



PACIFIC SMALL ISLAND DEVELOPING STATES

UNITED NATIONS MEMBER STATES

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PSIDS Statement: Sixth Committee- Agenda Item 82: Report of the International Law Commission on the Work of its Seventy-Second Session Thursday October 28th, 2021

Madame Chair,

I have the honor to deliver these remarks on behalf of the PSIDS represented in New York, namely, Fiji, Kiribati, Federated States of Micronesia, Nauru, Palau, Papua New Guinea, Solomon Islands, Tonga, Tuvalu, Vanuatu and my own country, Samoa.

We wish to congratulate you, Chair, and your Bureau on your much deserved elections to your posts. We have full confidence in your abilities to lead our Committee.

We also wish to thank the members of the International Law Commission for their hard work over the past two years during a global pandemic. We are grateful that members of the Commission, particularly through the Study Group on Sea-Level Rise in Relation to International Law, managed to produce and consider an authoritative First Issues Paper on the law of the sea aspects of the sea-level rise topic, despite the challenges posed by the pandemic.

The 1982 United Nations Law of the Sea Convention (“UNCLOS”) is critically important in establishing an effective legal regime for Ocean governance. It, however, does not explicitly deal with the impacts of climate change-related sea-level rise on maritime zones and the rights and entitlements that flow from them. The drafters of UNCLOS did not foresee the challenges posed by this phenomenon for the legal order created under UNCLOS- a point made clear in the First Issues Paper. Currently, the mean low-water lines along coasts around the world as marked on large-scale charts officially recognized by the relevant coastal States are used as normal baselines for measuring maritime zones under UNCLOS. These physical points will likely change in the future due to climate change-related sea-level rise, but UNCLOS does not explicitly state what this means for maritime zones and the rights and entitlements that flow from them. It is important that UNCLOS is

applied in such a way that respects the rights and obligations in the Convention, including the rights and entitlements of island States flowing from their maritime zones. We note with appreciation the preliminary observations 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 of maritime zones in the face of climate change-related sea-level rise once information about such maritime zones has been established and deposited with the UN Secretary-General.

While it is undeniable that climate change-related sea-level rise raises serious issues of international law to small island developing States, we are of the view that such sea-level rise is an issue that is of relevance to the international community as a whole. The recently endorsed Pacific Islands Forum Leaders' *Declaration on Preserving Maritime Zones in the Face of Climate Change-Related Sea-Level Rise* affirms that once Pacific islands have established and notified their maritime zones to the Secretary-General of the UN, such maritime zones and the rights and entitlements that flow from them shall not be reduced irrespective of the physical effects of climate change-related sea-level rise. Many PSIDS have built on regional state practice by adopting domestic legislation purporting to maintain their maritime limits for perpetuity, including the description of maritime boundary lines by reference to geographic coordinates and defining the outer limits of our continental shelves beyond 200 nautical miles and reference to neutral decision-making processes under UNCLOS. The Vienna Convention on the Law of Treaties states that subsequent practice applying a treaty, which evinces parties' agreement on the treaty interpretation, shall be taken into account when interpreting such a treaty. This practice grounds the observations of the Co-Chairs that, in order to preserve maritime zones and the rights and entitlements that flow from them, States Parties of UNCLOS are not obligated to update their maritime zone coordinates or charts once deposited with the UN Secretary-General.

Shifting gears from the law of the sea elements, the issues relating to statehood, statelessness and climate-induced migration are of direct relevance to our region, with the possibility that territories of our small island States may be entirely submerged due to climate change-related sea-level rise. Under international law, there is a presumption that a state, once established, will continue to be a state, particularly if it has a defined territory and population, among other factors. In this context, we stress the urgency of addressing

the international law implications of climate change-related sea-level rise, noting the various questions raised that pertain to statehood. As indicated in the release of the latest IPCC Working Group 1 contribution to the Sixth Assessment Report, on the current trajectory, we are on track to exceed the 1.5-degree global warming limit under the Paris Agreement by 2040. Consequently, the concern that one day the ocean will claim our ancestral homes or force our peoples to leave those homes is a daunting prospect that we have to grapple with every day. We welcome the future work of the Study Group on addressing the issue of statehood and the protection of persons outlined in para. 296 of the report.