Bangladesh Society of International Law

A PUBLICATION OF BSIL

Bangladesh Blog of International Law

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Sinking States: Can Bangladesh Legally Retain Its Maritime Boundaries in the Face of Sea Level Rise?

17 August 2026 | By **Al Muminul Mia**

Over recent decades, anthropogenic greenhouse gas emissions have increased ocean temperatures significantly. Over time, global mean sea levels have increased drastically. In the last century, global mean sea level rise accelerated from ~1.3 mm/yr (1901–1971) to ~1.9 mm/yr (1971–2006). Between 2006 and 2018, global sea levels were rising at ~3.7 mm per year. According to the Intergovernmental Panel on Climate Change, global sea levels could rise by 0.55 to 1.01 metres by 2100. Environmental scientists project that approximately 17% of Bangladesh's land area could be submerged by 2050, exposing vulnerable coastal states to the risk of losing significant portions of their landmass to the encroaching sea. This raises a question this article approaches cautiously rather than as a settled matter: can Bangladesh retain its maritime boundaries despite potential landmass loss induced by climate change?

According to the Montevideo Convention, a defined territory is one of the essential criteria of statehood. Although international law does not prescribe a minimum territorial size, sovereignty is traditionally exercised through jurisdiction over a geographic area. Similarly, the 1982 United Nations Convention on the Law of the Sea (UNCLOS) links entitlements to coastal geography. Accordingly, in international maritime delimitation, courts have repeatedly applied the principle of dominion by echoing that '*La terre domine la mer*.' The International Court of Justice (ICJ) consistently begins maritime delimitation by identifying relevant coasts and territorial sovereignty over coastal features. These are, however, two distinct inquiries — whether a State continues to exist despite territorial loss, and whether its maritime entitlements survive a receding coastline — and the discussion below addresses both in turn.

Traditional customary international law has generally recognised the *ambulatory baseline theory*, a rule distinct from the *equitable principles* that inform maritime delimitation, and from the related maxim that "the land

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dominates the sea". According to this theory, maritime baselines are not static, but shift automatically in response to physical changes in the coastline. In the context of Article 5 of UNCLOS, the International Law Association (ILA) concluded that “the normal baseline is ambulatory” as a matter of *lex lata*, as it moves with the low-water line. Based on this, Bangladesh could face depletion of its maritime zones due to coastal erosion in areas governed by that traditional rule, even though, as discussed below, its principal Bay of Bengal boundaries stand on a different footing, while maritime baselines shift landward continuously.

Against this precarious framework, some legal scholars have proposed the 'Nation Ex-Situ' concept in 2011 to protect the rights and sovereignty of vulnerable populations in deterritorialized states. By decoupling *statehood* from a physical landmass, this paradigm ensures that the legal "existence" of the state and its accompanying *maritime entitlements* remains permanent, even when the geography is lost to the sea. This remains a scholarly proposal rather than settled law; it is promoted by parts of the international community largely on humanitarian grounds, particularly to protect displaced populations from statelessness. In 2025, the ICJ notably declared that "once a State is established, the disappearance of one of its constituent elements would not necessarily entail the loss of its statehood". This suggests that even if a state's physical landmass is completely submerged by rising seas, the state continues to exist as a legal entity. The Court endorsed the view that States parties to UNCLOS are not required to update their charts or lists of geographical coordinates showing baselines and outer limits once these have been duly established under the Convention (Advisory Opinion, paras. 357, 359 and 362). This points toward a cautious "freezing of baselines" reading, though Judge Aurescu’s separate opinion notes that the Court stopped short of recognising fixed baselines as a rule of customary international law, and the point should not be overstated.

Nevertheless, Bangladesh’s situation differs significantly from the hypothetical “sinking state” scenario. This is because Bangladesh’s maritime boundary with Myanmar and India has been judicially and arbitrally delimited by fixed geographic coordinates — a distinct question from the general ambulatory-baseline rule discussed above, which remains separately relevant to baselines as such. The delimitation followed from the Myanmar and India cases. These two maritime delimitation proceedings resulted in an equitable allocation of approximately 118,813 square kilometres of maritime area to Bangladesh. In 2012, the International Tribunal for the Law of the Sea (ITLOS) recognized Bangladesh’s entitlement to a continental shelf beyond 200 nautical miles in the Bay of Bengal and sovereign rights over seabed resources thereto. Because of Bangladesh’s extreme coastal concavity, strict equidistance lines caused a severe *cut-off* effect.

The Tribunal utilized a geodesic azimuth of 215 degrees for the delimitation. In 2014, Annex VII arbitral tribunal in the Bangladesh–India arbitration determined that the maritime boundary line would be a geodetic line with an initial azimuth of 177° 30' 00", with the Permanent Court of Arbitration acting as registry. The tribunal calculated a coastal length ratio of 418.48 to 803.68 kilometres as a part of the *disproportionality test* to ensure an equitable result (Award, paras. 490–497). Thereafter, the ITLOS judgment and the Annex VII arbitral award provide a series of fixed geographic coordinates, a series of *fixed geographic coordinates* (latitude and longitude) instead of a line "relative" to the shore. These binding decisions establish Bangladesh's maritime boundaries by fixed geographic coordinates, placing them on a substantially stronger legal footing than ambulatory baselines. Furthermore, Bangladesh amended its maritime-zones legislation after the Myanmar and India decisions to reflect its maritime zones and relevant coordinates; such domestic legislation implements, rather than itself creates, the underlying international-law entitlements.

These judicially determined coordinates carry significant legal consequences, as international law traditionally protects the permanence of established boundaries. A teleological interpretation of the UNCLOS prioritises international peace and jurisdictional stability over shifting geography. Moreover, the Vienna Convention on the Law of Treaties (VCLT) provides that a "fundamental change of circumstances" (rebus sic stantibus) cannot be invoked to terminate or withdraw from a treaty establishing a boundary, reasoning the ILC's 2025 report extends to maritime delimitation agreements. Specifically, Article 62 bars invoking a fundamental change of circumstances against a boundary-establishing treaty; for the 2012 and 2014 adjudicated outcomes specifically, the stronger footing is the finality and binding character of the awards themselves, not Article 62 alone. Once states establish and publicise their coordinates on this basis, the lines remain legally fixed despite subsequent coastal erosion. In addition, international treaty law strongly protects these established limits. The boundary exception in Article 62(2)(a) exists strictly to ensure geopolitical stability. Without this vital exception, the doctrine of a fundamental change of circumstances would generate dangerous international friction. Building upon this, the scholarly interpretation of this article covers maritime boundaries as strictly as land borders. Even if a state invoked climate change under Article 62(1), the evidentiary threshold to prove a fundamental change remains very high. Therefore, sea-level rise would not, by itself, provide a basis for neighbouring States to reopen the 2012 ITLOS judgment or the 2014 Annex VII arbitral award. Moreover, the International Law Commission (ILC) recognized that an evolutive interpretation of UNCLOS is necessary to ensure legal stability, confirming that states are under no affirmative obligation to update or revise their deposited coordinates due to climate change.

Even beyond the case of Bangladesh, contemporary international state practice is increasingly moving toward the freezing of maritime boundaries. On 6 August 2021, the leaders of the Pacific Islands Forum (PIF) unanimously adopted the Declaration on Preserving Maritime Zones in the Face of Climate Change-Related Sea-Level Rise. PIF members agreed that, once properly established and deposited with the United Nations (UN) under UNCLOS, maritime zones will not be reduced by physical changes to coastlines due to sea-level rise. Interestingly, the United States (US) formally recognized this approach to maritime zone stability in 2023. At the 2024 Commonwealth Heads of Government Meeting (CHOGM) in Apia, Samoa, all 56 Commonwealth member nations, including Bangladesh, adopted the Apia Commonwealth Ocean Declaration for One Resilient Common Future. In paragraph 13, leaders affirmed that members can maintain their maritime zones as established and notified to the UN Secretary-General in accordance with UNCLOS, and these rights and entitlements shall continue to apply, without reduction, notwithstanding any physical changes connected to sea-level rise. Similarly, in his 2025 separate opinion regarding the ICJ's Advisory Opinion on climate change, Judge Bogdan Aurescu (a co-chair of the ILC study on sea-level rise) stated that "over 100 States" now expressly acknowledge that baselines should remain fixed — a claim about emerging State practice and policy consensus rather than a settled finding of opinio juris by the Court itself.

In conclusion, for these reasons, climate change cannot legally terminate Bangladesh's judicially and arbitrally established maritime boundary coordinates. Bangladesh is not merely a generic example of a "sinking state": its principal Bay of Bengal boundaries have already been judicially and arbitrally delimited by fixed coordinates, and international law strongly favours the stability of such adjudicated boundaries. This stability does not, however, foreclose every future legal question about baselines, outer limits, or domestic implementation as the coastline continues to change.