

Effects of Rising Sea Levels on Maritime Boundaries

18th United Nations Informal Consultative Process on Oceans and the Law of the Sea





Rising sea levels

Irregular weather
patterns



Ocean acidification

Food insecurity
Water scarcity
Overpopulation/
displacement





Baselines · Maritime Features · Statehood

“If the legal baseline changes with human-induced expansions of the actual low-water line to seaward, then it must also change with contractions of the actual low-water line to the landward.”



“The normal baseline is ambulatory”



“The existing law of the normal baseline does not offer an adequate solution to baselines moving landward to reflect changes caused by erosion and sea-level rise.”

- Not contemplated during UNCLOS negotiations

Fixed or Changing Baselines?

If baselines moves, outerlimits will move – all States affected:

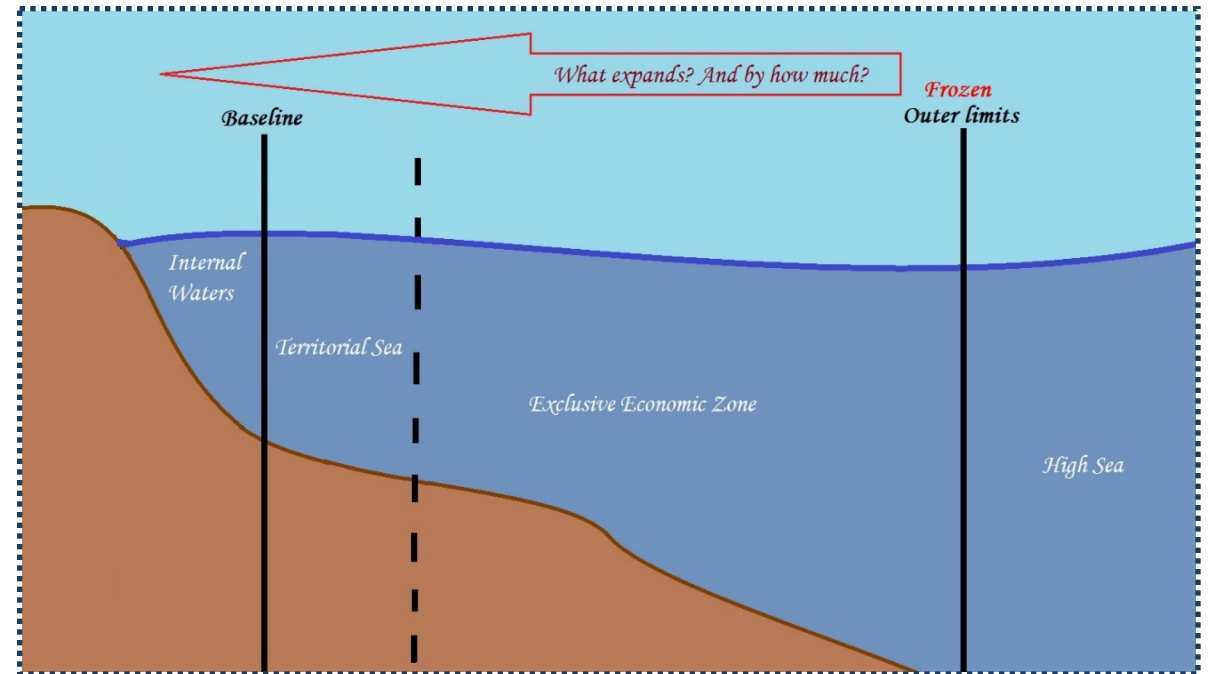
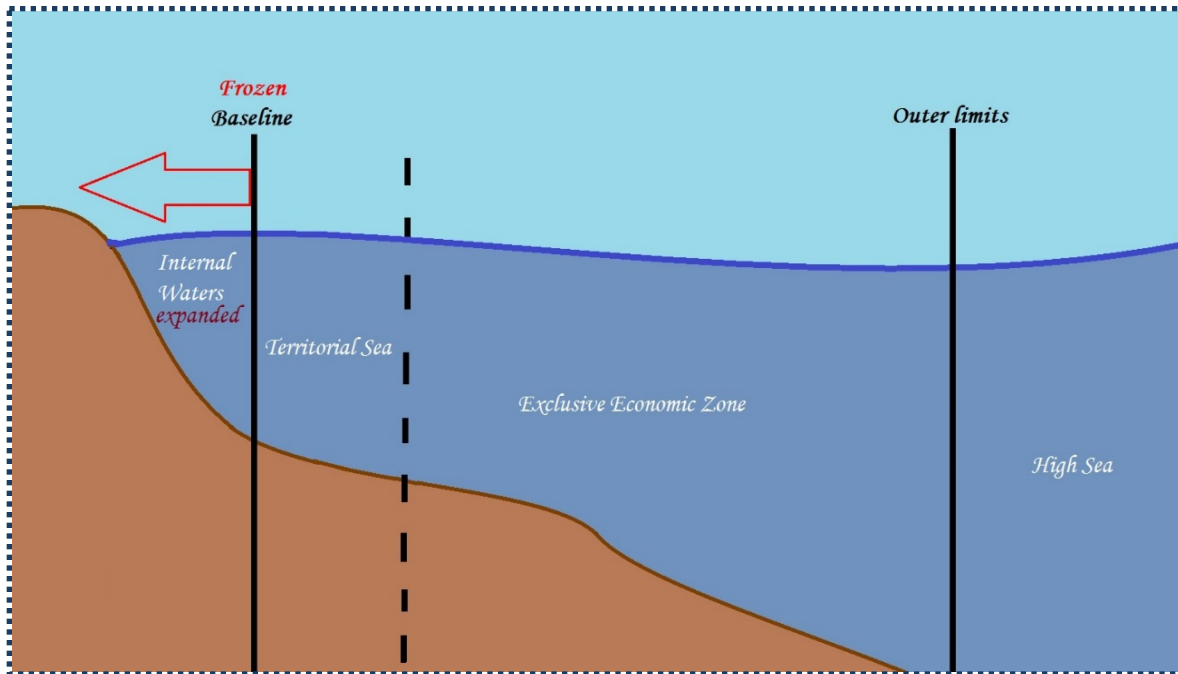
- Conflict with pre-existing agreements/closed cases
- Instability / consequences for peace and security
- Loss of territory and entitlements

Suggested Solutions to Ambulatory Baselines

Fixing baselines

vs.

Fixing the outer limits



What are the effects of rising sea levels on...

Islands Art. 121(1)

Islands that are rocks Art. 121(3)

Low tide elevations Art. 13

1. An island is a naturally formed area of land, surrounded by water, which is *above water at high tide*.
2. Except as provided for in paragraph 3, the territorial sea, the contiguous zone, the exclusive economic zone and the continental shelf of an island are determined in accordance with the provisions of this Convention applicable to other land territory.
3. Rocks which *cannot sustain human habitation or economic life of their own* shall have no exclusive economic zone or continental shelf.

Art 1, 1933 Montevideo Convention on Rights and Duties of States, the criteria for statehood:

- ✓ *A permanent population*
- ✓ *A defined territory*
- ✓ *Government*
- ✓ *Capacity to enter into relations with other States*

Birth v. Extinction of a State – criteria the same?

Loss of territory or un-inhabitability lead State extinction?

*Bay of Bengal Maritime Boundary Arbitration
(India v Bangladesh)*

- Whether the base points chosen now are feasible in the present case and time.
- Maritime delimitations must be stable and definitive to ensure peaceful relationships.
- Look at circumstances today / not projection of consequences of rising sea levels.

*Territorial and Maritime Dispute between
Nicaragua and Honduras in the Caribbean Sea
(Nicaragua v Honduras)*

- Honduras could not rely on certain coordinates for its baselines because they no longer conformed to the physical reality on the ground.
- Look at present circumstances, not past.

- Artificial substitutes unrecognized; “naturally formed” (Art 60 vs. Art 121)
- Should threatened States be planning resettlement?
- Under 1951 Convention Relating to the Status of Refugees, status of refugee not accorded to people displaced as a result of climate change consequences.
- Financing: protection of degrading territories and plans for relocation people

The existing legal framework is unequipped to deal with these critical problems.

- *State action and compliance – UNFCCC, Kyoto, Paris Agreement*
- *Development of international law: 6C and ILC*
- *Amendment to UNCLOS by a decision of SPLOS*
- *UNGA res. agreement on implementation of certain UNCLOS provisions*
 - *Referral of question to courts and tribunals*
 - *Agreements reached between States in interim*
 - *New rules for disappearing States*