

2023

Opening Speech

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Recommended Citation

Claudio Grossman (2023) "Opening Speech," *American University International Law Review*. Vol. 38: Iss. 3, Article 3.

Available at: <https://digitalcommons.wcl.american.edu/auilr/vol38/iss3/3>

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CONFERENCE ON SEA LEVEL RISE AND INTERNATIONAL LAW: ASSESSING ITS IMPACTS ON THE AMERICAS

This conference took place on July 26–27, 2022 during the 73rd Session of the International Law Commission meeting in Geneva, Switzerland, with virtual attendance via webinar made available by the American University Washington College of Law.

OPENING SPEECH

CLAUDIO GROSSMAN*

JULY 26, 2022, 12:00 PM ET

Good morning and good afternoon, depending on your time zone. It is a great pleasure to introduce this conference on “Sea Level Rise and International Law: Assessing its Impacts on the Americas.” Sea level rise is a pressing global challenge that could generate catastrophic effects, including in the Americas, which are surrounded by four oceans: the Arctic, the Antarctic, the Atlantic, and the Pacific. Several of the countries in the Region could suffer disproportionately from the consequences of this serious phenomenon. The implications for States and people all over the world are devastating, making rising sea levels a matter of utmost urgency. In the past few years, various substantive ideas have been developed regarding this pressing problem, this existential problem, in relation to international law. However, there is still much to do. Needless to say, this conference is an important venue for the discussion of this challenge and to contribute with further analyses, including the role that international law could play, and creating a space for the further consideration of this topic in the Americas.

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At the outset, I would like to express my gratitude to the co-sponsors of this conference, whose invaluable contribution has made this space for reflection on Sea Level Rise in the Western hemisphere possible. We are pleased to have a variety of co-sponsors and distinguished speakers from Eastern and Western Europe, Africa, and our own region, the Americas.

Our speakers include distinguished international law experts, colleagues from the International Law Commission, including the Co-Chairs of the Study Group on Sea Level Rise, ambassadors, representatives of permanent missions to the United Nations, practitioners, scholars, students, and members of non-governmental organizations, among others. This includes our friend and colleague, the Minister of Foreign Affairs of Romania. I want to also express my profound gratitude in the organization of this event to Jean-Michel Arrighi, the Secretary for Legal Affairs of the Organization of American States, with whom we started to organize this event months ago, in a special Working Group constituted also by the ambassador of Belize, Carlos Fuller, who also adds his own expertise and knowledge to this event; María Teresa Infante, Judge in the Law of the Sea Tribunal; and Herman Byrd, Lena Raxter, and Karen Reitan from the International Law Student Association of American University Washington College of Law. For the sake of brevity, the other participants of this conference, including those who will talk today, will be introduced by the moderator in each individual panel.

Further, I want to thank our co-sponsors: the Academia Brasileira de Direito Internacional; the Center for Human Rights and Humanitarian Law and the International Law Student Association of the American University Washington College of Law; the Permanent Mission of Belize to the United Nations; the Sociedad Latinoamericana de Derecho del Mar; the Sociedade Lusófona de Direito do Mar; the Instituto de Estudios Internacionales, and the Facultad de Derecho, Departamento de Derecho Internacional of the University of Chile. In addition, I want to express my gratitude to Roberto Álvarez, the Minister of Foreign Affairs of the Dominican Republic and its Government, and ambassadors to the OAS and the United Nations, for offering to organize a follow-up to this event, perhaps early next year in the Dominican Republic. Our recognition goes as well for the Chilean Permanent Mission to the United Nations

Office in Geneva in the person of Ambassador Claudia Fuentes Julio for assisting with the conference's logistics and coordination.

Before starting with the first panel, I would like to stress why it is important to discuss sea-level rise today. Sea level rise poses a pressing threat to many States and to the lives of millions of people around the world. There are more than seventy States that may be directly affected by sea level rise, many of which are located in the Americas.¹ Everyone else, also, will suffer the consequences. Moreover, the effects of sea level rise on States will have far-reaching implications for international law. Low-lying coastal States' areas are currently home to 680 million people, while small island developing States are home to sixty-five million people.² Additionally, coastal areas are home to approximately twenty-eight percent of the world's population, including about eleven percent who live on land less than ten meters above sea level.³ Some 146 million people will be at risk of having to evacuate their homes over the next century, some of whom face the risk of de facto statelessness, which can make it difficult to access basic services such as healthcare and would also exclude these people from decision-making processes concerning their own well-being.⁴

We should not wait until the territory of a State is completely covered by the sea, or greatly covered or partly covered, before considering approaches in international law to address this likely situation. Although the legal issues raised by sea level rise are novel and there is limited state practice, we cannot simply conclude that international law is irrelevant.⁵ Quite to the contrary: it is in the face of global phenomena, such as sea level rise, that international law

1. Int'l Law Comm'n, Rep. of the Work at Its Seventieth Session, U.N. Doc. A/73/10, at 326 (2018).

2. Patrícia Galvão Teles & Juan José Ruda Santolaria (Co-Chairs of the Study Group on Sea-Level Rise in Relation to International Law), *Sea-Level Rise in Relation to International Law: Second Issues Paper*, at 14, U.N. Doc. A/CN.4/752 (Apr. 19, 2022) [hereinafter *Second Issues Paper*].

3. Bogdan Aurescu & Nilüfer Oral (Co-Chairs of the Study Group on Sea-Level Rise in Relation to International Law), *Sea-Level Rise in Relation to International Law: First Issues Paper*, at 15, U.N. Doc. A/CN.4/740 (Feb. 28, 2020) [hereinafter *First Issues Paper*].

4. *Second Issues Paper*, *supra* note 2, at 40–41, 56–57.

5. *Id.* at 59.

might demonstrate that its principles and norms could be of crucial importance in facing the challenges to humanity through the rule of law. Moreover, this topic is related to some of the most fundamental principles of international law enshrined in the United Nations Charter and the 1970 Declaration on Friendly Relations, such as sovereign equality of States, self-determination, and international cooperation.⁶ Sea level rise has far-reaching consequences on matters such as the Law of the Sea, the notion of statehood, issues of State responsibility, and the protection of persons, among other interrelated topics.

The Human Rights Council has noted that the adverse effects of climate change “have a range of implications, both direct and indirect, for the effective enjoyment of human rights.”⁷ It is well-known and undeniable that climate change has an impact on sea level rise, which can, in turn, result in a substantial loss of territory or even the disappearance of some states.⁸ Hence, the State and its population may no longer have access to the resources necessary to prosper, or even to sustain life. Also, sea level rise may manifest itself through sudden onset phenomena such as storms, hurricanes, typhoons, and monsoon rains that will flood states much more rapidly and extensively compared to normal circumstances.⁹ Ultimately, it is reasonable to assume that both the loss of territory and the effects of climate-induced change could create catastrophic weather events and demonstrate that human rights and the protection of the environment are interdependent.

Sea level rise affects a range of human rights, including the right to life, an adequate standard of living, food, water and sanitation, health, and a healthy environment. In particular, the rights of indigenous

6. See G.A. Res. 2625 (XXV), Declaration on Friendly Relations, at 122 (Oct. 24, 1970); *Second Issues Paper*, *supra* note 2, at 101, 106.

7. Human Rights Council Res. 10/4, U.N. Doc. A/HRC/RES/10/4, at 1.

8. See *Second Issues Paper*, *supra* note 2, at 88, 103 (pointing out the potential loss of territory for small island developing States due to sea level rise, and the potential slow-onset consequences, including diminished habitable conditions and submersion or disappearance).

9. See Anthony Oliver-Smith, *Sea Level Rise and the Vulnerability of Coastal Peoples: Responding to the Local Challenges of Global Climate Change in the 21st Century*, 7 UNU-EHS INTERSECTIONS 1, 19 (2009) (discussing the various manifestations of climate change through environmental catastrophes and natural disasters).

populations will be affected, as many of them are dependent on the sea for their material, cultural, and spiritual sustenance. Sea level rise equally threatens their right to remain on their ancestral lands.¹⁰

The prohibition of non-refoulement is also an issue that is affected by sea level rise. The landmark decision of the United Nations Human Rights Committee, in dealing with the case of *Ioane Teitiota v. New Zealand*—following Teitiota’s deportation to the Republic of Kiribati—made it clear that, without strong international and national efforts, the effects of climate change on receiving states may expose individuals to possible violations of their rights, thus triggering non-refoulement obligations on sending States.¹¹

Other implications of sea-level rise are the issues of baselines and other maritime delimitations. If the baselines and other maritime delimitations are considered ambulatory and thus resulting in the movement of maritime zones closer to a State’s land mass, this will have a direct impact on sovereignty and jurisdiction rights, as well as maritime rights. Of course, those matters need to be studied, and this is the purpose of what we are doing here today. But we have to consider that if coastal States or island States lose such rights, this would exacerbate their situation and could have a serious impact on human rights.

Having acknowledged many of the implications of sea-level rise, I would like to briefly mention that the International Law Commission (ILC), the body in charge of codification and progressive development of international law, is contributing to this issue, which will therefore be developed in greater detail and depth by my distinguished ILC colleagues who are participating in this conference.

Following the request of Pacific small island developing States, in the Sixth Committee of the United Nations General Assembly in 2017, the ILC decided to include the topic “Sea-level rise in relation to international law” in its long-term program of work.¹² At its seventy-

10. *Second Issues Paper*, *supra* note 2, at 63–64 (connecting the right to self-determination and the rights of indigenous peoples with the potential loss of indigenous lands and cultures).

11. Hum. Rts. Comm., *Teitiota v. New Zealand*, at 2, 12, CCPR/C/127/D/2728/2016 (Oct. 24, 2019).

12. *See* Int’l Law Comm’n, Rep. of the Work at Its Seventieth Session, U.N.

first session in 2019, the ILC created an open-ended Study Group on the topic.¹³ I would like to take this opportunity to publicly thank the formidable contributions and leadership of the Co-Chairs of this Study Group: Bogdan Aurescu, Yacouba Cissé, Patrícia Galvão Teles, Nilüfer Oral, and Juan José Ruda Santolaria. It is an honor to have their participation in this conference today. In my capacity as a member of the Study Group on Sea Level Rise of the ILC, I have witnessed the serious and important discussions that have taken place, thanks to their thorough preparation and leadership, to analyze the topic and define the role of international law, including the need to enhance cooperation to face this existential challenge.

The objective of the Commission's Study Group is to map the legal questions raised by sea-level rise and its interrelated issues and endeavors submitted to them by the international community, respond to some of the legal questions raised by sea-level rise, and assist States in developing practicable solutions to respond effectively to the issue of sea-level rise.¹⁴ The ILC has issued two important reports on this topic focusing on three main areas: the law of the sea, statehood, and the protection of persons affected by sea-level rise.¹⁵

Regarding the law of the sea, I believe that many of the challenges must be examined through the legal framework of the International Law of the Sea, codified in the United Nations Convention on the Law of the Sea and crystallized in Customary International Law.¹⁶ But we will hear about this from my colleagues, as I do not want to go further on that.

This is the same with the issue of statehood, where the ILC has recognized that while no State has become completely submerged or uninhabitable at present, sea level rise is a global, non-uniform

Doc. A/73/10, at 326–27, 331 (2018) (discussing the development of the discussion around sea level rise and the introduction of a proposal by the Government of the Federated States of Micronesia to include the “Legal Implications of Sea-level Rise” in the ILC’s long-term work).

13. Int’l Law Comm’n, Rep. of the Work of Its Seventy-First Session, U.N. Doc. A/74/10, at 339 (2019).

14. Int’l Law Comm’n, Rep. of the Work at Its Seventieth Session, U.N. Doc. A/73/10, at 328–30 (2018).

15. *First Issues Paper*, *supra* note 3, at 3.

16. *See id.* at 6, 11, 14; *see also* United Nations Convention on the Law of the Sea, Dec. 10, 1982, 1833 U.N.T.S. 397.

phenomenon and poses serious threats to the survival of small island developing States while impacting everyone.¹⁷ The concept of a State as a subject of international law has been studied in accordance with the four requirements stipulated in Article 1 of the 1933 Convention on the Rights and Duties of States, but again, we are discussing in the Commission different issues that are going to be summoned by my colleagues, and one of those is whether the conditions for the creation of a state are the same for its continuance.

It is important to know that the international law community should pay, in spite of the fact that this impacts everyone, particular attention to the needs of small island developing States. For them, this topic is existential, even if it affects every other state in the world. Any other approach would be inconsistent with the spirit of the Convention on the Law of the Sea and international law generally.

Furthermore, concerning the protection of people affected by sea-level rise, at present, the international legal framework is fragmented and general. As the ILC has highlighted, people living in coastal environments and in small island developing States are particularly vulnerable and we are going to hear more about this in this conversation.¹⁸ I am sure that the contribution of everyone will promote the discussion in international law with the goal of this conference. To map out what is going on in the Americas, I have announced in the ILC that our goal is that the Inter-American Juridical Committee contributes to the Study Group and working in this matter does a study on the impact of sea level rise in the Western Hemisphere.¹⁹

Finally, to continue with the welcome and introductory words of this conference, let me introduce one of the best components of the academic community at the American University Washington College of Law, which is its students. In spite of everything they find the time to work, to deal with crucial issues facing humankind. I now give the floor over to Karen Reitan, the President of the Washington College

17. *Second Issues Paper*, *supra* note 2, at 21, 101.

18. *Id.* at 21.

19. *See generally* Int'l Law Comm'n, Rep. of the Work at Its Seventy-Second Session, U.N. Doc. A/76/10 (2021) (discussing the proposed remedies and goals of the ILC in relation to sea level rises and international law).

of Law's Chapter of the International Law Student Association. Many thanks.