

Case example: climate change damages

The Cook Islands - a self governing State since 1965 - comprises of 15 small islands scattered over the 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 37% of their annual GDP from the tourism sector. Beach holidays are the major attraction (plus coral reef diving and sea turtle nesting). For the purposes of this case, a community on the island Rarotonga wishes to lease a coastal property to a company which develops and builds tourism sites. (see: www.ck/invest.htm)

The site is only 2 meter above mean sea level. The area already relies heavily on the tourism sector for income generation. In the sale negotiation 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 caused by global warming 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 impacts of climate change (sea level rise) in the region.

The local community (municipal council) via the Government of the Cook Islands wants to claim compensation for the incurred losses based on the *risk* of sea level rise due to anthropogenic climate change. It wants to take action against the major greenhouse gas emitters. As a first step, the Cook Islands seek redress from the Australian Government at an Arbitral Tribunal with jurisdiction to decide such claim.

1. Group 1:

- a. You are legal advisors to the Government of the Cook Islands and are asked to analyze the prospects of such a case. Please prepare legal arguments in favour (and be prepared to counter those against) bringing action.
- b. Appoint one (or more) representative to argue this case before the tribunal.

2. Group 2:

- a. You are legal advisors to the Government of the Australia and are asked to prepare legal arguments against the claim of the Cook Islands.
- b. Appoint one (or more) representative to argue this case before the tribunal.