



ROYAL NORWEGIAN  
MINISTRY OF FOREIGN AFFAIRS

The Registrar  
International Tribunal of the Law of the Sea  
Am Internationalen Seegerichtshof 1  
22609 Hamburg  
Germany  
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**Request for an Advisory Opinion submitted by the Commission of Small Island States on Climate Change and International Law - Written Statement of Norway**

**1. Introduction**

By note verbale dated 13 December 2022, States Parties to the United Nations Convention on the Law of the Sea were informed that, on 12 December 2022, a request for an advisory opinion under article 138 of the Rules of the International Tribunal of the Law of the Sea (“the Tribunal”) had been submitted to the Tribunal by the Commission of Small Island States on Climate Change and International Law (“the Commission”).

By note verbale dated 19 December 2022, States Parties were invited by the Tribunal to submit written statements on the questions submitted to the Tribunal for an advisory opinion.

In line with the format and deadline for written statements extended by the President of the Tribunal in Order of 15 February 2023 to 16 June 2023, the Government of Norway hereby submits its written statement concerning the *Request for an Advisory Opinion Submitted by the Commission of Small Island States on Climate Change and International Law*.

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## **2. Norway's remarks**

### **2.1 The factual backdrop**

Climate change represents an existential threat to both present and future generations. It is well understood that the marine environment is at severe risk from the effects of climate change, through e.g. ocean warming, ocean acidification and sea-level rise.<sup>1</sup> Changes in the marine environment due to climate change also threatens sustainable fishing levels. Protecting the climate system and the environment, including the marine environment, from harmful effects caused by anthropogenic greenhouse gas emissions is an acute responsibility for the international community. It is certainly a core priority for Norway.

### **2.2 The Convention on the Law of the Sea**

As a seafaring nation with a strong and historic dependence on the oceans, Norway has a profound commitment to sound ocean governance, including preservation of the ocean and sustainable management of its resources. We remain firmly committed to the United Nations Convention on the Law of the Sea (hereafter UNCLOS or the Convention), commonly referred to as 'the constitution for the oceans', which sets out the legal framework within which all activities in the oceans and seas must be carried out.

The Convention is an ambitious and comprehensive legal framework for the governance of the world's oceans and seas that has been ratified by 167 states and the European Union. Last year, we marked the 40th anniversary of the signing of the Convention. The Convention was widely celebrated as one of the most significant and visionary multilateral instruments of the twentieth century. It is noteworthy, and a testament to the Convention's enduring success, that many of its provisions are considered as reflecting customary international law, thereby providing rights and obligations to all states.

The Convention represents a carefully negotiated instrument. It establishes a set of maritime zones in which jurisdiction is divided and balanced between coastal states, flag states and other states, thus constituting a legal order for the oceans, from navigational rights to maritime borders. It also protects the equitable and efficient utilization of the ocean's resources, while at the same time requiring the protection and preservation of the marine environment.

### **2.3 The duty under the Convention to protect and preserve the marine environment and to prevent, reduce and control pollution to the marine environment**

UNCLOS part XII, titled "Protection and preservation of the marine environment", lays down a general obligation "to protect and preserve the marine environment"<sup>2</sup> and requires states to take "all measures consistent with this Convention that are necessary to prevent, reduce and control pollution of the marine environment from any source"<sup>3</sup> including measures "necessary

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<sup>1</sup> IPCC (2021), "Sixth Assessment Report Working Group 1: The Physical Science Basis".

<sup>2</sup> UNCLOS Article 192.

<sup>3</sup> UNCLOS Article 194 (1).

to protect and preserve rare or fragile ecosystems as well as the habitat of depleted, threatened or endangered species and other forms of marine life.”<sup>4</sup>

States can take such measures either individually or jointly and, for this purpose, use “the best practical means at their disposal”, “in accordance with their capabilities”, while also endeavoring to “harmonize their policies”.<sup>5</sup>

Part XII further sets out requirements for states to cooperate in formulating international rules to achieve their obligations,<sup>6</sup> to provide technical assistance to developing states,<sup>7</sup> monitor and assess the effects of any activities they permit or control,<sup>8</sup> to enact national legislation to give effect to international rules on these issues,<sup>9</sup> as well as laying out rules on the enforcement by different states with respect to pollution.<sup>10</sup>

UNCLOS Part XII thus contains states’ general obligations to protect and preserve the marine environment as well as the measures states are required – and permitted – to take in relation to activities in the oceans and seas or against environmental threats. The rules of part XII apply to all states and across all different maritime areas, both inside and outside areas of national jurisdiction. Their purpose is to achieve a coherent and holistic approach to the sustainable management of the oceans.<sup>11</sup>

However, many of the said obligations are broadly formulated and their further development and implementation will thus depend on state practice and the practice of global and regional international organizations acting within their mandate such as regional sea conventions, regional fisheries management organizations, the International Maritime Organization and the International Seabed Authority.

Further, the Convention cannot be considered in a vacuum but must be interpreted and applied in a way that renders its obligations to protect and preserve the marine environment and to prevent, reduce and control pollution to the marine environment practical and effective. This entails that the Convention must be understood with due regard for other relevant rules of international law applicable in the relations between the parties.<sup>12</sup> This includes the UNFCCC and the Paris Agreement as the primary instruments when it comes to prescribing specific obligations on states in relation to climate change.

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<sup>4</sup> UNCLOS Article 194 (5).

<sup>5</sup> UNCLOS Article 194 (1).

<sup>6</sup> Part XII Section 2.

<sup>7</sup> Part XII Section 3.

<sup>8</sup> Part XII Section 4.

<sup>9</sup> Part XII Section 5. Section 5 develops the obligation under Article 194 in relation to specific sources of pollution.

<sup>10</sup> Part XII Section 6.

<sup>11</sup> As reflected in the Convention’s preamble.

<sup>12</sup> As reflected in the Vienna Treaty on the Law of Treaties Article 31 (3) c). See also UNCLOS Article 197 (1) and 212 (1) which refer to States “taking into account internationally agreed rules, standards and recommended practices and procedures”.

## 2.4 Relevant measures taken by states to protect and preserve the marine environment and to prevent, reduce and control pollution to the marine environment

Norway was delighted to be part of the high ambition coalition in the BBNJ negotiations and welcome this new treaty in the Law of the Sea framework. Norway is pleased to see that the international community is still able to address new challenges through multilateral treaty-making. The BBNJ provides additional and important tools to effectively preserve marine areas beyond national jurisdiction. This treaty will enhance coordination in ocean management and set out more detailed rules and procedures for the use of environmental impact assessments and area-based management tools, including marine protected areas. We believe it will also serve as a crucial step towards the politically determined goal of conserving at least 30 percent of the ocean by 2030.

With regards to the preservation of the marine environment in areas under national jurisdiction, Norway established the High-Level Panel for a Sustainable Ocean Economy together with 13 other countries in 2018. The Panel members have made a political commitment to sustainably manage 100 percent of the ocean areas under the Panel members' jurisdiction by 2025. The Panel recognizes the important link between climate change and the oceans' health. The Panel has also documented that the ocean is a fundamental part of the global response to climate change and that ocean-based climate actions offer significant opportunities to meet the targets of the Paris Agreement and contribute to a sustainable ocean economy.<sup>13</sup>

Norway notes with appreciation that new and other global instruments and fora also recognize this vital connection between the ocean and the climate. The preamble of the new BBNJ Agreement acknowledges “the need to address, in a coherent and cooperative manner, biodiversity loss and degradation of ecosystems of the ocean, due to, in particular, climate change impacts on marine ecosystems, such as warming and ocean deoxygenation, as well as ocean acidification, pollution, including plastic pollution, and unsustainable use.” As another example, The United Nations Framework Convention on Climate Change (UNFCCC) has created an ocean and climate change dialogue and encouraged ocean-based climate action. In Norway's view, this platform presents a key opportunity to elevate ambition and momentum for ocean-based climate solutions.

## 2.5 Concluding remarks

Towards this important and evolving backdrop, Norway welcomes the Tribunal considering the specific obligations of State Parties to UNCLOS including under Part XII on the protection and preservation of the marine environment, to (a) *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*, and (b) to

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<sup>13</sup> High Level Panel for a Sustainable Ocean Economy (2019), “The Ocean as a Solution to Climate Change: Five Opportunities for Action”.

*protect and preserve the marine environment in relation to climate change impacts, including ocean warming and sea level rise, and ocean acidification.*

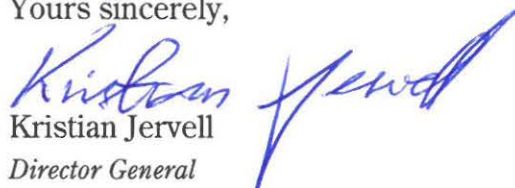
Norway is confident that the Tribunal's assessment of these questions can assist States Parties in better understanding their current obligations under the Law of the Sea, and thus ensuring even more effective compliance with them in the future.

For the sake of legal clarity, Norway hopes that the Tribunal will use this opportunity to elaborate on its reasoning with respect to the basis for its advisory opinion in these proceedings,<sup>14</sup> as well as on how the Tribunal has endeavoured to focus its assessment on specific aspects of what at the outset are broadly formulated questions by the Commission. In this regard, Norway certainly remains ready to submit further and more specific reflections on any particular issues that the Tribunal might identify a need to explore further.

The request before the Tribunal is focused on State Parties' obligations under UNCLOS. However, Norway observes that the questions now before the Tribunal to a certain extent overlap with questions posed by the United Nations General Assembly in its resolution 77/276 adopted on 29 March 2023, by which it decided to request the International Court of Justice (ICJ) to render an advisory opinion. The request was transmitted to the ICJ on 12 April 2023. In this request, co-sponsored by Norway, the ICJ has, inter alia, been asked to assess what the current obligations of all states are under international law, including under UNCLOS, to ensure the protection of the climate system and other parts of the environment from anthropogenic emissions of greenhouse gases for states and for present and future generations.

To deliver fruitful results, deliberations about the legal obligations of states in relation to climate change and its wide-ranging effects must be seen in tandem with our common political determination to address this pressing issue. While the UNFCCC and the Paris Agreement remain the primary negotiating forum for developing and implementing climate action, Norway is confident that both the ICJ's and the Tribunal's considerations can provide constructive contributions to these ongoing processes and thereby support the UNFCCC's agenda in strengthening climate action.

Yours sincerely,

  
Kristian Jervell

*Director General*

*Legal Department*

*Royal Norwegian Ministry of Foreign Affairs*

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<sup>14</sup> Including the Agreement for the establishment of the Commission of Small Island States on Climate Change and International Law dated 31 October 2021 Article 2 (2), the Statute of the International Tribunal for the Law of the Sea Article 21, and Request for an Advisory Opinion Submitted by the Sub-Regional Fisheries Commission (SRFC), list of cases: No. 21 of 2 April 2015.