

JUS5520 (autumn 2020)

Exam

**Question 1:**

Cook Islands - a self governing State since 1965 - comprises of 15 small islands scattered over the South-south Pacific. The low-lying islands have a height range above mean sea level of five to nine meters. The Cook Islands are engaged in international tourism activities and receive 67% of their annual GDP from the tourism sector. Beach holidays are the major attraction, plus coral reef diving and sea turtle nesting.

A coastal community on the island Rarotonga wishes to lease a coastal property to a company which develops and builds tourism sites.

The site is only 1.5 meter above mean sea level. The area already relies heavily on the tourism sector for income generation. During the lease negotiations the developer informs the governing council of the community that it wishes to reduce the estimated price by 30% to take account of the risk of sea level rise in the next decade. It is argued that local sea level rise would both lead to high insurance premiums on the property (storm and tidal wave insurance) and lower the possibility of using the property long-term should the sea encroach on the beaches and property become uninsurable. Moreover, should tidal waves hit the island with greater frequency, transport and supplies would not be guaranteed and the intrusion of salt water could threaten the freshwater supply. An expert team

agreed about the fact that the market value of the site has decreased significantly due to the

projected changes (sea level rise) in the region. Moreover, the impacts of observed increasing sea temperatures have led to the onset of coral bleaching and the dying of coral reefs around the island of Rarotonga. This also impacts on the sea turtle population, which has decreased in the area by about 30% over the last 10 years.

The Government of the Cook Islands on behalf of the local community wants to claim compensation for the incurred losses based on the risk of sea level rise due to anthropogenic climate change and the impacts on the tourist industry by the bleaching of the coral reef and decline of sea turtle populations. It wants to take action against the major greenhouse gas emitters. As a first step, the Cook Islands seeks redress from the Australian Government by bringing a claim before the International Court of Justice.

For the purpose of this case it is assumed that scientific studies confirm the increased risk posed to the coastal site due to anthropogenic climate change. Estimates have been made that project the loss of coastal land on Rarotonga, even under low warming scenarios, well in the 21st century (IPCC AR5).

Both Australia and the Cook Islands are Parties to the UNFCCC, the Kyoto Protocol and the Paris Agreement. Further, the jurisdiction of the ICJ is assumed.

You are a legal advisor to the government of the Cook Islands and are asked to analyse the legal basis for the claim under international environmental law.

## **Question 2:**

Explain and discuss:

- why the conservation of biological diversity is a common concern,
- which international treaty law exists that has the purpose of conserving biological diversity,
- do you consider the treaty/treaties adequate and effective for the conservation of biodiversity (if yes, why; if not, why)?,
- which changes, if any, do you consider necessary to international law, in order to halt the deterioration of biological diversity?