Sea Level Rise and Maritime Zones: Preserving the Maritime Entitlements of “Disappearing States”

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The Basic Questions

- If sea levels rise do the outer limits of a State’s 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?
Diagram showing relationship of maritime features, limits and zones seaward of the territorial sea baseline (not to scale)
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 may cease to generate any maritime zones
The Statehood Dilemma

• Criteria for Statehood (Montevideo Convention):
  – Permanent population
  – Defined territory
  – Government
  – Capacity to enter into relations with other States

• Loss of population and/or territory renders state non-existent

• Only States can claim maritime zones, therefore when a State ceases to exist, maritime zones cease and may revert to global commons or to other States
Resolving the Statehood Dilemma

• Disappearing State acquires new territory by cession

• Disappearing State merges into some form of federation with other State

• Recognition of new category of State – the deterritorialised State
Deterritorialised States

Concept already recognized in international law
- Knights of Malta
- Papal See

Functional or non-territorial sovereignty also recognized
- Governments in exile
- Communities made diasporic though invasion and colonisation
- Communities overrun and internally dislocated or formally deteritorrialised

Rights of ‘entities’ also recognized
- European Union
- Taiwan
Disappearing States as Deterritorialised States

• Governed by ‘government’ or ‘authority’ elected by registered voters
• ‘Government’ acts as trustee of State assets for benefit of citizens wherever they might be located
• Maritime zones continue to inure to the State
• Resource rents from maritime zones (fishing, sea-bed mining etc) used to fund the relocation and continued livelihood of displaced population – whether diasporic or all located in one new ‘host’ State
• ‘Government’ continues to represent deterritorialised State at the international level to ensure and preserve the trust ‘property’ and to ensure rights and interests of its citizens vis-a-vis their new host State or States
Resolving the Baseline Dilemma: 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
Resolving the Baseline Dilemma: New 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)
Preserving Maritime Entitlements

• Declare baselines in accordance with the LOSC and deposit the geographical coordinates with the UN

• Permanently establish outer limits of the continental shelf

• Delimit maritime boundaries with other states by treaty (defined by geographical coordinates)

• Promote adoption by the international community of a new rule that freezes baselines drawn in accordance with LOSC as permanent from the time they are publicly declared
Thank You