

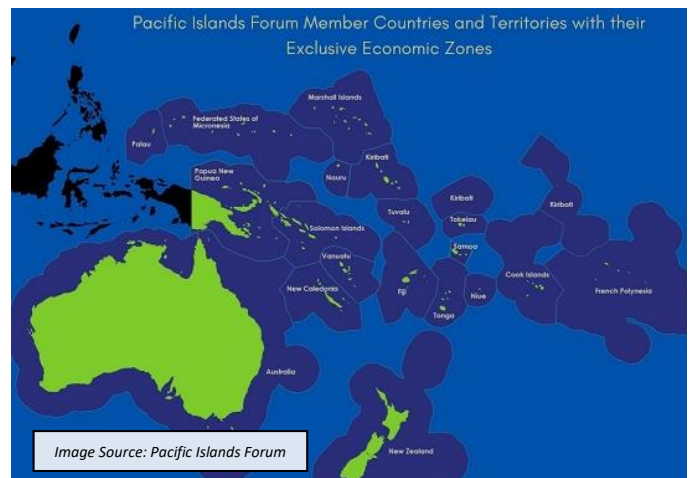
TOPIC: IMPACT OF SEA-LEVEL RISE ON MARITIME ZONES

BOTTOM LINE

- **Sea-level rise threatens coastal States worldwide and poses an existential threat to Pacific Island States.**
- **USINDOPACOM recognizes the severity of this threat** and is committed to working with allies and partners to promote **stability, security, certainty, and predictability of maritime entitlements** that are vulnerable to sea-level rise.
- The United Nations Convention on the Law of the Sea (UNCLOS) does not address the effect of sea-level rise on long-established baselines and corresponding maritime zones.
- As international law in this area develops, many countries see a need to preserve baselines and outer limits of maritime zones, and to prevent foreign actors from exploiting uncertainty to the detriment of coastal States.ⁱ
- The U.S. position is that **sea-level rise caused by climate change should not diminish the maritime zones** on which island States and other coastal States rely, including for food, livelihoods, and security.ⁱⁱ
- **The United States is committed to preserving the legitimacy of maritime zones**, and associated rights and entitlements, that have been established consistent with international law reflected in UNCLOS and that are not subsequently updated despite sea-level rise caused by climate change.ⁱⁱⁱ
- **The United States will work with Pacific Island States** and other countries toward lawfully establishing and maintaining baselines and maritime zone limits and has urged other countries to adopt similar approaches.^{iv}

WHY THIS MATTERS

- **If maritime zone limits recede landward with contracting baselines, the legal status of affected waters would change** – e.g., internal waters could become territorial sea (TTS); TTS could become contiguous zone (CZ) and exclusive economic zone (EEZ); EEZ could become high seas; and archipelagic baselines could face dissolution as the distance between land features increases.
- **These changes would significantly affect the rights of coastal States** (sovereignty in TTS, resource rights in the EEZ, etc.) and foreign States (innocent passage in TTS, high-seas freedoms in EEZ, etc.).
- Without action to ensure stability, security, certainty, and predictability, the sovereign rights and interests of coastal States will remain under threat and **foreign actors could exploit ambiguity** in maritime entitlements to their benefit and the detriment of coastal States.
- **Pacific Island States are especially vulnerable** to sea-level rise and need support from the international community to ensure their maritime zones are preserved in accordance with international law.^v
- **The United States steadfastly supports Pacific Island States**, to include the Freely Associated States (Republic of the Marshall Islands, the Federated States of Micronesia, and the Republic of Palau) with whom the United States maintains a unique relationship and obligations under the Compacts of Free Association.^{vi}
- Raising awareness of the threat posed by sea-level rise to Pacific Island States and other countries may **create opportunities for cooperation** to preserve the rights of allies and partners across the Indo-Pacific region.



DETAILED DISCUSSION



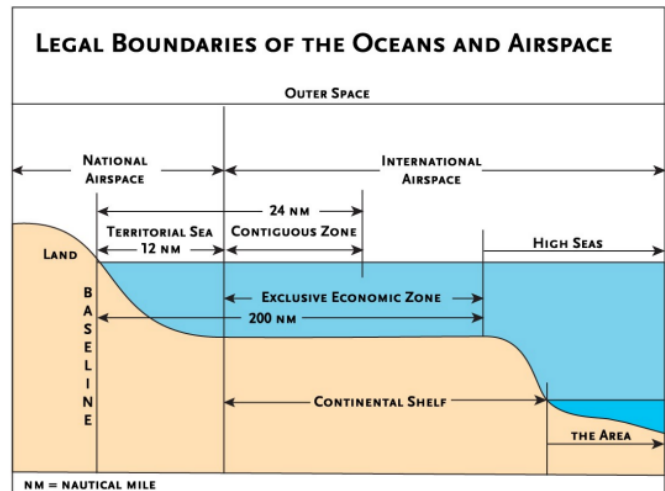
Climate Change and Sea Level Rise

- **Melting glaciers and ice sheets are adding water to the ocean**, and the volume of the ocean is expanding as the water warms. Between 1993 and 2021, mean sea levels rose as much as six to eight inches in ocean basins.^{vii}
- As global temperatures continue to rise, so will mean sea levels. Models estimate that sea levels could rise by two to six feet higher than 2000 levels by 2100.^{viii}
- Highlighting one at-risk Pacific Island State, in August 2023 the Sea Level Change Team at the National Aeronautics and Space Administration (NASA) released a technical assessment detailing Tuvalu's struggle with rising seas, and concluded based on projections that ***much of Tuvalu's land area will be below the average high tide by 2050.***^{ix}



Maritime Boundaries: The Basics

- Under international law reflected in UNCLOS, **maritime zones are measured from lawfully drawn baselines.**^x
- Unless other special rules apply,^{xi} **the normal baseline** from which maritime claims of a State are measured **is the low-water line** along the coast as marked on the State's official charts.^{xii}
- **The world's oceans are divided into two parts:** (1) **waters that are subject to sovereignty** of coastal States (internal waters, TTS, and archipelagic waters); and (2) **waters beyond the TTS** (consisting of the CZ, EEZ, high seas) in which all States enjoy high seas freedoms of navigation and overflight and other lawful uses related to these freedoms.^{xiii}
 - **Internal waters** are landward of the baseline. Examples include lakes, rivers, and some bays.^{xiv}
 - **The TTS** is a belt of ocean measured seaward from the baseline up to 12 nautical miles (nm).^{xv}
 - **Archipelagic waters** fall within archipelagic baselines.^{xvi} In archipelagic waters, all States have the right of archipelagic sea-lanes passage through designated sea-lanes and routes normally used for international navigation and overflight.^{xvii}
 - **The CZ** is an area extending seaward from the TTS up to 24 nm from the baseline in which the coastal State may enforce its customs, fiscal, immigration, and sanitary laws.^{xviii}
 - **The EEZ** is a resource-related zone extending up to 200 nm from the baseline where the coastal State has sovereign rights to explore, exploit, conserve, and manage natural resources.^{xix}
 - **The high seas** include all parts of the ocean seaward of the EEZ. On the high seas, all States enjoy freedoms of navigation and overflight and other lawful uses of the seas related to those freedoms.^{xx}
- An **island** is (1) a naturally formed area of land, surrounded by water, (2) which is capable of sustaining human habitation or economic activity of its own and (3) is above water at high tide.^{xxi} A State may claim maritime zones including a 12 nm TTS and 200 nm EEZ around an island.^{xxii}
- **Rocks**, defined as being above water at high tide but unable to sustain human habitation or economic activity, can only generate a 12 nm TTS, but not an EEZ.^{xxiii}
- A **low-tide elevation** is a naturally formed area of land, surrounded by and above water at low tide, but submerged at high tide. A low-tide elevation has no TTS of its own, but may be used as a baseline when it is within the TTS of a State.^{xxiv}

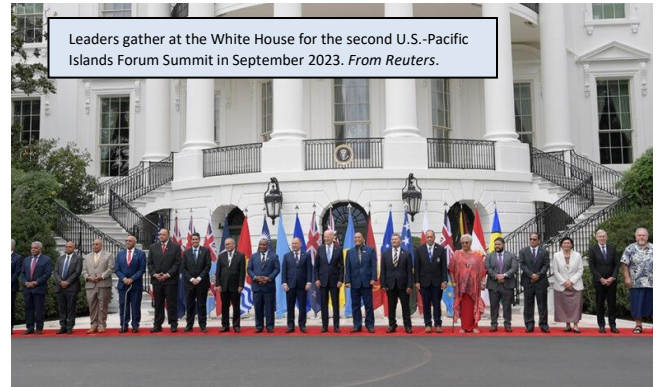


The Potential Effects of Sea-Level Rise on Coastal State Rights

- Rising seas mean that coastal areas may soon be underwater; islands may become uninhabitable; rocks may become low-tide elevations that are underwater at high tide; and low tide elevations may disappear.
- The land territory of ***low-lying Pacific Island States could vanish*** entirely.^{xxv}
- Receding low-water marks caused by rising seas raise questions about the legal status of affected waters and the associated rights of coastal States and foreign States.
- Absent stability, security, certainty, and predictability of baselines and outer limits of maritime zones, ***coastal States risk losing sovereignty*** in waters that transition from TTS to waters beyond the TTS ***and forfeiting resource rights*** (fishing, oil, minerals, etc.) in areas of the EEZ that become high seas.
- States could also be compelled to renegotiate ***maritime boundary delimitation agreements***, which may take years and lead to uncertainty and potential clashes between States with overlapping maritime zones.^{xxvi}
- Moreover, ***foreign actors could exploit ambiguous maritime boundaries*** to the detriment of coastal States.
- ***Many States and their citizens rely on maritime entitlements for food, livelihoods, and security.*** Diminution of an EEZ could devastate a coastal State's economy by reducing that State's ability to exclusively extract (or receive royalties for the extraction) oil, natural gas, fish, and other resources.

International Law & State Practice

- ***UNCLOS does not address the effect of sea-level rise*** on baselines and corresponding maritime zones.^{xxvii}
- In 2014, the Permanent Court of Arbitration, a non-UN intergovernmental organization that arbitrates disputes of international agreements between member states, ***held that maritime baselines "must be stable and definitive to ensure a peaceful relationship between the States"*** and that climate change cannot "jeopardize the large number of settled maritime boundaries throughout the world."^{xxviii}
- Furthering this trend, the International Legal Association passed a resolution in 2018 that ***"...baselines and limits should not be required to be recalculated should sea level change affect the geographical reality of the coastline,"*** affirming a fixed boundaries approach from the international legal community.^{xxix}
- ***The Pacific Islands Forum issued a landmark 2021 Declaration*** on Preserving Maritime Zones in the Face of Climate Change-related Sea-Level Rise, which noted that UNCLOS 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."^{xxx}
- The declaration stated that once maritime zones are lawfully established, "[Pacific Island States] intend to maintain these zones without reduction, notwithstanding climate change-related sea-level rise."^{xxxi}
- A 2023 report by the UN International Law Commission (ILC) found ***widespread international support for the stability of established maritime baselines notwithstanding sea-level rise.***^{xxxii}
- Australia and many Pacific Island States have enacted domestic legislation to affix maritime boundary points.
- Pacific Island States have submitted fixed boundaries to the UN in accordance with UNCLOS. Some States, such as New Zealand, included annotations in their submissions stating that there is no obligation to submit additional coordinates for changes that occur due to sea level rise.^{xxxiii}
- A growing number of developed nations with alliances, partnerships, and territorial interests in the Pacific support preserving existing maritime zones, to include the ***United States, the United Kingdom, Germany, and France.***^{xxxiv}
- ***Some nations, including the PRC and Russia, have expressed caution regarding the preservation of maritime zones.***^{xxxv} In a 2021 statement to the U.N. ILC, ***the PRC posited that State practice on sea-level rise was not "established" and "overemphasizing regional practice may exacerbate the fragmentation of legal rules."***
- The PRC's statement seemingly reflects a double-standard given the PRC's claims to "historic rights" in the South China Sea, which exemplify a PRC-centric historical narrative and the fragmentation of legal rules due to a highly regionalized interpretation of both history and law.^{xxxvi}



U.S. Policy

- ***The United States supports the Pacific Islands Forum's declaration***; recognizes the need for stable maritime zones in the face of sea-level rise caused by climate change; and is committed to preserving the legitimacy of existing maritime zones and their associated rights and entitlements.^{xxxvii}
- At the U.S.-Pacific Islands Forum Summit in September 2023, ***President Biden announced that sea-level rise driven by climate change should not cause any country to lose its statehood*** or its membership in the United Nations, and that ***sea-level rise should not diminish the maritime zones on which island nations and other coastal states rely for food and security***.^{xxxviii}
- ***The United States will work with Pacific Island States*** 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.^{xxxix}
- ***The United States has urged other countries to adopt similar approaches*** in order to safeguard vulnerable island States and promote regional stability.^{xl}
- ***USINDOPACOM is focused on improving surveillance, enforcement, and the capacity of allies and partners*** to prevent foreign actors from exploiting their maritime entitlements. Efforts include:
 - U.S. military and Coast Guard subject matter expert exchanges with coastal States across the Indo-Pacific aimed at developing legal frameworks and enforcement capabilities within coastal state EEZs;
 - Bilateral shiprider agreements with partners such as Papua New Guinea, Palau, and the Federated States of Micronesia, which allow the United States to conduct fishing vessel boardings within these countries' EEZs;
 - The Oceania Maritime Security Initiative, a cooperative effort between the U.S. Department of Defense, the U.S. Coast Guard, and National Oceanic and Atmospheric Administration, to improve maritime domain awareness and EEZ security across the Pacific Ocean;^{xli}
 - The informal Partners in the Blue Pacific initiative (involving Australia, Japan, New Zealand, the United Kingdom, and the United States) that includes a commitment to addressing the challenges of IUU fishing and maintaining MDA through cooperative partnerships across the region;^{xlii} and
 - The Quad's (Australia, India, Japan and the United States) Indo-Pacific Partnership for Maritime Domain Awareness, which uses tools such as commercial satellite radio frequency data collection to provide real-time information to coastal States on activities occurring within their maritime zones.^{xliii}



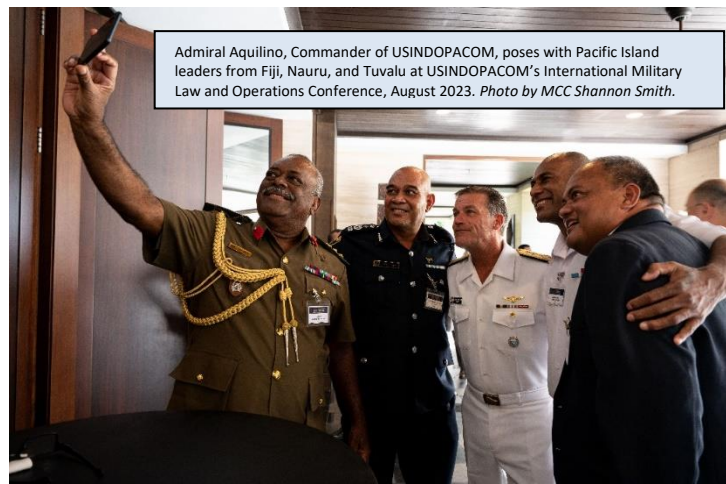
The crew of USCGC Oliver Henry conducts an approach in support of the Pacific Islands Forum Fisheries Agency's Operation 365 and Operation Rematau to stop IUU fishing, April 2023. Image source: USINDOPACOM.

PROPOSED COUNTER-LAWFARE APPROACH

** This section offers suggested language for incorporation into communications strategies **

- ***Sea-level rise*** due to climate change threatens coastal States worldwide and poses an ***existential threat to Pacific Island States***.
- ***USINDOPACOM recognizes the severity of this threat*** and is committed to working with allies and partners to promote stability, security, certainty, and predictability of maritime entitlements that are vulnerable to sea-level rise.
- ***Without action by the international community***, the sovereign rights and interests of coastal States will remain under threat and foreign actors could exploit ambiguity in maritime entitlements to their benefit and to the detriment of coastal States.
- Addressing sea-level rise with an approach based in the rule of law supports preservation of maritime zones and helps ensure ***stability, security, certainty, and predictability***.
- ***UNCLOS does not exclude an approach based on the preservation of baselines and outer limits of maritime zones*** in the face of climate change-related sea-level rise.
- The international community should ***support the Pacific Islands Forum's landmark Declaration*** on Preserving Maritime Zones in the Face of Climate Change-related Sea-Level Rise.

- *Some nations, including the PRC and Russia, have expressed caution regarding the preservation of maritime zones.*
- Sea-level rise driven by climate change should not diminish the maritime zones on which island States and other coastal States rely upon for **food, livelihoods, and security**.
- Upholding the rule of law in the Indo-Pacific requires **the stability of maritime boundary delimitation agreements as well as respect for the decisions of international courts and tribunals.**
- **Pacific Island States are especially vulnerable** to sea-level rise and need support from the international community to ensure their maritime zones are preserved in accordance with international law.
- **USINDOPACOM steadfastly supports Pacific Island States**, to include the Freely Associated States with whom the United States maintains a unique relationship and obligations under the Compacts of Free Association.
- Consistent with U.S. policy, **USINDOPACOM is committed to preserving the legitimacy of maritime zones**, and associated rights and entitlements, that have been established consistent with UNCLOS and that are not subsequently updated despite sea-level rise caused by climate change.
- Consistent with U.S. policy, **USINDOPACOM strongly supports initiatives by Pacific Island States** to lawfully establish and maintain baselines and maritime zone limits in the face of sea-level rise caused by climate change.
- Raising awareness of the threat posed by sea-level rise to Pacific Island States and other coastal States may create **opportunities for cooperation** to preserve the rights of allies and partners across the Indo-Pacific region.
- **USINDOPACOM supports and defends a Free and Open Indo-Pacific**, stands with allies and partners in recognizing the danger of sea-level rise, and supports actions by Pacific Island States to preserve their sovereign rights.
- **USINDOPACOM will work alongside other U.S. Federal entities** and with allies and partners to protect sovereignty, promote adherence to international law, and uphold the rules-based international order.



ⁱ See U.N. International Law Commission, Sea-level rise in relation to international law, U.N. Doc. A/CN.4/761 (Feb. 2023), at 5-7, <https://legal.un.org/docs/?symbol=A/CN.4/761>. This U.N. continues to study this issue and is seeking to finalize a substantive report on sea-level rise in 2025. Report of the Int'l Law Comm'n, U.N. Doc. A/78/10 (Nov. 2023), at 106.

ⁱⁱ U.S. Department of State, Office of Ocean and Polar Affairs, *U.S. Policy on Sea-level Rise and Maritime Zones*, <https://www.state.gov/marine-environment/>.

ⁱⁱⁱ *Id.*

^{iv} *Id.*

^v U.N. International Law Commission, *supra* note *i*, at 75 (noting that "equity, as a method under international law for achieving justice, should be applied in favour of the preservation of existing maritime entitlements, the loss of which would result in catastrophic consequences for the most vulnerable States.")

^{vi} See, e.g., U.S.-Pacific Islands Forum Leaders Statement on Reaffirming U.S.-Pacific Partnership (Sep. 25, 2023), <https://www.whitehouse.gov/briefing-room/statements-releases/2023/09/25/u-s-pacific-islands-forum-leaders-statement-on-reaffirming-u-s-pacific-partnership/>; FACT SHEET: Enhancing the U.S.-Pacific Islands Partnership (Sep. 25, 2023), <https://www.whitehouse.gov/briefing-room/statements-releases/2023/09/25/fact-sheet-enhancing-the-u-s-pacific-islands-partnership/>; Congressional Research Service. The Compacts of Free Association, (Nov. 13, 1992), <https://crsreports.congress.gov/product/pdf/IF/IF12194>.

^{vii} Lindsey, Rebecca, *Climate Change: Global Sea Level*, NOAA Climate, (Apr. 19, 2022), <https://www.climate.gov/news-features/understanding-climate/climate-change-global-sea-level>.

^{viii} *Id.* See also Caron, David D., *Climate Change, Sea Level Rise and the Coming Uncertainty in Oceanic Boundaries: A Proposal to Avoid Conflict* (October 6, 2014) in MARITIME BOUNDARY DISPUTES, SETTLEMENT PROCESSES, AND THE LAW OF THE SEA 1-17, <https://ssrn.com/abstract=2506092>, which notes a consensus estimate of sea-level rise by 2100 of between 1.5 and three feet.

^{ix} NASA-UN Partnership Gauges Sea Level Threat to Tuvalu. 15 August 2023. <https://sealevel.nasa.gov/news/265/nasa-un-partnership-gauges-sea-level-threat-to-tuvalu/>.

^x See United Nations Convention on the Law of the Sea (Dec. 10, 1982), 1833 U.N.T.S. 397 [hereinafter UNCLOS], Section 2. See also U.S. Commander's Handbook on the Law of Naval Operations (NWP 1-14) [hereinafter NWP 1-14], section 1.4.

^{xi} See, e.g., UNCLOS Art. 7 through Art. 14 discussing special rules for features such as deeply indented coastlines, island fringes along the coast, and bays. See also NWP 1-14, section 1.4.

^{xii} UNCLOS, Art. 5.

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- xiii UNCLOS, Art. 87. NWP 1-14, section 2.6.
- xiv UNCLOS, Art. 8. NWP 1-14, section 1.5.1.
- xv UNCLOS, Art. 3. NWP 1-14 section 1.5.2.
- xvi UNCLOS, Art. 47. NWP 1-14, section 1.5.4. An archipelagic State is a State that is constituted wholly of one or more groups of islands. Such States may draw straight archipelagic baselines joining the outermost points of their outermost islands, provided that the ratio of water to land within the baselines is between 1:1 and 9:1.
- xvii UNCLOS, Art. 53. NWP 1-14, section 1.5.4. Note that this provision is accomplished either by the archipelagic state designating sea lanes and air routes, or, in the absence of such designation, by the use of routes which have been normally used for international navigation.
- xviii UNCLOS, Art. 33. NWP 1-14, section 1.6.1.
- xix UNCLOS, Art. 56. NWP 1-14, section 1.6.2.
- xx UNCLOS, Art. 87. NWP 1-14, section 1.6.3.
- xxi UNCLOS, Art. 121. NWP 1-14, section 1.5.3.1
- xxii *Id.*
- xxiii *Id.*
- xxiv *Id.*
- xxv See, e.g., NASA-UN Partnership Gauges Sea Level Threat to Tuvalu. 15 August 2023. <https://sealevel.nasa.gov/news/265/nasa-un-partnership-gauges-sea-level-threat-to-tuvalu/>.
- xxvi For a dashboard of current maritime boundary delimitation agreements in the Indo-Pacific, see the Pacific Data Boundaries Dashboard at <https://pacificdata.org/dashboard/maritime-boundaries>. For an example of a U.S. maritime boundary delimitation agreement in the Indo-Pacific, see Treaty Doc. 114-13, The Treaties with the Republic of Kiribati and the Government of the Federated States of Micronesia on the Delimitation of Maritime Boundaries (2024), <https://www.congress.gov/114/cdoc/tdoc13/CDOC-114tdoc13.pdf>.
- xxvii There are two areas, deltas and continental shelves, where UNCLOS does explicitly allow for permanent, fixed baselines despite future movement or erosion. UNCLOS, Art. 7(2) and Art. 76(9). This can be used to argue that, where the possibility of movement or regression was explicitly considered, the drafters of UNCLOS took a position advocating stability and predictability. For a more detailed analysis, see Caron, David D., Climate Change, Sea Level Rise and the Coming Uncertainty in Oceanic Boundaries: A Proposal to Avoid Conflict (October 6, 2014) in MARITIME BOUNDARY DISPUTES, SETTLEMENT PROCESSES, AND THE LAW OF THE SEA 1-17, <https://ssrn.com/abstract=2506092>.
- xxviii *Bangladesh v India*, PCA Case No. 2010-16, Award, (Perm. Ct. Arb. July 7, 2014) at 216-217.
- xxix ILA, Resolution 5/2018: Committee on International Law and Sea Level Rise, available at: https://www.ila-hq.org/en_GB/documents/conference-resolution-sydney-2018-english-2. This position was reiterated by the ILA's Committee on International Law and Sea Level Rise in 2022. International Law Association, *International Law and Sea Level Rise Report* (Lisbon, June 2022), available at https://www.ila-hq.org/en_GB/documents/2022-report-ila-committee-june-2022.
- xxx Pacific Island Forum, *Declaration on Preserving Maritime Zones in the Face of Climate Change-related Sea-Level Rise*, (Aug. 6, 2021), <https://www.forumsec.org/2021/08/11/declaration-on-preserving-maritime-zones-in-the-face-of-climate-change-related-sea-level-rise>.
- xxxi *Id.*
- xxxii U.N. International Law Commission, *supra* note *i*, at 11-30. In July 2023, the US reiterated its position to the U.N. on Sea-level rise and maritime zones. Submission from the United States of America to the International Law Commission on the topic "Sea-level rise in relation to international law" concerning the subtopics of statehood and protection of persons affected by sea-level rise (Jul. 2023).
- xxxiii Wendbourg, Mara, "Interpreting the Law of the Sea in the Context of Sea-Level Rise: The Ambulatory Thesis and State Practice", *Journal of Environmental Law*, 2023, 35, 499–507, 16 August 2023, <https://doi.org/10.1093/jel/eqad024>.
- xxxiv *Id.*
- xxxv U.N. International Law Commission, *supra* note *i*, at 40.
- xxxvi *Id.*
- xxxvii U.S. Department of State, *supra* note ii.
- xxxviii FACT SHEET: Enhancing the U.S.-Pacific Islands Partnership (Sep. 25, 2023), <https://www.whitehouse.gov/briefing-room/statements-releases/2023/09/25/fact-sheet-enhancing-the-u-s-pacific-islands-partnership/>.
- xxxix U.S. Department of State, *supra* note ii.
- xl *Id.*
- xli See Coast Guard, Navy Begin High Seas Oceania Maritime Security Initiative Patrol (Apr. 6, 2022), <https://www.pacom.mil/Media/News/News-Article-View/Article/2991615/coast-guard-navy-begin-high-seas-oceania-maritime-security-initiative-patrol/>.
- xlii U.S. Department of State (DoS) Press Statement, *Strengthening Shared Understanding Among the Partners in the Blue Pacific and Pacific Islands: Illegal, Unreported and Unregulated Fishing (IUUF) and Maritime Domain Awareness*, 27 Jan 2023, available at <https://www.state.gov/strengthening-shared-understanding-among-the-partners-in-the-blue-pacific-and-pacific-islands-illegal-unreported-and-unregulated-fishing-iuuf-and-maritime-domain-awareness-mds/>.
- xliii FACT SHEET: Quad Leaders' Tokyo Summit 2022 (May 23, 2022), <https://www.whitehouse.gov/briefing-room/statements-releases/2022/05/23/fact-sheet-quad-leaders-tokyo-summit-2022/>.