

Work of the International Law Commission on sea-level rise in relation to international law

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Comments and observations of the French Republic relating to the subtopic of sea-level rise in relation to the law of the sea

In its reports of its seventy-second session (A/76/10,§27) and its seventy-third session (A/77/10,§26), the International Law Commission asked States to send it their observations and information concerning certain aspects of the subtopic “sea-level rise in relation to the law of the sea”.

France has the honour to send the International Law Commission the following information, drawn from its national practice, as well as general comments on this problem, which it hopes will be useful in the Commission’s work, without prejudice to its outcome.

The Commission’s work, including work relating to sea-level rise in relation to international law, is followed very closely by France. As a coastal State with large maritime zones amounting to 10.2 million km², 97% of which is located in overseas territories, a portion of its population is directly affected by sea-level rise. France has concluded maritime agreements with 24 States to date. Ongoing discussions are therefore extremely important to France, as to many countries worldwide.

First of all, France considers it important to recall its commitment to the United Nations Convention on the Law of the Sea (hereinafter “the Convention”), which sets out the legal framework within which all activities in the oceans and seas must be carried out. The Convention must be the primary framework for work on sea-level rise in relation to the law of the sea. Under the Commission’s mandate, the Commission’s work must not propose modifications to existing international law, particularly to the Convention.

France considers that the Convention’s framework and ambitions help us to understand this relatively new legal issue, without requiring a new multilateral framework.

In this regard, it is first important to point out that the Convention provisions grant coastal States room for manoeuvre when it comes to taking the initiative to modify, or maintain declared data regarding baselines and limits of their maritime zones. The Convention leaves it to coastal States to decide whether to make modifications to this data, which means that so long as a coastal State does not decide to make such modifications, the initially declared data remains in force.

That is the case for normal baselines, under Article 5 of the Convention, but also for straight baselines, under Article 16. Likewise, regarding maritime areas, when reading Articles 75 and 84 of the Convention, regarding the exclusive economic zone and the continental shelf respectively we can make the same observation.

It would seem that the only situation in which a State would no longer be able to take the initiative arises from the permanence of limits of the extended continental shelf, as set out in Article 76, paragraphs 8 and 9, once these limits are established by a coastal State on the basis of the recommendations of the Commission on the Limits of the Continental Shelf.

Second, some of the Convention's provisions could be applied to sea-level rise.

Article 7, paragraph 2, addresses the issue of coastal movements and the possibility to establish straight baselines, which remain in force so long as they are not modified by the coastal State, "because of the presence of a delta and other natural conditions". A literal interpretation of this passage could lead us to suppose that a combination of these two conditions – the presence of a delta, and of other natural conditions – is required to establish straight baselines. However, it could be possible, especially when reading the Russian version of this Article, and if this ultimately results from a broadly accepted interpretation, to consider that these are alternative criteria. This would make it possible to understand the notion of "other natural conditions" as being applicable to situations resulting from sea-level rise, independently from the presence of a delta.

Likewise, Article 7, paragraph 4, could be applied in the context of sea-level rise, because it enables a coastal State to establish straight baselines from low-tide elevations if lighthouses or similar installations which are permanently above sea level have been built on them, or if the drawing of these straight baselines have received general international recognition.

These components confirm the central role of the Convention and the need to address the issue in an inclusive manner. The analysis of this subtopic of study should lead to a result taking into account all of the problems and concerns expressed by States, as well as general interpretations and declarations of recognition that discussions identify.

In this regard, France welcomes the fact that this framework has been chosen by the Commission for conducting its work. It takes this opportunity to again commend the Commission members for their commitment and the quality of their reports.

a) Examples of practice relating to the updating, and frequency of updating, of national laws regarding baselines used for measuring the breadth of maritime zones; and of the frequency of the updating of national maritime zone notifications deposited with the Secretary-General of the United Nations.

France wishes first to note that the United Nations Convention on the Law of the Sea does not provide for an obligation, for coastal States, to re-evaluate and update their baselines. States may update their baselines and their national maritime zone notifications, but they are not obliged to do so.

In practice, France uses normal baselines and, when allowed by the Convention, straight baselines to determine the breadth of its maritime zones. Domestic law provisions establish the coordinates used for drawing these baselines. These provisions, taking the form of decrees, are then published on the portal of the Division for Ocean Affairs and the Law of the Sea (DOALOS) once they enter into force on national level.

Other domestic law provisions define the outer limits of France's maritime zones under the Convention, where appropriate subject to delimitation agreements with neighbouring States. These decrees are also published on the DOALOS portal, once they enter into force.

France does not have any examples of past or recent practice relating to the updating of its baselines because of geographical factors. The examples of modifications of national regulations relating to France's baselines concern updates for geographical and technical precision reasons (particularly updating the geodetic system of reference).

For these reasons of geographical and technical precision, decree 2015-958 of 31 July 2015, defining the baselines on which the breadth of the French territorial sea adjacent to the territory of metropolitan France and Corsica is measured, repeals an older decree of 19 October 1967. Likewise, decree 2012-1038 of 18 September 2012 concerning the baselines of French Polynesia was replaced by decree 2019-319 of 12 April 2019.

b) Examples of practice relating to the updating, and frequency of updating, of charts on which the baselines and outer limits of the exclusive economic zone and of the continental shelf are drawn, as well as the lists of geographical coordinates prepared in accordance with the relevant provisions of the United Nations Convention on the Law of the Sea and/or national legislation, including those which are deposited with the Secretary-General of the United Nations and given due publicity; and examples of practice relating to updating, and frequency of updating, of navigational charts, including for purposes of evidencing changes of the physical contours of the coastal areas.

The technical data, ie the charts and the lists of geographical coordinates, depend on and are included in existing national regulations (that is mainly the case for the geographical coordinates). Their updating is therefore subject to that of national regulations (see point a)) and their publication on the DOALOS portal is requested when the regulation entered into force at national level.

In this regard, it should be noted that the Convention does not provide for an obligation to update the charts and lists of geographical coordinates, once published pursuant to its provisions.

The navigational charts are prepared and published, as necessary, by the French Naval Hydrographic and Oceanographic Service, under guidelines set by the International Hydrographic Organization.

(c) Any examples of the taking into account or modification of maritime boundary treaties due to sea-level rise

France considers that maintaining maritime boundary treaties that have already been concluded and court decisions that have already been handed down ensures stability and predictability, particularly when it comes to very vulnerable zones or territories.

France has not had discussions with its neighbours with a view to considering whether a delimitation treaty or treaties could be affected by sea-level rise, and where necessary whether they should be modified.

Similarly, France considers that, unless agreed by stakeholders, court decisions handed down regarding maritime delimitation disputes must be maintained in the context of sea-level rise.

d) Information on the amount of actual and/or projected coastal regression due to sea-level rise, including possible impact on basepoints and baselines used to measure the territorial sea.

The causes of the coastal regression affecting France are multiple: it is due to wind, currents, geological features of the maritime shorelines concerned or even human activity, linked to the large populations on some coasts. Sea-level rise is an aggravating factor.

As a result, 22% of coastal areas are subject to regression, which has already required the artificialization of 17% of coasts in metropolitan France and 12% of coasts in overseas regions and territories. Overseas in particular, vulnerability to coastal regression has grown, given the strong coastal development of the habitat and economic activities.

e) Information on existing or projected activities related to coastal adaptation measures in relation to sea-level rise, including preservation of basepoints and baselines.

Coastal adaptation measures taken by France were envisaged from the standpoint of coastal regression and not only of sea-level rise. They are concentrated on the effects of this regression

on the land areas concerned and their population. That is why at this stage, they use the “coastline” as reference, ie the high-water line and not the low-water line.

For ten years, France has developed its legislative and regulatory framework in order to anticipate and adapt to coastal regression. A national comprehensive management strategy for the coastline was thus drafted in 2012 to better anticipate coastal evolutions and to take into account coastal regression in regional development policies of the local government bodies concerned. This national strategy has been applied in regional or municipal strategies, with the establishment of local plans. It is currently being reviewed.

In 2014, the national flood risk management strategy established a more specific framework aiming at improving flood prevention nationally and locally, with the priority objectives of bolstering the security of exposed populations and stabilizing over the short term, and decreasing over the medium term, the cost of flood-related damage.

Lastly, Act 2021-1104 of 22 August 2021 on the fight against climate change and strengthening resilience to deal with these effects (called the Climate and Resilience Act) sets out the framework for government action and includes four priorities focused on regression-related aspects: providing information on the evolution of the coastline; developing the necessary legal tools for managing existing highly vulnerable property; governing the regime for new construction; enabling spatial reconfiguration.

Within this framework, particularly vulnerable municipalities at risk of coastal regression have been identified, in metropolitan and overseas France. These municipalities now have an obligation, if they did not already have one, to establish a coastal risk prevention plan and a map for the evolution of the coastline for the next 30 to 100 years.

This new legal framework also provides for a building limit regime that is appropriate for the next 30 to 100 years, as well as a specific pre-emptive right, to the benefit of municipalities and the competent public institutions, over property located in exposed areas if they are put up for sale, particularly to complete a local development project. In addition, it creates a “real lease that is adapted to coastal erosion”, which can be concluded with a public lessor on buildings located in exposed areas. This new type of lease, for a duration of 12 to 99 years, includes an early termination mechanism, based on the evolution of the regression, if the security of people and property can no longer be guaranteed. It thus takes into account the implications of coastal

regression, while enabling certain activities to be pursued that are related to the coastal economy, such as tourism.