



COMMISSION OF SMALL ISLAND STATES

ON CLIMATE CHANGE AND INTERNATIONAL LAW

secretariat@cosis-ccil.org

Registrar
International Tribunal for the Law of the Sea
Am Internationalen Seegerichtshof 1
22609 Hamburg
Germany

12 December 2022

Re: Request for Advisory Opinion

Excellency,

We have the honour to inform you, in our capacity as the Co-Chairs of the Commission of Small Island States on Climate Change and International Law (the “Commission”), representing the Commission pursuant to Article 3(3) of the Agreement for the Establishment of the Commission (the “Agreement”), that we hereby submit a request for an advisory opinion from the International Tribunal for the Law of the Sea (the “Tribunal”) on the legal questions set out below.

On 31 October 2021, the Agreement established the Commission as an international organization with Antigua and Barbuda and Tuvalu as the original signatories. It was duly registered with the Secretariat of the United Nations in accordance with Article 102 of the Charter of the United Nations, and a Certificate of Registration was issued on 3 February 2022. Pursuant to Article 3(1) of the Agreement, Membership in the Commission is open to all Members of the Alliance of Small Island States. Thus far, instruments of accession have been deposited by the Republic of Palau,* Niue, the Republic of Vanuatu, and Saint Lucia.

Article 21 of the Statute of the Tribunal provides:

The jurisdiction of the Tribunal comprises all disputes and all applications submitted to it in accordance with this Convention and all matters specifically provided for in any other agreement which confers jurisdiction on the Tribunal.

Article 138 of the Rules of the Tribunal provides that the Tribunal may give an advisory opinion “on a legal question if an international agreement related to the purposes of the Convention specifically provides for the submission to the Tribunal of a request for such an opinion.” Article 138 further provides that such a request for an advisory opinion “shall be transmitted to the Tribunal by whatever body is authorized by or in accordance with the agreement to make the request to the Tribunal” (emphases added).

In this respect, Article 2(2) of the Agreement provides (emphasis added):

Having regard to the fundamental importance of oceans as sinks and reservoirs of greenhouse gases and the direct relevance of the marine environment to the adverse effects of climate change on Small Island States, the Commission shall be authorized to request advisory opinions from the International Tribunal for the Law of the Sea (“ITLOS”) on any legal question within the scope of the 1982 United Nations Convention on the Law of the Sea, consistent with Article 21 of the ITLOS Statute and Article 138 of its Rules.

* Subject to approval under its internal law.

On these bases, and pursuant to a unanimous Decision of its Members in accordance with Article 3(5) of the Agreement, the Commission decided at a duly constituted meeting on 26 August 2022 to refer the following legal questions to the Tribunal for an advisory opinion:

What are the specific obligations of State Parties to the United Nations Convention on the Law of the Sea (the “UNCLOS”), including under Part XII:

(a) to prevent, reduce and control pollution of the marine environment in relation to the deleterious effects that result or are likely to result from climate change, including through ocean warming and sea level rise, and ocean acidification, which are caused by anthropogenic greenhouse gas emissions into the atmosphere?

(b) to protect and preserve the marine environment in relation to climate change impacts, including ocean warming and sea level rise, and ocean acidification?

In accordance with Article 131 of the Rules of the Tribunal, we have enclosed copies of (1) the Decision of the Commission, (2) the Agreement, and (3) the Certificate of Registration. We also submit a dossier of documents likely to throw light upon the question.

We have appointed Payam Akhavan and Catherine Amirfar as the Commission’s counsel in these proceedings, acting as representative and co-representative respectively.

Please address all correspondence to:

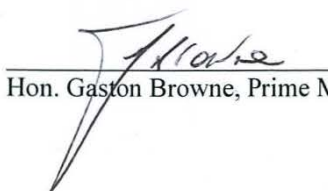
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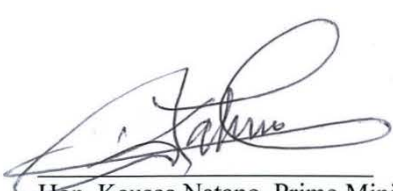
Please accept, Excellency, the assurances of our highest consideration.

THE CO-CHAIRS OF THE COMMISSION OF SMALL ISLAND STATES
ON CLIMATE CHANGE AND INTERNATIONAL LAW

FOR THE GOVERNMENT OF ANTIGUA
AND BARBUDA

FOR THE GOVERNMENT OF TUVALU


Hon. Gaston Browne, Prime Minister


Hon. Kausea Natano, Prime Minister