

THE SEA-LEVEL RISE AND ITS CONSEQUENCES FOR MARITIME ENTITLEMENTS AND BOUNDARIES

The rise of the sea level due to climate change



Julie O via Flickr. Available at https://www.flickr.com/photos/ga_greenier_au/3048225225/n/ [photostream/]

- GreenHouse Gases (GHG) Emissions have contributed to the sea-level rise.
- The Sixth Assessment Report of the Intergovernmental Panel on Climate Change (IPCC) estimated that SEA LEVEL had risen faster since 1900 than over the last 3000 years.
- Sea-Level might rise 0.44 to 0.76m under normal GHG emissions and up to 1.01m under high emissions levels.

HOW DOES SEA-LEVEL RISE AFFECT COASTAL STATES?



- Part or the entire of the States' territory will be submerged.
- Maritime entitlements are calculated from the land territory (the land dominates the sea).
- If the land territory disappears or is lost, States' rights over maritime zones established in UNCLOS will be reduced or lost.
- The loss of maritime entitlements will create instability in maritime delimitation agreements (MDA).

WHAT ARE THE BASELINES AND WHY ARE THEY RELEVANT FOR MARITIME ENTITLEMENTS?

- They are used as starting points for measuring the maritime zones to which States are entitled.
- Under UNCLOS (art.5), baselines are ambulatory, moving along the coast according to the low-water line.
- If the sea level rises, baselines will move inwards and so will maritime entitlements.
- States must change the law governing baselines to prevent losing maritime entitlements.



FROM AMBULATORY TO FIXED BASELINES: CHALLENGES IN CHANGING THE LAW

- Baselines must change to become permanent, requiring political consensus to change the law.
- States will not be willing to renegotiate UNCLOS to amend Art. 5 on baselines because it represents a high risk to other provisions.
- Customary international would require universality and uniformity, which is unlikely to happen because not all States consider fixed baseline desirable.
- The most convenient option is to adopt a supplementary treaty making baselines fixed without amending UNCLOS.



<https://www.sundaypost.com/?p/much-has-changed-since-cap20-but-we-cannot-lose-focus/>

The disappearance of maritime entitlements in MDA: Termination due to Fundamental Change of Circumstances?



- The disappearance of maritime entitlements does not invalidate MDAs automatically.
- MDAs remain binding based on the rule of *pact sunt servata*.
- There is no consensus on whether MDAs can be terminated based on a fundamental change of circumstances.
- Yet, States might try to do so if they are affected by the sea-level rise.
- This may create instability in the order of the oceans.
- States should interpret that termination due to a fundamental change of circumstances arising from climate change is also not applicable to MDAs.