



PIF SUBMISSION NO. 4 TO THE INTERNATIONAL LAW COMMISSION

Tuesday 1 August 2023

INFORMATION PAPER NO. 2: STATEHOOD AND THE PROTECTION OF PERSONS AFFECTED BY SEA LEVEL RISE

A. Introduction

The Pacific Islands Forum (PIF) welcomes the opportunity to provide further submissions to the International Law Commission (ILC) on its current study of the topic “Sea-level rise in relation to International Law”, and in particular the sub-topics of “sea-level rise in relation to statehood” and “the protection of persons affected by sea-level rise”.

2. This submission follows the third PIF Submission of 31 December 2021¹ to the ILC, which focused on the abovenamed sub-topics. Earlier PIF Submissions were made on 30 December 2019² on the first sub-topic of “sea-level rise in relation to law of the sea issues”, and on 26 February 2021 in response to the “First Issues Paper by Bogdan Aurescu and Nilüfer Oral, Co-Chairs of the Study Group on sea-level rise in relation to international law”.

3. Following the PIF Submission of 31 December 2021, this current submission is a further Information Paper, which responds to the information requested by the ILC under Chapter III of its 2022 Annual Report (73rd Session), paragraph 28, as follows:

(a) in relation to the subtopic of statehood, information on the practice of States, international organizations and other relevant entities, and other pertinent information concerning:

- (i) appraisals and/or practice on the 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;*
- (ii) appraisals and/or practice regarding the nature of the territory of a State, including therein the land surface and the jurisdictional maritime zones, particularly in the context of the sea-level rise;*
- (iii) practice related to the protection of the rights of peoples and communities, as well as to the preservation of their identity, that may contribute with elements or be considered by analogy when addressing the phenomenon of sea-level rise;*
- (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;*

(b) in relation to the subtopic on protection of persons affected by sea-level rise, information on the practice of States, international organizations and other relevant entities, as well as other pertinent information concerning:

¹ http://legal.un.org/docs/?path=../ilc/sessions/73/pdfs/english/slr_pif.pdf&lang=E

² https://legal.un.org/ilc/sessions/72/pdfs/english/slr_pif.pdf

- (i) *measures relating to risk reduction specific to the mitigation of the adverse impacts of sea-level rise;*
- (ii) *human rights implications of the adverse impacts of sea-level rise;*
- (iii) *regulation of the displacement of persons affected by sea-level rise;*
- (iv) *prevention of statelessness arising from the displacement of persons affected by sea-level rise;*
- (v) *international cooperation regarding humanitarian assistance to persons affected by sea-level rise.*

4. PIF responses in this submission focuses on key developments since the PIF Submission of December 2021. Detailed information, which may address one or more of the above, can otherwise be found under the updated online Compendium of Information as follows:

<https://drive.google.com/drive/folders/1EWFE2VzMA6vF2Qc7awy4rxIHVPEdRyB9>

B. Key Regional Developments

(i) 51st Pacific Islands Forum, July 2022

5. At the 51st Pacific Islands Forum Leaders Meeting, held in Suva, Fiji, on 14 July 2022, Forum Leaders “reconfirmed that climate change remains the single greatest existential threat facing the Blue Pacific, underscoring the urgency to limit global warming to 1.5 degrees through rapid, deep and sustained reductions in greenhouse gas emissions. In this respect, Leaders **declared that the Pacific is facing a Climate Emergency** that threatens the livelihoods, security, and well-being of its people and ecosystems, backed by the latest science and the daily lived realities in Pacific communities”.³

6. While reaffirming their 2021 *Declaration on Preserving Maritime Zones in the Face of Climate Change-Related Sea-Level Rise*, Leaders “noted that due to the complexity of the issues of **statehood and persons affected by sea-level rise**, due consideration of these issues should be guided and informed by applicable principles and norms of international law and relevant international frameworks and standards, and the need for the region to unpack these issues further”.⁴

7. Leaders endorsed the *2050 Strategy for the Blue Pacific Continent* (2050 Strategy), the region’s overarching blueprint to advance Pacific regionalism for the next three decades, articulating the region’s long-term vision, values, and key thematic areas and strategic pathways”, which will also frame how the region continues to respond to the phenomena of sea-level rise.

(ii) Regional Conference on Statehood and the Protection of Persons affected by sea-level rise, March 2023

8. To take forward the Leaders’ commitments, PIF convened from 27 – 30 March 2023 in Nadi, Fiji a Regional Conference on Statehood and the Protection of Persons affected by Sea-level rise. The Conference brought together senior officials and experts from all Forum nations, regional organisations, and supported by a number of distinguished experts on related international legal issues, including Members of the ILC and the International Law Association (ILA).

³ 51st Pacific Islands Forum Communique, 14 July 2022, Suva, <https://www.forumsec.org/2022/07/17/report-communicue-of-the-51st-pacific-islands-forum-leaders-meeting/>, paragraph 33

⁴ Ibid, paras 39 – 42.

9. The Conference identified and unpacked a range of options and responses to the impacts of sea-level rise, in the context of International Law. Its outcomes guide the work of the PIF Specialist Sub-Committee on Sea-Level Rise in Relation to International Law, the Forum mechanism mandated in 2020 to consider these legal issues and to make the necessary recommendations for Leaders' consideration, including in relation to strategic advocacy.

10. At present, Forum Members are developing a regional instrument that will specifically address sea-level rise in relation to statehood, including relevant elements on the protection of persons, in the context of international law, for consideration by Forum Leaders in 2023. Further updates will be submitted to the ILC in due course, and to be agreed by all Members.

11. In the meantime, the Forum identifies the following elements as deserving of consideration by the ILC:

Statehood

- (a) The 2050 Strategy sets out regional values and commitments that inform the region's understanding of the issue of statehood. These include: regionalism and solidarity; treasuring the diversity and heritage of the Pacific and seeking an inclusive future; acting as the Blue Pacific Continent to protect collective interests and to secure the well-being of our people; deepening collective responsibility for the stewardship of the Blue Pacific Continent; and protecting our sovereignty and jurisdiction over maritime zones.
- (b) Relevant to considering the concept of statehood are the legal concepts of international personality, sovereignty, and self-determination of peoples.
- (c) There is no precedent for states ceasing to exist due to the submergence of land territory. The *Montevideo Convention* criteria deals with the requirement for the establishment of states and does not address the requirements to maintain a state. International law says nothing about the demise of a state with respect to climate change-related sea-level rise.
- (d) International law supports a presumption of continuity of statehood. Relevant legal principles in support of this include:
 - Security, stability, certainty and predictability;
 - Fairness and equity;
 - The principle of sovereign equality of states;
 - The overarching duty of cooperation; and
 - Equity and good faith.
- (e) A State also has a right under international law to act to preserve its own existence as well as to organise itself as it sees fit.

Protection of persons affected by sea-level rise

- (a) Climate change is the single greatest threat to the livelihoods, security and wellbeing of the Pacific people.

- (b) The international frameworks on the protection of persons affected by sea-level rise are a fragmented network of hard and soft law instruments.
- (c) The discharge of international human rights law obligations is a critical domain of government and statehood. Climate change-related sea-level rise has the potential to adversely affect the enjoyment of human rights.
- (d) Both rights-based and needs-based approaches to the protection of persons are important. These approaches are complementary and allow the needs of persons affected by climate change-related sea-level rise to be met and for their rights to be respected.
- (e) Addressing the human rights implications of climate change-related sea-level rise is crucial to ensuring that affected communities can maintain their dignity, identity, culture and way of life. Pacific women are disproportionately affected by climate-related impacts and play a unique and leading role in addressing human rights concerns.
- (f) Existing international frameworks do not recognise climate change as a basis for affording refugee status unless affected persons meet the legal definition of a refugee. However, the circumstances of those persons recognised as refugees under international law may be made worse by the impacts of climate change, including sea-level rise.
- (g) The protection of persons is broad and cuts across many human rights and security issues. The displacement of persons resulting from climate change is a national, regional and global issue that may exacerbate security tensions.

(iii) *UNGA Resolution for an Advisory Opinion from the International Court of Justice to clarify legal consequences of climate change, March 2023*

12. This submission also highlights a significant development, being the historic adoption by consensus of UN General Assembly Resolution A/77/L.58 entitled “Request for an advisory opinion of the International Court of Justice on the obligations of States in respect of climate change”. PIF Members are proud of the leadership by the Government of Vanuatu in achieving this historic outcome. PIF Members have particularly recognised the contribution of the law students of the University of the South Pacific, the Pacific Islands Students Fighting Climate Change, who initiated the process that has led to the first referral from the UN General Assembly by consensus of a question to the International Court of Justice in the history of the United Nations.

13. At a Special Leaders Retreat on 23 February 2023, PIF re-emphasised support for this significant initiative, as well as supported the invitation by Tuvalu for Forum Members to join the Commission of Small Island States on Climate Change and International Law (COSIS).⁵

⁵ 2023 PIF Special Leaders Retreat Communique, <https://www.forumsec.org/2023/02/27/communique-pacific-islands-forum-special-leaders-retreat/>

(iv) *Ocean governance*

14. The issue of statehood is central to cooperation, discussions and decision-making of Pacific Leaders.⁶ More relevantly, as it relates to the issue of climate change-related sea-level rise on maritime zones and coastlines, Forum Members have been at the forefront of oceans governance instruments, including as follows:

- The *2010 Framework for a Pacific Oceanscape* calls upon States to address their baselines that are vulnerable due to sea-level rise;
- The *2014 Palau Declaration on “The Ocean: Life and Future”* called for “strengthened regional efforts to fix baselines and maritime boundaries to ensure that the impact of climate change and sea-level rise does not result in reduced jurisdiction”;
- The *2015 Taputapuātea Declaration* of the Polynesian Leaders Group underlines the importance of the permanency of established baselines;
- Under the *48th PIF Communique*, Forum Leaders called for a united regional effort that establishes and secures international recognition of the permanent protection and integrity of maritime zones and sovereignty from the impacts of climate change and sea-level rise;⁷
- The *2018 Delap Commitment* agrees “to pursue legal recognition” that “the defined baselines established under 1982 UNCLOS remain in perpetuity irrespective of the impacts of sea level rise”;
- The *2019 50th PIF Communique* reaffirmed the importance of preserving Forum Members’ existing rights stemming from maritime zones in the face of sea-level rise. Forum Leaders committed to a collective effort, including the development of international law, with the aim of ensuring that once a Forum Member’s maritime zones were delineated in accordance with the 1982 UNCLOS, that the Member’s maritime zones could not be challenged or reduced as a result of sea-level rise and climate change;
- The *2021 PIF Declaration on Preserving Maritime Zones in the Face of Climate Change-Related Sea-Level Rise* records the Forum position that maritime zones, once established in accordance with 1982 UNCLOS and notified to the UN SG, will be maintained as such, along with rights and entitlements flowing from them, without reduction notwithstanding any physical changes connected to climate change-related sea-level rise – and that this is supported by UNCLOS and the principles underlying it;
- The *2021 Declaration* is premised on States establishing their maritime zones in accordance with the 1982 UNCLOS and is firmly based and grounded in the primacy of UNCLOS. It clarifies our interpretation of UNCLOS as it stands and represents our formal collective view on how UNCLOS rules on maritime zones apply in the situation of climate change-related sea-level rise, a view which is supported by the Convention and its underpinning legal principles, including those of stability, security, certainty and predictability.
- Preserving maritime zones in the manner set out in the Declaration contributes to a just international response to climate change-related sea-level rise and towards the

⁶ In 2017, through the Forty-Eighth Pacific Islands Forum Communique the Forum Leaders called for a united regional effort that establishes and secures international recognition of the permanent protection and integrity of the maritime zones and sovereignty from the impacts of climate change and sea-level rise. In the 2019 through the Fiftieth Pacific Islands Forum Communique, the Forum Leaders encouraged Forum Members to conclude all outstanding maritime boundaries claims and zones. Additionally, Leaders reaffirmed the importance of preserving Members’ existing rights stemming from maritime zones, in the face of sea level rise, noting the existing and ongoing regional mechanisms to support maritime boundaries delimitation.

⁷ Forty-Eighth Pacific Islands Forum Communique (2017), paragraph 10

goal that our legal entitlements as sovereign nations are not lost nor challenged due to sea-level rise.

15. These statements clearly demonstrate growing practice in the region that is indicative of an intention of preservation of statehood and sovereignty in the event of sea-level rise, building on the 2021 *Declaration on Preserving Maritime Zones in the Face of Climate Change-Related Sea-Level Rise*.

16. It is clear that for PIF Members, preservation of their statehood remains paramount. The growing use of phrases such as “Blue Pacific”, “Blue Pacific Continent”, and “Blue Pacific Narrative” demonstrate that we recognise the importance for Pacific States of preserving both land territory and those maritime zones which support the economies of Pacific States.

17. With the development of the 2050 Strategy, it may be a matter of time that such concepts can be accepted as state practice. As outlined below, there is, at the national level, evidence to indicate that PIF Member countries intend to remain in the face of sea-level rise.

C. Further specific comments and responses by individual states

Australia

18. Australia supports its Pacific neighbours in taking steps to preserve their statehood and protect the human rights of persons affected by sea-level rise.

19. Australia was proud to join the Pacific region in endorsing the ground-breaking *Declaration on Preserving Maritime Zones in the Face of Climate Change-Related Sea-Level Rise* on 6 August 2021 (PIF Maritime Zones Declaration). Australia is now undertaking a review of its maritime boundaries to minimise the effects of sea-level rise on its jurisdiction, with the intention of proclaiming its permanent maritime limits under the Seas and Submerged Lands Act 1974 (Cth), consistent with the Declaration.

20. Australia is also working with Pacific Island countries to review and fix their maritime boundaries through the Pacific Maritime Boundaries Program. Australia provides technical, legal and financial support to Pacific Island countries to establish and finalise their maritime boundaries in accordance with the UNCLOS and the PIF Maritime Zones Declaration.

21. Australia recognises that people living in low-lying coastal areas and on small islands are particularly vulnerable to the impacts of climate change and natural hazards, and that globally, First Nations communities are disproportionately placed in vulnerable situations. The Australian Government is working in partnership with First Nations Australians to amplify the climate solutions embedded within Indigenous knowledges, sciences, and practices. This will reduce the impacts of climate change on First Nations Australians, by designing and implementing mitigation and adaptation measures that adequately include the perspectives of First Nations communities.

22. Australia is currently working with other Pacific Island countries, civil society and non-state actors to develop a Pacific Regional Framework on Climate Mobility. This Framework will guide Pacific regional action on this complex issue.

Federated States of Micronesia

23. The Federated States of Micronesia (FSM) reiterates the view expressed by the Alliance of Small Island States (AOSIS) in its statement in the Sixth Committee of the United Nations General Assembly on 31 October 2022, with respect to the Committee’s consideration of the report of the ILC on the work of its seventy-third session. Specifically, it is the FSM’s view, as reflected in the statement by AOSIS above, 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”.

Fiji

24. The *Constitution of the Republic of Fiji* provides that “[e]very person has the right to a clean and healthy environment, which includes the right to have the natural world protected for the benefit of present and future generations”.⁸ Clearly, the contemplation is that Fiji will exist as a State (present) and in the future (future generations). In the alternative, even without express provisions, it can be inferred by implication, that there is no evidence whatsoever, to indicate that a PIF member intends to acknowledge its non-existence if its land goes underwater. It is, in fact, the opposite that is evident in state practice. Fiji’s *Climate Change Act 2021* is a classic example. It recognises the permanence of maritime boundaries and maritime zones of Fiji notwithstanding the effects of climate change and sea-level rise.⁹

Kiribati

25. In Kiribati, the Government recognises the importance of peace and security towards creating sustainable development. The Government is also cognisant of the importance of maintaining its sovereignty in light of the projections for climate change and sea-level rise. In most islands, coastal erosion and inundation is becoming the new norm and which has led to loss of precious and already limited land space and resources, such as fresh water. If left unabated, it has the potential to create future tensions and insecurity among I-Kiribati, who will have to compete for these limited resources.

Nauru

26. At the United Nations Security Council 9260th Meeting, Nauru emphasised the “substantial threat” of sea level rise to island nations and coastal communities. Nauru also highlighted the “need to enhance efforts to contain the security consequences of rising sea-levels through initiatives aimed at increasing the resilience of States to climate change, in particular with regard to disaster-risk reduction”, both at a domestic and international level.¹⁰

27. Domestically, the Republic of Nauru Framework for Climate Change Adaptation and Disaster Risk Reduction (RONAdapt) outlines the measures for mitigation of the adverse impacts of sea-level rise, particularly in relation to increased likelihood of storm surges inundating coastal groundwater. Measures undertaken in response include (i) development of a community outreach strategy to develop and maintain high levels of community awareness and preparedness; (ii) a multi-hazard early warning system for disaster events; (iii) increased capacity of response agencies (fire, police, ambulance, marine search and rescue); and (iv)

⁸ Section 40(1) *Constitution* (Fiji)

⁹ Section 80(1)-(2), *Climate Change Act 2021* (Fiji)

¹⁰ United Nations Security Council 9260th Meeting, 14 February 2023.

compilation of vulnerability assessments for Nauru relating to disaster risk, climate change and climate variability, as the basis for identifying future priority actions.¹¹

28. In 2019, Nauru launched the Higher Ground Initiative, a multigenerational project to develop the higher elevation interior of the island in response to sea-level rise. The majority of Nauru's infrastructure is located on the coastal fringes of the island, with essential infrastructure, such as homes, the hospital, schools, churches, the airport, water, and power utilities most likely to be affected by sea-level rise. Innovation, such as the Higher Ground Initiative, advances Nauru's resilience and implicitly goes to the heart of maintaining statehood.¹²

29. Nauru has also highlighted the importance of international cooperation in addressing climate change and sea-level rise at the United Nations Security Council. The key recommendations for which Nauru advocated include: (i) regular reporting by the Secretary-General on the security implications of climate change; (ii) the appointment of a special representative on climate insecurity; (iii) climate-sensitive prevention, mediation and peacebuilding and the inclusion of women in those processes; (iv) training for all relevant UN personnel on the implications of climate change on peace and security and humanitarian crises; and (v) enhanced cooperation with civil society, regional, and national actors.¹³

30. Across all areas, Nauru has advocated measures to be taken to “fast-track women’s full, equal and meaningful participation in preventing and addressing climate-affected conflicts in relation to sea level rise”.¹⁴

New Zealand

31. New Zealand is closely involved with and strongly supports regional work on the topics of preserving statehood and protecting persons affected by sea-level rise. New Zealand has lodged a separate country submission to the ILC on these topics which is dated 30 June 2023.

Papua New Guinea

32. The *Constitution of the Independent State of Papua New Guinea* provides that “[t]he sovereignty of Papua New Guinea over its territory, and over the natural resources of its territory, is and shall remain absolute”.¹⁵ Accordingly, Papua New Guinea’s sovereignty over its territory and its natural resources is permanent. Papua New Guinea also calls attention to General Assembly resolution 1803 (XVII) of 14 December 1962 on the “Permanent Sovereignty over Natural Resources”.

Republic of the Marshall Islands

33. The Preamble of the *Constitution of the Republic of the Marshall Islands* states that “[t]his society has survived, and has withstood the test of time, the impact of other cultures, the devastation of war, and the high price paid for the purposes of international peace and security. All we have and are today as a people, we have received as a sacred heritage which

¹¹ Republic of Nauru Framework for Climate Change Adaptation and Disaster Risk Reduction, Government of Nauru, 2015.

¹² Republic of Nauru Country Statement: Pacific Regional Consultation on Internal Displacement.

¹³ United Nations Security Council 9260th Meeting, 14 February 2023

¹⁴ United Nations Security Council 9260th Meeting, 14 February 2023

¹⁵ Section 2(2), *Constitution* (PNG)

we pledge ourselves to safeguard and maintain, valuing nothing more dearly than our rightful home on the islands within the traditional boundaries of this archipelago.”

34. The Republic of the Marshall Islands is resolutely committed to these principles and to the continuity of its sovereignty and statehood, regardless of the impact of climate change-related sea-level rise. The Republic of the Marshall Islands reiterates the view expressed by the AOSIS in its statement in the Sixth Committee of the UN General Assembly on 31 October 2022, with respect to the Committee’s consideration of the report of the ILC on the work of its seventy-third session.

Samoa

35. Samoa’s position on statehood in relation to sea-level rise has been enunciated at various UNGA meetings. At the UNGA Sixth Committee 76th Session, Samoa noted that “issues relating to statehood, statelessness and climate-induced migration were directly relevant to the Pacific region in view of the possibility that the territories of small island States could be entirely submerged owing to climate change-related sea-level rise. Under international law, there was a presumption that a State, once established, would continue to exist, particularly if it had a defined territory and population. However, in light of the conclusion of the Intergovernmental Panel on Climate Change in its recent report that global warming would exceed the goal established in the Paris Agreement of keeping the temperature increase to 1.5°C above pre-industrial levels, the real concern of Pacific small island developing States was that the ocean would one day claim their ancestral homes or force their peoples to leave. It was therefore urgent that the international law implications of climate change-related sea-level rise for statehood be addressed. In that connection, the Pacific small island developing States looked forward to the Study Group’s work on issues related to statehood and to the protection of persons affected by sea-level rise”.¹⁶

36. At the UN Security Council 9260th Meeting, Samoa noted that “Sea level rise resulting from anthropogenic climate change does not have an effect on our statehood or sovereignty ... No matter the effect that sea level rise may have on our land territory, we are large ocean States ... On the issue of statehood, 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 its continuation in international law. Turning to the obligation of States to address all the risks associated with sea-level rise, cooperation in this regard is not only a policy imperative; it is a legal obligation for every State. Such cooperation is also a matter of equity”.¹⁷

37. Of further relevance, Samoa noted that “on the issue of 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 the continuation of statehood. Rather, there is a fundamental presumption of the continuation of statehood in international law. It would be 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 due to sea level rise is not a natural but an anthropogenic phenomenon. To make an analogy, our land territory is being invaded as a result of the actions or inaction 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”.

¹⁶ UNGA Sixth Committee 76th Session Summary Record of the 19th Meeting

¹⁷ United Nations Security Council 9260th Meeting, SC/15199

38. In terms of human rights implications of the adverse impacts of sea-level rise, the *Samoa State of Human Rights Report 2017* noted that climate change and sea-level rise threatens the right to housing in numerous ways, including by threatening settlements in low-lying areas, and total or partial destruction of houses and properties. The Report further explored the right to self-determination, referencing a 2009 OHCHR Report articulating that “sea level rise and extreme weather events related to climate change are threatening the habitability ... of low-lying island States. Equally, changes in the climate threaten to deprive indigenous peoples of their traditional territories and sources of livelihood. Either of these impacts would have implications for the right to self-determination.” As climate change displaces communities and erodes families’ connections to their land, it threatens the location-based institution of traditional village governance, as well as their cultural heritage. Similarly, a 2015 report by UN Special Rapporteurs found that climate change hinders the ability of SIDS citizens to “continue to live on their traditional territory, and ... to enjoy and exercise their right to self-determination”.¹⁸

Tonga

39. The *Act of the Constitution of Tonga*¹⁹, passed in 1875 affirmed the Kingdom of Tonga as a sovereign nation. The *Maritime Zones Act*²⁰ emphasizes under Section 8 that the sovereignty of the Kingdom of Tonga extends to all maritime zones as defined under the Act. This recognizes that Tonga’s sovereignty covers its land and maritime zones.

40. The *Tonga Strategic Development Framework II 2015 – 2025 (TSDF II)* reiterates the Kingdom’s Motto “*God and Tonga are My Inheritance*” as the guide for its development efforts. This motto was established by His late Majesty Tupou I, who entrusted the people of Tonga and all its land to the protection and blessing of God, for all Tongan generations to come. It emphasises that Tonga is comprised of its people, its land, and its strong Christian values and traditional values which underpin its culture. Premised on this, the TSDF II recognises that development efforts must be inclusive and sustainable, so that a more valuable inheritance (including land) is left for future generations. One can infer that this recognises Tonga’s existence in perpetuity.

41. The *Tonga Climate Change Policy 2016*²¹ highlights the theme of “A resilient Tonga by 2035”. The policy aims for a resilient Tonga to the impacts of climate change, climate related disaster-risks and to safeguard Tonga for present and future generations. One of its guiding principles, was to redesign approach that brings together traditional knowledge with science and technology, in order to address the realities of climate change.²² Obviously, that can be broadly read as including reinforcement of coastline through artificial (technology) and engineered solutions.

Tuvalu

42. The *Tuvalu Future Now Project*²³ – *Te Ataeano Nei* in Tuvaluan – contains a series of targeted plans to future proof Tuvalu against the most severe impacts of sea-level rise and climate change.

¹⁸ State of Human Rights Report 2017, Office of the Ombudsman National Human Rights Institution of Samoa

¹⁹ Act of the Constitution of Tonga [Cap.1.01]

²⁰ Section 8, *Maritime Zones Act* [Cap.1.03]

²¹ Policy Vision Statement, *Tonga Climate Change Policy 2016*

²² Guiding Principle 3(1), *Tonga Climate Change Policy 2016*

²³ <https://dfa.gov.tv/index.php/future-now-project/>

43. Initiative 2 of the Project comprises efforts to secure international recognition of Tuvalu's statehood and maritime zones as permanent in the face of sea-level rise and climate change. Targeted actions include:

- forming bilateral relations only with nations that recognize Tuvalu's statehood and maritime zones as permanent;
- establishing and reaffirming such relations via joint communiques;
- strengthening Tuvalu law; and
- building and supporting state practice towards the development of customary international law on these issues.

44. At their 51st Meeting in 2022, Forum Leaders noted these important efforts by Tuvalu under its Future Now Project and noted the invitation by the Government of Tuvalu to sign joint communiques with all PIF Members.

45. As noted above, on 31 October 2021 in Edinburgh, Tuvalu and Antigua and Barbuda launched the *Agreement for the establishment of the Commission of Small Island States on Climate Change and International Law*. The Agreement mandates the Commission to promote and contribute to the definition, implementation, and progressive development of rules and principles of international law concerning climate change, including, but not limited to, the obligations of States relating to the protection and preservation of the marine environment and their responsibility for injuries arising from internationally wrongful acts in respect of the breach of such obligations.²⁴

46. At a Special Leaders Retreat on 23 February 2023, PIF Leaders re-emphasised support for this significant initiative and supported the invitation by Tuvalu for Forum Members to join the COSIS.²⁵

47. Other initiatives which Tuvalu has supported include the Rising Nations Initiative together with the Republic of the Marshall Islands²⁶, and the Fossil Fuel Non-Proliferation Treaty.²⁷ At COP27, Tuvalu called for a fossil fuel non-proliferation treaty, in light of Tuvalu's vulnerability to sea-level rise.

Compacts of Free Association with Micronesian States

48. In terms of measures taken by third States with regard to small island developing states, in particular those affected by sea-level rise, the Compacts of Free Association between the United States of America and the FSM, the Republic of Palau, and the Republic of the Marshall Islands, afford their citizens the right to, among other things, reside and be employed indefinitely in the US as non-immigrant non-citizens without a visa, work permit, or a similar immigration document. Doing so will not automatically result in the termination of citizenship for those individuals in their respective home countries. A large number of citizens from the FSM, the Republic of Palau, and the Republic of the Marshall Islands have taken advantage of this entitlement, including in response to the impacts of climate change-related sea-level rise on atoll and coastal communities throughout the three countries.

²⁴ <https://treaties.un.org/Pages/showDetails.aspx?objid=08000002805c2ace>

²⁵ 2023 PIF Special Leaders Retreat Communique, <https://www.forumsec.org/2023/02/27/communique-pacific-islands-forum-special-leaders-retreat/>

²⁶ <https://climatemobility.org/rising-nations-initiative/>

²⁷ <https://fossilfuel treaty.org/tuvalu>

D. Final Remarks

49. The strength of ongoing Pacific efforts is the leadership and ownership by all PIF Members, at all levels, and throughout the different international capitals in terms of shared expertise, resources and advocacy. PIF Members, individually and collectively, look forward to making further contributions to the ILC and to engaging further with ILC Members on these sub-topics, which are of critical importance to our region.

Pacific Islands Forum Secretariat, Suva
1 August 2023



CP/20/26

9 January 2024

Secretary of the International Law Commission
2 United Nations Plaza
323 E, 44 Street, Room DC2-0566
New York, NY 0010017
UNITED STATES OF AMERICA

Dear Secretary,

**PACIFIC ISLANDS FORUM SUBMISSION NO. 5 IN RELATION TO STATEHOOD
AND THE PROTECTION OF PERSONS AFFECTED BY SEA-LEVEL RISE**

As incoming Chair of the Pacific Islands Forum (PIF) and on behalf of the PIF Membership, we continue to commend the work of the International Law Commission (ILC) as mandated under Article 13 (1) (a) of the United Nations Charter.

2. With reference to the ILC's ongoing study on "Sea-Level Rise in Relation to International Law", we welcome the invitation for submissions relating to the sub-topics of "statehood" and "protection of persons affected by sea-level rise", as outlined under Chapter III of the Report of the ILC for its seventy-fourth session (24 April – 2 June and 3 July – 4 August 2023). We also note that the Study Group will focus on the subject of sea-level rise in relation to statehood and protection of persons at the seventy-fifth session (2024).

3. This letter serves as **PIF Submission No. 5 to the ILC**, the Fifth in a series of PIF Submissions to the ILC on this matter, as follows:

- [PIF Submission No. 4 of 1 August 2023](#)¹, which conveyed Information Paper No. 2 on Statehood and the Protection of Persons affected by Sea-Level Rise;
- [PIF Submission No. 3 of 31 December 2021](#)² which conveyed Information Paper No. 1 on Statehood and the Protection of Persons affected by Sea-Level Rise;
- PIF Submission No. 2 of 26 February 2021 in response to the "First Issues Paper by Bogdan Aurescu and Nilüfer Oral, Co-Chairs of the Study Group on sea-level rise in relation to international law"; and
- [PIF Submission No. 1 of 30 December 2019](#)³ on the first sub-topic of "sea-level rise in relation to law of the sea issues".

4. This Submission is guided by the information requested by the ILC under Chapter III of its 2023 Annual Report (74th Session), including information on the practice of States, international organisations and other relevant entities concerning sea-level rise in relation to international law.

5. The focus of this Fifth Submission is the **2023 Pacific Islands Forum Declaration on the Continuity of Statehood and the Protection of Persons in the Face of Climate Change-Related Sea-Level Rise of 9 November 2023**.

¹ http://legal.un.org/docs/?path=../ilc/sessions/75/pdfs/english/slr_pif.pdf&lang=E

² http://legal.un.org/docs/?path=../ilc/sessions/73/pdfs/english/slr_pif.pdf&lang=E

³ https://legal.un.org/ilc/sessions/72/pdfs/english/slr_pif.pdf

6. As noted under PIF Submission No. 4 of 1 August 2023 (paragraph 10), the Declaration is a regional instrument that was developed by the Pacific Islands Forum to specifically address sea-level rise in relation to statehood, including relevant elements on the protection of persons, in the context of international law, for consideration by Forum Leaders in 2023.

7. Forum Leaders endorsed the Declaration at the 52nd Pacific Islands Forum, held 6 – 10 November 2023 in the Cook Islands, and **we are now very pleased to formally convey** and highlight the Declaration, at **Annex A**, to the attention of the Commission for consideration, including at the upcoming 75th Session (2024) of the ILC.

8. The Declaration is grounded on existing principles and features of current international law to declare that the statehood and sovereignty of Forum Members will continue, and the rights and duties inherent thereto will be maintained, notwithstanding climate change-related sea-level rise. The Declaration also expresses a commitment by Forum Members, both individually and collectively, to protecting persons affected by climate change-related sea-level rise including with respect to human rights duties, political status, culture, cultural heritage, identity and dignity, and meeting essential needs.

9. Further, the Declaration reaffirms the *2021 PIF Declaration on Preserving Maritime Zones in the face of Climate Change-Related Sea-Level Rise*. Both 2021 and 2023 declarations are mutually supportive, including in the way they protect the rights and entitlements of Forum Members.

10. In addition to the landmark Declaration, we encourage the Commission to also consider other key outcomes of the 52nd PIF, including the Pacific Framework on Climate Mobility, which promotes regional collaboration on rights-based and people-centred considerations in the context of climate change. It firmly acknowledges PIF Members' fundamental priority to 'stay in place' in our ancestral homes, including through land reclamation, and is a global first that aims to provide practical guidance to governments planning for and managing climate mobility, while also respecting Members' national laws and policies.

11. In closing, we express our highest appreciation once again for the opportunity afforded to all UN Members and relevant partners to provide further information on these sub-topics, which are of critical importance to our region. We also thank all members of the ILC for their continued dedication and commitment to these important issues.

12. We stand ready to provide continued support to the ILC's programme of work for the 75th Session (2024).

13. Please accept, Excellency, the renewed assurances of my highest consideration.

Yours sincerely,

His Excellency Viliami Va'inga Tōnē
Ambassador and Permanent Representative of the Kingdom of Tonga to the United Nations
On behalf of the Chair and Members of the Pacific Islands Forum

Attach: Annex A – 2023 Pacific Islands Forum Declaration on the Continuity of Statehood and the Protection of Persons in the Face of Climate Change-Related Sea-Level Rise

cc: All PIF Members



2023 DECLARATION ON THE CONTINUITY OF STATEHOOD AND THE PROTECTION OF PERSONS IN THE FACE OF CLIMATE CHANGE-RELATED SEA-LEVEL RISE

PREAMBLE

1. ***Recalling*** that the statehood and sovereignty of Pacific nations underpin a peaceful, safe and secure Blue Pacific region where people can realise their full potential as individuals, communities and nations, and where the health and wellbeing of our people and human rights and equity for all can be ensured,
2. ***Recalling*** also that Members of the Pacific Islands Forum as oceanic states, countries and territories place great value on our ocean, its seabed, and land, and cherish our deep connection to our communities, natural environment, resources, lives, livelihoods, identities, culture, and traditional knowledge,
3. ***Recognising*** that our shared commitment to work together, including through various modes of regional and sub-regional cooperation, is an important platform for achieving the greatest benefits for our people,
4. ***Underlining*** that coastal States, particularly Small Island Developing States and low-lying States, are disproportionately impacted and specially affected by sea-level rise and climate change, and Members of the Pacific Islands Forum are committed to reducing and preventing these impacts and strengthening the resilience of our communities,
5. ***Recognising*** the threats and adverse impacts of climate change and sea-level rise as the defining issue that imperils the lives, livelihoods and wellbeing of Pacific peoples, communities and countries, and undermines the full realisation of a peaceful, secure and sustainable future for our region,
6. ***Reaffirming*** our commitment for collective responsibility and accountability for the stewardship of the Blue Pacific Continent and the protection of our sovereignty, sovereign rights, and jurisdiction over our land, maritime zones, and natural resources, including in response to climate change-related sea-level rise,
7. ***Further reaffirming*** our 2021 *Declaration On Preserving Maritime Zones In The Face Of Climate Change-Related Sea-Level Rise*, which proclaims that our maritime zones, as established and notified to the Secretary-General of the United Nations in accordance with the United Nations Convention on the Law of the Sea, 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,
8. ***Recognising*** that under international law there is a general presumption that a State, once established, will continue to exist and endure, and maintain its status and effectiveness, and that international law does not contemplate the demise of statehood in the context of climate change-related sea-level rise,

9. ***Further recognising*** that continuity of statehood in the face of climate change-related sea-level rise is consistent with important principles and rights of international law, including the right of peoples to self-determination, the right to a nationality, the protection of territorial integrity and political independence, principles of equity and fairness, the maintenance of international peace and security which in turn requires stability in international relations, the right of a state to provide for its preservation, the duty of cooperation, the sovereign equality of states, and permanent sovereignty over natural resources,^{*†}
10. ***Acknowledging*** that protecting persons and communities affected by climate change-related sea-level rise involves protecting, promoting, and fulfilling their human rights, including civil, political, economic, social and cultural rights, and also protecting their culture, cultural heritage, identity and dignity, and meeting their essential needs, including through international cooperation,
11. ***Further acknowledging*** that States carry an important duty in ensuring protection of their people, and continuity of statehood is necessary and fundamental for that protection to be implemented and to endure,

WE, THE LEADERS OF THE PACIFIC ISLANDS FORUM, THEREFORE:

12. ***Affirm*** that international law supports a presumption of continuity of statehood and does not contemplate its demise in the context of climate change-related sea-level rise,
13. ***Declare*** that the statehood and sovereignty of Members of the Pacific Islands Forum will continue, and the rights and duties inherent thereto will be maintained, notwithstanding the impact of climate change-related sea-level rise,
14. ***Further declare*** that Members of the Pacific Islands Forum, individually and collectively, bear an important responsibility for ensuring protection of our people, and are committed to protecting such persons affected by climate change-related sea-level rise, including with respect to human rights duties, political status, culture, cultural heritage, identity and dignity, and meeting essential needs,
15. ***Commit*** to cooperate and take action including regionally and sub-regionally to achieve the purposes of this Declaration, and
16. ***Call upon*** the international community to support this Declaration and cooperate in achieving its purposes, consistent with our duty to cooperate and principles of equity and fairness.

MADE ON 9 NOVEMBER 2023 AT THE FIFTY-SECOND PACIFIC ISLANDS FORUM, HELD IN AITUTAKI, COOK ISLANDS

*Consistent with General Assembly Resolution 1803 (XVII) of 14 December 1962, “Permanent sovereignty over natural resources”.

†Nothing in this Declaration should be interpreted as undermining the sovereignty and territorial integrity of Forum Members.