Sea Level Rise and Maritime Zones: Preserving the Maritime Entitlements of ‘Disappearing States’

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The Basic Questions

- If the low water line retreats do baselines and the outer limits of maritime zones retreat?
- If an island becomes uninhabitable does it lose its EEZ and continental shelf?
- If an island disappears does it lose all its maritime zones?
- If an island State ceases to be inhabitable does it cease to be State?
- How can the international law assist in providing stability, certainty and a future to disappearing Small Island States?
The Baseline Dilemma

- The ambulatory nature of baselines
- Permanent inundation of low-tide elevations and fringing reefs used as basepoints will move the outer limits
- ‘Rocks which cannot sustain human habitation or economic life of their own’ are not entitled to an EEZ or continental shelf
- Islands that disappear cease to generate any maritime zones
Legal and Policy Options for Resolving the Baseline Dilemma: International Approaches

- **Substantive questions:**
  - Freezing baselines vs freezing outer limits
  - The time from which the baselines are frozen

- **Procedural mechanisms:**
  - Develop customary international law
  - Protocol to UNFCCC
  - Modify the Law of the Sea Convention by:
    - Formal amendment of LOSC
    - Decision of SPLOS
    - Supplementary agreement
      - Adopted by SPLOS initiative
      - Separate conference (ie Fish Stocks approach)
      - UNGA Resolution (ie PART XI approach)
Legal and Policy Options under Existing Law

- LOSC Article 5 – fix zones by marking low-water line on officially recognised charts
- Increased use of straight baselines (to be used with caution)
- Establishment of outer limits of continental shelf where appropriate
- Bilateral maritime boundary delimitation agreements
- LOSC Article 5 & Article 16(1): declare baselines by recourse to geographical coordinates - may require amendment of domestic legislation especially in the Pacific
Protecting Marine Entitlements: Imperatives for Small Island States

- Ensure domestic legislation delimits maritime zones by reference to distance from geographical coordinates – not just ‘low-water mark’
- Ensure coordinates are filed with UN in accordance with LOSC
- Delimit maritime boundaries with other states by treaty, ensuring reference to geographical coordinates not merely ‘equidistance’
- Promote adoption by international community of a new rule that freezes baselines drawn in accordance with LOSC as permanent from the time they are publicly declared