

**Submission by the Principality of Liechtenstein to the International Law Commission  
on the topic “Sea Level Rise in relation to International Law”**

**Introduction**

Liechtenstein would like to thank the International Law Commission and the co-chairs of the Second Issues paper on “sea-level rise in relation to international law” for their significant efforts on this important topic. Liechtenstein continues to welcome the International Law Commission’s ongoing consideration of the topic of sea level rise in relation to international law in its program of work, in particular the study of its effects on statehood and the protection of persons affected by sea-level rise in its 2024 session. Sea-level rise, which has been exacerbated by anthropomorphic GHG emissions, poses significant challenges to the international legal system.

In the ILC’s report of its seventy-third session, the Study Group requested information from States on *inter alia* appraisals and/or practice on the requirements for the configuration of a State in international law, and for the continuance of its existence in the context of the phenomenon of sea-level rise. The ILC also requested appraisals and/or practice related to the nature of territory of a State in the context of sea-level rise.

While the challenges that sea-level rise presents to the international legal system do not have direct precedent, the principles and core tenets of international law, including the right to self-determination, continue to apply and should play a central role in the response of the international community. Liechtenstein, therefore, appreciates the references to the right to self-determination contained in the Second Issues Paper and encourages the International Law Commission to continue to explore this aspect of the effects of sea level rise.

**Observations by Liechtenstein on the sub-topic of statehood**

*The primacy of self-determination*

Liechtenstein continues to see the right of self-determination as a fundamental aspect of our understanding of the impact of sea-level rise on the continuation of statehood. Common Article 1 of the ICESCR and ICCPR state that “[a]ll peoples have the right to self-determination”, and that it is by virtue of that right that peoples may “freely determine their political status and freely pursue their economic, social and cultural development.” The right to self-determination is inalienable, including the expression of that right through statehood.

In this regard, Liechtenstein appreciates the assertion contained in the Second Issue Paper that “[i]t is essential to preserve the right to self-determination of the populations of any small island developing States whose land territory is completely covered by the sea or becomes uninhabitable”,<sup>1</sup> including “through the maintenance of statehood, or the implementation of other approaches that enable the populations concerned to express their will in relation to decisions that could affect their future, and that preserve their rights, including their right to maintain their identity.”<sup>2</sup> Discretion on how relevant peoples express their right to self-determination must remain in their hands, as reflected in the ILC’s report of its

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<sup>1</sup> A/CN.4/752, para. 226

<sup>2</sup> *Ibid.*

73<sup>rd</sup> session that “the preservation of an affected population as a people for the purposes of exercising the right of self-determination should be one of the main pillars of the work of the Commission on the issue”.<sup>3</sup>

Liechtenstein thus supports the position expressed by many of the most affected States that “statehood will cease only if another form of expression of the right to self-determination is explicitly sought and exercised by that people.”<sup>4</sup> Therefore, even if territory is completely inundated or the population of a country or State is displaced, statehood continues to be a valid expression of self-determination, until such a time as that country or State decides to express its right to self-determination through another political status. Liechtenstein further notes that the right to self-determination, including its possible expression through statehood, also applies to the peoples of non-self-governing territories, and would therefore encourage the use of the term ‘countries’ in addition to ‘States’ where appropriate in the future works of the Commission.

Liechtenstein also notes the view expressed in the report of the ILC on its 73<sup>rd</sup> session that the ILC should “keep in mind the special historical and legal contexts of the right of self-determination and exercise caution in applying that principle in relation to sea-level rise.”<sup>5</sup> Liechtenstein emphasizes the fundamental nature of self-determination as a foundation for other human rights, including as set out in Common Article 1 of the ICCPR and ICESCR, and the continued expression of that right by countries and States. We also note that respect for the right to self-determination is an obligation *erga omnes*, as confirmed by the International Court of Justice.<sup>6</sup> The necessary and important consideration of the historical and legal context of this right should in no way dilute its *erga omnes* or *jus cogens* character, nor the scope for its appropriate expression by relevant peoples. In a similar way, self-determination should not, as suggested in the report, be conditioned on “agreements between the States concerned”, nor frame the right to seek self-determination through statehood as “a policy issue”.<sup>7</sup> While practical modalities will be important to consider going forward, this should not in itself condition or limit the scope of the implementation of self-determination as a right, which per the Friendly Relations Declaration encompasses “[t]he establishment of a sovereign and independent State, the free association or integration with an independent State or the emergence into *any other political status* freely determined by a people”.<sup>8</sup>

### *Novel Nature of the Challenge*

Liechtenstein continues to stress the novelty of the implications of sea-level rise for our understanding of statehood criteria. We reiterate that cases in which States have ceased to meet the criteria laid out in the Montevideo Convention have not in themselves resulted in challenges to State persistence, as there is a strong presumption of the continuity of statehood and a disfavoring of the extinction of an established State in international law.<sup>9</sup> Liechtenstein therefore supports the presumption of continuity of statehood

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<sup>3</sup> A/77/10, para. 199, see also para. 167(e), and 229

<sup>4</sup> 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, 1 November 2022, Sixth Committee of the United Nations General Assembly

<sup>5</sup> A/77/10, para. 199

<sup>6</sup> See Legal Consequences of the Separation of the Chagos Archipelago from Mauritius in 1965, Advisory Opinion, I.C.J. Reports 2019, para. 180

<sup>7</sup> Ibid. para. 213(f) and (j)

<sup>8</sup> A/RES/2625(XXV). Emphasis

<sup>9</sup> See the related observation in A/77/10, para. 169 that “the Convention on the Rights and Duties of States applied only to the determination of the birth of a State rather than to its continued existence”, and the observation of the co-chair in para.231 that “the presumption of continuity of a State was also a starting point for further work”. See also the observation by the late Judge Crawford that “[a] State is not necessarily extinguished by substantial changes

put forward in the ILC's report of its 73<sup>rd</sup> session, in line with the conclusions reached by the International Law Association Committee on International Law and Sea Level Rise. Likewise, Liechtenstein sees the right to preservation as inherent to statehood, and in addition, that there is "no clear criterion in customary international law for the cessation of a State."<sup>10</sup> Notably, the Montevideo Convention establishes the rights of the state to "provide for its conservation and prosperity, and consequently to organize itself as it sees fit",<sup>11</sup> and that these rights depend on "the simple fact of its existence as a person under international law".<sup>12</sup> Liechtenstein thus does not see justification for the view expressed elsewhere in the report that "there was no presumption of continuity of statehood".<sup>13</sup>

Furthermore, we recognize the argument made by affected States that, as international law has tolerated flexibility in the meeting of the Montevideo Criteria over the past century, it would be "inequitable and unjust" to deny small island countries and States that same flexibility.<sup>14</sup> Applying a new reading of the Montevideo Criteria to address situations of sea-level rise would in fact compound the injustice they face, as those most affected by climate change whilst contributing amongst the least to CO<sub>2</sub> emissions.

### *Going Forward*

Liechtenstein appreciates the approach taken in the report for the future consideration of the statehood sub-topic by the ILC. In particular, we see value in "analysis of the pertinence of the presumption of statehood in the case of States affected by sea-level rise, and of the ways in which self-determination could be exercised by the affected populations and whether certain principles of general international law could be applied in such cases",<sup>15</sup> while, as noted, distinguishing between situations of uninhabitability of territory and inundation of the territory. In that context, emphasis should be placed on the rights of affected States and countries to seek their conservation, the modalities to be used for that purpose, and the significance of international cooperation to that effect,<sup>16</sup> with close attention paid to the central position of self-determination in that context.

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in territory, population, or government, or even, in some cases, by a combination of all three". J. Crawford, *The Creation of States in International Law* (Clarendon Press, 2nd rev. ed. 2006), p.700

<sup>10</sup> A/77/10, para. 201.

<sup>11</sup> Art. 3

<sup>12</sup> Art. 4

<sup>13</sup> *Ibid.*, para. 213(g)

<sup>14</sup> 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, 1 November 2022, Sixth Committee of the United Nations General Assembly, paras. 7-8

<sup>15</sup> A/77/10, para. 235(c)

<sup>16</sup> *Ibid.*, 235(d)