



**Statement by Samoa on behalf of the Alliance of Small Island States (AOSIS)
under Agenda Item 79 – Report of the International Law Commission – Cluster 1**

Sixth Committee

Delivered by Mrs. Matilda Bartley, Charge d' Affairs &
Deputy Permanent Representative of Samoa to the United Nations
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Mr. Chair,

1. I have the honour to speak on behalf of the members of the Alliance of Small Island States (AOSIS), the 39 small island developing States (SIDS) that are specially affected by sea-level rise.
2. Since the 1989 Small States Conference on Sea Level Rise in the Maldives, SIDS have been at the forefront of the development of international law as it relates to the climate crisis and sea level rise. This reflects our continued commitment to engaging in the development and application of international law on an issue that deeply affects each of our States. In this regard, we wish to thank the International Law Commission, in particular the Study Group on Sea-Level Rise in Relation to International Law, for focusing our collective attention on this critical issue.
3. In this era of unprecedented and relentless sea-level rise, international law must evolve to meet the climate crisis and the disproportionate effect that it has on SIDS. We already have many of the tools to do this, but we must interpret and apply them for the realities of this new era.
4. The work of the ILC is one indication that the law is incorporating the reality that we are facing on the ground. Small island states have been asserting for years that maritime zones, established and notified in accordance with UNCLOS, will not be reduced in the face of climate change related sea level rise. ILC members stressed there is no explicit requirement in UNCLOS to update baselines and outer limits of maritime zones in response to changes in coastlines because of sea-level rise. In effect, the SIDS' interpretation of international law on this issue is correct.

5. Today, we would like to take this opportunity to comment on the recent work of the Sea Level Rise Study group, specifically on the additional paper to the Second Issues Paper and the sub-topics of statehood and protection of persons.

Statehood

6. With respect to the issue of statehood, the practice of states over the past century has indicated that the continuity of statehood is a fundamental principle of the international order. The United Nations system is built on the idea of stability of states.
7. As we have said many times before, SIDS have been absolutely clear that there is no existential threat to our statehood from sea-level rise. We must not conflate the physical reality of land territory disappearing or becoming uninhabitable, with the legal rules concerning statehood and sovereignty, including permanent sovereignty over natural resources.
8. To assist the international community on this particularly important issue, in September, the Heads of State and Government of the members of AOSIS adopted a Declaration on Sea Level Rise and Statehood. The Prime Minister of Samoa announced this Declaration at the High-Level Meeting on the Threats of Sea Level Rise on 25 September and introduced its contents.
9. In this Declaration, the 39 member states of AOSIS affirm that international law is based on a fundamental principle of the continuity of states and that this is consistent with broad state practice over the past century.
10. We affirm that consistent with the principles of equity, fairness and sovereign equality of states, statehood cannot be challenged under any circumstances of climate change-related sea-level rise.
11. We declare that the statehood and sovereignty of SIDS and our membership in the United Nations, its specialized agencies and other intergovernmental organizations will continue, and the rights and duties inherent thereto will be maintained, notwithstanding the impacts of climate change-related sea-level rise.
12. We also declare that consistent with the right to self-determination, the statehood and sovereignty of SIDS and our membership in the United Nations, its specialized agencies and other intergovernmental organizations will cease only if another form of expression

of the right to self-determination of a SIDS population is explicitly sought and freely exercised by that population.

13. And finally, we call upon the international community, consistent with the duty to cooperate, to support our declaration and cooperate in achieving its purposes.
14. Based on this Declaration, there are a few comments that we wish to make on the ILC Report. First, there was a discussion amongst the Study Group on rationale behind the statements that SIDS and other states have been making on the issue of statehood. To be clear, this recent Declaration and our previous statements were made because it is our interpretation of international law that there are positive international law rules on the continuity of statehood, of continued membership in international organizations and of the termination of statehood only as a result of the free exercise of the right to self-determination by the relevant population. We will make submissions to this end in the advisory proceedings of the International Court of Justice on climate change in December. We reiterate the need to consider equity in the interpretation of legal rules that are associated with climate change related sea-level rise.
15. Second, we agree strongly with the comments by the Co-Chair that a distinction could be made between the application of the criteria of the Montevideo Convention to the creation of states vs. the continuation thereof. As we have said in the past, there is a consistent and general practice of states illustrating that the criteria do not apply for the continuation of states. We welcome the Co-chair's acknowledgement that "for a number of States...some of the requirements...had either not been present at some point, or only marginally so...". We have further said that it would be inequitable and unjust to apply this criteria in the context of climate change related sea-level rise.
16. Third, we note the discussion in the Report on the continuity of statehood and whether to describe it as a presumption or a principle. In our recent Declaration on Sea-Level Rise and Statehood, we stated that this was a principle, rather than a presumption. In the context of climate change related sea level rise, it would be inequitable to consider that the continuation of a state could be subject to rebuttal by another state, particularly a state who was a cause of climate change. It would be more appropriate to describe the continuity of statehood as a principle, which could be terminated only through the free exercise of the right to self-determination by the relevant population.

Protection of Persons

17. Turning to protection of persons, we welcome the discussion on this issue and agree that this is an area that will require legal development. We note the list of elements

contained in the Additional Paper and wish to comment specifically on the issue of international cooperation.

18. In our recent Declaration, we acknowledged that international cooperation, including through the provision of technical, financial or other support, will be required to protect persons and communities affected by climate change-related sea level rise including, inter alia, protecting their culture, cultural heritage, identity and dignity, and meeting their essential needs.
19. We have noted in the past that the duty of cooperation is a general principle of international law. This principle establishes an obligation for the international community to assist the states that are most affected by sea-level rise. It is rooted in the U.N. Charter, the Universal Declaration of Human Rights and the Declaration on the Principles of International Law Concerning Friendly Relations and Cooperation Among States. It is also a foundational principle of international human rights, environmental, and disaster law—the three legal regimes most relevant to sea-level rise.
20. We have said before that while cooperation is a legal obligation, it is also a matter of equity. AOSIS members are among the lowest emitters of the greenhouse gases that drive climate change and sea-level rise. Yet, we face some of the most severe consequences of rising sea levels. To expect small island states to shoulder the burden of sea-level rise—without assistance from the international community—would be the pinnacle of inequity.

Final Report

21. Finally, looking forward to the final report from the Study Group, we would hope that the Co-chairs would not only summarize their work to date, but provide a path forward on how we may further develop these areas of law to confront sea level rise and the climate crisis.
22. As we have done for more than thirty years now, SIDS remain committed to addressing climate change and sea level rise in a manner that respects international law, fairness and equity. We look forward to continued international support and cooperation toward the protection of our rights and entitlements, sovereignty and statehood.
23. I thank you.