
FROZEN BASELINES IN A WARMING WORLD: RETHINKING MARITIME ENTITLEMENTS AND STATEHOOD UNDER INTERNATIONAL LAW

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ABSTRACT

Sea-level rise driven by anthropogenic climate change is projected to permanently submerge coastal lowlands and, in extreme cases, entire low-lying island states by the end of this century. Because the United Nations Convention on the Law of the Sea (UNCLOS) ties every maritime zone – the territorial sea, the contiguous zone, the exclusive economic zone, and the continental shelf – to baselines drawn from the physical coastline, a retreating shoreline threatens to shrink, and in extreme cases extinguish, the maritime entitlements of the states most responsible for none of the warming that imperils them. This paper examines whether international law, as it currently stands, can accommodate this threat, and argues that it cannot do so satisfactorily without doctrinal innovation. It contends that the law should move decisively toward permanently fixed baselines, charted once and preserved notwithstanding subsequent coastal recession, as the most coherent means of reconciling the doctrine that the land dominates the sea with the overriding need for legal certainty and equity for climate-vulnerable states. The paper further considers the more difficult question of continued statehood where territory is wholly or substantially lost, testing the Montevideo criteria against emerging State practice, the work of the Pacific Islands Forum and the Alliance of Small Island States, and the International Law Commission's Study Group on sea-level rise. It concludes that while customary international law is visibly moving toward accepting fixed baselines, the harder question of deterritorialised statehood remains unresolved and requires either a dedicated multilateral instrument or a generous, purposive reinterpretation of existing statehood doctrine. The paper closes with concrete recommendations for the future direction of codification.

Keywords: Sea-level rise; UNCLOS; baselines; maritime zones; exclusive economic zone; statehood; Montevideo Convention; International Law Commission; small island developing states; climate change and international law.

I. Introduction

International law has long proceeded on the assumption that coastlines, while not immutable, change slowly enough that the law need not treat their movement as a matter of urgency. The entire architecture of maritime zones under the United Nations Convention on the Law of the Sea, 1982 (UNCLOS) rests on this assumption. Every entitlement a coastal State possesses at sea – its territorial sea, its contiguous zone, its exclusive economic zone (EEZ), and its continental shelf – is measured outward from a baseline that is itself a function of the physical coastline, ordinarily the low-water line along the coast as marked on large-scale charts officially recognised by the coastal State.

Anthropogenic climate change has unsettled this assumption. The Intergovernmental Panel on Climate Change has projected sustained global mean sea-level rise over the course of this century, driven by thermal expansion of ocean water and the melting of land-based ice. For continental States, the consequence is a gradual landward retreat of the coastline and, correspondingly, of the baseline, with attendant losses of territorial sea and EEZ. For small island developing States, particularly low-lying atoll nations in the Pacific such as Tuvalu, Kiribati, and the Marshall Islands, the consequence is graver still: portions of national territory may become uninhabitable or permanently submerged, raising the spectre that a State could lose the land base on which its statehood, and its maritime entitlements, were originally founded.¹

This paper asks two connected questions. First, should the law require baselines to move landward in step with a retreating coastline, shrinking a State's maritime zones in proportion to its territorial loss, or should baselines instead be permanently fixed once established, irrespective of subsequent physical change? Second, in the most extreme scenario, where an island State's territory disappears in whole or in substantial part, does that State continue to exist as a subject of international law, and can it continue to assert maritime entitlements measured from a coastline that no longer exists in fact?

The paper argues that international law should recognise permanently fixed baselines as a matter of customary international law, both because this outcome is increasingly supported by State practice and *opinio juris*, and because it is the only outcome consistent with basic

¹ Intergovernmental Panel on Climate Change, Sixth Assessment Report: The Physical Science Basis (2021).

principles of legal certainty, sovereign equality, and equity as between States that have contributed negligibly to climate change and the international community that has, collectively, caused it. It further argues that the question of continued statehood, while related, is analytically distinct and considerably less settled, and that fixing baselines – however necessary – does not by itself resolve what becomes of a State whose territory is wholly lost.

The paper proceeds in seven further parts. Part II sets out the legal architecture of maritime zones under UNCLOS and explains why baselines are doctrinally significant. Part III explains the legal problem sea-level rise creates, in particular its tension with the traditional principle that the land dominates the sea. Part IV surveys State practice and the work of the International Law Commission's Study Group on sea-level rise. Part V turns to the harder statehood question. Part VI offers a critical analysis of the fixed-baseline solution, including its limitations. Part VII makes recommendations, and Part VIII concludes.

II. The Legal Architecture of Maritime Zones under UNCLOS

A. Baselines: The Foundational Concept

UNCLOS does not invent the concept of the baseline; it codifies and develops customary international law as it had emerged through State practice and the jurisprudence of the International Court of Justice, most notably the *Anglo-Norwegian Fisheries* case. Article 5 of UNCLOS provides that, except where otherwise provided, the normal baseline for measuring the breadth of the territorial sea is the low-water line along the coast as marked on large-scale charts officially recognised by the coastal State. Where coastlines are deeply indented or fringed with islands, Article 7 permits the use of straight baselines joining appropriate points. Articles 6 and 9 to 11 deal with reefs, river mouths, bays, and ports, while Article 47 governs archipelagic baselines for archipelagic States.²

The baseline performs two functions simultaneously. Internally, it demarcates the line between internal waters, over which the coastal State exercises sovereignty as though they were land territory, and the territorial sea. Externally, it is the line from which every subsequent maritime zone is measured outward. The baseline is, in this sense, the zero point of the entire maritime

² United Nations Convention on the Law of the Sea, opened for signature 10 December 1982, 1833 UNTS 3 (entered into force 16 November 1994) arts 5–7, 9–11, 47; *Fisheries Case (United Kingdom v Norway)* (Judgment) [1951] ICJ Rep 116.

legal order: a small inward or outward shift in the baseline produces a corresponding shift in the outer limits of every zone measured from it, and because the EEZ extends up to 200 nautical miles, even a modest landward shift in the baseline can translate into a substantial loss of maritime space and the resources within it.

B. Zones Measured from the Baseline

The territorial sea extends up to 12 nautical miles from the baseline, within which the coastal State exercises full sovereignty subject to the right of innocent passage (Articles 2 to 3). The contiguous zone extends to 24 nautical miles, within which the coastal State may exercise the control necessary to prevent and punish infringement of its customs, fiscal, immigration, and sanitary laws (Article 33). The EEZ extends to 200 nautical miles, within which the coastal State has sovereign rights for the purpose of exploring, exploiting, conserving, and managing natural resources, whether living or non-living, of the waters and the seabed (Article 56). The continental shelf comprises the seabed and subsoil of submarine areas extending to the outer edge of the continental margin, or to 200 nautical miles where the margin does not extend that far, and in some cases beyond 200 nautical miles where the geological shelf extends further, subject to the procedures of Article 76 and the Commission on the Limits of the Continental Shelf.

Each of these zones carries significant economic value, principally through fisheries and hydrocarbon and mineral resources. For small island States with limited land territory, the EEZ is frequently the single most valuable asset under their jurisdiction; for several Pacific atoll States, the maritime zone is many thousands of times larger than the land territory from which it is measured. The stakes of any landward movement of the baseline are accordingly not merely symbolic but directly bound up with the economic survival of the States concerned.

Figure 1: Maritime Zones Measured Outward from the Baseline (UNCLOS)

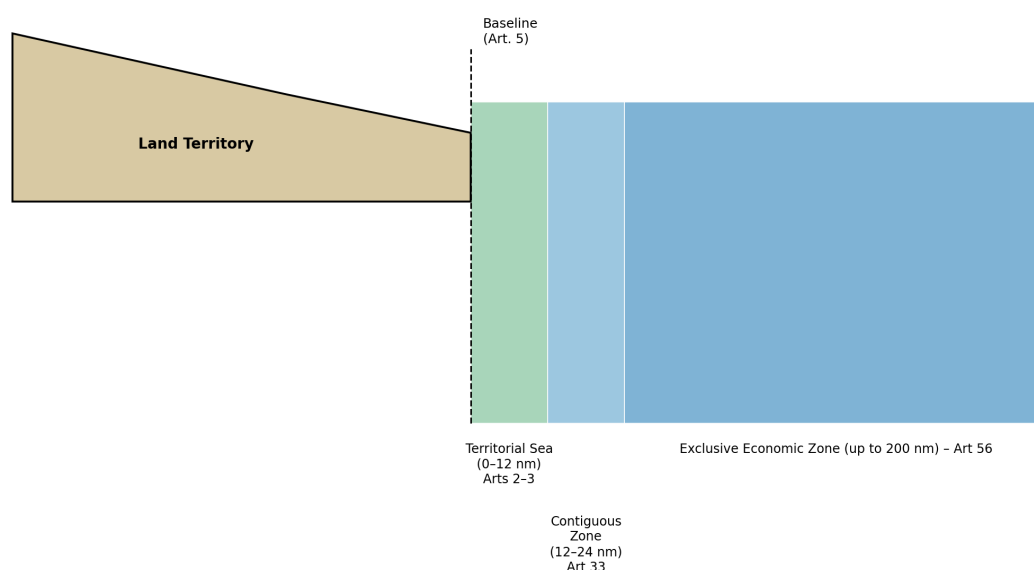


Figure 1: Maritime zones measured outward from the baseline under UNCLOS arts 2–3, 5, 33, and 56.

C. The Ambulatory Character of the Baseline

UNCLOS does not state in terms whether the baseline, once drawn, is fixed for all time or whether it must be redrawn as the coastline physically changes. The orthodox reading, grounded in the maxim that the land dominates the sea articulated by the International Court of Justice in the North Sea Continental Shelf cases and reiterated in subsequent jurisprudence including *Qatar v. Bahrain* and *Nicaragua v. Colombia* treats the baseline as ambulatory: a legal description of a physical fact, which must in principle track that fact as it changes. On this reading, as a coastline erodes, accretes, or is otherwise reshaped by natural processes, the baseline, and therefore the seaward limits of every maritime zone, moves correspondingly. This view finds support in the ordinary meaning of Article 5, which ties the baseline to the low-water line as it in fact exists, rather than as it existed at some earlier date.³

The ambulatory doctrine was developed and applied without any contemplation of sustained, unidirectional, anthropogenically caused sea-level rise affecting the entire global coastline simultaneously. It assumed gradual, localised, and often offsetting processes of erosion and

³ North Sea Continental Shelf (Federal Republic of Germany v Denmark; Federal Republic of Germany v Netherlands) (Judgment) [1969] ICJ Rep 3; Maritime Delimitation and Territorial Questions between Qatar and Bahrain (*Qatar v Bahrain*) (Merits) [2001] ICJ Rep 40; Territorial and Maritime Dispute (*Nicaragua v Colombia*) (Judgment) [2012] ICJ Rep 624.

accretion of the kind contemplated by classical accretion and avulsion doctrines in both international and domestic property law. Sea-level rise presents a qualitatively different phenomenon: a uniform, sustained, largely one-directional landward retreat affecting virtually every coastal and island State at once, driven by a cause—global greenhouse gas emissions—that is collective and largely exogenous to the affected States themselves. It is this mismatch between an inherited doctrine and an unprecedented physical phenomenon that generates the legal problem this paper addresses.

III. Sea-Level Rise as a Legal Problem

A. The Scientific Premise

The scientific basis for concern is not seriously contested. The Intergovernmental Panel on Climate Change's Sixth Assessment Report projects continued global mean sea-level rise throughout the twenty-first century and beyond under every emissions scenario considered, with the rate and ultimate magnitude of rise depending on the trajectory of future emissions and the response of polar ice sheets. Even under comparatively optimistic mitigation scenarios, sea levels are projected to continue rising for centuries because of the lagged response of the ocean and ice sheets to warming already locked in. For low-lying atoll States with maximum elevations of only a few metres above current sea level, even the lower end of projected rise threatens the habitability, and in some projections the physical existence above water, of significant portions of national territory within the lifetimes of people alive today.⁴

B. The Doctrinal Tension: 'The Land Dominates the Sea'

The principle that the land dominates the sea is foundational to the law of maritime delimitation: maritime entitlements derive from and are justified by sovereignty over land territory, not the reverse. Applied mechanically, this principle would suggest that as land territory is lost to the sea, the maritime entitlements that depend upon it should correspondingly diminish. This is precisely the outcome the ambulatory baseline doctrine, taken to its logical conclusion, would produce.⁵

⁴ Intergovernmental Panel on Climate Change, Sixth Assessment Report: The Physical Science Basis (2021) (synthesis projections for global mean sea-level rise under SSP emissions scenarios).

⁵ Rosemary Rayfuse, 'International Law and Disappearing States: Maritime Zones and the Criteria for Statehood' (2011) Environmental Policy and Law.

Yet this mechanical application sits uneasily with other foundational principles of the international legal order, in particular the principles of sovereign equality, the stability and finality of boundaries, and good faith. International boundary law has historically privileged certainty over strict physical accuracy once a boundary is established: land boundaries, once delimited and demarcated, are not ordinarily redrawn merely because a river that formed part of the boundary later shifts its course, a principle reflected in numerous boundary treaties that fix the boundary as it existed on a specified date notwithstanding subsequent avulsion. There is no obvious reason why maritime baselines, also boundaries in substance if not always in name, should be treated as more contingent and impermanent than land boundaries, particularly where the change in question is driven by a phenomenon global warming to which the affected coastal State has, in the paradigm case of a small island State, contributed almost nothing.

C. Differential Impact on Small Island and Low-Lying States

The burden of an ambulatory baseline doctrine would fall with grossly disproportionate severity on precisely those States least responsible for the underlying cause. Large continental States with extensive land territory would lose a relatively small proportion of their maritime zones even after significant coastal retreat. Low-lying atoll States such as Tuvalu and Kiribati, by contrast, face the prospect of losing the entirety of their land territory, and with it, on an ambulatory reading, their entire maritime estate and arguably their very statehood. The Alliance of Small Island States (AOSIS) and the Pacific Islands Forum have repeatedly characterised this as an issue of fundamental injustice: the States that did least to cause climate change stand to lose the most from a legal doctrine that simply was not designed with this scenario in mind.⁶

IV. State Practice and the Movement Toward Fixed Baselines

A. Pacific Islands Forum and AOSIS Declarations

Confronted with this prospect, Pacific island States have moved, largely outside the formal treaty-amendment process, to assert that their baselines and maritime zone limits, once notified to the United Nations Secretary-General in accordance with UNCLOS, should be considered

⁶ David Freestone and Clive Schofield, 'Sea Level Rise and Archipelagic States: A Preliminary Risk Assessment' (2021) *Ocean Yearbook*; Sumudu Atapattu, 'Climate Change and Displacement: Protecting Pacific Island States' (2020) *Journal of International Law*.

permanent regardless of future sea-level rise. The Pacific Islands Forum's 2021 Declaration on Preserving Maritime Zones in the Face of Climate Change-related Sea-Level Rise affirmed the view of its member States that maritime zones established and notified in accordance with UNCLOS should continue to apply without reduction, notwithstanding physical changes connected to climate change-related sea-level rise. This was followed in 2023 by a further declaration extending the same principle expressly to statehood, asserting that Pacific Forum members would continue to recognise the statehood of other Forum members notwithstanding the impact of sea-level rise. AOSIS has issued parallel statements to similar effect, and individual States, including Tuvalu, Vanuatu, the Federated States of Micronesia, the Marshall Islands, Niue, and others, have deposited or supported declarations asserting fixed baselines and the maintenance of charted maritime zone limits.⁷

These declarations are significant evidence of State practice and *opinio juris*, the two constituent elements of customary international law under the formula recognised by the International Court of Justice in the North Sea Continental Shelf cases. They are not, however, themselves dispositive: they represent the position of an interested group of States rather than universal or even widespread practice extending to the major maritime powers whose acquiescence (or, at minimum, absence of persistent objection) would strengthen the case that a new customary rule has crystallised. To date, no State appears to have lodged a formal protest against these declarations, which several scholars have suggested may itself be read as evidence of tacit acceptance, though the absence of objection is a weaker form of evidence than affirmative practice.⁸

B. National Legislative Practice

A number of States, including several outside the Pacific, have enacted domestic legislation fixing their baselines by reference to charts deposited at a specified date, rather than leaving the baseline to track the physical coastline indefinitely. While such legislation cannot itself create binding obligations on other States, the accumulation of consistent and broadly unopposed domestic practice of this kind is precisely the raw material from which customary international law is built over time, particularly where it is later reinforced through multilateral

⁷ Pacific Islands Forum, Declaration on Preserving Maritime Zones in the Face of Climate Change-related Sea-Level Rise (6 August 2021); Pacific Islands Forum, Declaration on the Continuity of Statehood and the Protection of Persons in the Face of Climate Change-related Sea-Level Rise (9 November 2023).

⁸ North Sea Continental Shelf (Federal Republic of Germany v Denmark; Federal Republic of Germany v Netherlands) (Judgment) [1969] ICJ Rep 3, on the requirements of State practice and *opinio juris*.

declarations and is consistent with the practice of specially affected States, here the small island States most exposed to the problem.⁹

C. The International Law Commission's Study Group on Sea-Level Rise

The International Law Commission established a Study Group on Sea-Level Rise in Relation to International Law in 2019, mandated to examine the topic across three principal sub-themes: the law of the sea, statehood, and the protection of persons affected by sea-level rise. The Study Group's outputs to date have been issue papers and informal reports rather than draft articles, reflecting the considerable divergence of views among Commission members and the political sensitivity of the topic, particularly the statehood sub-theme. On the law-of-the-sea sub-theme, however, the Study Group's work has tended to lend support to the position favoured by affected island States: that the baselines and outer limits of maritime zones, once established and notified in accordance with UNCLOS, need not be recalculated solely because of sea-level rise, since requiring continual redetermination would undermine the stability, certainty, and finality that the law of maritime boundaries is generally understood to require. The Commission has been markedly more cautious on the statehood sub-theme, where it has thus far declined to take a definitive position, instead canvassing a range of possible approaches without endorsing any single one.¹⁰

Figure 2: Timeline of State Practice and ILC Study Group Outputs, 2019-2023

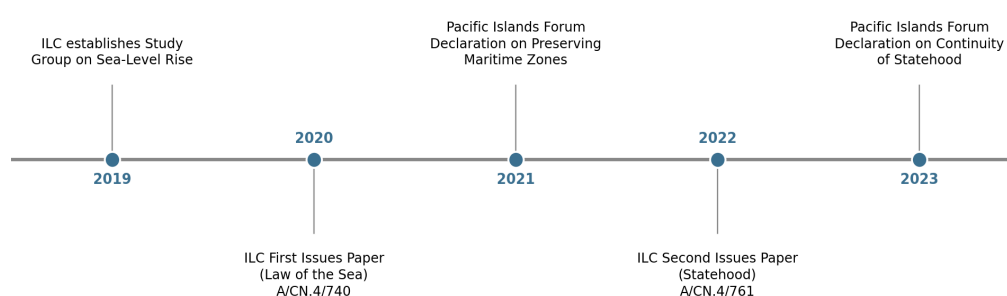


Figure 2: Timeline of ILC Study Group outputs and Pacific Islands Forum declarations, 2019–2023.

⁹ Jenny Grote Stoutenburg, *Disappearing Island States in International Law* (Brill Nijhoff, 2015).

¹⁰ International Law Commission, *Sea-Level Rise in Relation to International Law: First Issues Paper (Law of the Sea)*, UN Doc A/CN.4/740 (2020); International Law Commission, *Sea-Level Rise in Relation to International Law: Second Issues Paper (Statehood, Membership in International Organizations)*, UN Doc A/CN.4/761 (2022).

V. The Harder Question: Statehood in the Face of Submergence

A. The Montevideo Criteria Revisited

The traditional criteria for statehood, codified in Article 1 of the Montevideo Convention on the Rights and Duties of States, 1933, require a permanent population, a defined territory, an effective government, and the capacity to enter into relations with other States. Of these, the requirement of a defined territory is the one most directly threatened by sea-level rise. If a State's land territory is wholly submerged, it is no longer obvious that the territorial criterion continues to be satisfied in any literal sense, raising the theoretical possibility that the State in question simply ceases to exist as a subject of international law, with its population becoming, in the most extreme reading, effectively stateless, and its erstwhile maritime zones reverting to the high seas or the Area for the benefit of the international community generally.¹¹

This conclusion is, on reflection, difficult to accept, both as a matter of policy and, increasingly, as a matter of positive law. As a matter of policy, it would reward the causes of climate change predominantly the major historical greenhouse gas emitters by allowing them, in effect, to extinguish by inaction the statehood and resource entitlements of States that contributed negligibly to the problem. As a matter of positive law, the Montevideo criteria, although frequently treated as a convenient checklist, were articulated to describe the conditions under which statehood typically arises, rather than to prescribe a rule under which previously recognised statehood automatically lapses the moment any one criterion ceases to be satisfied in full. State practice, moreover, has long tolerated departures from strict application of the criteria once statehood has been established and recognised: governments in exile have continued to be treated as representing their States despite loss of effective control over territory, and States experiencing prolonged civil conflict or state failure have not been treated as having ceased to exist merely because effective government was, for a period, absent.

B. Doctrinal Responses: Deterritorialised and Government-in-Exile Models

Scholars and, increasingly, the affected States themselves have proposed several doctrinal routes by which statehood might be preserved notwithstanding the loss of habitable territory. One model draws on the established practice of recognising governments in exile, suggesting

¹¹ Montevideo Convention on the Rights and Duties of States, opened for signature 26 December 1933, 165 LNTS 19 (entered into force 26 December 1934) art 1.

that a State whose population has relocated, in whole or in substantial part, to the territory of another State or to land newly acquired for the purpose could continue to be recognised as a State so long as its government continues to function and to be recognised as representing the relevant population, even without territory in the traditional sense. A second, related model proposes that the remaining maritime features themselves, even if reduced to rocks or shoals not capable of sustaining human habitation, might suffice to anchor a residual territorial claim, particularly if reinforced by artificial preservation measures, though this raises the separate complication that Article 121(3) of UNCLOS denies an EEZ and continental shelf to rocks that cannot sustain human habitation or economic life of their own, a provision the International Tribunal for the Law of the Sea applied restrictively in the South China Sea Arbitration. A third model, favoured by several Pacific leaders in political declarations if not yet embodied in binding instruments, simply asserts as a matter of collective political recognition that Forum members will continue to recognise one another as States regardless of the physical fate of their territory, treating recognition itself, reinforced by continued United Nations membership, as sufficient to preserve legal personality.¹²

None of these models is free of difficulty. The government-in-exile analogy was developed for temporary occupation, not permanent and total loss of territory, and stretching it to cover indefinite deterritorialised statehood is a considerable doctrinal extension rather than a straightforward application of settled law. The residual-feature model depends on geological and engineering possibilities that may not be available to every affected State and sits awkwardly with Article 121(3). The declaratory-recognition model, while politically significant, does not bind States outside the declaring group and cannot, by itself, settle questions such as UN membership, treaty capacity, or the rights of a deterritorialised population under the law of nationality.¹³

C. The Continuity of Maritime Entitlements Absent Habitable Territory

If, contrary to the position adopted above, statehood is treated as continuing despite total loss of habitable land, a further question arises: can such a State continue to assert an EEZ and continental shelf measured from a baseline that, in physical fact, no longer corresponds to any

¹² South China Sea Arbitration (Philippines v China) (Award) PCA Case No 2013-19 (12 July 2016); United Nations Convention on the Law of the Sea (n 2) art 121(3).

¹³ Maxine Burkett, 'The Nation Ex-Situ: On Climate Change, Deterritorialized Nationhood and the Post-Climate Era' (2011) Climate Law.

coastline at all? The fixed-baseline solution developed in Part IV provides at least a partial answer: if the baseline is treated as permanently fixed once lawfully established and notified, the disappearance of the physical coastline subsequent to that notification does not, on the position favoured by Pacific States and increasingly reflected in the work of the International Law Commission, extinguish the maritime zones measured from it. On this view, the maritime zones become detached from the present physical coastline and instead persist as a function of the legally fixed baseline, a result that is conceptually unusual but not without precedent, given that maritime boundaries agreed by treaty are already treated as permanent regardless of subsequent natural change to the geographic features that originally justified them.

VI. Critical Analysis: Does Fixing Baselines Solve the Problem?

A. The Case for Fixed Baselines

The case for permanently fixed baselines rests on three principal grounds. First, legal certainty: maritime boundaries, whether between neighbouring States or as outer limits against the high seas, are foundational to resource allocation, investment, fisheries management, and the prevention of inter-State conflict, and the prospect of having to redraw them periodically as a coastline imperceptibly retreats would introduce instability into an area of law that depends on predictability. Second, sovereign equality and non-discrimination: there is no principled reason to treat a State's maritime entitlement as more contingent than that of its neighbours merely because of the geomorphological vulnerability of its coastline, particularly where that vulnerability stems from a global, collectively caused phenomenon rather than any conduct attributable to the State itself. Third, equity and historic responsibility: the States most exposed to losing their maritime zones through an ambulatory baseline rule are overwhelmingly the States that have contributed least to global greenhouse gas emissions, and a legal rule that compounds this injustice by stripping them of their principal economic asset would sit badly with the broader corpus of international environmental law, including the common but differentiated responsibilities principle reflected in the climate change treaty regime.¹⁴

B. Counterarguments and Their Limits

The principal counterargument is the one already noted: a fixed baseline, divorced indefinitely

¹⁴ United Nations Framework Convention on Climate Change, opened for signature 9 May 1992, 1771 UNTS 107 (entered into force 21 March 1994) art 3(1) (common but differentiated responsibilities principle).

from the physical coastline that originally justified it, becomes a legal fiction that is difficult to reconcile with the foundational principle that the land dominates the sea. Critics might argue that if the law is prepared to sever maritime entitlement from physical geography entirely, the conceptual basis for the entire system of zonal entitlement is called into question, with unpredictable consequences for other areas of the law of the sea that likewise depend on the link between land and sea, such as delimitation between neighbouring States.

This objection has force but is not, in the present author's assessment, decisive. International law has long been willing to tolerate fictions of this kind where they serve clear and important purposes of stability: a treaty-delimited land or maritime boundary is not redrawn merely because the river or reef that originally informed its course later shifts, and nobody suggests that this offends the land-dominates-the-sea principle in any troubling sense, because the principle is best understood as governing the initial derivation of maritime entitlement from land sovereignty, not as requiring continuous, real-time recalibration thereafter. Properly understood, fixing the baseline at the point of lawful establishment is not a departure from the land-dominates-the-sea principle so much as a sensible temporal qualification of it: the land dominates the sea at the moment the relationship between the two is legally fixed, and the law thereafter treats that relationship as settled, exactly as it does for land boundaries.

A second, more pragmatic counterargument is that fixing baselines could in principle be exploited by States seeking to lock in maximal maritime claims based on a coastline more favourable than its current configuration, divorced from genuine adaptation needs. This risk is real but is more a reason for procedural safeguards, such as requiring baselines to be fixed and notified by reference to a charted coastline existing as of a specified, relatively early cut-off date, than a reason to reject the fixed-baseline approach altogether.

C. Equity, Historic Responsibility, and the Limits of Formal Legal Certainty

It is worth acknowledging, finally, that fixing baselines, however necessary, is not by itself a complete answer to the predicament of climate-vulnerable States. A maritime zone is a wasting asset if a State's population can no longer live on, or govern from, any remaining land; the EEZ generates revenue and resources, but it cannot itself provide habitable territory, fresh water, or a seat of government. Fixed baselines preserve a State's economic patrimony, which is valuable and worth preserving, but they do not resolve the deeper question, considered in Part V, of what happens to the State and its population once the land itself is gone. A complete legal

response to sea-level rise accordingly requires the maritime-zone solution developed in this paper to be paired with parallel development of the law of statehood, nationality, and, ultimately, international responsibility for climate-displaced persons, none of which is yet settled.

VII. Recommendations

Based on the foregoing analysis, this paper makes the following recommendations for the future development of international law.

1. The International Law Commission should expedite its work on the law-of-the-sea sub-theme and move from issue papers toward draft articles or draft conclusions affirmatively recognising that baselines and the outer limits of maritime zones, once established and deposited with the Secretary-General in accordance with UNCLOS, are not affected by subsequent sea-level rise.
2. States should be encouraged to formally chart and deposit their baselines by reference to a specified cut-off date in the near term, to forestall disputes over whether a baseline reflects genuine historic coastal configuration or opportunistic later claims.
3. The UN General Assembly should consider requesting an advisory opinion from the International Court of Justice on the discrete question of whether sea-level rise affects previously established maritime baselines and zone limits, providing an authoritative judicial determination that would carry greater weight than political declarations alone.
4. On the statehood question, the Commission, working with affected States, should develop a dedicated framework instrument addressing the continuity of statehood, nationality, and governmental functions for States facing loss of habitable territory, rather than leaving the matter to be resolved piecemeal through unilateral or regional declarations.
5. The maritime-zone and statehood tracks should be treated as complementary rather than substitutes: preserving fixed baselines protects the economic patrimony of affected States, but does not by itself address the humanitarian and governance consequences of territorial loss, which require their own dedicated legal response.

VIII. Conclusion

Sea-level rise exposes a fault line in the law of the sea that its drafters did not anticipate: a doctrine of ambulatory baselines that made sense for localised, slow, and often self-correcting coastal change becomes a vehicle of profound injustice when applied to a sustained, global, anthropogenically driven retreat of coastlines that threatens to strip the most climate-vulnerable States of their principal economic resource and, in the most extreme cases, their territorial foundation altogether. This paper has argued that the doctrinally and equitably preferable response is to recognise permanently fixed baselines, a position increasingly reflected in Pacific State practice, AOSIS and Pacific Islands Forum declarations, and the cautious but discernible direction of the International Law Commission's own work. Fixing baselines is not a departure from the principle that the land dominates the sea so much as a considered temporal limitation upon it, consistent with the law's longstanding preference for the stability of boundaries once lawfully established.

The harder question – what becomes of a State, and of statehood itself, when habitable territory is wholly lost – remains substantially unresolved. The Montevideo criteria, sympathetically construed, are capable of accommodating continued statehood through models such as continued governmental function and international recognition, but these models remain doctrinally untested and politically contingent. The law's task in the years ahead is not merely to fix baselines, valuable as that is, but to build, deliberately rather than reactively, a coherent framework for the continuity of statehood, nationality, and governance that matches the scale and permanence of the climate threat now facing the world's most exposed States. Until that framework exists, the international community's response to sea-level rise will remain, in important respects, incomplete.

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