

RESOLUTION 01/2024

COMMITTEE ON INTERNATIONAL LAW AND SEA LEVEL RISE

The 81st Conference of the International Law Association, held in Athens, Greece, 25–28 June 2024:

HAVING CONSIDERED the Report of the Committee on International Law and Sea Level Rise submitted to the 81st Conference, as well as taking note of the Interim Report of the Committee submitted to the 80th Conference held in Lisbon, Portugal, in June 2022;

APPRECIATING the work done by the Committee, implementing its mandate ‘to study the possible impacts of sea level rise and the implications under international law of the partial and complete inundation of State territory, or depopulation thereof, in particular of small island and low-lying States’, and ‘to develop proposals for the progressive development of international law in relation to the possible loss of all or of parts of State territory and maritime zones due to sea level rise, including the impacts on statehood, nationality, and human rights’;

ENDORSES the views of the Committee that all actions by low-lying Small Island Developing States (SIDS) affected by climate change-related sea level rise; other States; sub-regional, regional and international organizations; as well as the international community as a whole should be guided by the principles and objectives of legal certainty and stability, equity, and international cooperation when addressing the implications of climate change-related sea level rise for the statehood of affected States and the rights of their population – *and, in particular:*

– *Regarding the impacts on maritime zones and their limits, and maritime boundaries,*

TAKING NOTE of the evidence submitted by the Committee demonstrating the significant evolution in State practice in the context of climate change-related sea level rise, including public views and newly adopted policies of States that have taken place subsequent to the Committee’s 2018 Report and ILA Resolution 5/2018 as well as the First Issues (2020) and Additional (2023) Papers of the Co-Chairs of the ILC Study Group on sea-level rise in relation to international law, supporting an interpretation according to which coastal States that have determined their baselines and maritime entitlements in accordance with the 1982 United Nations Convention on the Law of the Sea (Convention) are not required to change those baselines and entitlements, notwithstanding physical changes of the coastline brought about by climate change-related sea level rise;

REITERATES the continuing relevance of ILA Resolution 5/2018 and **ENDORSES** the recommendation by the Committee that an explicit recognition of this solution at a globally agreed level would significantly contribute to facilitating legal certainty concerning the stability of baselines, maritime limits, and maritime boundaries in the context of sea level rise, so that there would be considerable benefit from the adoption of a globally agreed instrument enabling wide participation – such as an UNGA resolution or whatever other format or forum might be agreed upon for this purpose – that confirms international law as reflected in the Convention, clarifying its contemporary interpretation according to which:

1. On the grounds of legal certainty and stability, provided that the baselines and the outer limits of maritime zones of a coastal or an archipelagic State have been properly determined in accordance with the Convention, these baselines and limits are not required to be redetermined should climate change-related sea level rise affect the geographical reality of the coastline;
2. The maintenance of existing maritime entitlements is conditional upon the coastal State’s existing maritime claims having been made in compliance with the requirements of the Convention and duly deposited with the Secretary-General of the United Nations, as required by the relevant provisions of the Convention;
3. The interpretation of the Convention in relation to the ability of coastal and archipelagic States to maintain their existing lawful maritime entitlements in the context of climate change-related sea level

rise applies equally to maritime boundaries delimited by international agreements or by decisions of international courts or arbitral tribunals;

4. In view of legal certainty, it is recommended that coastal States deposit with the UN Secretary General information specifying also those baselines and the outer limits for which the deposit is not strictly required by the Convention.

ENDORSES the recommendation by the Committee that baselines and limits of maritime zones that are in compliance with the Convention and deposited with the UN Secretary-General, and have not met with objection by other States, should continue in place even if the territory involved gradually changes as a result of climate change-related impacts including sea level rise in the process or submergence;

ENDORSES ALSO the recommendation by the Committee regarding the finality of maritime boundaries agreed by treaty or settled by judicial decisions, so that existing maritime boundaries should continue in force and represent the legal extent of maritime zones, even if the territory from which the agreed or adjudicated boundaries were originally calculated gradually changes in the process of submergence.

– Regarding the impacts on statehood and the rights of affected populations,

ENDORSES the views of the Committee with regard to the preservation of statehood that:

1. States affected by sea level rise not only have the right but to some extent also the duty to provide for their own preservation using the various lawful means at their disposal, including through international cooperation;
2. The principle that the existing recognition of a State is unconditional and irrevocable legitimately provides for and supports the objective of international law to facilitate legal certainty and stability. It should therefore be recognized as the key guidance for addressing the unprecedented challenge faced by low-lying SIDS in a mid- to long-term perspective, when most of their land territory may become uninhabitable or submerged in consequence of sea level rise. Thus, as recognized by some States, climate change-related sea level rise should not cause the loss of statehood of any State nor its membership in the United Nations, its specialized agencies, or other international organizations.

REITERATES the continuing relevance of the Sydney Declaration of Principles on the Protection of Persons Displaced in the Context of Sea Level Rise (ILA Resolution 6/2018), including, in particular,

1. Principle 2 on the freedom of affected persons to choose their residence and thus to stay there; their freedom to leave and return to their own country; their right to be protected against *refoulement*; and their right to be informed, consulted, and participate in decisions affecting them;
2. Principles 4, 7 and 9 on the duty to cooperate and particularly relevant forms of such cooperation to prevent displacement; the facilitation, as appropriate, of cross-border migration; and the protection of the rights of persons who are displaced across borders in the context of climate change-related sea level rise impacts.

RECOGNIZES that international human rights law regulates the allocation of human rights duties and responsibilities among States, particularly in situations of cross-border displacement and migration of members of the population of affected States. Such individuals always remain rights holders under international law regardless of whether or not they have left their own country; and that States under whose jurisdiction they fall are always obligated to respect, protect, and fulfil their rights without discrimination;

FURTHER RECOGNIZES that retaining the ability of affected States to meet their human rights obligations is an important factor in maintaining their ability to govern and exercise authority as an important criterion of statehood and that international cooperation should strengthen that ability wherever possible;

ENDORSES the views of the Committee concerning the human rights of members of the population of affected SIDS that:

1. As long as affected States are able to safeguard substantial parts of habitable territory, they retain the primary responsibility to respect, protect and fulfil the human rights of the members of their population;
2. To the extent that such States' ability to meet these obligations is undermined by the impacts of climate change-related sea level rise, they should, as envisaged in Article 2(1) of the International Covenant on Economic, Social and Cultural Rights, request assistance from other States and the international community, which are, as appropriate, called upon to respond positively to such requests in accordance with the principle of international cooperation. To make such cooperation predictable and effective,
 - a. States with the capacity to provide support should increase the availability of, and facilitate access to, funding and financing for both climate adaptation and loss and damage in ways that enable affected States to meet their human rights obligations;
 - b. Cooperating States should develop and adopt bilateral or multilateral cooperation agreements with affected States;
3. At the point where an affected State has lost most of its habitable territory, and most of its population has moved abroad, but it still retains its statehood, the primary responsibility to respect, protect and fulfil the human rights of those affected shifts to the State(s) in which those affected now live. In some situations, this might raise complex questions of overlapping jurisdictions. In particular,
 - a. Affected and host States are recommended to:
 - i. enhance cooperation by developing human rights-based and gender-responsive bilateral, (sub-)regional, and regional frameworks and agreements on cross-border displacement, migration and planned relocation;
 - ii. allow dual/multiple nationality and absentee voting as measures to help affected States retain a population capable of shaping political life, and thus the exercise of State authority as criteria of statehood, even in conditions of large-scale loss of habitable territory;
 - iii. as appropriate and to the extent that hosted communities become a minority group within another State, reiterate the human rights principles protecting their members and agree on their practical implications;
 - b. Hosting States, depending on their own capacities and level of development, may need the support of the international community to permanently host the newcomers and discharge their own human rights obligations, in particular with regard to the realization of their economic, social and cultural rights. Other States and the international community, which are called upon, as appropriate, should respond positively to such requests.

REQUESTS the Secretary-General of the International Law Association to forward this Resolution to the Secretary-General of the United Nations with the request that it be brought to the attention of the UN Member States, the UN Human Rights Council, the International Law Commission, the UN Office of the High Representative for the Least Developed Countries, Landlocked Developing Countries and Small Island Developing States, as well as other relevant UN bodies and agencies;

ALSO REQUESTS the Secretary-General of the International Law Association to forward this Resolution to the Registrar of the International Court of Justice, the Registrar of the International Tribunal for the Law of the Sea, the Secretary-General of the Permanent Court of Arbitration, the Registrar of the Inter-American Court of Human Rights, as well as to international organizations and associations of the interested States, in particular the Pacific Island Forum (PIF), the Alliance of Small Island States (AOSIS), the Caribbean Community (CARICOM), the Organization of Eastern Caribbean States (OECS), the Indian Ocean Rim Association (IORA), the Association of Southeast Asian Nations (ASEAN), the Organization of African, Caribbean and Pacific States (OACPS), and the Asian African Legal Consultative Organization (AALCO).

RECOMMENDS to the Executive Council that the Committee on International Law and Sea Level Rise, having accomplished its mandate, be dissolved.