



**Statement by Antigua and Barbuda on behalf of the Alliance of Small Island States (AOSIS) under
Agenda Item 77 – Report of the International Law Commission on the work of its seventy-third session**

Sixth Committee
Delivered by Ms. Asha Challenger, First Secretary,
Permanent Mission of Antigua and Barbuda
Tuesday, 1 November 2022

Mr. Chair,

Introduction

1. I have the honour to deliver this statement 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 the effects of sea-level rise.
2. We would like to thank the International Law Commission, and in particular the Study Group on Sea-Level Rise in Relation to International Law, for their work over the past three years. Their two issues papers have given us much to consider. We are grateful to continue the dialogue with the ILC and our fellow States to understand, develop, and apply international law in a manner that matches the urgency needed to confront the climate crisis.
3. In this era of unprecedented and relentless sea-level rise, SIDS have been particularly engaged in the discussions around anthropogenic sea-level rise and international law. SIDS requested this item to be put on the programme of work of the Commission and made several submissions to the Commission. We have made statements in this Committee outlining our understanding of the relevant international law. Our heads of state and government have issued declarations on this issue. We are determined to be engaged in the development and application of international law that affects our States.
4. We recall the AOSIS Leaders' Declaration of last September, which we have previously spoken about in this Committee. In that negotiated declaration, our AOSIS Leaders affirmed that there is no obligation under the United Nations Convention on the Law of the Sea to keep baselines

and outer limits of maritime zones under review nor to update charts or lists of geographical coordinates once deposited with the Secretary-General of the United Nations, and that such maritime zones and the rights and entitlements that flow from them shall continue to apply without reduction, notwithstanding any physical changes connected to climate change-related sea-level rise. We are heartened to see that other states, including some of the largest coastal states, have adopted a similar understanding of international law, recognizing the need to ensure legal stability, security, certainty, and predictability.

5. Today, I would like to speak specifically on the issues covered in the Second Issues Paper, namely, the issues of statehood and protection of persons affected by sea-level rise.

Statehood

6. On statehood, we think that the past two centuries of state practice are abundantly clear. The Montevideo Convention on the Rights and Duties of States is not relevant to the question of continuation of statehood. Rather, there is a fundamental presumption of the continuation of statehood in international law. This principle has existed since Westphalia and has been consciously applied multiple times in order to allow states to continue to exercise their statehood. This is logical as the continued existence of States is foundational to our current rules-based international order.
7. Over the past century, we have recognized governments in exile when their control of territory is lost. We have allowed states to resume independent statehood and reclaim their seats at the UN after they had chosen to merge with other states. And we have even allowed states to exist that no longer have defined land territory. This consistent and general practice of states illustrates that Montevideo does not apply once statehood is initially established and that it is the presumption of the continuation of states that governs these situations.
8. It is inequitable and unjust to now suggest that in the context of rising sea levels we should strictly apply criteria developed in a regional agreement signed almost a century ago and ratified by 16 countries. Such criteria, in our view, do not apply to the continuation of states. We note that the potential loss of land territory by small islands because of sea level rise is not a natural phenomenon, but rather is anthropogenic in cause. To make an analogy, our land territory is being invaded as a result of the actions or inactions of other states. To now deprive us of our sovereignty is contrary to a century of state practice and our interpretation of the relevant law in this situation.

9. It is, as well, an unacceptable exertion of power by larger states, contrary to the principle of self-determination. Common Article 1 of the ICCPR and the ICESCR states that the right of self-determination allows people to “freely determine their political status and freely pursue their economic, social and cultural development.”
10. Mr. Chair, it is our view that once a state is created by a people expressing their right to self-determination through statehood, that statehood will cease only if another form of expression of the right to self-determination is explicitly sought and exercised by that people. This is the only determinant of whether a state continues.

Protection of Persons

11. Moving to protection of persons, this is an area in which there are clear legal obligations. The protection of persons in the face of sea-level rise is a global challenge that requires meaningful inter-state cooperation. However, cooperation is not only a policy imperative. It is a legal obligation for every state.
12. It is our view 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.
13. The duty of cooperation 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.
14. First, in international human rights law, the duty to cooperate mandates developed States to assist developing States’ ability to realize human rights in their jurisdiction and this should be subject to developing States’ consent. This duty is extraterritorial, only limited by the maximum of each States’ available resources. This duty is also immediate, requiring States with readily available resources to act expeditiously to assist developing States.
15. This duty is found in multiple international and regional agreements, and is supported by significant state practice, including multiple resolutions in the Human Rights Council and General Assembly.

16. Second, there is a fundamental duty to cooperate in international environmental law. States must approach *all* international environmental issues in a cooperative manner, and provide meaningful assistance to meet shared environmental goals. Specifically, developed states have a duty to provide financial, technical, and scientific assistance, among other obligations.
17. The ICJ has recognized that states have a customary duty to cooperate in the prevention of transboundary environmental harm, and cooperation is also a cornerstone in numerous international and regional treaties, and international declarations.
18. Finally, in international disaster law, cooperation is again a foundational principle. It imposes a duty on states to help one another strengthen their resilience to disasters. While all states have a duty to cooperate, developed, non-affected states have an especially strong obligation to assist developing states directly affected by the disaster. International law requires this assistance to be adequate, timely, and sustainable, and tailored to meet the needs of the affected country.
19. The principle of cooperation spans across the international disaster agreements that form the backbone of the modern humanitarian system. Additionally, decades of state practice have established the principle of cooperation in the context of disasters. Since the 1960's, the General Assembly has played a leading role in facilitating cooperation on disaster risk reduction and response.
20. These three areas of international law illustrate that the duty to cooperate is a general principle of international law.
21. And 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.
22. Finally, we would like to respond to the suggestion that sea-level rise can be considered under the Draft Articles on the Protection of Persons in the Event of Disasters. Notwithstanding commentary 4 to Draft Article 3, while the effects of sea-level rise are certainly “disastrous,” sea-level rise is not a “disaster.” Disasters are natural phenomena. Sea-level rise is caused by anthropogenic climate change and its impacts on human mobility result from multiple factors

including exposure, vulnerability, and lack of capacity. The draft articles were developed in the context of events for which there is no state responsibility. That is not the situation here. The responsibility for climate change is shared among the largest emitters in the international community. So to must be the legal duty to cooperate to ameliorate its effects.

23. I thank you