



PACIFIC SMALL ISLAND DEVELOPING STATES

UNITED NATIONS MEMBER STATES

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Statement by Samoa on behalf of the Pacific Small Island Developing States on the Report of the International Law Commission on its 73rd Session¹

Tuesday 1 November 2022

Chair,

I have the honour to deliver this statement on behalf of the twelve (12) member states of the Pacific Small Island Developing States. We align ourselves with the statement delivered by Antigua and Barbuda on behalf of the Alliance of Small Island States (AOSIS) in this Cluster II.

The Work of the ILC

For the Pacific we underscore the urgent need for action in light of the conclusion of the Intergovernmental Panel on Climate Change in its recent reports that global warming will likely exceed the goal established in the Paris Agreement of keeping the temperature increase to 1.5°C above pre-industrial levels, based on current projections. Their specific projections on rising sea levels are not encouraging. We highlight the urgent need for action at all levels and from all sectors to address the threat of sea-level rise which poses an existential crisis. We acknowledge the important contribution that the International Law Commission (ILC) and in particular, the ILC's Study Group on sea-level rise in relation to international law, can make in this regard. The two issues papers produced so far by the respective Co-Chairs of the Study Group provide the international community with an important foundation on which to build the legal solutions for the existential challenge of sea-level rise for vulnerable states.

Background

As we have stated before, in this and other fora:

1. The 1982 United Nations Convention on the Law of the Sea (UNCLOS) sets out the legal framework within which all activities in the oceans and seas must be carried out;
2. We acknowledge that the relationship between climate change-related sea-level rise and maritime zones was not contemplated by the drafters of UNCLOS at the time of its negotiation;
3. In August 2021, the leaders of the Pacific Islands Forum issued the [Declaration on Preserving Maritime Zones in the Face of Climate Change-related Sea-Level Rise](#), which is a formal statement of Forum Members' view on how the existing UNCLOS rules on maritime zones apply in the situation of climate change-related sea-level rise;

¹ This statement is without prejudice to statements submitted by individual members and to later submissions that may be made to the International Law Commission.

4. Forum Leaders consider that maritime zones, once established and notified to the Secretary-General of the United Nations in accordance with UNCLOS, and the rights and entitlements that flow from them, shall continue to apply, without reduction, notwithstanding any physical changes connected to climate change-related sea-level rise. As the Declaration makes clear, this approach is supported by UNCLOS and its underlying principles. Contrary to the impression that may have been given by others in this Committee in earlier discussion on Cluster II, the Declaration does not formally represent an extra-legal circumvention of UNCLOS or the establishment of new international law. Because it is grounded on an interpretation of the existing law of the sea as reflected in UNCLOS, States from outside the Pacific Islands Forum membership are welcome to endorse and apply the approach of the Declaration, including those that are not States Parties to UNCLOS.

Statehood

On the subject of statehood, we thank the Co-Chairs for their important contributions as reflected in the Second Issues Paper which serves as a good basis for moving forward. The issues relating to statehood, statelessness, sovereignty, and self-determination are directly relevant to the Pacific region in view of the ever-increasing possibility that our territories could be entirely submerged or depopulated due to climate change-related sea-level rise.

We believe that there must be a strong presumption as to the continuity of a State once established. In this regard we emphasise that criteria contained in instruments such as the 1933 Montevideo Convention on the Rights and Duties of States apply more appropriately to the creation of states, and not to the extinguishment of states. It is also important for the discussion on statehood to consider the views of states specially affected by the phenomena of climate-change related sea-level rise. In that connection, we welcome the acknowledgement in the Second Issues Paper that “[w]ith regard to small island developing States whose territory could be covered by the sea or become uninhabitable owing to exceptional circumstances outside their will or control, a strong presumption in favour of continuing statehood should be considered.”

Protection of Persons

Sea-level rise poses significant and multi-dimensional threats to SIDS - beyond coastal erosion and possible inundation of territories, we also face the loss of habitable land, increased salinity levels in freshwater sources, increased risk of flooding and increased vulnerability to natural disasters. Climate-change related sea-level rise threatens all aspects of life in the Pacific - socioeconomic, environmental and cultural - and especially our vulnerable populations. These impacts cannot always be adequately addressed through adaptation strategies and improved infrastructure, with some coastal communities in the Pacific already being forced to relocate from their villages due to sea-level rise.

We appreciate the useful mapping which the Co-Chairs have provided in the Second Issues Paper on the existing legal frameworks potentially applicable to the protection of persons affected by sea-level rise. In this regard it is our position that the duty to cooperate which is well recognized in international law must be applied to help States cope with the adverse impacts of sea-level rise on their populations.

Conclusion

The real and valid fears of the Pacific are that the ocean may one day claim our ancestral homes and force our peoples to leave. It is therefore urgent that the international law implications of climate change-related sea-level rise for statehood and the obligations regarding the protection of persons be fully clarified and addressed, on the basis of fairness and justice.

I thank you.

