accordance with UNCLOS.²⁶⁶ This

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- ²⁴⁹ Statement by Viet Nam, Sixth Committee, 78th session, 25th plen. mtg. (October 25, 2023), *available at* https://www.un.org/en/ga/sixth/78/pdfs/statements/ilc/25mtg_vietnam_1.pdf.
- ²⁵⁰ Statement by Cuba, Sixth Committee, 78th session, 25th plen. mtg. (October 25, 2023), *available at* https://www.un.org/en/ga/sixth/78/pdfs/statements/ilc/25mtg_cuba_1.pdf.
- ²⁵¹ Statement by Canada, Sixth Committee, 78th session, 25th plen. mtg. (October 25, 2023), *available at* https://www.un.org/en/ga/sixth/78/pdfs/statements/ilc/25mtg_canada_1.pdf.
- ²⁵² Statement by Samoa (on behalf of Alliance of Small Island States (AOSIS)), Sixth Committee, 78th session, 27th plen. mtg. (October 27, 2023), *available at* https://www.un.org/en/ga/sixth/78/pdfs/statements/ilc/27mtg_aosis_1.pdf.
- ²⁵³ Statement by Sierra Leone, Sixth Committee, 78th session, 27th plen. mtg. (October 27, 2023), *available at* https://www.un.org/en/ga/sixth/78/pdfs/statements/ilc/27mtg_sierraleone_1.pdf.
- ²⁵⁴ Statement by Malta, Sixth Committee, 78th session, 27th plen. mtg. (October 27, 2023), *available at* https://www.un.org/en/ga/sixth/78/pdfs/statements/ilc/27mtg_malta_1.pdf.
- ²⁵⁵ Statement by Colombia, Sixth Committee, 78th session, 27th plen. mtg. (October 27, 2023), *available at* https://www.un.org/en/ga/sixth/78/pdfs/statements/ilc/27mtg_colombia_1.pdf.
- ²⁵⁶ Statement by Federated States of Micronesia, Sixth Committee, 78th session, 27th plen. mtg. (October 27, 2023), *available at* https://www.un.org/en/ga/sixth/78/pdfs/statements/ilc/27mtg_micronesia_1.pdf.
- ²⁵⁷ Statement by Indonesia, Sixth Committee, 78th session, 27th plen. mtg. (October 27, 2023), *available at* https://www.un.org/en/ga/sixth/78/pdfs/statements/ilc/27mtg_indonesia_1.pdf.
- ²⁵⁸ Statement by Guatemala, Sixth Committee, 78th session, 27th plen. mtg. (October 27, 2023), *available at* https://www.un.org/en/ga/sixth/78/pdfs/statements/ilc/27mtg_guatemala_1.pdf.
- ²⁵⁹ Statement by Papua New Guinea, Sixth Committee, 78th session, 27th plen. mtg. (October 27, 2023), *available at* https://www.un.org/en/ga/sixth/78/pdfs/statements/ilc/27mtg_papua_1.pdf.
- ²⁶⁰ Statement by Argentina, Sixth Committee, 78th session, 28th plen. mtg. (October 27, 2023), *available at* https://www.un.org/en/ga/sixth/78/pdfs/statements/ilc/28mtg_argentina_1.pdf.
- ²⁶¹ Statement by the Republic of Korea, Sixth Committee, 78th session, 28th plen. mtg. (October 27, 2023), *available at* https://www.un.org/en/ga/sixth/78/pdfs/statements/ilc/28mtg_rok_1.pdf.
- ²⁶² Statement by Côte d’Ivoire, Sixth Committee, 78th session, 28th plen. mtg. (October 27, 2023), *available at* https://www.un.org/en/ga/sixth/78/pdfs/statements/ilc/28mtg_cotedivore_1.pdf.
- ²⁶³ Statement by Jamaica, Sixth Committee, 78th session, 28th plen. mtg. (October 27, 2023), *available at* https://www.un.org/en/ga/sixth/78/pdfs/statements/ilc/28mtg_jamaica_1.pdf.
- ²⁶⁴ Statement by Tonga, Sixth Committee, 78th session, 28th plen. mtg. (October 27, 2023), *available at* https://www.un.org/en/ga/sixth/78/pdfs/statements/ilc/28mtg_tonga_1.pdf.
- ²⁶⁵ Statement by the Philippines, Sixth Committee, 78th session, 28th plen. mtg. (October 27, 2023), *available at* https://www.un.org/en/ga/sixth/78/pdfs/statements/ilc/28mtg_philippines_1.pdf.
- ²⁶⁶ Statement by New Zealand, Sixth Committee, 78th session, 25th plen. mtg. (October 25, 2023), *available at* https://www.un.org/en/ga/sixth/78/pdfs/statements/ilc/25mtg_newzealand_1.pdf.

widespread endorsement from a diverse range of States underscores the importance of the principles of legal stability and equity foundational to the UNCLOS.²⁶⁷ New Zealand emphasized that preserving maritime zones benefits not only Pacific neighbors but also the global community at large.²⁶⁸

Opinio juris, on the other hand, is a sense of legal obligation and indicates that states act in a manner due to an acknowledgement or belief that they are legally required to do so, which distinguishes custom from mere habits or policies.²⁶⁹ *Opinio juris* is demonstrated through declarations made by States and their governments, and decisions or advisory opinions of international tribunals.²⁷⁰ In line with this, statements by judges, and recent state declarations support the transition to a fixed baselines approach.

As early as 2003, Judge José Luis Jesus of the ITLOS held the view that “once baselines are set in accordance with UNCLOS, they should remain fixed even in the face of sea-level rise.”²⁷¹ Judge Jesus believes this principle should also extend to newly formed islands and to the future classification of rocks as either habitable or uninhabitable.²⁷² In support of this view, the ILA reported that as of 2021, States party and non-States party alike, including the U.S., Japan, and the EU, announced their support for the stability of baselines in light of sea-level rise²⁷³ emphasizing that “it would be in the interest of legal certainty for States to consider adopting a fixed baselines approach.”²⁷⁴ Clearly, more States have rapidly acknowledged the legal necessity to adopt a fixed-baselines across the international landscape.

Baselines are not merely geographical but have significant legal implications, characterized by legal stability that should not shift with geographical changes. The law of the sea prioritizes the stability and security of international relations, including boundary regimes. While the law of the sea inherently deals with

²⁶⁷ Statement by New Zealand, Sixth Committee, 78th session, 25th plen. mtg. (October 25, 2023), available at https://www.un.org/en/ga/sixth/78/pdfs/statements/ilc/25mtg_newzealand_1.pdf.

²⁶⁸ *Id.*

²⁶⁹ Military and Paramilitary Activities in and against Nicaragua (Nicar. v. U.S.), Judgment, 1986 I.C.J. 14, ¶ 207 (Jun. 27).

²⁷⁰ *Id.*

²⁷¹ Jesus, Jose Luis, *Rocks, New-Born Islands, Sea Levels Rise and Maritime Space, in Negotiating for Peace: Liber Amicorum Tono Eitel* 579, 601 (Jochen Abr. Frowein et al. eds., 2003).

²⁷² *Id.*

²⁷³ ILA Athens, at 22.

²⁷⁴ ILA Athens, at 14.

geographical elements where change is constant, the law itself provides the necessary stability and security, aligning with the objectives of the UNCLOS. Thus, when negotiating boundaries, the UN Division for Ocean Affairs and the Law of the Sea advises States to disregard potential future geographical or geological changes and their impacts on resource distribution or equity.²⁷⁵

Further, the UNCLOS is not the only framework governing maritime affairs; it is complemented by other conventions like the VCLT, which underscores the stability of boundary agreements irrespective of geographical changes.²⁷⁶ Thus, despite shifts in geography and baselines, maritime boundary agreements and their coordinates remain secure and stable, ensuring legal consistency and continuity.

The widespread State practice, especially of specially affected States, coupled with *opinio juris* support the crystallization of fixed baselines as a customary interpretation of normal baselines under UNCLOS, intending to stabilize maritime rights of coastal States faced with the threat of sea-level rise.

II. PROTECTION MEASURES AND ADAPTATION STRATEGIES

Alongside legal strategies, many States have turned to physical measures to preserve their coastal features and, with them, their maritime entitlements. Hard engineering solutions, including the building of sea walls, groynes, and structures to dampen waves—such as revetments, offshore breakwaters, rock armor, and gabions—are designed to secure the coastline’s position and safeguard crucial infrastructure within coastal areas.²⁷⁷

Under international law, there are no restrictions preventing a coastal State from physically protecting these critical assets, although such measures might only offer short- to medium-term relief.²⁷⁸ The Tribunal in the *South China Sea Arbitration* found that enhancing an already fully entitled island to preserve its habitability did not affect its capacity to sustain the full array of maritime zones.²⁷⁹

²⁷⁵ UN HANDBOOK ON DELIMITATION, *supra* note 159, ¶¶239 – 324.

²⁷⁶ VCLT, art. 62(2).

²⁷⁷ Schofield, Clive H., *Shifting Limits? Sea Level Rise and Options to Secure Maritime Jurisdictional Claims*, 4 CARBON & CLIMATE L. REV. 405 (2009), at 411.

²⁷⁸ *The Case of the S.S. Lotus* (France v. Turkey), Judgment, 1927 P.C.I.J. (ser. A) No. 10 (Sept. 7).

²⁷⁹ *Philippines v. China*, ¶511.

While a completely artificial island does not create any maritime zones, international law does allow for the protection of existing islands or features that generate a territorial sea or an EEZ to prevent their disappearance, even though the cost might be prohibitively high.

At one end of the spectrum, it is noted that placing a simple structure like a lighthouse or even a framework with a solar-powered light on a low-tide elevation qualifies it as a basepoint for establishing straight²⁸⁰ or archipelagic baselines.²⁸¹ Moreover, the outermost permanent structures of a harbor, such as breakwaters and groynes connected to the coast, are considered part of the coastline that can be extended, although this does not apply to offshore artificial islands or structures.²⁸²

Conversely, international law allows a coastal State to expand its land mass through environmentally responsible land reclamation and to enhance or elevate existing islands to preserve their natural maritime entitlements.²⁸³ For instance, Pulau Nipa in the Singapore Strait, once diminished to one hectare due to sand mining, was restored in 2004 to about 60 hectares and remains part of Indonesia's archipelagic baseline system, also serving as a crucial point for delineating maritime boundaries with Singapore.²⁸⁴

Verily, the *South China Sea Arbitration* Tribunal clarified that it is not permissible under international law to transform a naturally occurring low-tide elevation or “rock” into an island to claim a broader range of maritime zones.²⁸⁵ The UNCLOS establishes regulations for building artificial islands, installations, and structures within the EEZ²⁸⁶ or on the continental shelf,²⁸⁷ granting the coastal State exclusive rights over these constructions. However, these structures do not confer any maritime zones typically associated with natural features.²⁸⁸

²⁸⁰ UNCLOS, art. 7(4).

²⁸¹ UNCLOS, art. 47(4).

²⁸² UNCLOS, art. 11.

²⁸³ *Sovereignty over Pedra Branca/Pulau Batu Puteh, Middle Rocks and South Ledge* (Malaysia/Singapore), Judgment, 2008 I.C.J. Rep. 12 (May 23).

²⁸⁴ Freestone, David and Schofield, Clive, *Sea Level Rise and Archipelagic States: A Preliminary Risk Assessment*, 35 OCEAN YEARBOOK 240 (2021), 40.

²⁸⁵ *Philippines v. China*, ¶¶621–22.

²⁸⁶ UNCLOS, art. 60.

²⁸⁷ UNCLOS, art. 80.

²⁸⁸ UNCLOS, art. 60.

Physical defenses, such as constructing sea walls, groynes, and other wave reduction structures like revetments and breakwaters, can have significant adverse effects, including disrupting natural sediment flows and causing unintended erosion or deposition in other areas.²⁸⁹ Such effects often extend beyond the intended protection area, affecting natural erosion processes and sediment supply to adjacent regions. For example, on the east coast of England, erosion rates increased significantly along a 15 km stretch adjacent to a sea walled section over 50 years.²⁹⁰ These interventions can also impede accretion in environments like estuaries and wetlands, increasing flood risks as sea levels rise.²⁹¹ This is especially problematic for coral islands that rely on uninterrupted sediment flows for their structural integrity.²⁹²

Low-lying coastal states, like the Netherlands, have historically utilized land reclamation projects to expand and fortify their coastlines.²⁹³ Similarly, island nations facing threats from rising sea levels could adopt strategies like building artificial or even floating islands. The Maldives, for instance, is actively engaged in creating large artificial islands, elevating them about 3 meters above sea level and reinforcing them with concrete to provide safe havens for its population.²⁹⁴ Although artificial islands and structures, as defined by Article 60(8) of the UNCLOS, do not have the status of natural islands and cannot possess their own territorial sea or influence maritime boundary delimitation, these initiatives can extend and potentially preserve natural land features through reclamation efforts.

The unilateral construction of coastal defenses can also impact neighboring countries, potentially leading to international liability.²⁹⁵ For instance, actions that disrupt sediment flows have exacerbated coastal erosion in West Africa²⁹⁶ and

²⁸⁹ Freestone & Pethick, *supra* note 24, at 73 – 90.

²⁹⁰ Pethick, J., *Waves of Change: Coastal Response to Sea Level Rise*, 19 GEOGRAPHICAL ANALYSIS 1 (1989), 1–4.

²⁹¹ *Id.*

²⁹² Kenchington, Richard, *Maintaining Coastal and Lagoonal Ecosystems and Productivity*, PROCEEDINGS OF THE INTERNATIONAL SYMPOSIUM ON ISLANDS AND OCEANS (Hiroshi Terashima ed., 2009), at 4.

²⁹³ Hoeksema, Robert J., *Three stages in the history of land reclamation in the Netherlands*, 56 IRRIGATION AND DAMAGE 113 (2007).

²⁹⁴ Morris, Chris, *Maldives Rises to Climate Challenge*, BBC News Online (March 17, 2009), *available at* http://news.bbc.co.uk/2/hi/south_asia/7946072.stm.

²⁹⁵ Freestone & Pethick, *supra* note 24, at 73–90.

²⁹⁶ Shannon, E. H., *Coastal Erosion and Management along the Coast of Liberia* in CHANGING CLIMATE AND THE COAST (IPCC Working Group III, J. Titus ed., 1990), 25–48.

affected sedimentation patterns in the North Sea,²⁹⁷ impacting coastal mudflats and marshes crucial for ecological balance. Such situations have raised concerns similar to those in transboundary river management, where interventions in one country can harm another's environment.

International law, as reflected in cases like the *Trail Smelter Arbitration*²⁹⁸ and the *Corfu Channel*,²⁹⁹ asserts that no State should use its territory to cause significant harm to other States. In the modern context, this principle extends to responsibilities against activities that might damage the global ecosystem.

These approaches are permissible under international law, provided they do not artificially create new maritime entitlements in violation of UNCLOS Article 60(8). For instance, enhancing existing natural features is acceptable, while building entirely new artificial islands does not confer EEZs or continental shelves. However, such projects come with environmental and legal risks, including unintended harm to neighboring States through sediment disruption or ecological damage. As international law evolves, States must pursue adaptive measures that are ecologically sound, legally compliant, and regionally cooperative.

²⁹⁷ Dronkers, J., et. al., *Suspended Sediment Transport Processes in the Southern North Sea*, in RESIDUAL CURRENTS AND LONGSHORE TRANSPORT (R.T. Cheng ed., 1990).

²⁹⁸ *Trail Smelter* (U.S. v. Can.), 3 R.I.A.A. 1922 (1938).

²⁹⁹ *Corfu Channel*, ¶22.

CHAPTER SIX: CONCLUSION AND RECOMMENDATIONS

I. CONCLUSION

This Study has argued that international law must evolve to meet the existential challenge posed by sea-level rise. As coastlines retreat, so too do the legal guarantees upon which States rely to preserve sovereignty, economic rights, and territorial integrity. This silence in UNCLOS leaves the most vulnerable States at risk of losing not just land, but legal identity.

In response, the Study proposes the fixed baselines theory: a principled and legally defensible approach that allows maritime zones to remain legally stable despite geographic changes. By interpreting UNCLOS through the lens of equity, sustainability, and treaty interpretation, fixed baselines offer a path that upholds certainty and justice without requiring radical treaty reform. Yet the adoption of fixed baselines must be paired with broader legal and institutional engagement. International legal order cannot stand still while the world changes. Legal certainty, especially for nations facing irreversible harm, must become a priority, grounded not only in doctrine, but also in conscience.

II. RECOMMENDATIONS

To operationalize this vision, the Study proposes a three-pronged legal strategy:

1. That the UN General Assembly adopt a resolution affirming the legality of fixed baselines under Article 5 of the UNCLOS;³⁰⁰

This would send a clear message of international consensus and moral solidarity, especially for States already adhering to fixed baselines. While non-binding,³⁰¹ such a resolution would shape State behavior and reinforce the interpretive legitimacy of fixed baselines in customary law.³⁰²

³⁰⁰ See Annex A: Draft UN General Assembly Resolution to Safeguard Maritime Rights Of Coastal States Amidst Sea-Level Rise.

³⁰¹ Schwebel, Stephen M., *The Effect of Resolutions of the U.N. General Assembly on Customary International Law*, 73 PROC. OF THE AM. SOC'Y OF INT'L L. 301, 301 (1979).

³⁰² *Id.*

2. **That the UN General Assembly requests an Advisory Opinion from the ITLOS on the proper interpretation of baselines in the UNCLOS;**³⁰³ and This would clarify the legal status of baselines under sea-level rise, guiding both adjudication and State practice. As shown in its 2024 Advisory Opinion on climate change,³⁰⁴ ITLOS can be a powerful voice in shaping progressive legal norms grounded in environmental stewardship.
3. **That the UNCLOS States Parties negotiate an implementing agreement under UNCLOS specific to sea-level rise.**³⁰⁵

A long-term, binding solution would provide uniformity, institutional legitimacy, and legal durability. This agreement can codify fixed baselines, establish protocols for vulnerable States, and integrate environmental realities into the law of the sea.

Together, these proposals advance a multi-level legal response that ensures coastal States are not left behind by rising tides. They embody the values of protecting liberty through legal certainty, and nurturing prosperity through equitable governance.

In a time of climate crisis, international law must rise. With clarity, compassion, and collective resolve, the global community can reaffirm its commitment to a rule of law that defends the rights of all nations, especially those with the most to lose and the least capacity to defend themselves. Justice demands nothing less.

³⁰³ See **Annex B: Draft Written Application to the ITLOS for Request for an Advisory Opinion on the Interpretation of Baselines under UNCLOS.**

³⁰⁴ *ITLOS Advisory Opinion*, ¶202.

³⁰⁵ See **Annex C: Draft Implementing Agreement to the United Nations Convention on the Law of the Sea on Sea-Level Rise Adaptation.**

**ANNEX A: DRAFT UN GENERAL ASSEMBLY RESOLUTION TO
SAFEGUARD MARITIME RIGHTS OF COASTAL STATES AMIDST SEA-
LEVEL RISE**

United Nations
A/RES/xx/xxx



GENERAL ASSEMBLY

General

2024

Distr:

17 June

Eightieth session
Agenda item 1

**Protection of Maritime Rights Amidst Climate Change-Induced Sea-Level
Rise**

The General Assembly,

Mindful of the purposes and principles of the United Nations,

Bearing in mind its functions and powers under the Charter of the United Nations,

Reaffirming the United Nations Convention on the Law of the Sea (UNCLOS) as the cornerstone of maritime law that governs all aspects of ocean space and its resources,

Recognizing the significant challenges posed by climate change, particularly sea-level rise, to the integrity of coastal and island States' maritime zones,

Acknowledging the need for legal clarity and stability concerning the interpretation and application of UNCLOS provisions amidst these challenges,

Observing the urgent need to adapt the existing legal framework to ensure it adequately protects the maritime rights of coastal States in a changing environment,

1. *Affirms* that Article 5 of the UNCLOS permits States to fix their baselines in accordance with their charted low-water line, thereby ensuring the stability of maritime zones against the impacts of sea-level rise;
2. *Encourages* Member States to actively consider and propose necessary amendments to the UNCLOS aimed at addressing the challenges posed by sea-level rise, ensuring the sustainable and equitable use of maritime resources, and protecting the rights and territories of affected states;
3. *Requests* the International Tribunal for the Law of the Sea to provide an Advisory Opinion on the proper interpretation of baselines under UNCLOS in the context of dynamic coastal changes resulting from sea-level rise; and
4. *Decides* to remain seized of the matter and to review progress on this issue at its next session.

EXPLANATORY NOTE

1. The phenomenon of sea-level rise, driven by climate change, presents unprecedented challenges to coastal and island States, particularly those whose survival and maritime entitlements are directly threatened. While UNCLOS serves as the cornerstone of international maritime law, it does not explicitly address the impacts of environmental changes on baselines or maritime boundaries. This legal gap undermines the stability and certainty of maritime zones, critical to the territorial integrity and sovereign rights of States.
2. Although UNCLOS primarily governs maritime zones rather than territorial sovereignty, its provisions indirectly affect territorial claims by delineating EEZs, territorial seas, and continental shelves. Ensuring clarity and stability in these maritime zones through legal interpretations of UNCLOS provisions

is critical for safeguarding the rights of States disproportionately affected by climate change. The resolution leverages the authority of the General Assembly to provide guidance, facilitate dialogue, and request interpretations to reinforce international law's adaptability and equity.

On Paragraph 1: Affirmation of the Fixed Baselines Theory

3. Article 5 of UNCLOS defines the normal baseline as the low-water line along the coast as marked on officially recognized charts. This provision has been interpreted to permit the fixing of baselines based on the charted low-water line, as supported by treaty interpretation principles under the VCLT and the *travaux préparatoires* of UNCLOS. Affirming this interpretation ensures that maritime zones remain stable even as coastlines physically change due to sea-level rise.
4. By affirming the permissibility of fixed baselines, the resolution provides legal certainty to coastal States, reducing disputes and ensuring that maritime zones remain intact despite physical coastline changes. This approach protects the sovereign rights of vulnerable States while reinforcing legal stability in maritime governance.

On Paragraph 2: Encouragement for Amendments to UNCLOS

5. While the resolution interprets existing provisions to support fixed baselines, it acknowledges the need for long-term solutions. Encouraging Member States to consider amendments to UNCLOS facilitates dialogue on the challenges posed by sea-level rise and aligns international law with evolving environmental realities. This provision ensures that sustainable and equitable use of maritime resources is maintained while addressing the unique vulnerabilities of Small Island Developing States (SIDS) and other coastal States.
6. Proposing amendments to UNCLOS would create a platform for collective action and policy innovation. It balances the need for stability with the requirement to adapt international law to changing environmental and geopolitical contexts.

On Paragraph 3: Request for an Advisory Opinion from ITLOS

7. An Advisory Opinion from ITLOS provides authoritative legal interpretation of UNCLOS provisions, particularly Article 5, in light of dynamic coastal changes caused by sea-level rise. This request aligns with Article 21 of the ITLOS Statute, which authorizes the tribunal to provide advisory opinions on legal questions related to the law of the sea. An Advisory Opinion would clarify ambiguities in the interpretation of baselines, offering guidance to States and reducing potential disputes.
8. An Advisory Opinion strengthens the legal framework by providing a definitive interpretation of baselines, guiding future State practice, and enhancing the legitimacy of international law in addressing climate-related challenges. It ensures that legal interpretations are grounded in judicial reasoning, fostering consistency and predictability.

On Paragraph 4: Commitment to Continued Engagement

9. The General Assembly's decision to remain seized of the matter emphasizes the importance of ongoing monitoring and dialogue. Sea-level rise is a progressive issue, and its implications will evolve over time. Ensuring periodic reviews allows the international community to assess the effectiveness of measures taken and adapt them as necessary.
10. This provision underscores the General Assembly's role as a central forum for addressing global challenges and ensures sustained attention to the issue, fostering accountability and international cooperation.
11. This resolution does not seek to redefine territorial sovereignty but rather focuses on ensuring stability and clarity in maritime zones, which are inherently linked to State rights and resource entitlements. By addressing sea-level rise through the existing UNCLOS framework, the resolution reinforces the adaptability of international law without necessitating the creation of entirely new legal regimes.
12. While UNCLOS primarily delineates maritime zones, its implementation impacts territorial claims as a by-product, particularly for vulnerable States. This resolution strengthens these States' claims by providing interpretive

clarity and encouraging legal mechanisms that preserve their rights in the face of environmental challenges. It also highlights the General Assembly's role as a platform for fostering dialogue and generating collective responses to pressing global issues, ensuring equity and sustainability in maritime governance.

**ANNEX B: WRITTEN APPLICATION TO THE ITLOS FOR REQUEST FOR
AN ADVISORY OPINION ON THE INTERPRETATION OF BASELINES
UNDER UNCLOS**

United Nations
A/RES/xx/xxx



GENERAL ASSEMBLY

General

2024

Distr:

17 July

Eighty-one session
Agenda item 1

**Request for an Advisory Opinion on the Interpretation of Baselines under the
United Nations Convention on the Law of the Sea**

The General Assembly,

Mindful of the purposes and principles of the United Nations, including the maintenance of international peace and security and the promotion of friendly relations among nations,

Bearing in mind its functions and powers under the Charter of the United Nations, particularly its role in fostering progressive development and codification of international law,

Recalling the history of treaty development under the United Nations Convention on the Law of the Sea (UNCLOS) and its role as the cornerstone of the legal framework governing the world's oceans and maritime spaces,

Recognizing the unprecedented challenges posed by climate change-induced sea-level rise to the maritime rights and entitlements of coastal States,

Emphasizing the importance of providing legal clarity and stability to protect the territorial integrity, sovereignty, and maritime entitlements of coastal and small island States particularly vulnerable to the impacts of sea-level rise,

Noting the growing divergence in State practice concerning baseline determinations under UNCLOS, particularly the debate between the fixed baselines and ambulatory baselines theories,

Aware of the significant legal, political, and economic implications of sea-level rise on maritime boundaries, resource entitlements, and international peace and security,

Decides, in accordance with Article 96 of the Charter of the United Nations, to request the International Tribunal for the Law of the Sea (ITLOS), pursuant to Article 21 of the Statute of the Tribunal, to render an advisory opinion on the following questions:

1. Does Article 5 of the United Nations Convention on the Law of the Sea permit coastal States to fix their baselines based on the charted low-water line irrespective of subsequent physical changes to the coastline?
2. Under what circumstances, if any, does UNCLOS require coastal States to revise their baselines or maritime boundaries in response to significant coastal changes caused by climate change or other environmental factors?
3. How should the principles of legal stability, equity, and sustainability be balanced in interpreting baseline provisions under UNCLOS in the context of dynamic coastal changes resulting from sea-level rise?

Requests the Secretary-General to ensure the effective communication of this resolution to ITLOS and to provide any necessary support to facilitate the Tribunal's consideration of this request.

Decides to remain seized of the matter and to review progress at its subsequent sessions to ensure continued dialogue and action on this issue.

EXPLANATORY NOTE

1. The unprecedented phenomenon of climate change-induced sea-level rise is reshaping coastlines and creating significant legal, political, and economic challenges for coastal and island States. Under the United Nations Convention on the Law of the Sea (UNCLOS), baselines serve as the foundation for maritime zones, determining territorial seas, exclusive economic zones (EEZs), and continental shelves. However, the prevailing interpretation of baselines as ambulatory—adjusting with changes in the low-water line—raises critical issues for States experiencing significant coastal erosion or submersion.
2. The General Assembly recognizes the need for legal clarity on the matter. UNCLOS remains the cornerstone of maritime law, but it does not explicitly address how baseline provisions should operate in the context of permanent and significant environmental changes. This resolution seeks to bridge the gap by leveraging the advisory jurisdiction of ITLOS to interpret UNCLOS in light of contemporary realities, offering a pathway to address legal ambiguities without necessitating a formal treaty amendment.
3. The resolution requests ITLOS to provide an advisory opinion to clarify whether UNCLOS permits fixed baselines under Article 5. This provision builds on the rules of treaty interpretation under the Vienna Convention on the Law of Treaties (VCLT), emphasizing that the ordinary meaning, context, object, and purpose of Article 5 can support a fixed baseline interpretation. This approach enables ITLOS to address legal ambiguities without requiring a treaty amendment, as Article 31 of the VCLT allows interpretation to adapt treaties to evolving circumstances.
4. The resolution seeks clarity on whether UNCLOS imposes obligations on coastal States to adjust baselines or boundaries in response to sea-level rise. ITLOS can analyze the treaty text, *its travaux préparatoires*, and customary international law to determine whether an ambulatory interpretation is

obligatory or if States have discretion to adopt fixed baselines to protect their maritime zones.

5. The resolution asks ITLOS to address the broader principles that should guide baseline interpretation. This allows ITLOS to provide a balanced perspective that reconciles the need for legal stability with the principles of equity and sustainability, ensuring vulnerable States are not disproportionately disadvantaged by climate change.
6. While many States interpret UNCLOS as requiring ambulatory baselines, ITLOS has the authority to interpret the treaty in light of contemporary circumstances, particularly where the existing text is silent or ambiguous. By emphasizing the treaty's object and purpose—promoting equity, stability, and legal certainty—ITLOS can provide a legally sound basis for fixed baselines within the current framework, avoiding the need for a formal amendment process.

ANNEX C: DRAFT IMPLEMENTING AGREEMENT TO THE UNITED NATIONS CONVENTION ON THE LAW OF THE SEA ON SEA-LEVEL RISE ADAPTATION

IMPLEMENTING AGREEMENT TO THE UNITED NATIONS CONVENTION ON THE LAW OF THE SEA ON SEA-LEVEL RISE ADAPTATION

Preamble

Acknowledging the significant impact of climate change, particularly sea-level rise, on the maritime rights and entitlements of coastal States, and recognizing the urgency to adapt the provisions of the United Nations Convention on the Law of the Sea to these challenges,

Emphasizing the principle of the stability, security, certainty, and predictability of maritime boundaries as fundamental to peaceful relations, equitable resource management, and the protection of marine environments,

Affirming the need to assist States, especially those with low-lying coastal areas and island nations, in their efforts to cope with the effects of sea-level rise,

Recognizing the established practice and growing consensus on the necessity of adapting legal frameworks to accommodate the physical changes brought by climate change,

The Parties to this Agreement,

Have agreed as follows:

Article 1: Objectives

1. To affirm and operationalize the application of fixed baselines for the interpretation of Article 5 of UNCLOS in the context of climate change and sea-level rise.
2. To provide a legal framework that ensures the protection and stability of maritime zones against the physical changes caused by sea-level rise.
3. To promote international cooperation in addressing the impacts of sea-level rise on statehood and maritime entitlements.

Article 2: Affirmation of Fixed Baselines

1. Fixed baselines shall be recognized as permissible under Article 5 of UNCLOS once they have been established and promulgated by a coastal State.
2. Once established, these baselines shall not be subject to alteration due to subsequent physical changes along the coast, including those resulting from sea-level rise, erosion, or accretion.

Article 3: Technical and Financial Assistance

1. Parties agree to facilitate technical and financial assistance to States affected by sea-level rise, enabling them to implement sustainable coastal management and adaptation strategies.
2. Support will be provided through international organizations, development agencies, and bilateral arrangements.

Article 4: Review and Monitoring

1. A Review Committee shall be established to monitor the effects of this Agreement and to propose further measures as necessary.
2. The Committee will consist of representatives from the Parties, scientific experts, and stakeholders from affected communities.

Article 5: Final Provisions

1. This Agreement shall be open for signature by all States Parties to UNCLOS and shall be subject to ratification, acceptance, or approval by the signatory States.

2. The Agreement shall enter into force on the thirtieth day after the date of deposit of the tenth instrument of ratification, acceptance, approval, or accession.

Done at [Location] on [Date].

EXPLANATORY NOTE

1. While UNCLOS remains the cornerstone of international maritime law, it does not explicitly address the dynamic challenges posed by sea-level rise. The lack of specific provisions for adapting baselines and maritime entitlements leaves coastal States, particularly low-lying and island nations, vulnerable to the loss of maritime zones and associated rights.
2. This implementing agreement seeks to fill this gap by offering a forward-looking framework that operationalizes the principle of fixed baselines, provides practical support to affected States, and fosters international cooperation. It builds on the existing framework of UNCLOS, ensuring continuity and stability while addressing the evolving realities of climate change. Despite the time that has elapsed since UNCLOS was adopted, this agreement reaffirms the convention's adaptability and relevance in addressing contemporary challenges.
3. Critics may question the feasibility of an implementing agreement given the time elapsed since UNCLOS was adopted. However, international law has a long tradition of adopting supplementary agreements to address emerging issues without undermining existing frameworks. The Agreement Relating to the Implementation of Part XI of UNCLOS and the Agreement on the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks are precedents for this approach, demonstrating the adaptability of UNCLOS to evolving challenges.
4. Furthermore, while treaty amendments often require extensive time and negotiation, an implementing agreement provides a more efficient route to address sea-level rise within the existing framework of UNCLOS. This approach preserves legal continuity while offering a tailored response to contemporary issues, making it a pragmatic and timely solution.

On Preamble:

5. The preamble recognizes the existential threat posed by sea-level rise, particularly to coastal and island States, setting the stage for the necessity of this agreement.
6. Stability in maritime boundaries is a fundamental principle of international law, vital for peaceful relations and resource management. This preamble underscores the importance of preserving these principles amidst environmental changes.
7. By emphasizing the need to assist affected States, the preamble highlights the agreement's commitment to equity and solidarity.

On Article 1: Objectives

8. This article establishes the agreement's key goals: affirming fixed baselines, protecting maritime zones, and promoting cooperation.

On Article 2: Affirmation of Fixed Baselines

9. This article explicitly permits coastal States to establish fixed baselines, aligning with the interpretative flexibility of Article 5 of UNCLOS under the Vienna Convention on the Law of Treaties (VCLT).
10. By affirming that established baselines are not subject to change due to physical alterations, this provision provides legal certainty, particularly for States whose coastlines are receding due to sea-level rise.

On Article 3: Technical and Financial Assistance

11. Recognizing the disparity in resources among States, this article ensures that vulnerable nations, particularly Small Island Developing States (SIDS), receive the necessary technical and financial support to implement adaptation strategies.

12. The article provides a framework for mobilizing resources through international organizations, development agencies, and bilateral arrangements, promoting equitable access to support.

On Article 4: Review and Monitoring

13. Establishing a Review Committee ensures that the agreement remains responsive to new scientific developments and emerging challenges, providing a mechanism for ongoing assessment and adaptation.

14. The inclusion of representatives from affected communities and scientific experts ensures that the agreement is grounded in both practical realities and scientific evidence.

On Article 5: Final Provisions

15. This article provides the procedural framework for the agreement's adoption and implementation, ensuring that it aligns with international treaty practices.

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