

**Draft intervention for informal meeting with Sixth Committee on 28
October 2020**

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Chair and distinguished delegates of the Sixth Committee,

I have the privilege to introduce the second part of the First Issues Paper on sea level rise in relation to international law.

I will start with sub section A of Part II of the First Issues paper which examines *Maritime zones and entitlements under international law*. The scope of this part is only to provide an overview of the development of international law and outline the current status of the rights and obligations of coastal States and third States in these respective maritime zones.

The First Issues paper first provides a brief general overview of the period before codification of the law of the sea, followed by the relevant 1958 Geneva Conventions, customary international law and the 1982 Convention.

It should be mentioned that while the 1982 Convention on the Law of the Sea is the principal source of codified law for the purposes of the present paper, this is without prejudice to the position of States that have not ratified the Convention.¹

¹ Paragraph 46

This overview delineates the evolution of the different maritime zones from those that were recognized before and after the adoption of the 1982 UNCLOS.

Sub-section B examines *Sea-level rise, the sovereign rights and jurisdiction of the coastal State and its nationals, and the rights and obligations of third States and their nationals in maritime zones*

Sub- section B maps out the possible consequences on the rights and obligations of the coastal State and Third States in the situation where there is a landward shift of the baseline from which the territorial sea is measured.

The purpose of this section is to illustrate the specific impacts of a shift in the baseline due to sea level rise. Just as one example, and perhaps the most notable, is the case where part of the exclusive economic zone could become part of the high seas.

The exclusive economic zone confers upon the coastal State exclusive sovereign rights to explore, exploit, conserve and manage living and non-living natural resources, establish and use artificial islands, installations and structures, protect and preserve the marine environment, conduct marine scientific research and exercise other rights and duties provided under the Convention.

An important natural resource for coastal States are fisheries and other marine living resources. For example, the Coastal State alone determines the total allowable catch of living resources in its exclusive economic zone under article 61 of the Convention. In addition, the coastal State can adopt laws and regulations for environmental protective measures, such as protected areas.

These rights of the coastal State could be lost in part- if part of the exclusive economic zone becomes part of the high seas, which is in general an open access regime for all States.

One correction will be made to paragraph 177 where it should read that part of the internal waters becomes part of the territorial sea. The final report will reflect the changes.

Part Three of the First Issues paper examines the possible legal effects of sea-level rise on the status of islands, including rocks, and on the maritime entitlements of a coastal State with fringing islands.

One of the effects of sea-level rise is the potential loss of territory or complete disappearance of an offshore feature. Questions arise as to what legal consequences this might have on its continued status as an island entitled to the full suite of entitlements under article 121.

As stated in paragraph 191 of the First Issues paper, the role, status and entitlements of low-tide elevations, islands and other offshore features, including artificial islands, have been a long -standing subject of international law. The first part of the First Issues paper provides an historic overview of the development of international law leading up to the adoption of article 121.

The issues paper does not, however, attempt to, nor does it have any intention to enter into the debate of how to classify offshore features. Rather, the purpose of this section to provide the background of State practice, international case law and doctrinal views highlighting no more than the fact that this is an area with mixed practice and views. This in turn has relevance for the issue of what

happens to the entitlements of islands that possibly could become rocks under article 121, paragraph 3 with the possible loss of certain maritime zones and entitlements under UNCLOS.

The next section in the First Issues Paper examines the legal status of artificial islands, reclamation or island fortification activities as a response/adaptive measures to sea-level rise

As the First Issues paper notes, land reclamation is a practice that has taken place for centuries. In relation to sea level rise and climate change it has taken on added significance as a measure to retain existing maritime entitlements either through fortification of the coast line, basepoints that rest on small features vulnerable to disappear with SLR , or islands losing territory. The First Issues Paper provides some past and current examples of State practice, for land reclamation and coastal fortification including through artificial means will increase as a response to sea-level rise.

Under UNCLOS, artificial islands are not entitled to any maritime zone. However, there is no definition of an artificial island. The First Issues paper does not and will not engage in offering any such definition. Again, the purpose is to map existing state practice on response measures to sea level rise.

Lastly, I would like to add a few comments on our future work. Unfortunately, because of the pandemic and postponement of the 72nd session of the Commission, we did not have an opportunity to discuss our First Issues paper within the Commission.

As my co-chair and the Chair of the Commission have stated we have held some informal exchanges and invited contribution papers from members of the ILC. When we meet in 2021, we will hold open-ended Study Group meetings

on the First Issues Paper and then we will submit a final which will be made available for the comments of States. Indeed, comments by States are integral to the work of the Study Group on sea level rise.

The First Issues paper will be followed by the Second Issues Paper. It will examine the issues related to statehood and those related to the protection of persons affected by sea-level rise, under the co-chairpersonship of Mr. Ruda Santolaria and Ms. Galvão Teles.

The First and Second Issues papers are intended to be preliminary in nature. The intent is for the Study Group Co-Chairs to prepare in the next quinquennium, consolidated issues papers based on the substantive reports reflecting the work of the Study Group, the discussions in the Commission and the comments by States.

We also take this opportunity to invite States to provide any examples of State practice that is directly or indirectly related to measures that have taken in response to sea level rise. The work of the Commission on this important topic will be much enhanced with such information.

We now welcome your comments and any questions.