
Securing our future in the Pacific



Pacific Islands Forum with United Nations Missions

*Australia, Federated States of Micronesia, Fiji,
Kiribati, Nauru, New Zealand, Palau,
Papua New Guinea, Republic of Marshall Islands,
Samoa, Solomon Islands, Tonga, Tuvalu, Vanuatu*

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Secretary of the International Law Commission

2 United Nations Plaza
323 E. 44th Street, Room DC2-0566
New York, NY 10017

December 30th, 2019

Dear Secretary of the International Law Commission,

On behalf of the Members of the Pacific Islands Forum (the "PIF"), I welcome the decision of the International Law Commission (the "ILC") to include the topic of "Sea-level rise in relation to international law" in its programme of work, as well as the creation of an open-ended Study Group on that topic.

The PIF Members appreciate the ILC's invitation sound in chapter III of the 2019 Annual Report of the International Law Commission (A/74/10) to submit examples of relevant State practice, of which the PIF has the honour to respectfully submit the enclosed selection, which could be downloaded at the link provided in the Annex, with the cover note.

The submission is made under the mandate provided by our Leaders that PIF Members committed to a collective effort, including to develop international law, with the aim of ensuring that once a Forum member's maritime zones are delineated in accordance with UNCLOS, that the member's maritime zones could not be challenged or reduced as a result of sea-level rise and climate change.

The enclosed submission of PIF Members reveals consistent State practice for coping with sea-level rise in favour of maintaining maritime zones before further sea-level rise; settling outstanding maritime limits as soon as possible, including through agreements, neutral decision-making; and fixing geographical coordinates of maritime baselines and outer limits of maritime zones. PIF Members consider that there are good grounds to work towards ensuring that, once maritime zones are delineated in accordance with UNCLOS, those maritime zones should not be challenged or reduced as a result of sea-level rise and climate change.

Please accept the renewed assurances of my highest consideration.

Yours Sincerely,

A handwritten signature in black ink, appearing to be 'H.E. Samuelu Laloni'.

H.E Samuelu Laloni
On behalf of the Pacific Islands Forum Members
Ambassador Extraordinary and Plenipotentiary
Permanent Representative of Tuvalu to the United Nations

**Submission of the Members of the Pacific Islands Forum to the
International Law Commission on the Topic of
Sea-Level Rise in Relation to International Law**

The Pacific Islands Forum (the “PIF”) welcomes the decision of the International Law Commission (the “ILC”) to include the topic of “Sea-level rise in relation to international law” in its programme of work, as well as the creation of an open-ended Study Group on that topic. The PIF Members appreciate the ILC’s invitation to submit examples of relevant State practice, of which the PIF has the honour to respectfully submit the enclosed selection.

This PIF submission explains the significance of sea-level rise and its impacts in the Pacific, reinforces our collective commitment to the UN Convention on the Law of the Sea (“UNCLOS”), and outlines the State practice of PIF Members in promoting the stability of their maritime zones and entitlements. The submission includes an Annex that contains extensive primary materials of relevance to the submission, including consistent State practice described below—(i) pursuing avenues to ensure the stability of maritime zones notwithstanding the effects of sea-level rise, (ii) the practical and durable determination of maritime zones under the law of the sea, and (iii) the use of geographic coordinates to designate maritime zones—that it hopes will be of use to the Study Group.

The PIF notes that the enclosed submission relates only to sea-level rise and the law of the sea, the topic of the Study Group’s focus in 2020.

PIF Members’ Commitment to Maritime Entitlements in the Face of Sea-Level Rise

The Ocean is central to the identity, culture, and sustainable development of PIF Members. PIF Members also take seriously their role as custodians and their responsibility for shared stewardship of the Ocean, a role that stems from many centuries of connection with and reliance on the Ocean.

While sea-level rise and other impacts of climate change on maritime zones may affect many States globally, the Pacific is particularly affected. The Pacific is home to the majority of the world’s low-lying atoll States and States dependent on coral islands and cays. Sea-level rise threatens to devastate PIF Members given the extent of their coastlines, their extensive use of low-lying features to generate maritime zones, and their economic reliance on the sea. As PIF Members have consistently made clear, sea-level rise could therefore have significant consequences for statehood, national identity, sustainable development, and livelihoods in the Pacific. This is a particularly unjust and inequitable outcome, as sea-level rise and climate change are phenomena that small island States have done the least to cause.

Preservation of existing maritime zones and the entitlements that flow from them is essential. As early as 2010, PIF Leaders committed to preserving PIF Members' existing rights stemming from maritime zones in the face of sea-level rise.¹

UNCLOS does not explicitly deal with the impact of climate change, including sea-level rise, on maritime zones. Drafters of UNCLOS did not foresee the challenges posed by this phenomenon on the order created under UNCLOS.

PIF Leaders have registered their concern at the threat posed by sea-level rise to securing our vision for the Blue Pacific. Leaders have committed to a number of actions to combat the threat, including through concluding maritime boundary treaties and defining the outer limits, in accordance with UNCLOS, of PIF Members' continental shelves beyond 200 nautical miles from the baselines from which the breadths of their territorial seas are measured.

At their August 2019 meeting in Tuvalu, PIF Leaders also committed all PIF Members to a collective effort, including to develop international law, with the aim of ensuring that once a PIF Member's maritime zones are delineated in accordance with UNCLOS, that Members' maritime zones could not be challenged or reduced as a result of sea-level rise and climate change.²

PIF Members also favour stable maritime zones for practical reasons. Acquiring baseline data, and then generating and declaring baselines and the outer limits of maritime zones, requires substantial time and resources. This reality precludes regular review, which in any event is not required under UNCLOS, as it is the responsibility of the coastal State to mark or to show baselines and establish outer limits of maritime zones, including via "large-scale charts officially recognized by the coastal State."³ Regular review would impose a significant burden on States, is administratively costly and disruptive, and leads to more uncertainty about maritime zones and their entitlements. This would defeat an important purpose of UNCLOS.

¹ PIF, *Our Sea of Islands – Our Livelihoods – Our Oceania. Framework for a Pacific Oceanscape: A Catalyst for Implementation of Ocean Policy* (November 2010), <https://www.forumsec.org/wp-content/uploads/2018/03/Framework-for-a-Pacific-Oceanscape-2010.pdf>. PIF Leaders' practice has been recognized generally. *See, e.g.*, ILA, Resolution 5/2018. The International Law Association ("ILA") endorsed this approach in its Resolution 5/2018. In doing so, the ILA noted the emerging State practice, particularly among Pacific island States, in favour of maintaining the "baselines and limits of their current maritime zones . . . notwithstanding physical coastline changes brought about by sea level rise." While noting that States must have first established such entitlements in compliance with UNCLOS prior to physical coastline changes to benefit from such a rule of international law, the ILA underscored that maintenance of baselines and outer limits of maritime zones would advance UNCLOS's objective of ensuring legal certainty and stability, and enact the States Parties' "strong desire that UNCLOS allow for flexibility of practice in order to ensure durability over time." *See also Bay of Bengal Maritime Boundary Arbitration (Bangladesh v. India)*, PCA Case No. 2010-16, Award (7 July 2014), ¶ 217 ("In the view of the Tribunal, neither the prospect of climate change nor its possible effects can jeopardize the large number of settled maritime boundaries throughout the world. This applies equally to maritime boundaries agreed between States and to those established through international adjudication.").

² PIF, *Leaders Meeting, Communiqué* (16 August 2019), <https://www.forumsec.org/fiftieth-pacific-islands-forum-tuvalu-13-16-august-2019>; Palau Declaration on the Ocean: Life and Future (1 August 2014), <http://www.forumsec.org/wp-content/uploads/2017/11/2014-Palau-Declaration-on-'The-Ocean-Life-and-Future'.pdf>.

³ UNCLOS, Articles 5, 6.

The Role of UNCLOS in Promoting Stability and Good Order of the Ocean

For PIF Members, UNCLOS is critically important in establishing an effective legal regime for Ocean governance, in particular through UNCLOS's establishment of a regime for certain, stable, and durable maritime zone designations. UNCLOS was established as a comprehensive legal order for the Ocean. The Preamble to UNCLOS notes that Ocean issues are "closely interrelated and need to be considered as a whole" and that UNCLOS should "contribute to the realization of a just and equitable economic order." The United Nations General Assembly has recognized UNCLOS's contribution to sustainable development in successive resolutions.⁴

In turn, PIF Members have planned their national and regional development in reliance on the legal order under UNCLOS, including the sovereignty, sovereign rights and jurisdiction generated by its regime of maritime zones.

PIF Members have invested significant resources to pursue best practices for determining their national baselines and establishing outer limits of maritime zones in accordance with UNCLOS. PIF Members have concluded maritime boundary treaties and, in accordance with UNCLOS, have defined the outer limits of continental shelves beyond 200 nautical miles. PIF Members have also established regional agreements, including on the conservation and sustainable use of their fisheries, in reliance on the stability and order generated by the UNCLOS regime of maritime zones.

The Role of Maritime Boundary Agreements and Continental Shelf Limits in Providing Stability for Maritime Zones

PIF Members have undertaken a sustained effort to conclude, where necessary, maritime boundary agreements in the region. Maritime boundaries play an important role in promoting stability in the face of sea level rise, recognising the unique status of boundary treaties under the Vienna Convention on the Law of Treaties. Recent practice in maritime boundary agreements negotiated by PIF Members include the description of boundary lines by reference to geographic coordinates, which also promotes stability and certainty.

PIF Members have also pursued stability of maritime zones through defining the outer limits of their continental shelves beyond 200 nautical miles and reference to neutral decision-making processes under UNCLOS. PIF Members have made ten submissions to the Commission on the Outer Limits of the Continental Shelf (CLCS).⁵ It is important to note in this context that Article

⁴ See, e.g., UN General Assembly, Resolution 73/124, Oceans and the Law of the Sea (11 December 2018).

⁵ Australia (15 November 2004); Cook Islands (16 April 2009); Fiji (20 April 2009); Kiribati (24 December 2012); Federated States of Micronesia (30 August 2013); Federated States of Micronesia, Papua New Guinea, and the Solomon Islands (5 May 2009); Tuvalu, and France and New Zealand (7 December 2012); New Zealand (19 April 2006); Palau (8 May 2009); and Tonga (11 May 2009).

76(8) of UNCLOS provides that the outer limits of the continental shelf established by a coastal State on the basis of CLCS recommendations shall be final and binding.

Designation of Maritime Zones by Geographic Coordinates

Recently, State practice from among PIF Members has shifted from using nautical charts as the sole or primary method to show the location of the normal, strait, or archipelagic baseline and the outer limits of maritime zones to the use of geographic coordinates specifying points on the baseline and outer limits. This method allows States to use modern and credible technology to apply principles of hydrographic practice. Describing baselines and maritime zone limits in this way is more accurate and certain with regard to the rights and responsibilities of coastal and third States. Benefits include easier legal compliance and enforcement (*e.g.*, fisheries, especially as modern vessels rely on digital positioning systems to locate themselves within licensed areas); assistance in resource exploration and exploitation; and management of area-based tools (*e.g.*, location of shipping lanes or marine protected areas).

Examples of this practice published on the United Nations Division for Oceans and the Law of the Sea website include the maritime zones legislation of Kiribati, the Republic of the Marshall Islands, Niue, Samoa, and Tuvalu.⁶ Australia followed this approach in its Seas and Submerged Lands (Continental Shelf) Proclamation 2012, and Papua New Guinea's Maritime Zones Act 2016 follows the same practice.⁷ The Solomon Islands and Fiji are also working towards using geographic coordinates.

Conclusion

The Pacific is a region that is committed to UNCLOS and has relied heavily on its regime of maritime zones to ensure regional security, prosperity and development. We are also a region that is, and will be, particularly affected by climate change-induced sea-level rise. The threat posed by sea-level rise, including potentially to our maritime entitlements under UNCLOS, is an issue of serious concern to Pacific Leaders.

PIF Members are taking both political and legislative steps to preserve existing rights stemming from our maritime zones in the face of sea-level rise. The enclosed submission of PIF Members reveals consistent State practice for coping with sea-level rise in favour of maintaining maritime zones before further sea-level rise; settling outstanding maritime limits as soon as possible, including through agreements, neutral decision-making; and fixing geographical coordinates of maritime baselines and outer limits of maritime zones.

⁶ See UN Division for Oceans and the Law of the Sea, <https://www.un.org/Depts/los/LEGISLATIONANDTREATIES/depositpublicity.htm>.

⁷ See Papua New Guinea, Maritime Zones Act 2016, www.fisheries.gov.pg/PolicyandRegulation/Legislation/tabid/86/Default.aspx.

PIF Members consider that there are good grounds to work towards ensuring that, once maritime zones are delineated in accordance with UNCLOS, those maritime zones should not be challenged or reduced as a result of sea-level rise and climate change.