

## **Sea-level rise in relation to international law**

### **German Submission to the International Law Commission in preparation of its 75<sup>th</sup> session (2023) – Answers to Questions posed in the Commission’s report of the 73<sup>rd</sup> session (2022), Chapter III**

Germany is committed to supporting small island states and other states gravely impacted by sea-level rise. Sea-level rise induced by climate change poses a threat to the very existence of entire states, both from a physical and a legal point of view, as well as to their populations. Consequently, sea-level rise assumes paramount importance as an issue of not only climate and development policy but also as a matter of international peace and security and international law. Germany recognises the pressing need to address the legal, political and humanitarian dimensions of the severe repercussions caused by rising sea levels. Small Island Developing States (SIDS), such as Tuvalu, Kiribati, the Marshall Islands, the Bahamas, Vanuatu and Palau in particular face an increasingly uncertain future. This is why German Foreign Minister Annalena Baerbock visited Palau last summer, where she witnessed first-hand the devastating direct effects of the climate crisis, such as increasing numbers of storms and floods. The Minister underlined during her visit that Germany is committed to intensifying its efforts to mitigate the impacts of climate change on human livelihoods and regional security in the Pacific, and to preserving and strengthening the rules-based international order. Germany notes that although the Pacific Island States contribute an extremely small share to global CO<sub>2</sub> emissions, they often suffer the most from the consequences of climate change and particularly from rising sea levels. Even more countries and territories will be threatened by the end of the century.

Germany recognises that action is urgently necessary. This is why Germany supports the Platform on Disaster Displacement financially and politically. Germany is committed to scaling up anticipatory action based on early warning in its humanitarian assistance, and to financially supporting the Rising Nations Initiative to which it is giving funds totalling 1.8 million euro. In November 2022, Germany pledged 10 million euro to the newly established Special Climate Change Fund (SCCF) window through which the climate change adaptation priorities of SIDS will be financed. Germany is also developing and supporting programmes for dealing with climate-related losses and damage, such as the Global Shield against Climate Risks. The Pacific SIDS as a region and the Philippines are among the Pathfinder countries in which the Global Shield will commence its work. Germany has also appointed a Special Envoy for International Climate Action, a Special Envoy for the Pacific Island States responsible for responding to climate change and its consequences for Pacific Island States, as well as a Special Envoy for Climate in the Caribbean Island States. This last appointment is intended to intensify both our dialogue and our co-operation with the Caribbean region on all aspects of adaptation to climate change, the mitigation of its negative impact and the strengthening of resilience. Moreover, Germany has taken proactive measures to facilitate legal discourse on this matter beyond its regular statements in the Sixth

Committee of the United Nations General Assembly. In September 2022, Germany organised a side-event during the High-Level Week in New York, which aimed to engage experts in discussing the legal questions pertaining to sea-level rise: “Does international law provide us with adequate instruments to manage the possible displacement of millions of people due to climate change? What are the legal implications if a state physically ceases to exist or becomes uninhabitable as a consequence of rising sea levels that were mainly caused by other states?”

Where existing legal frameworks might not be sufficient to deal with the consequences of climate change and especially sea-level rise for vulnerable countries and their people, Germany stands prepared to advocate for the establishment of new legal frameworks where necessary. At the same time, Germany is closely monitoring the climate cases pending before the European Court of Human Rights, as well as the upcoming Advisory Opinions by the International Tribunal for the Law of the Sea, the Inter-American Court of Human Rights and the International Court of Justice. As a member of the Core Group initiated by Vanuatu, which successfully sought a unanimously adopted UNGA resolution to request an advisory opinion of the International Court of Justice on the obligations of states in respect of climate change, Germany very much welcomes this opportunity for the International Court of Justice to clarify the international legal framework for future climate cooperation. Similarly, Germany supports the request submitted by the Commission of Small Island States on Climate Change and International Law for an advisory opinion by the International Tribunal for the Law of the Sea, which seeks to further clarify such obligations in the specific context of the law of the sea. Germany has therefore submitted a written statement in these proceedings and supports the written statement submitted by the EU, to which it contributed.

Against this backdrop, Germany welcomes the International Law Commission’s timely mission to clarify the legal framework and distil the relevant legal questions and their implications in connection with sea-level rise. Following the invitation made by the International Law Commission, in chapter III, para. 28 of the report of its seventy-third session (2022), to states to provide examples of their state practice on the subject of sea-level rise in relation to international law, Germany has the honour to submit the following information and comments. This information on Germany’s contribution to climate change mitigation is provided as an illustration of state practice, not as an indication of *opinio iuris*.

#### **A. In relation to Statehood**

##### **I. Requirements for the configuration of a State as a subject of international law and for the continuance of its existence in the context of the phenomenon of sea-level rise**

The question of statehood in international law is of fundamental nature. The state, being the original subject of international law, to date retains its preeminent position in international law. With regard to the increasing existential threat faced by low-lying atoll states, the question concerning the maintenance of statehood in relation to sea level rise gains practical relevance beyond academic discussions. As the present statehood of these island states is entirely undisputed, the pertinent legal question revolves around the fulfilment of the prerequisites for statehood under international law over time. In circumstances in which island states are submerged and their previous territory physically ceases to exist or becomes uninhabitable in the context of sea-level rise, the question is whether the legal entity still continues to exist.

Firstly, it is of importance to underscore that, at present, international law as it stands (*de lege lata*) does not provide a definite answer to this question. As aptly highlighted in the second issue paper (A/CN.4/752, Part Two, section III.), to date there has not been a single case involving a state whose territory has been entirely submerged or become uninhabitable due to sea-level rise. The array of statements and questions raised by states in debates in the Sixth Committee of the General Assembly, as concisely summarised by the International Law Commission in that paper (A/CN.4/752, Introduction, section III.), illustrate that state practice on this matter has not yet attained a sufficiently advanced stage to yield a conclusive legal solution. At the same time, the urgency and political need for a reliable common understanding of the future of these affected states have dramatically increased.

Broadly speaking, should a state irrevocably lose one of the three foundational elements necessary for statehood under international law — namely a land territory, a permanent population and an effective government — it may reasonably be assumed that the state would legally cease to exist. However, historical instances bear testimony to the fact that geopolitical realities as well as recognition by the international community assume significance when considering the continuance of statehood, the succession of states or the maintenance of international legal personality possibly even when being deprived of control over certain territory. A spectrum of viable solutions based on international law is therefore conceivable in order to preserve the international legal personality of island states that are subject to submergence or becoming uninhabitable. Currently, some of the most vulnerable countries are developing innovative approaches as they are expecting significant territory loss within this century. In this regard, the Rising Nations Initiative, launched in 2021 by Pacific Atoll States, aims to develop solutions to preserve the statehood and the cultural heritage of Small Island Developing States. Measures to this end are, inter alia, to digitally document cultural heritage and to design a blueprint for digital citizenship. More importantly on the question of statehood, however, the Rising Nations Initiative is promoting a political declaration that will reaffirm the commitment of the international community to preserve the sovereignty of island states.

Germany has been closely following possible endorsements by other states of declarations pertaining, inter alia, to the recognition of the statehood of particular island states as permanent. Germany remains steadfast in its commitment to explore all viable legal avenues aimed at facilitating a constructive discourse on this matter. It is also assessing under which conditions such declarations could be endorsed. Although a clear answer cannot be derived presently from existing international law *de lege lata*, the importance of developing a common understanding to address the future of affected states cannot be overstated. This can be achieved through the comprehensive examination and exploration of legal options, including a systematic analysis of historical precedents that have some bearing on the present legal and political challenges.

## **II. The nature of the territory of a State including therein the land surface and the jurisdictional maritime zones, particularly in the context of sea-level rise**

Germany is committed to actively addressing the legal challenges of sea-level rise as regards the territory of states, especially with regard to the preservation of baselines and maritime zones. As Germany has stated in a previous submission<sup>1</sup> to the International Law Commission, states, while being entitled to update their baselines, are under no obligation to do so, even when the low-water line changes due to sea-level rise. From this it follows that the territory and maritime zones remain stable until the coastal state decides to update them. This solution to preserving the territory and maritime zones of states can be reached in a manner consistent with the United Nations Convention on the Law of the Sea, namely through a contemporary reading and interpretation of its intents and purposes, rather than through the development of new customary rules. In this way, the integrity of the Convention as it stands can be preserved, and legal uncertainty in the maritime domain can be prevented.

Considering that low-lying islands will likely be uninhabitable before being fully submerged, the question of whether state territory needs to be habitable is at least equally relevant. While Germany has not yet formed an *opinio iuris* on this question, a few considerations should be mentioned. Above all, extreme or even uninhabitable conditions are a reality in many regions, not only on islands, e.g. high-altitude mountains, deserts, etc. In these cases, the uninhabitable land still forms part of the state's territory. Secondly, according to Article 121 of UNCLOS, rocks, i.e. uninhabitable islands, are also part of the territory of a state and generate a territorial sea around them.

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<sup>1</sup> Federal Republic of Germany, Written Statement 71st and 72nd ILC Report (30 June 2022).

### **III. Practice related to the protection of the rights of peoples and communities, as well as to the reservation of their identity, that may contribute with elements or be considered by analogy when addressing the phenomenon of sea-level rise**

Germany is of the conviction that all those particularly affected by climate change and sea-level rise are in need of protection, given the negative consequences climate change and sea-level rise have on peace, stability, security and the enjoyment of human rights, in particular for vulnerable groups.

Germany regularly supports resolutions on the rights of indigenous people in the Human Rights Council and in the UN General Assembly, for example the resolution on “Human rights and indigenous peoples”, A/HRC/RES/45/12, passed during the 48<sup>th</sup> session of the Human Rights Council. It also supports the mandate of the Special Rapporteur on the Rights of Indigenous Peoples. Inclusiveness and the meaningful participation of indigenous communities in all matters relevant to their lives is an important prerequisite for appropriate decision-making in this context, including in matters related to climate change and sea-level rise, also with a view to the right to a healthy and sustainable environment.

Germany’s support for the Rising Nation Initiative’s project activities constitutes one of its concrete action responses to the grave impacts caused by sea-level rise. In an effort to protect the affected states’ sovereignty and cultural integrity, the RNI implements various action-oriented multi-stakeholder programmes, such as the Heritage Programme and the Tuvalu Digital Nation State Programme. The former supports the preservation of culture and heritage in Pacific Atoll countries under threat by providing practical support for collection, digitalisation and preservation activities for the benefit of local communities. It also assists efforts to achieve global recognition and thus create greater impetus for global support to protect such heritage and culture. These efforts are expected to strengthen the resilience of the nation’s identity and heritage amidst possible disruptive challenges. The Tuvalu Digital Nation State Programme supports efforts to build a new digital ecosystem, founded on meaningful connectivity that will allow for strengthened governance, administration and connectivity structures.

Additionally, Germany supports projects that are not specifically aimed at adapting to sea-level rise but which will equally benefit communities affected by sea-level rise. The G7, under Germany’s Presidency, worked with the Vulnerable Twenty Group of Finance Ministers (V20), an association of 58 states that are particularly threatened by climate change, to develop the Global Shield against Climate Risks. The Global Shield was officially launched on 14 November 2022 during the climate change conference (COP27) in Sharm-El Sheikh. The Global Shield aims to provide more and better pre-arranged finance to address climate and disaster risks. This will be achieved through the development of Climate and Disaster Risk Finance and Insurance (CDRFI) solutions. Instruments will be developed that can pay out quickly to the relevant recipients in the case of an extreme weather event. The three complementary financing vehicles of the Global Shield support the

development and scale-up of pre-arranged instruments. These can include different risk transfer and insurance products but also credit-based risk financing, shock-responsive social protection, early and anticipatory action protocols as well as contingency plans. At COP27, Chancellor Olaf Scholz announced Germany's contribution of 170 million euro to the Global Shield. Of this, 84 million euro are earmarked for the central financing structure of the Global Shield, and the other funds for complementary instruments of climate risk financing, which will be implemented through concrete safeguarding measures over the next few years. The funds come from the Federal Ministry for Economic Cooperation and Development budget. Additional contributions have been announced by France, Canada, the USA, Denmark, Ireland, Japan and the European Commission. Currently, there are 270 million euro available to the Global Shield financing vehicles.

Finally, the Team Europe Initiative (TEI) on Climate Change Adaptation and Resilience in Africa was also launched during COP27 and will bring together existing and new climate change adaptation programmes totalling more than 1 billion euro, including current contributions to global climate funds. Its aim is to leverage the impact of these programmes by improved coordination and a reinforced policy dialogue on adaptation between the EU and the AU, guided by the principle of African ownership. The proposed TEI will complement other important climate change adaptation investments in Africa, notably in climate-resilient infrastructures, transboundary water management, and the fight against desertification and land degradation. It is a way of mobilising additional finance and supporting greater access to climate risk insurance. The TEI was initiated by Germany, France and the European Commission, and later joined by other EU member states. It is part of the EU-Africa Global Gateway Investment Package. Furthermore, Germany provides support for adaptation planning, including for SIDS, through the NAP Global Network (NAP GN), to which Germany has pledged some 5 million euro since 2014.

#### **IV. Practice regarding measures of a different nature adopted by States in relation to sea-level rise in order to provide for their conservation and with respect to international cooperation on the subject**

In Germany, climate change adaptation is an ongoing long-term task that is being addressed within an institutional and methodological framework agreed at political level. Scientific research programmes and processes for participation and consultation have been set up, along with a continuous reporting system. Action is based on the precautionary principle: the aim is to prevent or minimise damage to people and the environment and build the capacities of state and non-state actors alike to handle the impacts of climate change.

Measures to prepare for the consequences of sea-level rise are largely the responsibility of the German coastal federal states (*Länder*). However, an Adaptation Strategy (*Deutsche Anpassungsstrategie, DAS*) for climate change was adopted in 2008 by the German Federal Government to provide a comprehensive framework for addressing the impacts of climate change and planning adaptation measures across various sectors, with

regular comprehensive progress reports. The long-term objective of the DAS is to reduce the vulnerability of natural, social and economic systems to the impacts of climate change and to improve the adaptive capacity of these systems while taking advantage of any opportunities.

The process of climate change adaptation in Germany at federal level is based largely on the following adaptation policy cycle:

1. Understand and describe climate change: The Monitoring Report provides an overview of the observed impacts of climate change and the adaptation measures already introduced in Germany.
2. Identify climate impacts and vulnerabilities: The climate impact and risk analysis (*Klimawirkungs- und Risikoanalyse, KWRA*) identifies which fields of action and regions are particularly at risk from climate change and where there is a need for action. Reference periods are the present, the near future (2031-2060) and the distant future (2071-2100). The KWRA was first undertaken in 2015.
3. Develop and implement measures: The Adaptation Action Plans (APAs) underpin the DAS by specifying the current and future measures taken at federal level to adapt to climate change. They are based *inter alia* on the scientific findings and results of the KWRA. The APAs describe the measures to be implemented by the ministries within their respective spheres of responsibility.
4. Evaluation – observe, assess and develop adaptation: The strategy process and implementation of the DAS are evaluated on a regular basis. Details of this review are included in a Progress Report, which sets out practical steps for the further development and implementation of the DAS.

In the context of sea-level rise, the strategy seeks to contribute to minimising the potential impacts of rising sea levels on coastal areas and to safeguard the well-being of citizens. The strategy outlines several key adaptation measures aimed at protecting coastal areas, enhancing resilience, and minimising the potential damage caused by rising sea levels. The Coalition Agreement of the Federal Government proposes the further development of the current DAS to move towards a precautionary adaptation strategy with concrete and measurable adaptation targets, as well as the establishment of a legal framework for adaptation in Germany in the guise of a law on adaptation. A list of cooperation measures to foster adaptation can be found in Annex 2 to the most recent progress report.<sup>2</sup>

Several concrete Adaptation Action Plans underpin the outlined overall strategy. The most recent Adaptation Action Plan includes the following key activities in the water cluster relating to the consequences of sea-level rise. These measures are in the process of being implemented by the federal institutions concerned:

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<sup>2</sup> Cf Second Progress Report on the German Strategy for Adaptation to Climate Change (DAS) [https://www.bmu.de/fileadmin/Daten\\_BMU/Download\\_PDF/Klimaschutz/klimawandel\\_das\\_2\\_fortschrittsbericht\\_en\\_bf.pdf](https://www.bmu.de/fileadmin/Daten_BMU/Download_PDF/Klimaschutz/klimawandel_das_2_fortschrittsbericht_en_bf.pdf)

- The National Flood Protection Programme (NHWS) will be carried forward to tackle the growing risks of flood events in a coordinated manner across all *Länder*. The Preventive Flood Protection special framework plan of the Federal/*Länder* Joint Taskforce for the Improvement of Agricultural Structures and Coastal Protection provides federal funding for this purpose, co-financed from *Land* resources. The Federal Government will urge participants to harmonise their flood hazard maps when updating them.
- The Federal Government/*Länder* strategy for dealing with accelerated sea-level rise. Because of the major and inter-sectoral significance of the consequences of accelerated sea-level rise for both coastal and non-coastal *Länder*, the Federal Government will, in close collaboration with the *Länder*: 1. summarise the risks of sea-level rise and 2. specify the steps needed to deal with sea-level rise in a federal/*Länder* strategy. As part of this work, the Federal Government and the *Länder* will also analyse and evaluate further research needs and options for action.
- The *Länder*, which bear a constitutional responsibility for these matters, already have numerous measures in place to deal with flood events, low-flow situations and the impacts of sea-level rise. The Federal Government will continue to broaden its cooperation with the *Länder* in these fields within the scope of its competencies.
- Furthermore, extreme events and damage are to be recorded systematically. In order to be in a position to better quantify the extent and frequency of meteorological and hydrological extreme events and the damage and environmental impacts caused by them, Germany will set up a database documenting (past) events, modelled on those already established in other countries.

Internationally, Germany is committed to the UN Framework Convention on Climate Change and supports partner countries who are particularly vulnerable to the impacts of climate change and who are facing financial, technical and institutional challenges in their efforts to adapt. In particular, Germany has placed a special focus on helping partner countries implement ecosystem-based adaptation measures (EbA) and develop relevant climate information and services under the International Climate Initiative (IKI). The IKI is part of the German Government's international climate finance commitment, implemented by three federal ministries, which links the protection of local biodiversity with climate change adaptation and mitigation efforts.

EbA measures have proven to be highly relevant for the protection of coastal areas and ecosystems as well as the livelihoods of coastal populations. Since about one third of the global population lives in coastal areas, the goods and services these ecosystems provide are vitally important. For example, mangroves, coral reefs and coastal ecosystems as a whole help reduce flooding, erosion and the damage caused by storm surges. Many



coastal EbA measures under the IKI therefore address the flooding and erosion impacts of climate change by restoring or enhancing ecosystem services that also support livelihoods:

- Mangrove restoration/rehabilitation to reduce wave energy, erosion and storm surge water levels, thus limiting coastal flooding, saline intrusion into groundwater and farmlands, and damage to property and livelihoods;
- Coral reef rehabilitation to attenuate wave intensity, and to increase habitat and nursery grounds for fish, thus reducing flooding, erosion and damage to property, and supporting fisheries and livelihoods.

Another focus of the IKI is support for the development of climate information and services to enable partners who are also affected by rising sea-levels to plan and implement science-based adaptation measures. Experience has shown that the availability of climate data alone is not sufficient when striving to build resilience to the impacts of climate change. Instead, climate data must be prepared and presented in a context-specific and target group-oriented manner in order to be useful. This includes incorporating indigenous and traditional knowledge to inform ecosystem-based adaptation, since failure to consider local knowledge can result in maladaptation. Through the IKI, Germany is also helping partner countries with considerable coastlines that are particularly vulnerable to rising sea levels to develop relevant climate information and services.

## **B. In relation to protections of persons affected by sea-level rise**

### **I. Measures relating to risk reduction specific to the mitigation of the adverse impacts of sea-level rise**

Measures in Germany to reduce the risk of adverse impacts on individuals and coastal communities, enhance preparedness and resilience, and ensure the safety and well-being of citizens in the face of sea-level rise primarily focus on protecting coastal communities, enhancing early warning systems, and promoting sustainable land-use practices. They include:

- Coastal Protection Infrastructure: Germany is investing in the construction and maintenance of coastal infrastructure, such as dykes, flood barriers and levees. These structures are designed to prevent flooding and protect coastal communities from the impacts of rising sea levels and storm surges.
- Early Warning Systems: The German Government has been improving its early warning systems to provide timely information and alerts for coastal residents. These systems help individuals and communities prepare for and respond to coastal hazards, such as flooding and storm surges, associated with sea-level rise.
- Land-Use Planning and Zoning: Germany promotes land-use planning and zoning regulations that take into account the risks associated with sea-level rise. Setback lines and zoning restrictions ensure that new constructions and developments are located at safe distances from the coast, reducing the exposure of individuals to potential impacts. In 2021, Germany adopted a new maritime spatial plan for the Exclusive

Economic Zone that coordinates the various uses of the EEZ, comprising shipping, offshore wind energy, cables, pipelines, raw material extraction, fisheries, research and defence. A key objective of the maritime spatial plan is to reconcile the uses with the ecological functions of marine space by applying the ecosystem approach.

- **Risk Communication and Public Awareness:** The Government actively engages in risk communication and public awareness campaigns to educate individuals about the risks of sea-level rise and the actions necessary to protect themselves. This includes providing information on evacuation procedures, emergency preparedness and the importance of following official instructions during coastal hazards.
- **Building Codes and Regulations:** Germany has building codes and regulations that incorporate climate change considerations, including sea-level rise. These codes ensure that buildings and infrastructure are designed to withstand the potential impacts of rising sea levels and extreme weather events.
- **Insurance and Financial Mechanisms:** Germany promotes the availability of insurance and financial mechanisms to help individuals and communities cope with the damage caused by coastal hazards. This includes providing insurance coverage for flood-related damage and offering financial assistance for rebuilding and recovery efforts.
- **Research and Monitoring:** Continuous research and monitoring are conducted to assess the risks and to develop effective adaptation strategies. These efforts help us understand the potential impacts on individuals and inform decision-making processes to mitigate those risks.

Internationally, Germany's efforts to reduce the risk of adverse impacts from sea-level rise include:

- **International Climate Agreements:** Germany is a signatory and active participant in climate agreements such as the Paris Agreement. Through these agreements, Germany has committed itself to reducing greenhouse gas emissions and limiting global temperature rise, which in turn helps mitigate the causes of sea-level rise.
- Germany is one of the largest donors to international climate funds, having committed about 2.25 billion euro to the Green Climate Fund and 514 million euro to the Adaptation Fund. At COP27, the German Government pledged an additional 9 million euro to the LDCF and thus remains its largest donor with a cumulative total of 424 million euro. During COP27, Germany also pledged 10 million euro to the newly established SCCF window for the climate change adaptation priorities of Small Island Developing States. In 2021, Germany provided 2.59 billion euro from budgetary sources for adaptation, equal to 49 % of our total climate finance from budgetary sources. This included support for adaptation projects in countries that are particularly susceptible to sea-level rise impacts.
- **Knowledge Sharing and Capacity Building:** Germany engages in knowledge sharing and capacity building initiatives to assist other countries in developing and implementing effective adaptation strategies for sea-

level rise. This involves sharing expertise, best practices and technical knowledge with partner countries, particularly in the areas of coastal protection, risk assessment and early warning systems.

- **International Research Collaboration:** Germany collaborates with international partners on research initiatives related to sea-level rise and its impacts. This includes sharing scientific data, participating in joint research projects and supporting international scientific networks focused on coastal resilience and adaptation.
- **Coastal Management Partnerships:** Germany fosters partnerships with other countries to exchange experience and collaborate on coastal management strategies. These partnerships involve sharing lessons learned, conducting joint studies and developing shared approaches to coastal adaptation, with a focus on reducing the risk of adverse impacts on individuals.
- **Participation in International Fora:** Germany actively participates in international fora and conferences related to climate change adaptation, including those specifically focused on sea-level rise. By engaging in these platforms, Germany contributes to global discussions, policy development and the exchange of ideas to enhance international efforts towards reducing the impacts of sea-level rise on individuals.

Germany recognises that addressing the impacts of sea-level rise requires collective action and international cooperation. Through its involvement in various international initiatives and partnerships, Germany contributes to a global response that aims to protect individuals from the adverse effects of sea-level rise and promote a sustainable and resilient future.

## **II. Human rights implications of the adverse impacts of sea-level rise**

At the domestic level, the German Federal Constitutional Court has determined in its decision of 24 March 2021<sup>3</sup> that the German state is under a constitutional obligation to protect both life and property rights in the light of climate change and sea-level rise, in particular. In its decision, however, it has also stated once again that the legislator has considerable leeway in fulfilling its duties of protection. Thus, the Court could not at present ascertain any violation of these obligations.

Nevertheless, the constitutional complaints were partially successful in that the Court found that under certain conditions, the German Basic Law imposes an obligation to safeguard fundamental freedoms over time and to spread the opportunities associated with freedom proportionately across generations. Consequently, the Court held that the Federal Climate Change Act was in violation of fundamental rights, insofar as the level of greenhouse gas emissions allowed until 2030 would significantly narrow the emission possibilities after 2030, and the Act lacked provisions that satisfy fundamental rights with respect to the updating of reduction targets

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<sup>3</sup> BVerfG, Order of the First Senate of 24 March 2021, 1 BvR 2656/18, available in English: <https://www.bundesverfassungsgericht.de/SharedDocs/Pressemitteilungen/EN/2021/bvg21-031.html;jsessionid=75DE2C335C94F35BB9ED66380E5ECDAA.internet982>

for the period from 2031. As intertemporal guarantees of freedom, fundamental rights afford protection against comprehensive threats to freedom caused by greenhouse gas reduction burdens being unilaterally offloaded onto the future. The Government was therefore requested to ensure the adoption of a continuous and realistic mitigation pathway that will ensure climate neutrality by 2050.

At the international level, Germany is closely following the recent developments regarding climate change law and is actively engaged in the processes (see A.I. / A.II. above). Germany remains convinced that climate change, sea-level rise and their human rights implications need to stay on the agenda of all relevant international fora. Germany would in this context also like to refer to the Geneva Pledge for Human Rights and Climate Action, which will continue to guide our action on human rights in the climate crisis.

The human rights implications of sea-level rise have to stay on the agenda in international fora, especially the UN Security Council. Germany co-leads the Geneva Pledge for Human Rights and Climate Action, which clearly acknowledges that climate change and sea-level rise have adverse implications for human rights. The Geneva Pledge connects the UNFCCC and the HRC and can feed into the COP processes.

Germany has learnt that the rise of sea level is a threat multiplier and warrants the comprehensive protection of human rights, particularly of vulnerable groups. Associated security risks can violate the right to life, asylum, appropriate housing, food, water and health, as well as civil and political rights. In this context Germany was an active proponent of the right to a clean, healthy and sustainable environment that was postulated in the UNGA in July 2022. Germany would like to reiterate that climate change and sea-level rise are threat multipliers and have serious implications for the protection of human rights, particularly of vulnerable groups, including the right to life, a clean, healthy and sustainable environment, appropriate housing, food, water and health, as well as other rights.

### **III. Regulation of the displacement of persons affected by sea-level rise**

Germany has stated previously that the Geneva Convention on the Status of Refugees does not cover cross-border displacement or international migration caused by sea-level rise. To improve the protection of people who are displaced in the context of climate change, Germany has been a strong supporter of the Nansen Initiative and the Platform on Disaster Displacement (PDD). For example, in the face of current displacement in the context of climate change, PDD has been advocating for and supporting the development of regular pathways. Through its longstanding support for PDD, Germany contributes to common agenda setting around disaster displacement, concrete protection avenues and political support for small island states on the issue of sea-level rise.

Germany has suggested discussing the question of whether the current legal framework offers sufficient tools to deal with huge movements of populations displaced due to climate change and specifically by sea-level rise. Whilst international law cannot solve climate and security challenges, it can provide states with clarity and certainty in order to raise ambitions in climate action and to build a safe and secure future. In this context, Germany has suggested a two-fold approach to engage in legal discussion with regard to the application of existing legal frameworks in order to identify possible legal gaps and assess the necessity for new legal frameworks where appropriate.

#### **IV. Prevention of statelessness arising from the displacement of persons affected by sea-level rise**

Germany recognises the obligation to prevent statelessness. It has signed the 1961 Convention on the reduction of statelessness as well as the 1954 Convention on the Status of Stateless Persons, which was adopted specifically to cover stateless persons who are not refugees. The Convention contains no prerequisites that would explicitly exclude persons displaced due to sea-level-rise from its scope. To date, Germany has not seen a need to adapt its laws and policies in order to accommodate climate change induced statelessness. In this respect, it should be noted that displacement does not automatically lead to the loss of nationality, unless the causes of displacement and dissolution of statehood coincide. In our view, innovative solutions for the preservation of statehood (should a nation's territory become submerged or uninhabitable, see A.I, A.II above) are the main approach to preventing statelessness in the context of sea-level rise and therefore such solutions must be developed. Furthermore, the United Nations High Commissioner on Refugees (UNHCR) has the international mandate to prevent and end statelessness worldwide. Germany is the second largest donor to UNHCR and hereby provides significant support to UNHCR in this area.

#### **V. International cooperation regarding humanitarian assistance to persons affected by sea-level rise**

The federal ministries implement disaster risk management measures in the international environment within their respective areas of responsibility. With its measures on humanitarian disaster risk management, the Federal Foreign Office helps anticipate impending humanitarian needs, prevent or reduce them in advance and strengthen the response capacity of humanitarian actors with regard to future disasters. Where humanitarian needs nevertheless arise, it helps meet them as quickly as possible, to enable survival in dignity and safety, and to alleviate the suffering of those who cannot overcome their acute emergency on their own. The Federal Ministry of the Interior and Community is committed to international civil protection and cooperates intensively with European states, especially on civil protection, with regard to the resilience of critical infrastructures and cyber security.

German humanitarian assistance is provided on the basis of need, following humanitarian principles and in support of the UN-coordinated humanitarian system. If, in the case of a conflict, disaster or slow onset event,

a government is not able or willing to provide lifesaving assistance to its population, humanitarian assistance can be employed to save lives. As one of the biggest donors to the international humanitarian system and its actors (e.g. UNHCR), Germany therefore makes a significant contribution to making lifesaving assistance available in the context of disasters, displacement and climate change.

Given the technological ability to forecast a significant percentage of extreme weather events, anticipatory action in humanitarian assistance is particularly relevant with a view to mitigating the humanitarian impact of more frequent and intense natural hazards. Anticipatory action refers to actions taken to reduce the humanitarian impacts of a forecast hazard before it occurs, or before its most acute impacts are felt. The decision to take action is based on a forecast or collective risk analysis of when, where and how the event will unfold. This makes it possible to apply anticipatory action also to slow-onset disasters. Anticipatory action is a humanitarian priority of the Federal Foreign Office, which strives to spend 5% of its humanitarian budget on this approach.

The topics of sea-level rise and resilience building, adaptation options and solutions are part of objectives 2 and 5 of the Global Compact on Migration (GCM). Climate-induced migration and displacement are priority issues for UNHCR and IOM. Displacement due to sea-level rise is a sub-theme of this.