

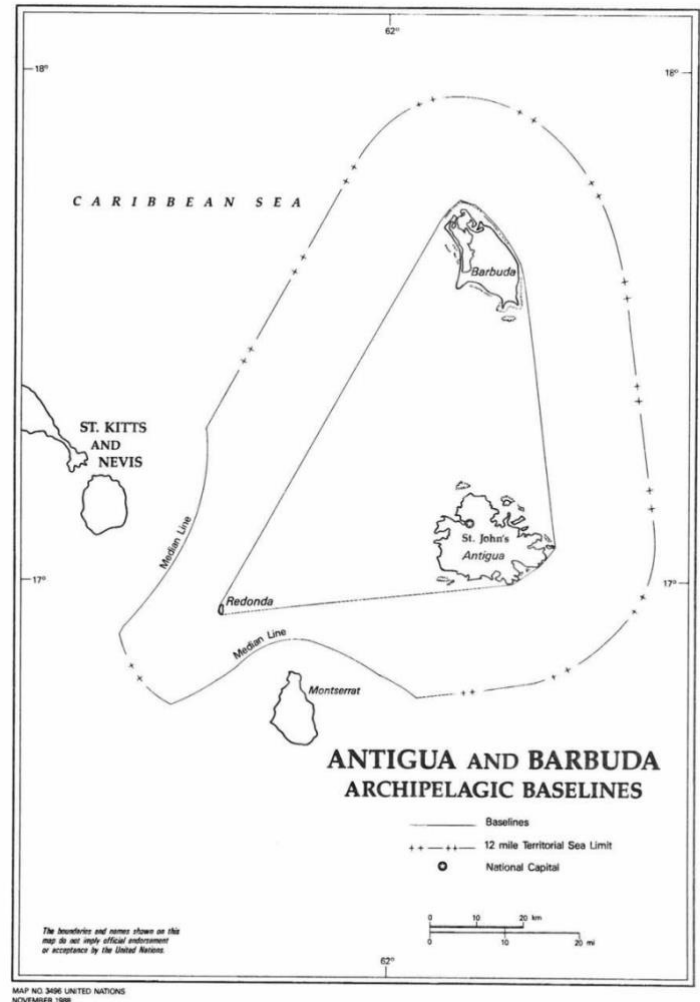
## **Antigua and Barbuda's submission on the effects of sea-level rise on the law of the sea**

1. This submission is provided on behalf of Antigua and Barbuda on the subject of "Sea-level rise in relation to international law" which is currently being studied by the International Law Commission.
2. In accordance with the syllabus issued by the ILC's Study Group, this submission focuses on the first set of issues (those related to the law of the sea).
3. Antigua and Barbuda would like to thank the Study group for its comprehensive First Issue Paper and would like to encourage the Commission to work with the same energy and level of legal expertise on the issues of statehood and the protection of persons affected by sea-level rise.
4. This submission will first discuss (I) Antigua and Barbuda's geography and reliance on the oceans. It will then shift to legal considerations by successively addressing the impacts of sea-level rise on (II) maritime delimitations determined in accordance with UNCLOS, (III) maritime delimitations agreed upon by treaties or adjudication and (IV) the qualification of islands and rocks under international law.

## I. Notes on Antigua and Barbuda's geography and reliance on the ocean

### A. Antigua and Barbuda's geography

5. Antigua and Barbuda is a Caribbean archipelago composed of three islands: Antigua, Barbuda and Redonda (see map to the right<sup>1</sup>). Antigua, is located at the southeast corner of the archipelago, with Barbuda on the north-east corner and Redonda on the south-west corner. Antigua and Barbuda became independent from the United Kingdom in 1981.
6. Antigua and Barbuda declared archipelagic baselines in 1982. Those baselines link together the three aforementioned islands. See below (II.B).



### B. Antigua and Barbuda's Reliance on the Ocean

7. Antigua and Barbuda's economy is heavily dependent on the oceans. Like many other small island developing States (SIDS), Antigua and Barbuda depends on the ocean for tourism, fishing, and trade.
8. Tourism, which is Antigua and Barbuda's main industry, offers a key example of the effect of sea-level rise on Antigua and Barbuda. Tourism accounts for nearly 60% of GDP and 40% of investment.<sup>2</sup> Additionally, tourism employs 90% of Antigua and Barbuda's

<sup>1</sup> This is a reproduction for illustration purposes only of the map deposited by Antigua and Barbuda to the United Nations. See United Nations, *The Law of the Sea, Baselines: National Legislation With Illustrative Maps* (1989) 13-15,

<<https://www.un.org/Depts/los/LEGISLATIONANDTREATIES/PDFFILES/publications/E.89.V.10.pdf>>.

<sup>2</sup> 'Central America: Antigua and Barbuda' (*CIA World Factbook*, 2018)

<[https://www.cia.gov/library/publications/the-world-factbook/geos/print\\_ac.html](https://www.cia.gov/library/publications/the-world-factbook/geos/print_ac.html)> accessed 24 November 2019.

population.<sup>3</sup> Tourism thrives on large beaches and shallow, clear waters next to the shores. As a result, numerous resorts are located close to the shores. One meter of sea level rise would impact 10% of major tourism resorts, *all* seaports, and 2% of major road networks in Antigua and Barbuda.<sup>4</sup> Fishing presents similar concerns.<sup>5</sup>

9. Numerous Caribbean islands are low-lying. As such, one meter of sea level rise would result in approximately 1,300 square kilometers of land lost in the Caribbean—the equivalent area of Antigua and Barbuda, Anguilla, Barbados, St. Vincent and the Grenadines.<sup>6</sup> It is estimated that for every 10 millimeters of sea level rise, the island of Barbuda will lose about 1 meter of land.<sup>7</sup> As a direct consequence of sea-level rise, the availability of freshwater on Barbuda is at risk due to its shallow water table and the proximity of its wells and aquifers to the coast.<sup>8</sup>

## II. Sea-level rise has no mandatory effect on maritime baselines determined in accordance with UNCLOS

10. Antigua and Barbuda’s legal opinion, which is backed by its state practice—and by the legal practice of numerous other States as shown in the *First Issue Paper “Sea-level rise in relation to international law”*<sup>9</sup> (hereafter “FIP”)—is that maritime baselines established in accordance with UNCLOS may **remain fixed despite sea-level rise and, additionally, States have no obligation to revise maritime baselines because of sea-level rise.**
11. This submission will (A) set forth the rationale for this position and (B) show that it is consistent with Antigua and Barbuda’s practice.

### A. Fixed baselines respect international law while ambulatory baselines may lead to the violation of international law principles

12. UNCLOS provides for five maritime areas under State jurisdiction: the internal waters, the territorial sea, the contiguous zone, the exclusive economic zone and the continental shelf. All these zones are delimited with regard to the same baseline.
13. This submission will show (1) that the limits of the continental shelf are immutable and (2) that baselines may remain fixed despite sea-level rise to abide with the principles of certainty and stability. Furthermore, ambulatory baselines are (3) inequitable and unfair

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<sup>3</sup> Antigua and Barbuda (*Union of Concerned Scientists*, 2013) <<https://www.climatehotmap.org/global-warming-locations/antigua-and-barbuda.html>> accessed 25 November 2019.

<sup>4</sup> Green Climate Fund Documentation, ‘Antigua and Barbuda Country Programme’, 5 (17 March 2017) <[https://www.greenclimate.fund/documents/20182/1688867/Antigua\\_and\\_Barbuda\\_Country\\_Programme.pdf/46340037-4d9c-e4d5-eebe-cc387ce3c74c](https://www.greenclimate.fund/documents/20182/1688867/Antigua_and_Barbuda_Country_Programme.pdf/46340037-4d9c-e4d5-eebe-cc387ce3c74c)> accessed 24 November 2019.

<sup>5</sup> Betsy Von Holle et al. *Effects of future sea level rise on coastal habitat*, *Journal of Wildlife Management* Volume 83, Issue 3 (2019) <<https://wildlife.onlinelibrary.wiley.com/doi/pdf/10.1002/jwmg.21633>> accessed 9 December 2019.

<sup>6</sup> ‘Sea Level Rise: What Does it Mean for Antigua and Barbuda’ (*Caribbean Energy Information System*, 25 November 2015) <<https://www.ceis-caribenergy.org/sea-level-rise-what-does-it-mean-for-antigua-and-barbuda/>> accessed 25 November 2019.

<sup>7</sup> ‘Antigua and Barbuda’ (*Union of Concerned Scientists*, 2013) <<https://www.climatehotmap.org/global-warming-locations/antigua-and-barbuda.html>> accessed 25 November 2019.

<sup>8</sup> *Id.*

<sup>9</sup> A/CN.4/740.

and (4) violate State sovereignty and the principle of permanent sovereignty of peoples and States over their natural wealth and resources.

### **1. The limits of the continental shelf are immutable**

14. The FIP rightfully underlines that UNCLOS provides for the permanency of the outer limits of the continental shelf. [FIP, ¶ 72]. Art. 76, ¶ 9 of UNCLOS states that “The coastal State shall deposit with the Secretary-General of the United Nations charts and relevant information, including geodetic data, *permanently* describing the outer limits of its continental shelf.” (emphasis added) Likewise, the limits of the continental shelf fixed in accordance with art. 76, ¶ 8 are final and binding. [FIP, ¶74].
15. Antigua and Barbuda fully agrees with those two legal conclusions.
16. However, Antigua and Barbuda respectfully disagrees with the conclusion reached in Paragraph 73 of the Issues Paper as it is inconsistent with Antigua and Barbuda’s legal opinion that baselines may always remain fixed (see below).

### **2. The baselines may remain fixed despite sea-level rise to abide with the principles of certainty and stability**

17. Antigua and Barbuda shares the concerns expressed in the FIP that ambulatory baselines “affect legal stability, security, certainty and predictability, as well as the balance of rights between the coastal States and third States in these maritime zones”. [FIP, ¶77].
18. International law strongly underlines the importance of stability and certainty of States’ boundaries. It is notably exemplified in the Vienna Convention on the Law of Treaties (“VCLT”)—the change of circumstance doctrine is not applicable to treaties determining boundaries (art. 62(2)(a)). Additionally, the Vienna Convention on Succession of States specifies that succession of States does not affect boundaries established by a treaty (art. 11(a)).
19. Article 7, ¶2 of UNCLOS also underlines UNCLOS’ implicit reticence to have State lose some of their entitlements: under this provision, States can keep their baseline when the low-water line regresses but can still move them forward in the event the low-water line were to expand.
20. Interpreting baselines as fixed would be more consistent with the principles of certainty and stability of international law.
21. Furthermore, as underlined in the FIP, UNCLOS

*does not indicate expressis verbis that new baselines must be drawn, recognized... or notified... by the coastal State when coastal conditions change; the same observation is valid also with regard to the new outer limits of maritime zones. [FIP, ¶78] Consequently nothing prevents Member States from depositing notifications, in accordance with the Convention, regarding the baselines and outer limits of maritime zones measured from the baselines and, after the negative effects of sea-level rise occur, to stop updating these notifications in order to preserve their entitlements. [FIP, ¶104(f)].*

22. Antigua and Barbuda is also of the opinion that sea-level rise triggers article 7, ¶ 2 of UNCLOS and allows for the drawing of straight baselines “along the furthest seaward extent of the low-water line” that “shall remain effective until changed by the coastal State” “notwithstanding subsequent regression of the low-water line.”
23. Indeed, the “other natural conditions” and “regression of the low-water line” included in the article can reasonably be read to include sea level rise. Thus, even with sea level rise,

which causes a coastline to be highly unstable, and notwithstanding subsequent regression of the low-water line, baselines can remain fixed.

24. Antigua and Barbuda respectfully disagrees with the assertion in Footnote 155 of the FIP that this provision should only be applicable to deltas as the text reads “and” and not “or” (“presence of a delta *and* other natural conditions”) and that this interpretation would be confirmed by the preparatory work. However:
- The Russian version reads “or” (дельты *или* других).
  - Under the VCLT, when a treaty has been authenticated in multiple languages, each version is equally authoritative unless otherwise provided. [Art. 33, ¶1]
  - Art. 320 of UNCLOS states that the Convention shall be equally authentic in Arabic, Chinese, English, French, Russian and Spanish.
  - Under VCLT Art. 33, ¶ 4, when a linguistic discordance appears, the text should be interpreted pursuant VCLT art. 31 (“A treaty shall be interpreted in good faith in accordance with the ordinary meaning to be given to the terms of the treaty in their context and in the light of its object and purpose.”). As the ordinary meaning is barred by the linguistic discordance, the text should be interpreted in context and in the light of its object and purpose.
  - Art. 7 of UNCLOS regulates the use of straight baselines when the use of normal baseline would be extremely burdensome because the coastline is deeply indented (¶ 1) or highly unstable (¶ 2). As the goal of this article is notably to simplify the determination of baselines, it makes more sense to allow for such a determination both when the coast is highly unstable because of a delta or because of “other natural conditions”.
  - As VCLT art. 31 allows to solve the discrepancy, there is no need to use supplementary means of interpretation such as preparatory work. [art. 32].
25. Fixed maritime baselines are thus consistent with UNCLOS.

### 3. Ambulatory baselines would be inequitable and unfair

26. Equity is particularly important when it comes to determining rights on maritime areas. As shall be further discussed *infra*, UNCLOS mandates States to find an “equitable solution” when they agree on their respective maritime zones. [UNCLOS, art. 73 and 84]. The same goes for boundaries decided by international adjudication. In the *Arbitration between Barbados and the Republic of Trinidad and Tobago, relating to the delimitation of the exclusive economic zone and the continental shelf between them* award, the Tribunal recalled that “*Certainty, equity and stability* are thus integral parts of the process of delimitation.”<sup>10</sup>
27. It is not reasonably disputed that sea-level rise is caused by anthropogenic activities, mostly activities emitting greenhouse gases.
28. Antigua and Barbuda’s CO<sub>2</sub> emissions in 2019 were approximately 0.510Mt<sup>11</sup> out of 3303.975Mt at the world level—thus, only about 0.0015%. Despite bearing next to no responsibility in sea-level rise<sup>12</sup>, Antigua and Barbuda and other SIDS suffer disproportionate economic and geographic consequences of sea-level rise. *See supra* section (I).

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<sup>10</sup> *Arbitration between Barbados and the Republic of Trinidad and Tobago, relating to the delimitation of the exclusive economic zone and the continental shelf between them*, REF, Vol XXVII, p. 215, §244.

<sup>11</sup> <https://op.europa.eu/en/publication-detail/-/publication/71b9adf3-f3dc-11ea-991b-01aa75ed71a1>, p. 39.

<sup>12</sup> Carolyn Beeler, ‘It’s a form of injustice: Caribbean island nations struggle against rising seas’ (*PRI*, 25 September 2019) <<https://www.pri.org/stories/2019-09-25/it-form-injustice-caribbean-island-nations-struggle-against-rising-seas>> accessed November 25 2019.

29. Ambulatory baselines would redouble those adverse consequences by causing, at the very least, a significant shrinking of Antigua and Barbuda's maritime zones or even an unravelling of its archipelagic baselines.
30. Furthermore, with ambulatory baselines, the only way for States to maintain their baselines is to invest in heavy coastal fortifications. The FIP underlines the exorbitant cost of such fortification. [*FIP*, ¶ 87].
31. Antigua and Barbuda and other SIDS do not bear any material responsibility for sea-level rise but due to their geographic situation they bear most of its consequences. Ambulatory baselines would double this harm by providing that loss of land would also entail loss of maritime areas. Ambulatory baselines would then triple this harm by providing that the only remedy would be to engage in incredibly expensive coastal fortifications.
32. Ambulatory baselines are thus inequitable and unfair.

**4. Ambulatory baselines would violate State sovereignty and the principle of permanent sovereignty of people and States over their natural wealth and resources**

33. States have absolute sovereignty over their land, their internal waters and their territorial sea. [UNCLOS, art. 2, ¶1] State sovereignty on the other maritime areas is more limited, as set forth in the FIP. [*FIP*, ¶ 152sq].
34. UNCLOS defines internal waters as waters that are “on the landward side of the baseline of the territorial sea”. [UNCLOS, art. 8]. Territorial waters can be established up to 12 nautical miles measured from baselines. [UNCLOS, art. 3].
35. Under a fixed baseline regime, permanently flooded areas of a coastal State would become internal waters as the waters would be on the “landward side” of the baseline. As a result, the sovereignty of the State over those areas would remain unchanged.
36. Under an ambulatory baseline regime, if the inundation causes the baseline to move inland, the flooded area of the coastal state would *de facto* be requalified as *territorial* waters as internal waters can only be “on the landward side” of the baseline. If the receding exceeds 12 nautical miles, the flooded land could become a contiguous zone or even an exclusive economic zone (EEZ) if it exceeds 24 nautical miles, thus provoking a significant loss of sovereignty. If the State didn't declare a continental shelf, the soil, which was once part of the State territory, could become part of the Area and the impacted State would lose any bit of sovereignty over it.
37. It would also entail that were those lands to ever become not submerged again, the impacted State would probably not be able to claim any sovereignty over them as “No State shall claim or exercise sovereignty or sovereign rights over any part of the Area or its resources.” [UNCLOS, art. 137, ¶ 1].
38. Ambulatory baselines may thus lead to severe violations of State sovereignty.
39. Ambulatory baselines also violate the principle of permanent sovereignty of people and every state over its natural wealth and resources<sup>13</sup>.
40. As a result, baseline should be allowed to remain fixed despite sea-level rise.

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<sup>13</sup> See for instance the 1978 Vienna Convention on the succession of States, art. 13, or Resolution 1803 of 14 December 1962 “Permanent sovereignty over natural resources” of 14 December 1962.

## **B. Antigua and Barbuda’s practice demonstrates its conviction that maritime baseline can remain fixed**

41. When the negotiations of the *United Nations Convention on the Law of the Sea* concluded in 1982, Antigua and Barbuda promptly took domestic action and ratified the Convention on 7th February 1983, solidifying its claim to its current maritime entitlements around and between its constituent islands.
42. In accordance with the Convention, Antigua and Barbuda passed the *Maritime Areas Act 1982* (“Maritime Act”)<sup>14</sup>, which came into effect on September 1, 1982. The Act established Antigua and Barbuda as an archipelagic state with its internal waters on the landward side of the low-water line or any closing lines prescribed by the Minister in accordance with the Act and its archipelagic waters as comprising the areas of the sea other than internal waters on the landward side of the baselines. [*Maritime Act*, section 4]. The Act further established a 12-nautical mile territorial sea, a 24-nautical mile contiguous zone, a 200-nautical mile EEZ and a continental shelf (except where the proximity of other islands prevented it).
43. Art. 18 of the Maritime Act reads:

*18A. The Minister shall cause to be prepared such charts or lists of geographical coordinates as he thinks fit, showing all or any of the following matters:*

  - (a) the low-water line, closing lines prescribed pursuant to section 2A(2), or the baselines;*
  - (b) the seaward limits of the territorial sea, the contiguous zone, the continental shelf or the exclusive economic zone;*
  - (c) the axis of sea lanes or traffic separation schemes designated or prescribed pursuant to section 20 (C)...*

*18C. The Minister shall cause:*

  - (a) due publicity to be given to charts or lists of geographical co-ordinates prepared pursuant to section 18A; and*
  - (b) a copy of each such chart or list to be deposited with the Secretary-General of the United Nations*
44. The Maritime Act provides for no mandatory update of those charts or lists.
45. Antigua and Barbuda deposited its maritime charts with the United Nations Division for Ocean Affairs and the Law of the Sea (the Division for Ocean Affairs) in accordance with the Convention<sup>15</sup>. The deposited charts identify the precise *geographic coordinates* of Antigua and Barbuda’s archipelagic baseline and provide a map of the archipelago and its territorial waters (see reproduction of the map *supra*). Antigua and Barbuda has since maintained the charts deposited with the Division for Ocean Affairs for nearly 40 years, and has consistently behaved in a manner indicating that the maritime entitlements outlined are fixed. In accordance with the practice of fixed maritime entitlements, Antigua and Barbuda has never updated its deposited charts as sea levels have risen. This practice is consistent with ¶104(f) of the FIP, that found that States do not have to update their baseline and can preserve their entitlements. [*see supra*].

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<sup>14</sup> Antigua and Barbuda Maritime Areas Act, Act Number 18 of 17th August, 1982

<[https://www.un.org/Depts/los/LEGISLATIONANDTREATIES/PDFFILES/ATG\\_1982\\_18.pdf](https://www.un.org/Depts/los/LEGISLATIONANDTREATIES/PDFFILES/ATG_1982_18.pdf)>.

<sup>15</sup> United Nations, *The Law of the Sea, Baselines: National Legislation With Illustrative Maps* (1989) 13-15 <<https://www.un.org/Depts/los/LEGISLATIONANDTREATIES/PDFFILES/publications/E.89.V.10.pdf>>.

### **III. Sea-level rise has no effect on maritime boundaries set forth by treaty or by adjudication**

46. Geographical proximity between States does not always allow maritime zones to be established to the maximum extent allowed by UNCLOS. In those cases, maritime boundaries are established either by treaty or, in certain cases, by adjudication.
47. Antigua and Barbuda's legal opinion is that boundaries established by treaties or by adjudication are *in principle final and not impacted by sea-level rise*. According to the FIP, no State seems to have so far voiced a contrary opinion.
48. This submission will (A) set forth the rationale for this position and (B) show that it is consistent with Antigua and Barbuda's practice.

#### **A. International treaties establishing marine boundaries cannot be questioned because of sea level rise**

49. This submission will show that, absent explicit provisions, (1) international treaties establishing marine boundaries are binding and cannot be questioned under the doctrine of fundamental change of circumstances, (2) questioning such treaties would also violate the principles of stability and certainty and (3) it would be inequitable to do so.

##### **1. International treaties establishing marine boundaries are binding and cannot be questioned under the doctrine of fundamental change of circumstances**

50. Antigua and Barbuda fully agrees with ¶115 of the FIP that the doctrine of fundamental change of circumstances under VCLT does not apply to maritime boundaries.
51. Antigua and Barbuda further underlines that UNCLOS itself refers to maritime delimitations as "boundaries", further strengthening this conclusion:
  - Art 298, ¶ 1(a)(i) reads: "disputes concerning the interpretation of application of articles 15, 74 and 83 *relating to sea boundary delimitations*" (emphasis added).
  - Art. 9 of Annex II reads "The actions of the Commission shall not prejudice matters relating to delimitation of *boundaries* between States with opposite or adjacent coasts" (emphasis added).

##### **2. Allowing States to question existing treaties would violate the principles of stability and certainty**

52. Antigua and Barbuda agrees with ¶111 of the FIP and further emphasizes that in the *Arbitration between Barbados and the Republic of Trinidad and Tobago, relating to the delimitation of the exclusive economic zone and the continental shelf between them* award, the Tribunal recalled that "*Certainty, equity and stability* are thus integral parts of the process of delimitation."<sup>16</sup>

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<sup>16</sup> *Arbitration between Barbados and the Republic of Trinidad and Tobago, relating to the delimitation of the exclusive economic zone and the continental shelf between them*, REF, Vol XXVII, p. 215, ¶244, emphasis added.



53. Allowing States to question treaties because of sea-level rise would create tensions and instability between neighboring States, including those that have more stable coastlines than adjacent States<sup>17</sup> and could even lead to conflicts.

### **3. Allowing States to question existing treaties would be inequitable**

54. Art. 73 and 84 of UNCLOS reads:

“The delimitation of the [exclusive economic zone or the continental shelf] between States with opposite or adjacent coasts shall be effected by agreement on the basis of international law, as referred to in Article 38 of the Statute of the International Court of Justice, *in order to achieve an equitable solution*” (emphasis added).

55. It flows from those articles that any agreement between States determining maritime boundaries must have reached an *equitable solution* to abide by international law.
56. If a State tries to question a maritime border treaty due to sea-level rise, it is probably because it assumes that it could see its maritime entitlement increase. This case could arise if the treaty used equidistance as the means of defining the boundary and one of the States is more impacted by sea-level rise than the other.<sup>18</sup> In that situation, the State which is most impacted by sea-level rise and has already lost land would also risk losing maritime entitlement. Such a solution would clearly be inequitable.

## **B. Antigua and Barbuda’s practice demonstrates its conviction that maritime boundaries agreed by treaties are not impacted by sea-level rise**

57. Antigua and Barbuda is bordered by several islands:
- The archipelago of St-Kitts and Nevis on the west;
  - The island of Saint Barthélemy, on the north of St-Kitts and Nevis (north-west of Antigua and Barbuda), which belongs to France;
  - The archipelago of Anguilla, further north-west, which belongs to the United Kingdom;
  - The island of Montserrat, which belongs to the United Kingdom, on the south;
  - French Guadeloupe further south.
58. On March 15, 2017, Antigua and Barbuda concluded a treaty with France to settle their respective maritime zones regarding both Guadeloupe on the south and Saint Barthélemy on the north-east (“The Treaty”).<sup>19</sup>
59. Antigua and Barbuda also intends to demarcate the boundaries between itself and its remaining neighbors, Anguilla, Montserrat, and St. Kitts and Nevis.
60. The Treaty fixes the delimitation of the respective maritime zones using precise geographical coordinates (art. 3-5).

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<sup>17</sup> Sefrioui S. “Adapting to Sea Level Rise: A Law of the Sea Perspective” In: Andreone G., The Future of the Law of the Sea. Springer, Cham (2017) 15 <[https://link.springer.com/content/pdf/10.1007%2F978-3-319-51274-7\\_1.pdf](https://link.springer.com/content/pdf/10.1007%2F978-3-319-51274-7_1.pdf)> accessed 29 November 2019.

<sup>18</sup> This situation also offers a supplementary argument in favor of fixed baselines.

<sup>19</sup> <https://treaties.un.org/doc/Publication/UNTS/No%20Volume/55817/Part/I-55817-0800000280550e6e.pdf>; Antigua and Barbuda Delimitation of Maritime Space (Antigua and Barbuda and the Republic of France in the Caribbean Region) (Ratification of Agreement) Bill 2017 (2017) <[http://legalaffairs.gov.ag/pdf/bills/Delimitation\\_of\\_Maritime\\_Space-Antigua\\_and\\_France\\_Bill\\_2017.pdf](http://legalaffairs.gov.ag/pdf/bills/Delimitation_of_Maritime_Space-Antigua_and_France_Bill_2017.pdf)>.

#### IV. Sea-level rise cannot lead to the requalification of islands as rocks

61. Antigua and Barbuda is of the opinion that sea-level rise cannot lead to the requalification of islands as rocks.
62. UNCLOS distinguishes between islands and rocks “which cannot sustain human habitation or economic life of their own”. [UNCLOS art 121, ¶ 3]. Unlike islands, rocks “shall have no exclusive economic zone or continental shelf”, but only a territorial sea and a contiguous zone. [UNCLOS 121, ¶ 3].
63. The FIP underlines that sea-level rise could make islands uninhabitable, which raises the question as to whether they should be requalified as simple “rocks”, thus losing their EEZ and their continental shelf [FIP, ¶¶ 194 and 207], which could be “economically, socially and culturally catastrophic.” [FIP, ¶ 207]
64. As correctly restated by the FIP [¶ 201], international jurisprudence<sup>20</sup> has determined that:
  - The fact that an island is currently uninhabited doesn’t prove it is uninhabitable
  - Historical evidence of human habitation or economic life are relevant for establishing the capacity of the island in that regard
  - Human intervention negatively impacting the capacity to sustain human habitation or economic life should be disregarded.
65. Antigua and Barbuda agrees with the doctrine quoted in the FIP that “Arguably, human intervention could include a sea-level rise caused by anthropogenic climate change. Accordingly, this change would not alter the ‘intrinsic capacity of the feature’s and presumably would not affect the feature’s status” [FIP, ¶ 203, quoting Stuart Kaye, “The Law of the Sea Convention and sea level rise after the *South China Sea Arbitration*”, *International Law Studies Series, US Naval War College*, vol. 93 (2017), p. 423, at 431.]
66. Antigua and Barbuda further underlines that requalification of islands into rock would create a contradiction between art. 121, ¶ 3 of UNCLOS, that states that rocks have “no exclusive economic zone or continental shelf” and art. 76, ¶ 9 that states that the geodetic data deposited by a coastal State are “permanently describing the outer limits of its continental shelf.” This interpretation is thus to be avoided.
67. Antigua and Barbuda further agrees with the fact that “There is a general agreement that the use of artificial means to maintain base points, coastal areas and island features is acceptable under international law as evidenced by wide State practice.” [FIP, ¶218(e)]
68. This kind of requalification also raises the issues of equity and sovereignty detailed under section (II.A.3).

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<sup>20</sup> South China Sea Arbitration between the Republic of the Philippines and the People’s Republic of China, Award, Arbitral Tribunal, Permanent Court of Arbitration, 12 July 2016, § 483, 484 and 549.