

---

## Securing our future in the Pacific

---



Pacific Islands Forum  
with United Nations Missions

*Australia, Federated States of Micronesia, Fiji,  
Kiribati, Nauru, New Zealand, Palau,  
Papua New Guinea, Republic of Marshall Islands,  
Samoa, Solomon Islands, Tonga, Tuvalu, Vanuatu*

---

Permanent Mission of Tuvalu to the United Nations. 685 Third Ave, Suite 1104, New York, NY 10017. Email: [tuvalumission.un@gmail.com](mailto:tuvalumission.un@gmail.com). Tel: 212-490-0534. Fax: 212-808-4975

---

### Pacific Islands Forum

#### Statement for the Sixth Committee on

#### Report of the International Law Commission on the work of its seventy-second session

**Tuesday, October 27, 2020, at 10 am**

Mr. Chairman,

I have the honour to deliver this statement on behalf of the 14 Pacific Islands Forum countries with Missions to the United Nations, namely Australia, Federated States of Micronesia, Fiji, Kiribati, Palau, Papua New Guinea, Marshall Islands, Nauru, New Zealand, Samoa, Solomon Islands, Tonga, Vanuatu and my own country Tuvalu.

Firstly, we would like to congratulate you Mr. Chairman and members of your Bureau for your election. Although we are facing the most challenging timing, we would still like to assure you of our group's unwavering support as you steer the Committee's work in this Session.

In 2019, our Leaders noted with concern of the threat posed by sea-level rise to securing the Blue Pacific, and further committed to a collective effort of our region, including to develop international law, with the aim of ensuring that once the maritime zones are delineated in accordance with the 1982 UN Convention on the Law of the Sea ("UNCLOS"), that our Members maritime zones could not be challenged or reduced as a result of sea-level rise and climate change.

In this context, our Leaders reaffirmed our region's commitment to conclude negotiations on all outstanding maritime boundaries claims and zones, and to preserve Members' existing rights stemming from maritime zones, in the face of sea-level rise. Our region also called for the Commission to examine the international law implications of sea-level rise as a matter of extreme urgency. Once again, we would like to express our deep gratitude to the members of the Commission for listening to our call, and for the priority to establish an open-ended Study Group accorded the topic Sea-Level Rise in Relation to International Law.

The COVID-19 pandemic has affected the ILC plenary meetings in 2020, yet we are thrilled to see the Co-Chairs of the ILC Study Group on the topic, Dr. Bogdan Aurescu and Dr. Nilüfer Oral, have introduced their First Issues Paper addressing the law of the sea matters.

The Pacific Islands Forum countries consider this First Issues Paper provides an excellent foundation for resolving these concerns. As mentioned by the First Issues Paper and highlighted by many Member States, there is an overarching concern for preserving legal stability, security, certainty and predictability at the very centre of this topic. This would also be in line with the general purpose of the UNCLOS, as reflected in its preamble.

The PIF countries agree with other Governments and the Co-Chairs that UNCLOS represents a carefully balanced and equitable package of rights and responsibilities and that this balance must be preserved.

The practice of our region, as well as the practice of other regions, demonstrates the interest of many Member States in preserving the legal stability and security of their baselines and of outer limits of maritime zones measured from the baselines. Over time, this practice may contribute to the emergence of a rule of customary international law regarding the preservation of baselines and of outer limits of maritime zones measured from the baselines.

In this context, we note with appreciation the preliminary conclusions set out in para 104 of the First Issues Paper and particularly draw attention to the points in paragraph (e) and (f) that UNCLOS does not exclude an approach based on the preservation of baselines and outer limits once notifications have been deposited.

We also concur with the observations made by the First Issues Paper that sea-level rise cannot be invoked in accordance with article 62, paragraph 2, of the 1969 Vienna Convention on the Law of Treaties, as a fundamental change of circumstances for terminating or withdrawing from a treaty which established a maritime boundary, since maritime boundaries enjoy the same regime of stability as any other boundaries. In this regard, we find the international jurisprudence is clear in this and it's necessary to preserve existing maritime delimitations, either effected by agreement or by adjudication, notwithstanding the coastal changes produced by sea-level rise.

As a fundamental principle we believe, international law should not further disadvantage those harmed by the impacts of climate change. We contend that the response of international law to sea-level rise must take into account the interests of those who are specially affected, including small island developing states with substantial—even existential—exposure to the harmful impacts of climate change despite having the least responsibility for its causes. We, therefore, believe that sea-level rise should not cause any loss of our existing maritime entitlements, and sovereign rights and jurisdiction as coastal States in maritime zones. Any changes of these rights and obligations between coastal States and third parties will bring the risk of creating uncertainty, instability and the possibility of disputes.

In short, Mr. Chairman, we aim to ensure that our maritime zones and the entitlements flowing from those zones are not challenged or reduced as a result of sea-level rise.

Mr. Chairman, we, therefore, will continue our engagement in the ILC process on the topic of sea-level rise in relation to international law. In addition to the issues related to the law of the sea, we will work together to respond effectively to other challenges posed by sea-level rise and make further submissions to the ILC Study Group in its current examination of the sub-topics of statehood, and issues related to the protection of persons affected by sea-level rise.

To conclude, Mr. Chairman, we would like to take this opportunity to thank the ILC and the Study Group for their work so far. We look forward to the continued discussion on each of the facets of this important topic.

I thank you.