



**UN General Assembly – Agenda item 79
Report of the International Law Commission on the work of its seventy-third and
seventy-fourth sessions**

**Statement by the Federal Republic of Germany
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Madam Chairwoman/Mr Chairman,

Excellencies,

Ladies and Gentleman,

as regards the first cluster of ILC topics, Germany would like to address the issue of “Sea-level rise in relation to international law”.

Germany aligns itself with the statement made on behalf of the European Union and its member states.

Furthermore, we would like to commend the Co-Chairs and the Study Group on their considerations and on the progress made that is reflected in Chapter VIII of the present Report of the International Law Commission. Germany attaches great importance to this highly relevant and topical dossier: Climate change poses an existential threat to states, individuals and to international security. The two issues papers and the additional paper to the first issues paper presented in 2020, 2022 and 2023 by the Co-Chairs of the Study Group set out the main legal questions raised in connection with rising sea-level. We would like to congratulate the Co-Chairs, Ms Nilüfer Oral and Mr Bogdan Aurescu, in particular, for the preparation of the additional paper to the first issues paper, which focuses on the law of the sea, and express our profound gratitude to them.

We would also like to refer to the June 2022 German contribution to the ILC work on the law of the sea-related issues, where we explained our interpretation of the relevant UNCLOS rules regarding the stability of baselines. In our view, a contemporary reading and interpretation of these UNCLOS rules allows for the freezing of baselines and outer limits of maritime zones, once these have been duly established and, as applicable, published and deposited in accordance with the Convention. UNCLOS does not contain an obligation of Coastal States to regularly review and update such baselines, charts or lists of geographical coordinates of the outer limits of maritime zones, even though States do retain the right to do so should they so wish.

We are pleased to note that there seems to be an ever-increasing convergence of States who share this view, as highlighted in paras. 141 and 142 of the ILC Report, and that no single State has contested that approach, not even States whose domestic legislation provides for regular reviews and updates of baselines and outer limits. On the contrary, while some States have made express commitments not to challenge baselines and outer limits that are not subsequently updated after sea-level rise, the majority seems to share our view that there is no obligation to review and updates them in the first place.

We note that the Co-Chairs have stressed the importance of further exploring the issue of submerged territories, which had not been raised in 2021, as an issue potentially related to both the law of the sea and to statehood. Germany is very interested in advancing on these topics and commits to continue to contribute to this important work. As regards the law of the sea aspects, we believe that the principle of “legal stability” should equally apply to baselines and maritime zones derived from islands and rocks pursuant to Art. 121 para. 1 and 3 UNCLOS, when these natural land features are subsequently submerged due to sea-level rise.

According to Art. 121 para. 2 UNCLOS, the maritime zones of islands and rocks are determined in accordance with the provisions of the Conventions applicable to other land territory. As I said, in our view, Coastal States have no duty to regularly review and update their baselines and maritime zones derived from continental land territory. It seems to follow from a contemporary reading and interpretation of the Convention that they also have no duty to regularly review whether naturally formed land features have subsequently changed their nature or become submerged after the maritime zones around

them were duly established, published and deposited in accordance with the Convention. Art. 7 para. 2 of UNCLOS deals with the fixing of baselines in areas where the coastline is highly unstable due to the presence of “a delta and other natural conditions”. The legal ideas encapsulated therein might also serve as an additional basis for a contemporary interpretation of the Convention that allows for the stabilization of baselines in coastal areas affected by climate-change induced sea-level rise, including low-lying islands.

Madam Chairwoman/Mr Chairman,

To conclude, Germany believes that all law of the sea-related questions in connection with sea-level rise can and should be satisfactorily resolved. Maritime zones and the rights and entitlements of affected States should be preserved through a contemporary reading and interpretation of the Convention and its intents and purposes, rather than through the development of new customary law or the negotiation of new treaty rules.

The precise way in which the Convention ought to be interpreted and how this ought to be reflected legally and in practice – e.g. through a set of conclusions, an interpretative declaration or resolution – may still require some further work. Germany looks forward to these important discussions. We will continue to engage with partners, international organizations and academic institutions, to further contribute to and promote the important work of the Commission and its Study Group on this topic.

The root cause of sea-level rise, the human-induced climate change, can only be addressed through international cooperation. Germany has therefore submitted a comprehensive answer to the questions posed in the ILC’s report of the 73rd session (2022), Chapter III. We outlined Germany’s state practice as well as our legal view on the continuance of statehood in circumstances in which island states are submerged and their previous territory physically ceases to exist or becomes uninhabitable in the context of sea-level rise. Germany remains steadfast in its commitment to explore all viable legal avenues aimed at facilitating a constructive discourse on this matter. Although a clear answer cannot be derived presently from existing international law as it stands *de lege lata*, the importance of developing a common understanding to address the future of affected states cannot be overstated. This can be achieved through the comprehensive examination and exploration

of legal options, including a systematic analysis of historical precedents that have some bearing on the present legal and political challenges. A spectrum of viable solutions based on international law is conceivable in order to preserve the international legal personality of island states that are subject to submergence or becoming uninhabitable.

Thank you.