Professor Davor Vidas

CIL Distinguished Visiting Scholar

THE LAW OF THE SEA AND SEA LEVEL RISE: between the Holocene and the Anthropocene

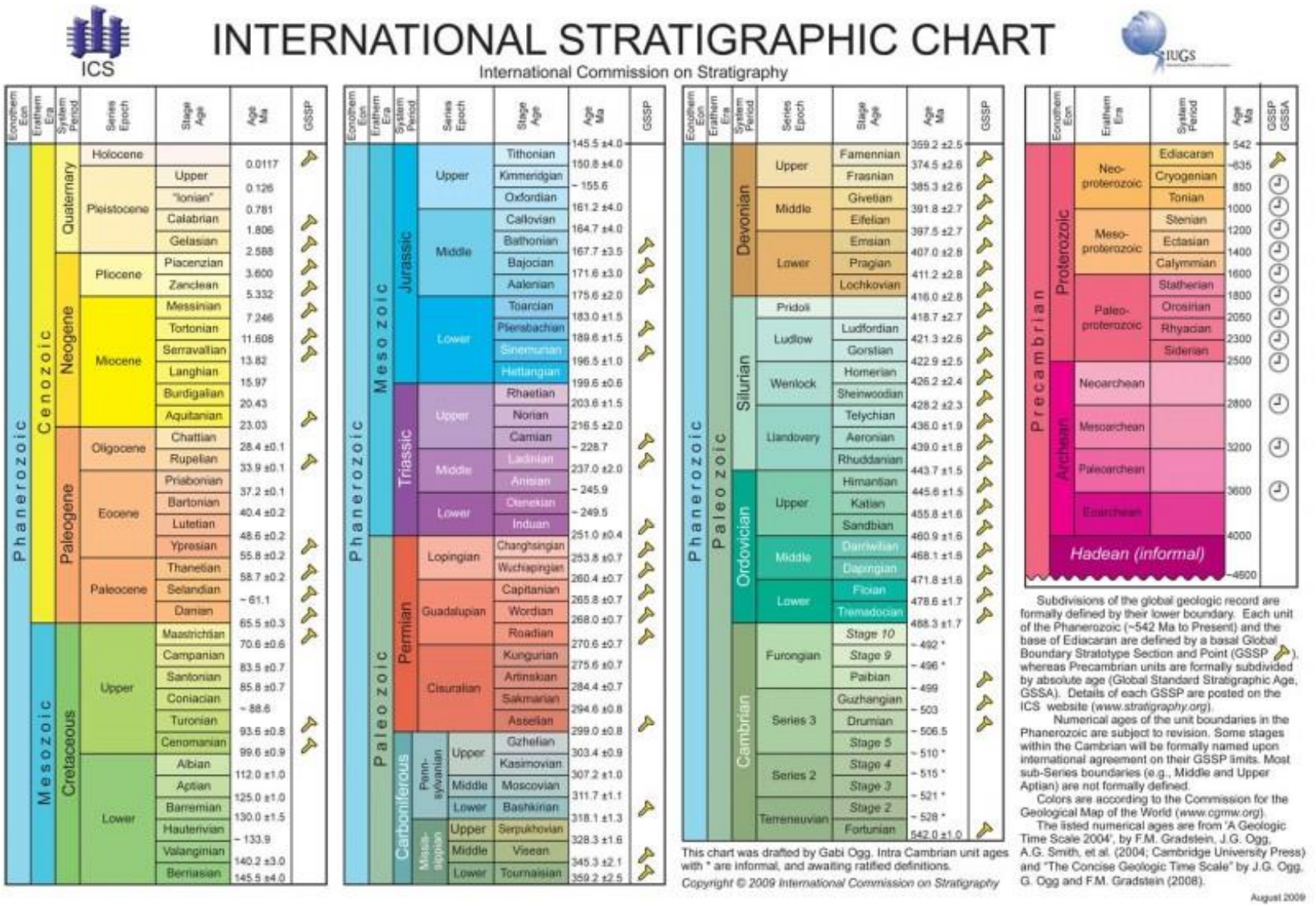
22 February 2023, Wednesday

4:00PM – 5:30PM

NUS Bukit Timah Campus

Block B, Level 5, Seminar Room 5-3

Geological Time Scale



Intergovernmental Panel on Climate Change: Periodization of Future Projections (in AR6)

Near-term: until 2040

Mid-term: from 2041 to 2060

Long-term: beyond (2081-2100)

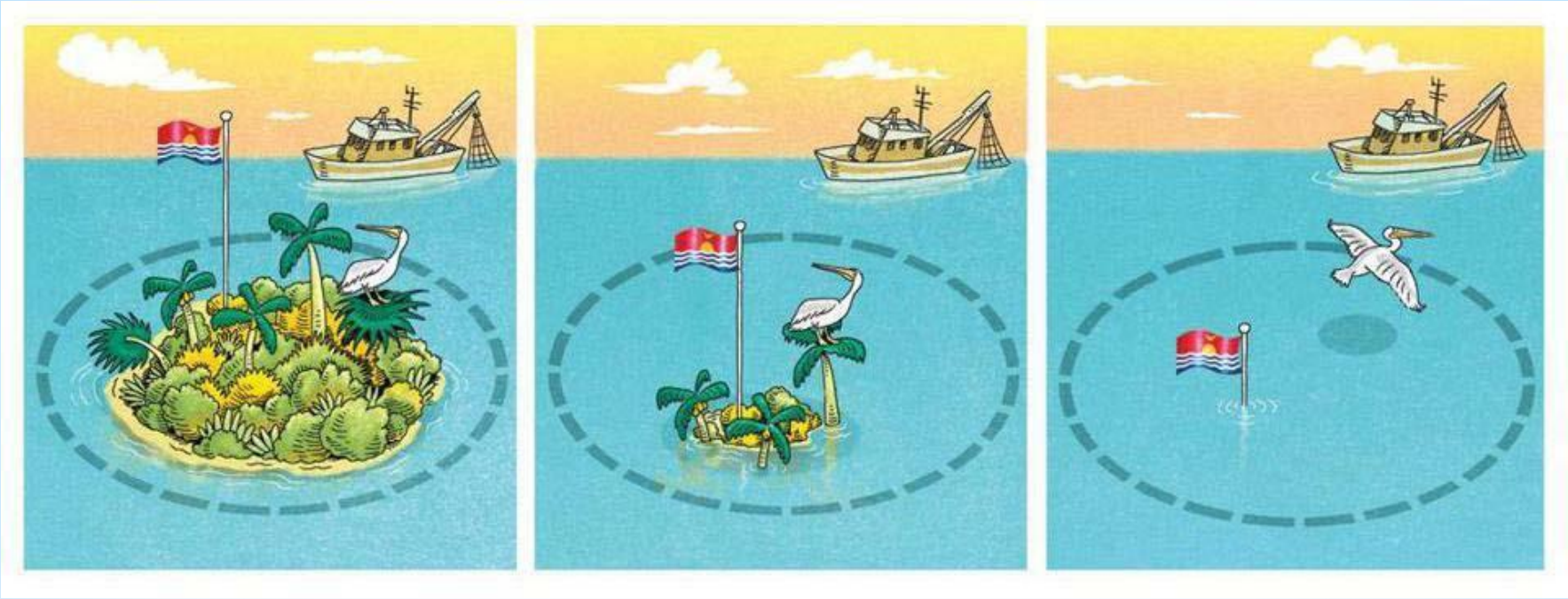
KD Burke, JW Williams, MA Chandler, AM Haywood, DJ Lunt and BL Otto-Bliesner:

> ”Pliocene and Eocene provide best analogs for near-future climates”

Proceedings of the National Academy of Sciences (PNAS), 2018, Vol. 115, No. 52, pp. 13288-13293.

* Finding of the ILA Baselines Committee in Sofia Report of 2012

* "The normal baseline is ambulatory, ***moving seaward*** to reflect changes to the coast caused by accretion, land rise, and the construction of human-made structures associated with harbour systems, coastal protection and land reclamation projects, ***and also landward*** to reflect changes caused by erosion and sea level rise."



*Why it is important…

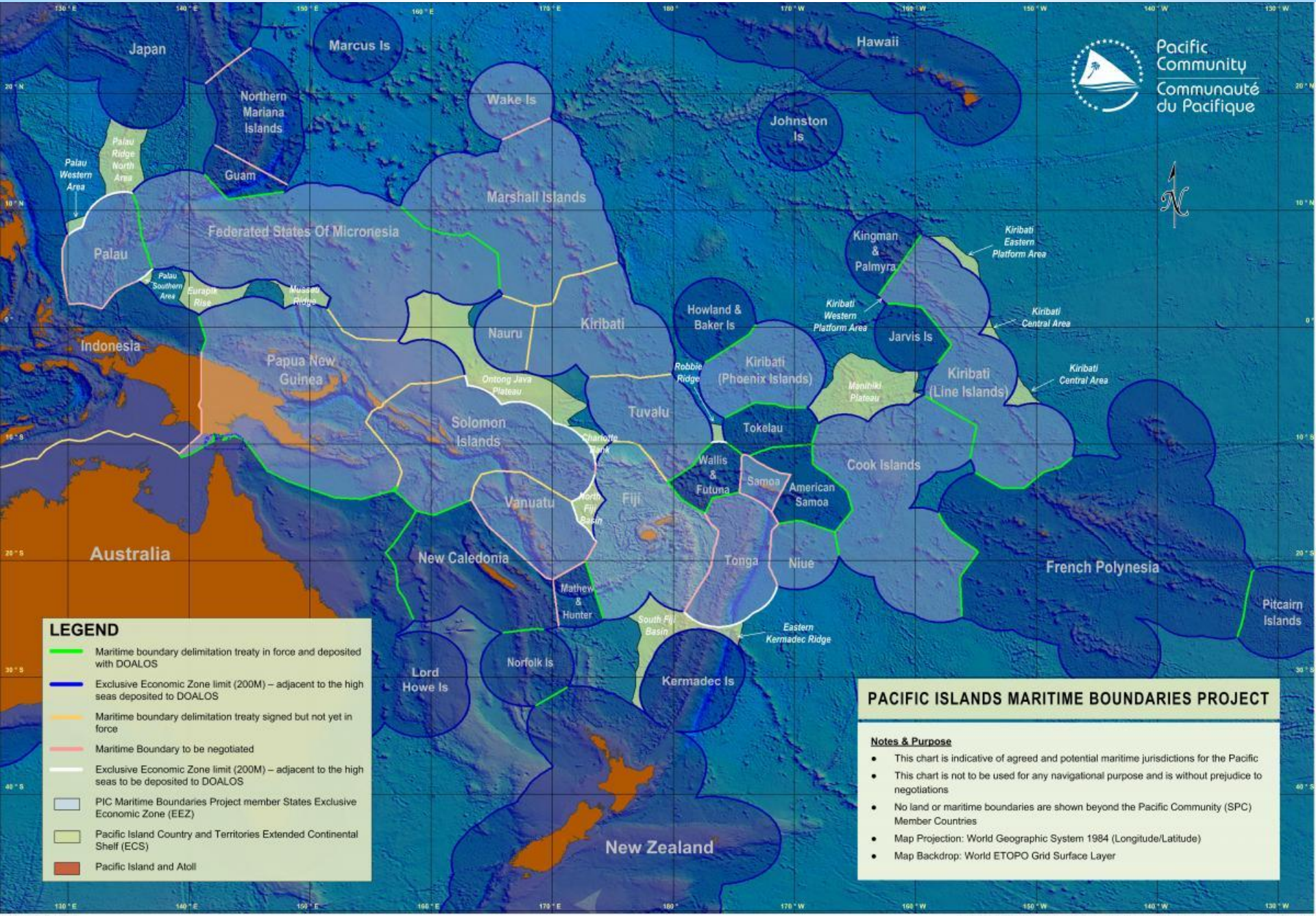
Illustration by Wesley Bedrosian, in Latif Nasser, *When island nations drown, who owns their seas?* The Boston Globe, October 19, 2014.

* 38 UN Member States are SIDS

1. Antigua and Barbuda	14. Guyana	27. Singapore
2. Bahamas	15. **Haiti***	28. St. Kitts and Nevis
3. Bahrain	16. Jamaica	29. St. Lucia
4. Barbados	17. **Kiribati***	30. St. Vincent and the Grenadines
5. Belize	18. Maldives	31. Seychelles
6. Cabo Verde	19. Marshall Islands	32. **Solomon Islands***
7. **Comoros***	20. Federated States of Micronesia	33. Suriname
8. Cuba	21. Mauritius	34. **Timor-Leste***
9. Dominica	22. Nauru	35. Tonga
10. Dominican Republic	23. Palau	36. Trinidad and Tobago
11. Fiji	24. Papua New Guinea	37. **Tuvalu***
12. Grenada	25. Samoa	38 Vanuatu
13. **Guinea-Bissau***	26. **São Tomé & Príncipe***	

1. American Samoa	8. Cook Islands	15. New Caledonia
2. Anguilla	9. Curacao	16. Niue
3. Aruba	10. French Polynesia	17. Puerto Rico
4. Bermuda	11. Guadeloupe	18. Sint Maarten
5. British Virgin Islands	12. Guam	19. Turks and Caicos Islands
6. Cayman Islands	13. Martinique	20. U.S. Virgin Islands
7. Commonwealth of Northern Marianas	14. Montserrat	

* **20 non-UN Members are associate members of regional commissions**


Pacific Community
Communauté du Pacifique
Japan
Marcus Is
Hawaii
Northern Mariana Islands
Wake Is
Johnston Is
Palau Ridge North Area
Palau Western Area
Guam
Marshall Islands
Federated States Of Micronesia
Palau
Palau Southern Area
Eauripik Rise
Mussau Ridge
Kingman & Palmyra
Kiribati Eastern Platform Area
Kiribati Western Platform Area
Kiribati Central Area
Howland & Baker Is
Jarvis Is
Nauru
Kiribati
Indonesia
Papua New Guinea
Ontong Java Plateau
Robbie Ridge
Kiribati (Phoenix Islands)
Manihiki Plateau
Kiribati (Line Islands)
Kiribati Central Area
Tuvalu
Solomon Islands
Tokelau
Charlotte Bank
Wallis & Futuna
Samoa
American Samoa
Cook Islands
Vanuatu
North Fiji Basin
Fiji
Australia
New Caledonia
Tonga
Niue
French Polynesia
Mathew & Hunter
South Fiji Basin
Eastern Kermadec Ridge
Pitcairn Islands
Norfolk Is
Lord Howe Is
Kermadec Is
New Zealand
LEGEND
Maritime boundary delimitation treaty in force and deposited with DOALOS
Exclusive Economic Zone limit (200M) – adjacent to the high seas deposited to DOALOS
Maritime boundary delimitation treaty signed but not yet in force
Maritime Boundary to be negotiated
Exclusive Economic Zone limit (200M) – adjacent to the high seas to be deposited to DOALOS
PIC Maritime Boundaries Project member States Exclusive Economic Zone (EEZ)
Pacific Island Country and Territories Extended Continental Shelf (ECS)
Pacific Island and Atoll
PACIFIC ISLANDS MARITIME BOUNDARIES PROJECT
Notes & Purpose
This chart is indicative of agreed and potential maritime jurisdictions for the Pacific
This chart is not to be used for any navigational purpose and is without prejudice to negotiations
No land or maritime boundaries are shown beyond the Pacific Community (SPC) Member Countries
Map Projection: World Geographic System 1984 (Longitude/Latitude)
Map Backdrop: World ETOPO Grid Surface Layer
Print Paper Size: ISO A1
Copyright © Oceans and Maritime Programme – Geoscience, Energy & Maritime Division, Pacific Community (July, 2020)

From the ILA Baselines Committee Sofia Report

- '…this new committee 'should **take into account the spirit of modern law of the sea** in which the interests of differently situated states are balanced'
- '… should also **recall the aims of the [LOS] Convention**: to strengthen peace, security, cooperation, and friendly relations among nations in conformity with the principles of justice and equal rights; to take account of the interests and needs of humankind as a whole; and to promote the economic and social advancement of all peoples of the world considering the special interests and needs of developing countries.'

‘[T]he Committee has presented evidence of the emergence of State practice, particularly in the South Pacific region, indicating that small island States intend to maintain the baselines and limits of their current maritime zones established in accordance with the 1982 Law of the Sea Convention for the future, notwithstanding physical coastline changes brought about by sea level rise.’

* ILA Resolution 5/2018: on the evidence of State practice

* An *initial* phase from about **2010 to 2018**: early evidence of State practice in the South Pacific: regional policy documents and national legislation.

* A *watershed* phase in the course of **2019 and 2020**: main trends, but also some mixed approaches, can be identified. Increasing number of examples from other regions, such as the Caribbean and the Indian Ocean.

* A phase of *consolidation*, **from 2021**: achieved the current level of clarity and specificity. States from several different regions expressed support, including in the Sixth Committee.

* Three phases of development of State practice specific to sea level rise

***Co-ordinated texts of Declarations adopted by PIF and AOSIS (August and September 2021)*:**

(1) the [LOS] Convention imposes no affirmative obligation to keep baselines and outer limits of maritime zones under review nor to update charts or lists of geographical coordinates once deposited with the Secretary-General of the United Nations.

(2) maritime zones, as established and notified to the Secretary-General of the [UN] in accordance with the Convention, 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.

Romania (UN, 2021):

> 'our legislation could be interpreted as favouring an ambulatory system of baselines, though *a connection with the specific case of sea-level rise is difficult to make…'*

Ireland (UN, 2022):

> 'our practice [of ambulatory baselines] has *not* been formulated expressly *in contemplation of sea-level rise*' .'

* Statements in the Sixth Committee UNGA

‘Under existing international law, as reflected in the [Law of the Sea] Convention, coastal ***baselines are generally ambulatory***, meaning that if the low-water line along the coast shifts (either landward or seaward), such shifts may impact the outer limits of the coastal State’s maritime zones.’

* Statement by the USA in the Sixth Committee UNGA in 2021

The United States would like to note that it has **announced a new policy** on sea-level rise and maritime zones.

Under this policy, which ***recognizes that new trends are developing*** in the practices and views of States ***on the need for stable maritime zones in the face of sea-level rise***, the United States will work with other countries toward the goal of lawfully establishing and maintaining baselines and maritime zone limits ***and will not challenge such*** baselines and maritime zone limits that are not subsequently updated despite sea-level rise caused by climate change.

* Statement by the USA in the Sixth Committee UNGA in 2022

‘Germany commits to support the process and work together with others to preserve their maritime zones and the rights and entitlements that flow from them in a manner consistent with the Convention, including *through a contemporary reading and interpretation of its intents and purposes*, rather than through the development of new customary rules.’

‘Through such contemporary reading and interpretation, Germany *finds that the UNCLOS allows for freezing* of once duly established, published and deposited baselines and outer limits of maritime zones in accordance with the Convention.’

* Germany (statements/submissions in the UN, 2021 and 2022)

For more on this theme, if interested in further reading:

- *Davor Vidas and David Freestone*: "Legal Certainty and Stability in the Face of Sea Level Rise: Trends in the Development of State Practice and International Law Scholarship on Maritime Limits and Boundaries", ***The International Journal of Marine and Coastal Law***, Vol. 37, No. 4, 2022, pp. 673–725 (*published online 6 October 2022*);

- *Davor Vidas and David Freestone*: "The Impacts of Sea Level Rise and the Law of the Sea Convention: Facilitating Legal Certainty and Stability of Maritime Zones and Boundaries", ***International Law Studies***, Vol. 99, 2022, pp. 944–964 (*published 1 December 2022*).