



The Commonwealth

Meeting of Law Ministers and Attorneys General of
Small Commonwealth Jurisdictions (LMSCJ)

Meeting Paper

Marlborough House, London, 4-5 October 2018

Provisional Agenda Item 5

LMSCJ(18)7

Legal Implications of Rising Sea Levels

Paper by the Commonwealth Secretariat

Summary

This paper presents a number of the most important legal implications of rising sea levels. Rising sea levels raise questions principally in public international law, and particularly in the law of the sea, as well as areas of domestic law. The paper notes important developments in global academic opinion in this area and makes recommendations for action in response to these developments.

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I. Introduction

1. Rising sea levels resulting from climate change present a number of challenges to international law and to various domestic legal areas. These challenges are of particular concern to small island developing states. Rising sea levels will have consequences affecting maritime jurisdiction and boundaries and, in extreme cases, the survival of statehood. People will be displaced, both within and across borders, with potential consequences for international human rights and environmental law.

2. At their meeting in London on October 2016, law ministers and attorneys general noted a number of emerging legal issues that may be associated with the consequences of climate change, and requested the Secretariat to produce a research paper to be submitted to the next Law Ministers and Attorneys General of Small Commonwealth Jurisdictions Meeting (LMSCJ). In preparation for the research paper, the Secretariat conducted informal consultations to consider the legal issues associated with sea level rise on the margins of the Twenty-third Annual Conference of the Parties (COP 23) to the 1992 United Nations Framework Convention on Climate Change (UNFCCC). This paper outlines the legal issues noted by law ministers and considers potential developments, reforms or measures which may take place at the international and national levels in response.

II. The scientific context and the response

3. At the outset, it is relevant to set out the scientific reality that forms the context to the legal dimension of sea level rise. Sea level rise, that which has occurred and that which is to come, is an accepted scientific fact. The fifth *Assessment Report* (AR5) of the Intergovernmental Panel on Climate Change (IPCC), published in full in 2014, confirms that the amount of global mean sea level rise in the course of the twentieth century and the first decade of the twenty-first century was 20cm. Regarding future sea level rise, AR5 contains an upper end prediction of a 98cm rise in sea levels from existing levels by 2100, with significant regional deviations from the mean amount of sea level rise. A rise in sea levels of this magnitude will pose an existential threat to people in low-lying coastal areas or in small island states. It is a threat that will remain and endure. Looking beyond this century, AR5 is 'virtually certain' that sea levels will continue to rise for hundreds of years, even if greenhouse gas concentrations in the atmosphere are stabilised.

4. The consequences of rising sea levels have preoccupied scholars of international law since the scale of the coming change began to become apparent in the earlier IPCC Assessment Reports. Commonwealth leaders identified sea level rise as a global environmental challenge in the *Commonwealth Expert Group Climate Change Report* and the Langkawi Declaration, both in the year 1989. More recently, the International Law Association (ILA) has focused its attention on the issue. The ILA is an influential grouping of international law scholars that leads international opinion on developing international law and holds consultative status with a number of UN specialised agencies. In November 2012, following the recommendations of its Baselines Committee, the ILA established the Committee on International Law and Sea Level Rise ('Sea Level Rise Committee') with a two-part mandate:

- i. to study the possible impacts of sea level rise and the implications under international law of the partial and complete inundation of state territory, or depopulation thereof, in particular of small island and low-lying states; and
- ii. to develop proposals for the progressive development of international law in relation to the possible loss of all or of parts of state territory and maritime zones due to sea level rise, including the impacts on statehood, nationality and human rights.¹

5. The Sea Level Rise Committee comprises 34 distinguished academics and their alternates, in addition to the Chair, Professor Davor Vidas, and the Co-Rapporteurs, Professors David Freestone and Jane McAdam. The interim report of the Sea Level Rise Committee was published in August 2016 at the ILA conference in Johannesburg. The final report was published in August 2018 at the ILA conference in Sydney. The recommendations of the final report were adopted by the ILA in the form of two resolutions at the Sydney conference.² This paper draws extensively from the conclusions and perspectives of both reports.³

6. The Commonwealth has a long history of engagement with the challenges and opportunities posed by the world's oceans through the work of its Oceans and Natural Resources Section. At the Commonwealth Heads of Government Meeting in the United Kingdom in April 2018, the Heads of Government adopted the Blue Charter, which mandates 'a Commonwealth Blue Charter plan of action focused around Action Groups, led by Commonwealth member countries, which will collaborate with partners at national, regional and international levels, in addressing identified priority ocean issues of member countries'. The Blue Charter specifically recognises that some ocean challenges are common across the Commonwealth, such as 'managing the impact of climate change, including sea level rise'.

7. In response to the request from law ministers and attorneys general of small Commonwealth jurisdictions, and with a view to clearly identifying specific legal challenges and possible responses, this paper addresses: (i) sea level rise and maritime zones; (ii) sea level rise and maritime boundary agreements; (iii) sea level rise and statehood; (iv) sea level rise and human rights; and (v) sea level rise and disaster risk management laws. The paper has been prepared by the Secretariat Governance and Peace Directorate, in close collaboration with the Trade, Oceans and Natural Resources Directorate.

III. Sea level rise and maritime zones

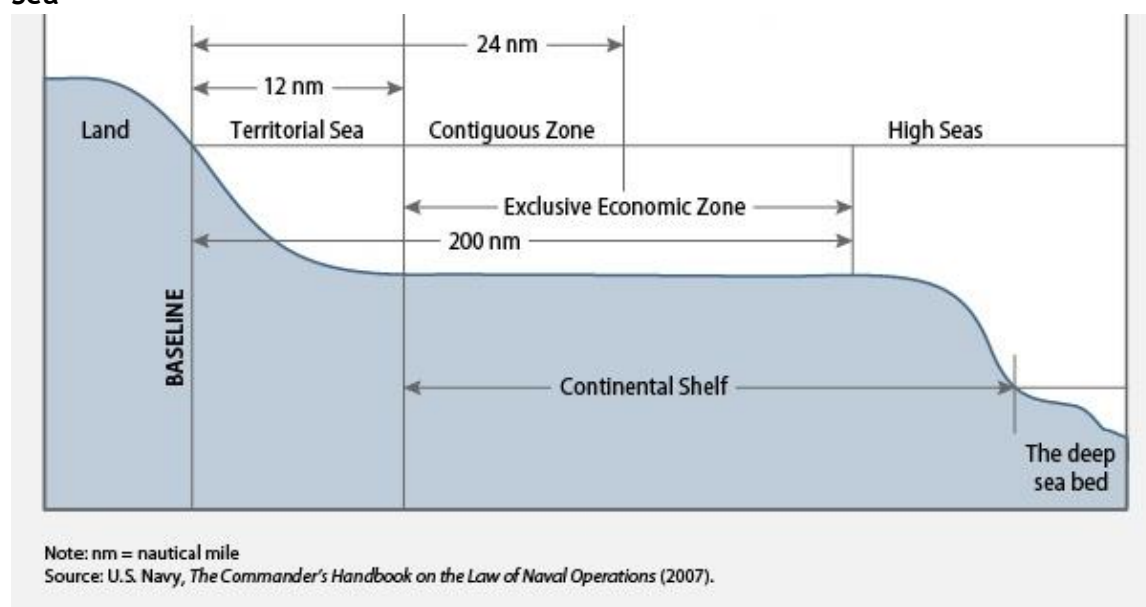
¹ ILA, *International Law and Sea Level Rise: Interim Report* (2016) 1; ILA, *International Law and Sea Level Rise: Report* (2018) 1.

² ILA, Resolution 5/2018: Committee on International Law and Sea Level Rise (2018); ILA, Resolution 6/2018: Committee on International Law and Sea Level Rise (2018).

³ The reports of the Sea Level Rise Committee are available at: <<http://www.ila-hq.org/index.php/committees>>. Other significant scholarly sources consulted for this paper include: Michael B Gerrard and Gregory E Wannier, *Threatened Island Nations* (Cambridge University Press 2013); Jenny Grote Stoutenberg, *Disappearing Island States in International Law* (Brill Nijhoff 2015); and Jane McAdam, *Climate Change, Forced Migration, and International Law* (Oxford University Press 2012).

8. The question of whether or how sea level rise will affect the extent and nature of coastal states' maritime jurisdictions or zones arises because those maritime zones are determined by direct reference to shorelines or coastlines, which are expressed in the law of the sea as 'baselines'. Under the law of the sea as set out in the 1982 United Nations Convention on the Law of the Sea ('the Convention'), a state's maritime zones are usually measured from the 'normal' baseline, determined in accordance with Article 5, which provides: 'Except where otherwise provided in this Convention, the normal baseline for measuring the breadth of the territorial sea is the low-water line along the coast as marked on large-scale charts officially recognized by the coastal State'.

Figure 1 Maritime zones in the 1982 United Nations Convention on the Law of the Sea



9. It is from this 'normal' baseline that most coastal states measure their territorial sea (Article 3), contiguous zone (Article 33), exclusive economic zone (Article 57) and continental shelf (Article 76(1)). Archipelagic states are entitled to draw 'archipelagic' baselines, 'joining the outermost points of the outermost islands and drying reefs of the archipelago provided that within such baselines are included the main islands and an area in which the ratio of the area of the water to the area of the land, including atolls, is between 1 to 1 and 9 to 1' (Article 47(1)). A coastal state is also entitled to draw 'straight' baselines to establish the breadth of its territorial sea, where its coastline is deeply indented, cut into or where fringing islands are present along its coast. These must follow the general direction of the coast (Article 7). Unlike normal baselines, straight baselines, bay closing lines and archipelagic baselines have to be declared and given due publicity either on large-scale charts used by the states or a list of geographical co-ordinates, deposited with the United Nations (Article 16 (2); 47(9)).

10. In a world of rising sea levels and shifting baselines, the law of the sea must answer the question of whether the outer limits of each of these maritime zones moves landward as the relevant baselines do so. The question is particularly stark when asked

of archipelagic baselines: If a geographical feature forming a base point is submerged, does that baseline cease to exist?

11. In the maritime boundary arbitration between Bangladesh and India, the tribunal was asked to consider that certain of the low-tide elevations selected as base points for the purposes of delimiting the maritime boundary would disappear as the sea level rose. Rather than answer the question of the effect of future sea level rise, the tribunal held that this was not relevant for the purposes of the arbitration, as '[t]he issue is not whether the coastlines of the Parties will be affected by climate change in the years or centuries to come. It is whether the choice of basepoints located on the coastline and reflecting the general direction of the coast is feasible in the present case and at the present time'.⁴

12. Scholars have attempted to engage with the question of the effect of disappearing base points on baselines more directly than has been possible in the case law to this point. The current prevailing opinion is reflected in the report of the Baselines Committee of the ILA.⁵ That prevailing opinion holds that, under the law as it is, maritime zones do move as the baselines controlling them shift. This shift takes place even if the charts marking and recording the baselines do not keep up with the physical changes to the baselines.

13. In the past, the wording of Article 5 has given rise to some ambiguity as to whether the legal normal baseline is the actual low-water line, or whether it is the line as marked on a chart, regardless of that chart's correlation to reality. The Baselines Committee of the ILA considered this issue in its 2012 report and, having reviewed the case law and scholarly opinion, concluded that although the charted line enjoys a strong presumption of accuracy, 'where significant physical changes have occurred so that the chart does not provide an accurate representation of the actual low-water line at the chosen vertical datum, extrinsic evidence has been considered by international courts and tribunals in order to determine the location of the legal normal baseline'.⁶

14. The Baselines Committee concluded that under the existing law, the legal baseline moves as the actual low-water line moves. That is, the legal normal baseline is 'ambulatory, moving seaward to reflect changes to the coast caused by accretion, land rise, and the construction of human-made structures associated with harbour systems, coastal protection and land reclamation projects, and also landward to reflect changes caused by erosion and sea level rise. Under extreme circumstances the latter category of change could result in total territorial loss and the consequent total loss of baselines and of the maritime zones measured from those baselines. The existing law of the normal baseline does not offer an adequate solution to this potentially serious problem'.⁷

⁴ See: *The Bay of Bengal Maritime Boundary Arbitration (Bangladesh v India)*, PCA Case 2010-16, Award of 7 July 2014, paras 213-215.

⁵ ILA, *Baselines Committee Sofia Report* (2012).

⁶ ILA, *Baselines Committee Sofia Report* (2012) 31.

⁷ *Ibid.*

15. A loss of maritime jurisdiction is the unavoidable consequence of the interaction of the physical reality of sea level rise with the existing law of an ‘ambulatory’ baseline. This consequence is generally accepted by scholars as correct legally, and also widely lamented as an unsatisfactory outcome that strains the normative limits of the law of sea.⁸ Scholars have developed a number of proposals for the progressive development of the law to address the situation and preserve maritime zone entitlements for states affected by sea level rise. These proposals are generally variations on one of two options to ‘freeze’ zone entitlements. The first option would be to propose a new rule freezing existing baselines in their current position, using ‘the large-scale charts officially recognised by the coastal state’ referred to in Article 5 of the Convention. The second option is to establish a new rule under international law that freezes the existing defined outer limits of maritime zones measured from the baselines established in accordance with the Convention.⁹

16. Both options present complications. Regarding the first option, and as set out above, the Baselines Committee has found that the majority of state practice and the preponderance of scholarship support the view that charts are not determinative of the baseline, which is ‘ambulatory’. There are risks inherent in separating the application of a legal rule or concept from its foundation in reality, not least to the perceived legitimacy and consequent durability of that legal rule. The implications of such a rule must be carefully considered. Separating the outer limits of maritime zones from coastal baselines would impact key provisions of the Convention, including the breadth of the territorial sea and of the exclusive economic zone. There is a risk of freezing excessive claims, where states have established baselines in knowing or unknowing violation of the rules of the Convention. Further, the specific point in time at which the ‘freezing’ of the limits of maritime zones occurs must be decided. Perhaps most importantly of all, there is a risk that such moves might undermine or contradict fundamental principles of the law of the sea, particularly the principle that ‘the land dominates the sea’: that is, the principle that geographic facts on the land determine the legal status and regime of the adjacent sea. Interference with fundamental principles such as this can lead to unexpected and undesirable instability, in international law as in any other body of law.

⁸ See, for example, Jenny Groute Stoutenberg, ‘When Do States Disappear?’; Maxine A Burkett, ‘The Nation Ex-Situ’; Ann Powers and Christopher Stucko, ‘The Law of the Sea and the Legal Implications of Rising Sea Levels’; Clive Schofield and David Freestone, ‘Options to Protect Coastlines and Secure Maritime Jurisdictional Claims in the Face of Global Sea Level Rise’; and Rosemary Rayfuse, ‘Sea Level Rise and Maritime Zones: Preserving the Maritime Entitlements of Disappearing States’ in Michael B Gerrard and Gregory E Wannier (eds), *Threatened Island Nations* (2013).

⁹ ILA, *International Law and Sea Level Rise: Interim Report* (2016) 14–16. See also cited therein AHA Soons, ‘The Effects of a Rising Sea Level on Maritime Limits and Boundaries’ (1990) 37 *Netherlands International Law Review* 207; DD Caron, ‘When Law Makes Climate Change Worse: Rethinking the Law of Baselines in Light of Rising Sea Level’ (1990) 17 *Ecology Law Quarterly* 621; DD Caron, ‘Climate Change, Sea Level Rise and the Coming Uncertainty in Oceanic Boundaries’ in Seoung-Yong Hong and JM Van Dyke (eds), *Maritime Boundary Disputes, Settlement Processes, and the Law of the Sea* (2009); JL Jesus, ‘Rocks, New-born Islands, Sea Level Rise and Maritime Space’ in J Frowein et al. (eds), *Negotiating for Peace* (2003); and M Hayashi, ‘Sea Level Rise and the Law of the Sea – Future Options’ in D Vidas and PJ Schei (eds), *The World Ocean in Globalisation: Challenges and Responses* (2011).

IV. Changing international law to freeze maritime zones?

17. If a new rule is considered desirable or necessary to protect the maritime jurisdictions of coastal states from effects of sea level rise, another important question arises: How to institute a change in the law? As the law of the sea now has a treaty basis in the Convention, which both codified the existing customary international law of the sea and developed the law in new directions, a change to the Convention would be the surest way to reflect a new rule accounting for sea level rise. The Convention could be effectively amended in a number of ways: by the addition of a protocol; by the utilisation of the amendment provisions of the Convention; by a decision of a meeting of the state parties to the Convention; by a diplomatic conference including both parties and non-parties (such as the United States) to the Convention; or by an agreement adopted by the UN General Assembly after negotiations with subsidiary agencies. However, although there are many ways to adjust the framework of rules underpinned by the Convention, there are substantial obstacles in the way of each.

18. The Convention was painstakingly negotiated over the course of decades, and is generally considered a significant feat of multilateralism. The appetite of states to reopen the text of the Convention in even a limited capacity is likely to be extremely limited.

19. The alternative option to amending the Convention is for a new rule to emerge in customary international law. Developing customary international law requires state practice and the will of states that is sufficiently widespread and consistent. This does not mean that any particular duration of practice is required, and the assessment of whether a customary rule has developed will depend in each case on the particular context.¹⁰ In circumstances where there is an emergent situation, widespread and consistent practice of the most-affected state is likely to be good evidence of the development of a rule of customary international law. In this context, it is significant that there have been recent interesting developments in state practice from the Pacific region, as noted by the Sea Level Rise Committee¹¹ and by the wider ILA.¹²

20. Seven Pacific leaders, including the leaders of three Commonwealth members, signed the Taputapuātea Declaration on Climate Change on 16 July 2015, ahead of the Twenty-first Session of the Conference of the Parties to the UN Framework Convention on Climate Change (UNFCCC COP 21) in Paris. The Declaration called on the parties to the UNFCCC to:

¹⁰ See: Report of the International Law Commission on its Sixty-eighth session (2 May-10 June and 4 July-12 August 2016) (A/71/10), Draft conclusions on identification of customary international law adopted by the Commission, Conclusion 8(2) ('Provided that the practice is general, no particular duration is required'); and Commentary, 96, para 9 ('a relatively short period in which a general practice is followed is not, in and of itself, an obstacle to determining that a corresponding rule of customary international law exists. While a long duration may result in more extensive relevant practice, time immemorial or a considerable or fixed duration of a general practice is not a condition for the existence of a customary rule'); see also: *North Sea Continental Shelf Cases (Federal Republic of Germany/Denmark; Federal Republic of Germany/Netherlands), Judgment*, ICJ Reports 1969, 43, para 74 ('the passage of only a short period of time is not necessarily, or of itself, a bar to the formation of a new rule of customary international law').

¹¹ ILA, *International Law and Sea Level Rise: Report* (2018) 16.

¹² ILA, Resolution 5/2018: Committee on International Law and Sea Level Rise (2018).

- Accept that climate change and its adverse impacts are a threat to territorial integrity, security and sovereignty and in some cases to the very existence of our islands because of the submersion of existing land and the regression of our maritime heritage.

- Acknowledge, under the [Convention], the importance of the Exclusive Economic Zones for Polynesian Island States and Territories whose areas is calculated according to emerged lands and permanently establish the baselines in accordance with the [Convention], without taking into account sea level rise.¹³

21. Eight Pacific leaders, including the leaders of five Commonwealth members, signed 'The Delap Commitment on Securing Our Common Wealth of Oceans' on 2 March 2018, by which they agreed '[t]o pursue legal recognition of the defined baselines established under the [Convention] to remain in perpetuity irrespective of the impacts of sea level rise'.¹⁴

22. In 2010, several years before the above agreements were signed, the Pacific Islands Forum developed a strategy document called 'Framework for a Pacific Oceanscape'.¹⁵ That document urges all Pacific countries to deposit charts delineating their maritime zones with the United Nations, 'in their national interest', and states:

Once the maritime boundaries are legally established, the implications of climate change, sea level rise and environmental change on the highly vulnerable baselines that delimit the maritime zones of Pacific Island Countries and Territories should be addressed. This could be a united regional effort that establishes baselines and maritime zones so that areas could not be challenged and reduced due to climate change and sea level rise.¹⁶

23. A 'consensus on the importance and priority associated with the formal declaration and lodging of baselines with the United Nations' was also a key outcome of a workshop intended to develop strategies 'to address climate change impacts on jurisdictional claims' conducted by the Food and Agriculture Organization in the Pacific from 2013 to 2015.¹⁷

24. The Sea Level Rise Committee notes a number of examples of state practice from the Pacific region that appear to be implementing this strategy. Marshall Islands

¹³ Signed by the leaders of French Polynesia, Niue, Cook Islands, Samoa, Tokelau, Tonga and Tuvalu. Text at: <http://www.presidence.pf/files/Polynesian_PACT_EN_15-07-15.pdf>.

¹⁴ Signed in Majuro in Marshall Islands by Federated States of Micronesia, Kiribati, Marshall Islands, Nauru, Palau, Papua New Guinea, Solomon Islands and Tuvalu.

¹⁵ C Pratt and H Govan, *Framework for a Pacific Oceanscape: A catalyst for implementation of ocean policy* (Pacific Islands Forum Secretariat November 2010) <<http://www.forumsec.org/wp-content/uploads/2018/03/Framework-for-a-Pacific-Oceanscape-2010.pdf>>.

¹⁶ *Ibid*, 57–58.

¹⁷ Food and Agriculture Organization, *TCP/SAP/3404: Strategies and capacity building in Pacific SIDS to address climate change impacts on jurisdictional claims: Terminal Statement* (2016).

(in 2016),¹⁸ Kiribati (2014)¹⁹ and Tuvalu (2012)²⁰ have legislated to unilaterally declare and publicise their maritime jurisdictional baselines, archipelagic zones and the outer limits of their exclusive economic zone boundaries. The Sea Level Rise Committee is of the view that this appears to be a conscious effort to pre-empt any arguments that baselines or the outer boundaries of maritime zones have shifted as a result of sea level rise.²¹ This practice is also in satisfaction of the due publicity obligations under the Convention.

25. The evidence of emerging state practice regarding the intent of Pacific island states to defend their maritime zones against the effects of rising sea levels is growing. Noting this, and the considerable obstacles to amending the text of the Convention, the Sea Level Rise Committee made the following recommendation in support of this state practice in its 2018 report:

The Committee therefore recommends that a proposal be put together in a Resolution for the International Law Association proposing that States should accept that, once the baselines and the outer limits of the maritime zones of a coastal or an archipelagic State have been properly determined in accordance with the detailed requirements of the [Convention], these baselines and limits should not be required to be recalculated should sea level change affect the geographical reality of the coastline.

The Committee considered that this proposal should remain unchanged as long as there is no different solution agreed upon in a universal, globally applicable treaty.²²

26. The ILA noted this evidence of the emergence of state practice at its conference in August 2018.²³

27. In this way, small island developing states, including a number of Commonwealth member countries, have begun to evidence practice that could, in the future, be consistent with an emerging rule on the freezing of baselines in the face of sea level rise.

V. Sea level rise and maritime boundary agreements

28. There is a related but distinct issue to the loss of maritime space as a consequence of shifting baselines: the effect of those same shifting baselines on settled

¹⁸ Act no 13 of 2016. Text at:

<http://www.un.org/Depts/los/LEGISLATIONANDTREATIES/PDFFILES/DEPOSIT/mhl_mzn120_2016_1.pdf>.

¹⁹ Baselines around the Archipelagos of Kiribati Regulations 2014 (2014). Text at:

<http://www.un.org/Depts/los/LEGISLATIONANDTREATIES/PDFFILES/KIR_2014_archipel_baselines_regulations.pdf>. See also: Exclusive Economic Zone Outer Limit Regulations 2014 (2014) (Kiribati). Text at: <http://www.un.org/depts/los/LEGISLATIONANDTREATIES/PDFFILES/KIR_2014_eez_outer_limits_regulations.pdf>.

²⁰ Declaration of Archipelagic Baselines 2012, LN no 7 of 2012 (Tuvalu). Text at: <http://www.un.org/depts/los/LEGISLATIONANDTREATIES/PDFFILES/tuv_declaration_archipelagic_baselines2012_1.pdf>.

²¹ ILA, *International Law and Sea Level Rise: Report* (2018) 17.

²² *Ibid*, 19.

²³ ILA, Resolution 5/2018: Committee on International Law and Sea Level Rise (2018).

maritime boundaries, agreed by treaty between nation states. Where the territorial seas, exclusive economic zones or continental shelves of two states overlap, the boundary line between them falls to be decided by a negotiated maritime boundary delimitation agreement or by international third-party dispute resolution. The Commonwealth Secretariat, through the work of its Oceans and Natural Resources Section, has provided assistance to many Commonwealth members in negotiating these maritime boundary delimitation agreements.

29. The challenge of rising sea levels in this context is as follows: If two neighbouring states negotiate a maritime boundary delimitation agreement based on an equidistant line between their respective coastal baselines (the most common basis for agreement), what is the effect on that agreement of a landward shift in one of those baselines due to sea level rise? Would this amount to a fundamental change of circumstances which would invalidate the maritime boundary delimitation agreement?

30. The concept of 'fundamental change of circumstances' is referred to in Article 62 of the 1969 Vienna Convention on the Law of Treaties. Article 62(1) reads:

A fundamental change of circumstances which has occurred with regard to those existing at the time of the conclusion of a treaty, and which was not foreseen by the parties, may not be invoked as a ground for terminating or withdrawing from the treaty unless:

- a) the existence of those circumstances constituted an essential basis of the consent of the parties to be bound by the treaty; and
- b) the effect of the change is radically to transform the extent of obligations still to be performed under the treaty.

31. A change in a baseline, however, likely does not qualify as a fundamental change of circumstances relevant to a boundary agreement based on baselines under this test. Article 62(2) specifically excludes the application of the doctrine of fundamental change of circumstances 'if the treaty establishes a boundary'. This provision reflects the customary international law principle of stability of boundaries. Some scholars have argued that the application of Article 62(2) to established maritime boundaries is an open issue.²⁴ But is it strongly arguable that it does apply to established maritime boundaries, because it is long-established that the underlying principle of stability of boundaries applies to maritime boundaries.²⁵ Consistently with this, the Sea Level Rise Committee suggests that in the interests of legal certainty and stability, the impacts of sea level rise on maritime boundaries should not be regarded as a fundamental change of circumstance.²⁶ Research into the *travaux préparatoires* demonstrates that many types of boundary treaties were referred to in the context of the negotiation of the

²⁴ DD Caron, 'Climate Change, Sea Level Rise and the Coming Uncertainty in Oceanic Boundaries' in Seoung-Yong Hong and JM Van Dyke (eds), *Maritime Boundary Disputes, Settlement Processes, and the Law of the Sea* (2009), cited at ILA, *International Law and Sea Level Rise: Interim Report* (2016) 17.

²⁵ See, for example, *Maritime Delimitation in the Area between Greenland and Jan Mayen (Denmark v Norway)*, Judgment, (1993) ICJ Reports 74, para 80 ('the attribution of maritime areas to the territory of a State, which, by its nature, is destined to be permanent'); and *Aegean Sea Continental Shelf (Greece v Turkey)*, Judgment (1978) ICJ Reports 36, para 85 (stating that land and maritime boundaries 'inevitably involve[] the same element of stability and permanence').

²⁶ ILA, *International Law and Sea Level Rise: Report* (2018) 24.

Vienna Convention.²⁷ As a matter of existing law, it is probable that changes in baselines due to sea level rise do not affect the validity of established maritime boundary.

32. However, the stability of settled maritime boundary agreements depends on one underlying presumption that may itself be challenged under certain extreme scenarios of sea level rise: the very statehood of the parties to the agreement. In a case where sea level rise results in a state's entire territory being submerged or becoming uninhabitable, statehood itself comes under question.

VI. Sea level rise and statehood

33. Customary international law stipulates four objective criteria of statehood. A state must possess a defined territory, a permanent population, a government and a certain measure of independence. The loss of any one of these four characteristics would theoretically result in a loss of statehood. In reality, the viability of each characteristic is closely linked to the others, with the link between territory and population particularly relevant. The complete inundation of the territory of a small island state and the relocation of its population would be catastrophic in human and environmental terms. A focus on complete inundation and loss of territory as the indicator of a state's disappearance may therefore be misplaced, as a territory is likely to become uninhabitable some time before it 'sinks'.²⁸ The legal implication of this would be that population, rather than territory, would be first indicia of statehood to fail. But whether through loss of territory or of population, a possible consequence of sea level rise is that some states may cease to meet all four of the traditional criteria and will lose effective statehood. This is perhaps the most dramatic of the possible legal implications of sea level rise, and the one which demonstrates most powerfully the potentially devastating scale of the impact.

34. However, although sea level rise might cause a state to lose its effective statehood under the traditional tests, it does not automatically follow it would cease to exist as an international subject. Some commentators have argued that states have a moral and possibly legal duty to continue recognising states that have lost their effective statehood. It is suggested that the principle of effectiveness, by which states exist if they meet the four objective criteria listed above, cannot overrule fundamental legal norms. By this reasoning, if a state is created in violation of fundamental norms, other states have a legal duty not to recognise the effective situation. By analogy, if a state is effectively extinguished in violation of fundamental norms, other states have a legal obligation to continue recognising the legal personality of the state that has disappeared.²⁹

35. The South African Bantustans, which had an arguable case for meeting the four criteria, were established for the sole purpose of furthering the policy of apartheid. For

²⁷ J Lisztwan, 'Stability of Maritime Boundary Agreements' (2012) *Yale Journal of International Law* 37, 153, cited at ILA, *International Law and Sea Level Rise: Interim Report* (2016) 17.

²⁸ McAdam, 124.

²⁹ Jenny Groute Stoutenberg, 'When Do States Disappear?' in Michael B Gerrard and Gregory E Wannier (eds), *Threatened Island Nations* (2013).

this reason, the international community refused to recognise their statehood. There are more examples in the other direction; that is, examples of the resilient statehood of states rendered ineffective through the violation of international norms, such as, for example, states emerging from belligerent occupation or illegal annexation with their statehood intact.

36. The potential disappearance of small island states due to climate change certainly engages fundamental norms of international law, such as the right to self-determination and permanent sovereignty over natural resources. The question that arises is whether a refusal to continue to recognise the statehood of submerged or depopulated states is unlawful, because refusing to recognise would in effect be to endorse the situation created in breach of fundamental norms. Certain commentators argue that considerations of international justice and solidarity underpin a moral imperative for the continued recognition of de-territorialised island states.³⁰

37. For most states, the loss of statehood is a remote or impossible prospect. States for which it is a real existential question, however, include members of the Commonwealth family, such as Kiribati and Tuvalu. Without diminishing the importance of focusing on preserving territory and population, it is in the interests of these states that their future as states be affirmed beyond any doubt.

38. Noting the ‘great sensitivity’ and the ‘political dimensions’ of the issues surrounding the loss of statehood, the Sea Level Rise Committee declined to come to a conclusion or make a recommendation on this issue in the 2018 report.³¹

VII. Sea level rise and human rights

39. There is a large and growing body of literature concerned with the impacts of climate change, including sea level rise, on the enjoyment of human rights. Particularly affected are the rights to life, adequate food, health, housing, cultural identity and self-determination. The threat to human rights has been addressed by Commonwealth members, notably in the St Julian’s Declaration on Climate Justice in 2015. In this declaration, the Commonwealth Forum of National Human Rights Institutions noted:

that 45 of the 100 countries classified globally as most vulnerable to climate change are in the Commonwealth, 31 of which are small states and 27 are small island developing states. Increasing concern around water supply and food security, the rights of indigenous peoples, health services, extreme weather events and rising sea levels, and emergency planning are examples of the way human rights are at risk from climate change.³²

40. The UN Human Rights Council (HRC) has resolved that ‘the adverse effects of climate change have a range of direct and indirect implications for the effective

³⁰ Grote Stoutenberg, 315.

³¹ ILA, *International Law and Sea Level Rise: Report* (2018) 25.

³² St Julian’s Declaration on Climate Justice, Commonwealth Forum of National Human Rights Institutions (2015) <<http://thecommonwealth.org/sites/default/files/news-items/documents/2015%2520CFNHRI%2520St%2520Julian%2520Declaration%2520FINAL.pdf>>.

enjoyment of all human rights’,³³ including ‘immediate and far-reaching threats to people and communities around the world’.³⁴ The HRC notes that ‘the effects of climate change will be felt most acutely by individuals and communities...that are already in vulnerable situations owing to geography, poverty, gender, age, indigenous or minority status or disability’³⁵ and that ‘people in developing countries, particularly in least developed countries, small island developing states and African countries [are] among the most vulnerable to the adverse effects of climate change on the full and effective enjoyment of all human rights’.³⁶

41. Crucially, however, the link between climate change’s impact on the enjoyment of human rights and a breach of a state’s international obligations can be very difficult to establish. There is growing recognition that existing human rights obligations include requirements that states address the harmful impacts of climate change, but greater clarity on these requirements is needed.³⁷ All states have an obligation to respect, protect and fulfil human rights to protect people from foreseeable harm, including from the impact of sea level rise. The content of that obligation as regards the impact of climate change remains unsettled.

42. Migration is an issue of particular concern and relevance in the context of human rights and climate change. There are currently no authoritative global estimates for movements of people due to sea level rise, as its slow onset makes such measurements difficult. It is acknowledged that the gradual impacts of sea level rise, such as erosion and the saltwater contamination of groundwater, will progressively destroy liveability and inevitably prompt migration from certain areas. Such displacement will fall on a spectrum from completely voluntary to forced, and will occur both within states and internationally.

43. International law concerning the movement of persons does not deal directly with this challenge. Flight from the rising sea does not entitle a migrant to protection under the 1951 Convention relating to the Status of Refugees (‘the Refugee Convention’), for example. The Refugee Convention extends protection to someone who is unable or unwilling to return to their country of origin owing to a well-founded fear of persecution for reasons of race, religion, nationality, membership of a particular social group or political opinion - but not due to the threat of sea level rise or other environmental catastrophe.

44. International organisations, including the United Nations High Commission for Refugees (UNHCR), have identified the problem of so-called environmental ‘refugees’, even if they are not recognised as refugees under the Refugee Convention. UNHCR frames the issue largely in terms of humanitarian protection for persons who are internally displaced or cross borders as a result of climate change, in addition to

³³ ‘Human Rights and Climate Change’, UN Doc A/HRC/26/L.33/Rev.1 (25 June 2014) para 1.

³⁴ UN Doc A/HRC/RES/18/22 (17 October 2011) para 1.

³⁵ UN Doc A/HRC/29/L.21 (30 June 2015) preamble.

³⁶ UN Doc A/HRC/26/L.33/Rev.1 (25 June 2014) preamble.

³⁷ Siobhan McNerney-Lankford, ‘Human Rights and Climate Change: Reflections on International Legal Issues and Potential Policy Relevance’ in Michael B Gerrard and Gregory E Wannier (eds), *Threatened Island Nations*, (2013).

emphasising the importance of planned relocation and preventing statelessness. In 2015, the UNHCR published ‘Guidance on Protecting People from Disasters and Environmental Change through Planned Relocation’, which sets out principles for responding to this human need.³⁸ Nevertheless, it may be that the international legal architecture requires updating to respond to the threats to the human rights of migrants posed by rising sea levels, in particular as concerns the development of established and consistent approaches to humanitarian protection for displaced persons.

45. This updating may, or may not, take the form of a new treaty or convention enshrining obligations to persons displaced by rising seas. As mentioned above, however, the political barriers to successfully concluding a global convention are daunting. McAdam adds a further note of caution regarding the global convention/treaty approach. She warns against ‘prematurely concentrating the diverse impacts of climate change on human movement into calls for treaties’ as ‘the local and the particular do not always speak well to an international law or governance agenda’, and the law possesses a ‘tendency to create rights-based frameworks, which cannot always respond directly or adroitly to primarily needs-based problems’.³⁹

46. A more appropriate international law response, in McAdam’s view, may be to respond to regional scenarios through tailored bilateral or regional agreements - at least initially. Such agreements might be both more achievable than a convention, and better suited to provide a targeted and effective response to a particular regional need. To meet the needs of affected persons and to directly address underlying problems relating to scarce resources, overcrowding, rapid urbanisation and environmental degradation, these regional or bilateral agreements should include economic migration opportunities. Regional ‘soft law’ declarations, such as the Niue Declaration on Climate Change made at the 39th Pacific Islands Forum, could form the foundations of more comprehensive regional agreements.⁴⁰

47. Whether the endgame is a new convention or the encouragement of regional co-operation and soft-law declarations, there is the beginning of movement at an international level to address the challenge of climate change and migration. The Paris Agreement of December 2015 refers to respect for, promotion and consideration of the rights of migrants when taking action to address climate change. On adopting the Paris Agreement, the Conference of the Parties called for the establishment of a task force, under the auspices of the Warsaw International Mechanism for Loss and Damage associated with Climate Change Impacts, ‘to develop recommendations for integrated approaches to avert, minimise and address displacement related to the adverse impacts of climate change’.⁴¹ This task force met for the first time on 18 and 19 May 2017 in Bonn, and included representatives of the Least Developed Countries Expert Group, the Adaptation Committee, the Platform on Disaster Displacement, the International Organisation for Migration, the International Federation of Red Cross and Red Crescent Societies, the United Nations Development Programme, the International Labour

³⁸ 7 October 2015 <<http://www.unhcr.org/uk/protection/environment/562f798d9/planned-relocation-guidance-october-2015.html>>.

³⁹ McAdam, 210-211.

⁴⁰ *Ibid.*

⁴¹ Adoption of the Paris Agreement, UN Doc. FCC/CP/2015/L.9.Rev.1, 12 December 2015, para 50.

Organisation and the UNHCR. The task force agreed on draft workplan for its activities, bundled under four desired impacts:

- i. national and subnational policies/practice to avert, minimise and address displacement;
- ii. international and regional policies to recognise the adverse impact of climate change on displacement;
- iii. data and assessment; and
- iv. framing and linkages.

48. The workplan expands on these impacts and sets out the expected deliverables, which include various mapping reports and analysis papers.⁴² The task force is expected to finalise its recommendations to the Warsaw International Mechanism before the end of 2018. States with populations threatened by displacement due to rising sea levels have an obvious interest in the ongoing work and recommendations of this task force.

VIII. The Sydney Declaration of Principles on the Protection of Persons Displaced in the Context of Sea Level Rise

49. Having considered the issue of human displacement since its establishment in 2012, the Sea Level Rise Committee published a Sydney Declaration of Principles on the Protection of Persons Displaced in the Context of Sea Level Rise (Sydney Declaration) in its 2018 Report.⁴³ The ILA adopted the Sydney Declaration at its August 2018.⁴⁴ These principles constitute a comprehensively researched and extensively debated response by the community of international law scholars to this challenge (set out in full in the Annex to this paper). The principles purport to both codify and progressively develop relevant norms of international law, and include the following: the primary duty and responsibility of states to protect and assist affected persons; the duty to respect the human rights of affected persons; the duty to take positive action; the duty to co-operate; evacuation of affected persons; planned relocations of affected persons; migration of affected persons; internal displacement of affected persons; and cross-border displacement of affected persons.

50. The 2018 Report of the Sea Level Rise Committee should be consulted for the illuminating commentaries that accompany each principle.

IX. Sea level rise and disaster risk management laws

51. This paper has reviewed the major implications of sea level rise in international law. Sea level rise will also pose challenges in a domestic legal context, which will require responses from domestic legal frameworks. Disaster risk management (DRM) laws are an important example. The many effects of sea level rise, such as chronic

⁴² The 'Summary of the proceedings of the 1st meeting of the task force on displacement and its workplan' is annexed to the UNFCCC, *Report of the Executive Committee of the Warsaw International Mechanism for Loss and Damage associated with Climate Change Impacts* (November 2017) <<https://unfccc.int/process-and-meetings/bodies/constituted-bodies/executive-committee-of-the-warsaw-international-mechanism-for-loss-and-damage-wim-excom/reports-of-the-executive-committee>>.

⁴³ ILA, *International Law and Sea Level Rise: Report* (2018) 26.

⁴⁴ ILA, Resolution 6/2018: Committee on International Law and Sea Level Rise (2018).

water scarcity and coastal erosion, constitute an example of a slow-onset disaster. The United Nations Office for Disaster Risk Reduction (UNISDR) defines disaster as: ‘a serious disruption of the functioning of a community or a society involving widespread human, material, economic or environmental losses and impacts, which exceed the ability of the affected community or society to cope using its own resources’.⁴⁵

52. All Commonwealth countries have DRM laws of varying scope. They range from a simple mechanism for declaring an emergency, to the management of responses to natural hazards or disasters, to multi-hazard omnibus laws that establish national and local institutions, policy frameworks, community education and training, early warning systems, and cross-sectoral disaster risk reduction mechanisms.⁴⁶ However, only three Commonwealth countries include climate change adaptation measures with their DRM legal system. They are Bangladesh,⁴⁷ Seychelles⁴⁸ and Sri Lanka.⁴⁹

53. Rising sea levels, and climate change more broadly, drive a range of phenomena with a disastrous impact on communities, especially in small island developing states. In light of this fact, states may be well advised to account for the impact of sea level rise in the context of an overall review of DRM laws. The Commonwealth/UNFCCC/UN Environment Law and Climate Change Toolkit presently focuses on overarching climate change laws and energy laws. A module on climate change and disaster risk management, however, is under consideration for development, possibly in partnership with the International Federation of Red Cross and Red Crescent Societies and the British Red Cross in the course of 2019.

X. Conclusion and recommendations

54. The legal implications of sea level rise will manifest at the national, regional and international levels. A strategic response is accordingly required at each level. Nationally, Commonwealth countries can take action to review and update their DRM laws to sharpen responsiveness and effectiveness in the face of sea level rise-related disasters. They can finalise and deposit charts establishing maritime jurisdictional claims according to current sea levels, in an effort to be prepared in the event of a push to freeze maritime entitlements. The Commonwealth Secretariat is equipped to advise and assist its members in this task through its Oceans and Natural Resources Section.

55. Sea level rise and its impacts will continue to be the focus of the Commonwealth’s attention, most particularly through the ongoing agenda of the Blue Charter. The Commonwealth may continue to seek to influence international developments to the advantage of its members through continued engagement in relevant international fora, including meetings of states parties to the United Nations Convention on the Law of the Sea and the task force on displacement formed under the

⁴⁵ UN Office for Disaster Reduction (UNISDR), *Terminology on Disaster Risk Reduction* (2009).

⁴⁶ Commonwealth Secretariat, *Disaster risk management, risk reduction and international disaster response laws in the Commonwealth* (2017) 6.

⁴⁷ Disaster Risk Management Act 2012; Standing Orders on Disaster 6 April 2010.

⁴⁸ Disaster Risk Management Act 2014.

⁴⁹ Sri Lanka Disaster Management Act no 13 of 2005 (as amended in 2013).

UNFCCC Warsaw International Mechanism for Loss and Damage associated with Climate Change Impacts.

56. Regional groupings, small Commonwealth jurisdictions, or the entire family of Commonwealth members, could examine options for adopting shared positions in a conscious effort to shape emerging practice and *opinio juris*. To this end, law ministers and attorneys general are invited to consider:

- i. Expressing their common concern that national, regional and international legal responses to sea level rise should be equitable and practicable, taking into account the particular circumstances of small states.
- ii. Continuing to actively work towards the peaceful settlement of their unresolved maritime boundaries by finalising maritime boundary agreements and complying with their due publicity obligations under the convention by depositing these agreements, national maritime zones legislation, and large-scale charts or a list of geographical co-ordinates with the United Nations.
- iii. Highlighting that legal responses to sea level rise could be guided by principles contained in the Commonwealth Blue Charter and Commonwealth St Julian's Declaration on Climate Justice.
- iv. Forming a group of concerned states in the form of an Action Group of the Blue Charter to consider, review and make recommendations for action concerning the legal implications of sea level rise, and to invite all interested members of the Commonwealth to join. Issues to be addressed by the Action Group may include, *inter alia*:
 - a) areas of national law, such as disaster risk management and migration law, that may be required to be reformed in response to the challenges of sea level rise;
 - b) the possibility of endorsement of ILA Resolution 5/2018 that once the baselines and the outer limits of the maritime zones of a coastal or archipelagic state have been properly determined in accordance with the detailed requirements of the Convention on the Law of the Sea, that these baselines and limits should not be required to be recalculated should sea level change affect the geographical reality of the coastline;
 - c) the possibility of endorsement of ILA Resolution 5/2018 that the interpretation of the Convention on the Law of the Sea in relation to the ability of coastal and archipelagic states to maintain their existing lawful maritime entitlements should apply equally to maritime boundaries delimited by international agreement or by decisions of international courts or arbitral tribunals.
 - d) consideration, possible commendation and implementation in practice, of the values expressed in the 'Sydney Declaration of Principles on the Protection of Persons Displaced in the Context of Sea Level Rise' adopted by the ILA;⁵⁰ and
 - e) options for small Commonwealth jurisdictions, and the wider Commonwealth membership, to progressively develop the norms of international law that are engaged due to sea level rise.

⁵⁰ ILA, Resolution 6/2018: Committee on International Law and Sea Level Rise (2018).

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XI. ANNEX

Sydney Declaration of Principles on the Protection of Persons Displaced in the Context of Sea Level Rise

Extracted from: Annex to ILA, Resolution 6/2018: Committee on International Law and Sea Level Rise, adopted at the 78th Conference of the ILA, held in Sydney, Australia, 19-24 August 2018

Purpose: The purpose of the present Declaration of Principles is to provide guidance to States in averting, mitigating, and addressing displacement occurring in the context of sea level rise, based on and derived from relevant international legal provisions, principles, and frameworks.

Scope: The present Declaration of Principles applies to all forms of human mobility arising in the context of sea level rise.

Definitions: For the purposes of the present Declaration of Principles, the following definitions shall apply:

(a) ‘disaster’ means a serious disruption of the functioning of a community or a society at any scale, due to climatic events interacting with conditions of exposure, vulnerability, and capacity, leading to human, material, economic, and/or environmental losses and impacts.

(b) ‘displacement’ means the movement of persons who are forced or obliged to leave their homes or places of habitual residence due to sudden-onset natural hazards and/or slower, cumulative pressures occurring in the context of sea level rise. Displacement may take place within a country and/or across internationally-recognized borders.

(c) ‘evacuation’ means the rapid movement of persons away from the immediate threat or impact of a disaster to a safer place of shelter, in order to ensure their security, safety, and well-being. Evacuations are usually short-term (hours to weeks) and may be voluntary or forced. They usually take place within the same country.

(d) ‘human mobility’ means all relevant forms of the movement of persons in the context of sea level rise, including displacement, migration, planned relocation, and evacuation.

(e) ‘migration’ means predominantly voluntary cross-border movement, which, in the context of disaster- and climate change-related impacts, is more likely to occur in anticipation of future harm. It is usually planned, less sudden than displacement, and occurs over a longer period of time.

(f) ‘planned relocation’ means a planned process in which persons move or are moved away from their homes or places of temporary residence, are settled in a new location, and are provided with the conditions for rebuilding their lives. Planned relocation is carried out under the authority of the State, and is undertaken to protect persons from risks and impacts related to disasters and environmental change in the context of sea level rise. It can be either forced or voluntary, large-scale or small-scale, internal or cross-border.

(g) ‘sea level rise’ means the sole or combined and cumulative impacts of the effects of climate change and subsidence or land uplift on the increase of the sea level in a given location.

Principle 1 - The Primary Duty and Responsibility of States to Protect and Assist Affected Persons: States have the primary duty and responsibility to provide protection and assistance to persons with habitual residence on territories under their jurisdiction who are affected by sea level rise.

Principle 2 - The Duty to Respect the Human Rights of Affected Persons: States of origin, transit, and destination have a duty to respect on a non-discriminatory basis the human rights of persons under their jurisdiction who move in the context of sea level rise, including:

- (a) their right to liberty of movement and freedom to choose their residence,
- (b) the freedom to leave and return to their own country;
- (c) their right to be protected against refoulement;
- (d) their right to be informed, consulted, and participate in decisions affecting them;
- (e) the cultural and land rights of indigenous peoples and local communities.

Principle 3 - The Duty to Take Positive Action

1. States have a responsibility to use the best practicable means at their disposal, in accordance with their capabilities and their international human rights obligations as well as other relevant international standards and frameworks, to take appropriate and effective measures, including those referred to in Principles 8-12:

- (a) to reduce disaster risks and adapt to the adverse effects of climate change in order to protect the lives and ensure the safety of persons with habitual residence on low-lying areas at risk of sea level rise under their jurisdiction;
- (b) to prevent their displacement; and
- (c) to protect and assist them in the event of displacement.

2. In order to avert, mitigate, and address displacement in the context of sea level rise and to protect and assist persons displaced in this context, States should, in particular:

- (a) adopt adequate normative frameworks and implementing operational measures;
- (b) assign powers and responsibilities to competent authorities and institutions or, where they do not exist, create such authorities and institutions; and
- (c) provide adequate resources to such authorities and institutions.

Principle 4 - The Duty to Cooperate

1. States shall enhance international cooperation among themselves and with relevant international organizations and agencies to assist States affected by sea level rise to prevent, avoid and respond to disaster- and climate change-related risks, including the risk of displacement. Affected States should call on the international community when they require assistance.

2. Cooperation in this context may include:

- (a) efforts at bilateral, regional and/or sub-regional levels to strengthen and coordinate measures to:
 - i. reduce disaster-risk, enhance adaptation to climate change, and build resilience of affected communities living in low-lying areas at risk of sea level rise;
 - ii. assist, in accordance with elementary humanitarian considerations, in the evacuation of persons where necessary to save lives, including across borders;
 - iii. facilitate cross-border migration in anticipation of, or in reaction to, irreversible environmental degradation or sudden-onset disasters linked to sea level rise;
 - iv. enhance the humanitarian response in situations of internal displacement; and

v. support recovery, including durable solutions, for internally displaced persons;

(b) efforts to ensure that persons moving across borders are admitted and received with respect for their safety, dignity, and human rights, including the creation or harmonization of more predictable domestic or regional legal frameworks, and durable solutions to displacement are found; and

(c) technical and financial support by the international community and donor countries and their multilateral and bilateral financing mechanisms to support affected countries and regions.

Principle 5 - Evacuation of Affected Persons

1. States affected by sea level rise shall take all necessary measures to facilitate, without discrimination, the evacuation of persons facing a serious and imminent risk linked to the effects of sea level rise, and provide support to those unable to evacuate themselves.

2. Where evacuations are not voluntary, they shall only be undertaken if they are provided for by law and are necessary to protect the life and health of affected persons, and less intrusive measures would be insufficient to avert the harmful consequences of the threat. Competent authorities should ensure that evacuation orders are enforced only for as long as strictly necessary to fulfil such purpose.

3. Evacuations, whether voluntary or forced, shall be carried out with full respect for the life, dignity, liberty, and security of evacuees.

Principle 6 - Planned Relocations of Affected Persons

1. States affected by sea level rise shall only undertake planned relocations (whether within their territories or across international borders) when so requested by affected persons and communities, or when conducted with their full, free, and informed consent.

2. Where, despite the provision of adequate information and consultation, such consent cannot be obtained, planned relocations must only be undertaken as a measure of last resort to safeguard the lives and safety of those affected. They must be based on national law and implemented in accordance with relevant international legal standards.

3. Planned relocations shall be implemented in ways that safeguard the human rights and dignity of those who move, including the principle of family unity, as well as the human rights and dignity of those who have to receive relocated persons.

4. Given their significance for indigenous peoples, States undertaking planned relocation shall respect and protect their rights to self-determination, culture, identity, land, and resources.

5. Persons affected by a planned relocation, including those who have to receive relocated persons, must be informed, consulted, allowed, and enabled to participate in all relevant decision-making processes.

6. At a minimum, persons' pre-relocation living standards must be restored post-relocation.

Principle 7 - Migration of Affected Persons

1. States should recognize that temporary, circular, or permanent migration across borders can be an important means for persons to adapt to climate change and cope with the adverse effects of sea level rise.

2. Both States of origin and destination should review existing domestic laws, as well as bilateral and regional migration arrangements, and consider new laws and agreements, to facilitate migration as an adaptation measure, in accordance with applicable international human rights obligations as well as international labour law.

3. Both States of origin and destination should cooperate to ensure that the full range of rights and protections afforded to migrants by international law is respected, including the right to liberty of movement and the freedom to choose one's place of residence.

Principle 8 - Internal Displacement of Affected Persons: States shall protect and assist persons displaced within their territory in the context of sea level rise and associated hazards and establish conditions for, as well as provide the means which allow internally displaced persons to find, durable solutions, in accordance with the UN Guiding Principles on Internal Displacement.

Principle 9 - Cross-Border Displacement of Affected Persons

1. States should admit persons displaced across borders in the context of disasters linked to sea level rise if they are personally and seriously at risk of, or already affected by, a disaster, or if their country of origin is unable to protect and assist them due to the disaster (even if temporarily). States should ensure that they have adequate laws and policies in place to facilitate this protection.

2. States of refuge should not return persons to territories where they face a serious risk to their life or safety or serious hardship, in particular due to the fact that they cannot access necessary humanitarian assistance or protection. In all cases, States must observe the prohibition on forcible return to situations of persecution or other forms of serious harm, as provided for by applicable international law.

3. States that have admitted cross-border disaster-displaced persons should cooperate with States of origin to find durable solutions for such persons. This may include return where possible, or permanent admission and stay in the host State.

4. States ready to admit cross-border disaster-displaced persons should strive to harmonize their practices regarding the admission and protection of cross-border disaster-displaced persons at the regional and/or sub-regional levels.