

COMMISSION OF SMALL ISLAND STATES

ON CLIMATE CHANGE AND INTERNATIONAL LAW



COSIS 2022 ANNUAL REPORT

October 2022





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Vision

TO TAKE COLLECTIVE ACTION TO PROTECT AND PRESERVE THE CLIMATE SYSTEM, INCLUDING THE MARINE ENVIRONMENT, THROUGH THE PROMOTION, PROGRESSIVE DEVELOPMENT, AND IMPLEMENTATION OF RULES AND PRINCIPLES OF INTERNATIONAL LAW CONCERNING CLIMATE CHANGE.

INTRODUCTION

to the Commission of Small Island States on Climate Change and International Law

Background

States who are least responsible for climate change, Small Island Developing States (SIDS), will be the most likely to bear the worst brunt of its effects in the short- as well as the long-term.¹ Over the coming decades, SIDS will encounter “rising sea levels, extreme weather events, coral bleaching, loss of fisheries and marine biodiversity”, as well as the risk of total submersion.

Facing this existential threat, as well as inaction on the international stage, the Prime Ministers of Antigua and Barbuda and Tuvalu signed the Agreement for the Establishment of the **Commission of Small Island States on Climate Change and International Law (COSIS)** on the eve of COP26. The Agreement was registered with the United Nations in accordance with Article 102 of the Charter of the United Nations.² The Republic of Palau acceded to the Agreement in November 2021 and Niue in September 2022. Membership is open to any State in the Alliance of Small Island States (AOSIS).

This Annual Report outlines the history, purpose and activities of the Commission over the past year, since its inception on 31 October 2021.



*Prime Minister Browne and Prime Minister Natano establishing COSIS
in Edinburgh, 31 October 2021*



Prime Minister Browne, Prime Minister Natano and Payam Akhavan, Counsel to COSIS, announcing the establishment of the Commission at COP26

Mandate

According to Article 1(3) of the Agreement establishing COSIS:

“The mandate of the Commission shall be to promote and contribute to the **definition, implementation, and progressive development of rules and principles of international law concerning climate change**, including, but not limited to, the **obligations** of States relating to the **protection and preservation of the marine environment** and their **responsibility for injuries** arising from **internationally wrongful acts** in respect of the breach of such obligations.”



COSIS in the news

Climate justice: small island states push back

On the first day of the COP26 climate summit, Tuvalu and Antigua and Barbuda took an important step towards climate justice.

POSTED ON 11/11/2021
BY ANNE THERESE GALLAGHER



The Washington Post

Today's WorldView • Analysis

Drowning nations disappointed with outcome of U.N. climate summit may have one move left: Lawsuits

Le Monde

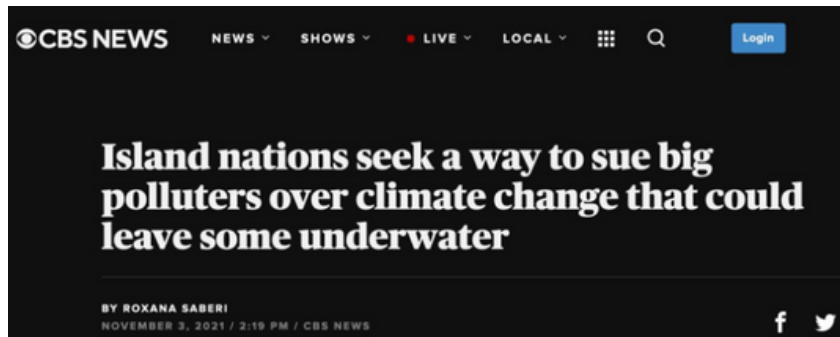
PLANETE • COP26

A la COP26, les Etats les plus vulnérables réclament que les pays pollueurs payent pour leurs dommages climatiques

TIME

Imagine If The Rich Countries That Caused Climate Change Actually Took Responsibility

IDEAS BY SURANGEL S. WHIPPS JR. JANUARY 6, 2022 8:00 AM EST
Surangel S. Whipps Jr. is president of the Republic of Palau.



The New York Times

Monday, November 1, 2021

Small island nations try to take major polluters to court.

FOREWORD

Message from the Co-Chairs of COSIS

On October 31st, 2021, on the first day of COP26, we had the privilege of signing the Agreement for the Establishment of the Commission of Small Island States on Climate Change and International Law (COSIS) in Edinburgh, in the United Kingdom of Great Britain and Northern Ireland, and to become the Co-Chairs for the initial two-year period of its activities. The purpose of this unprecedented multilateral institution, which is open to accession by all members of the Alliance of Small Island States (AOSIS), is to provide a means for the smallest of nations to unite and collaborate in confronting the greatest of challenges facing our times: namely, catastrophic climate change which has long ceased to be a distant future concern for our peoples, and is now an immediate threat to their survival, if not the very existence of their countries.

It is no doubt true that this is a common concern of humanity, but while making a negligible contribution to global warming, Small Island States bear a disproportionate burden. This is unjust and must be remedied. When the United Nations Framework Convention on Climate Change (UNFCCC) was first adopted in 1992, Small Island States were already aware that they were the most vulnerable in the face of rising sea levels, extreme weather events, and other far-reaching changes to the marine environment arising from the fact that the oceans are the biggest sinks and reservoirs of greenhouse gases. Despite some progress having been made, including the conclusion of the Paris Agreement at COP21 in 2015, the progress has not been nearly sufficient to address the scale and gravity of the catastrophe that is unfolding before our very eyes. The major polluters need to take immediate and far-reaching action to significantly reduce the risks and impact of climate change, and they must take seriously the common but differentiated responsibility of members of the international community, including the loss and damage suffered by climate vulnerable States as a result of inaction.

In establishing COSIS, the simple question that we asked is of what relevance is international law to humankind's struggle to confront climate change? Should we frame the issue in terms of a rule-oriented international order, where States take seriously their obligations to protect and preserve the environment? Or do we allow for vague commitments that are discretionary and carry no consequences? The answer should be clear: there must be a robust global regime to address climate change, informed by global norms. The time for empty promises is over; we can ill afford subordinating our common interest in collective survival to narrow short-term interests.

Although the international community must continue to negotiate and cooperate in finding meaningful solutions, international law is a fundamental dimension of framing the issues that must be urgently addressed. Long before adoption of the UNFCCC in 1992, international law had already established obligations that States owe, whether to their immediate neighbours or the international community as a whole, to avoid harm and injury to the environment, and to compensate for loss and damage arising from breaches of such obligations. The Declaration on the Human Environment, adopted by the United Nations Conference on the Human Environment in Stockholm in 1972, proclaimed that the natural resources and ecosystems of the Earth must be safeguarded for the benefit of present and future generations. A decade later, the United Nations Convention on the Law of the Sea (UNCLOS), adopted in 1982, set forth an affirmative obligation to protect and preserve the marine environment. Why should the international community, today in 2022, decades after those legal undertakings, not apply those same obligations to climate change, the greatest environmental challenge faced by humankind in history?

It is this basic premise and commitment to the rule of international law that informs the mandate of COSIS to promote and contribute to the definition, implementation, and progressive development of rules and principles of international law concerning climate change. This includes, but is not limited to, the obligations of States relating to the protection and preservation of the marine environment and their responsibility for injuries arising from internationally wrongful acts in respect of the breach of such obligations. It also includes recognition of the permanence of maritime boundaries and Statehood in the face of climate change-induced sea-level rise.

These legal questions are fundamental for both the present and future of Small Island States. In pursuit of elaborating these pressing issues, COSIS has undertaken to support parallel initiatives both for the initiative of Vanuatu before the United Nations General Assembly to request an Advisory Opinion from the International Court of Justice, and the initiative of COSIS to request an Advisory Opinion from the International Tribunal for the Law of the Sea. The former, the principal judicial organ of the United Nations, would address questions of general international law, while the latter, a specialized judicial organ, would focus *inter alia* on the robust regime for protection of the marine environment and the rights of coastal States under UNCLOS. Surely, the international courts and tribunals created by the global community to dispense justice have a role to play as we set out to establish the legal framework within which future efforts should take place?

We were encouraged when on November 4th, 2021, at COP26, Palau became the first member to sign an Instrument of Accession to join COSIS, with Niue following suit on September 13th, 2022, and several other AOSIS members expressing their interest in becoming members. We look forward to increasing our numbers as we move forward with historic initiatives in the coming months. We are also deeply grateful for the Committee of Legal Experts, a world-class team of renowned international lawyers and scholars, who have volunteered their time and resources to serve Small Island States. Without such solidarity and collective action, it will indeed be difficult for our voices to be heard, and for us to secure our rights.

We look forward to COSIS' second year of activity with hope that the promise of international law will assist Small Island States in their pursuit of climate justice.

The Co-Chairs of COSIS



Hon. Gaston Alfonso Browne
Prime Minister of Antigua and Barbuda



Hon. Kausea Natano
Prime Minister of Tuvalu

THE ORGANIZATION

The Co-Chairs have appointed Committees and Sub-Committees to advise on the exercise of the Commission’s mandate and conduct of its activities.



The Committee of Legal Experts comprises 14 legal scholars and practitioners (list of names below). Collectively, they bring decades of expertise on international environmental law and the law of the sea, as well as practice in international courts and tribunals. The Committee is gender balanced with representatives from States on six continents. They serve on subcommittees relating to (1) the marine environment, (2) loss and damages, (3) sea-level rise, (4) human rights, and (5) litigation management. They have been assisted by international lawyers Charlotte Ruzzica de La Chaussée and Jessica Joly Hébert.

The Committee on Strategy, Management, and Outreach comprises the Co-Chairs of COSIS plus five members of the Committee of Legal Experts.

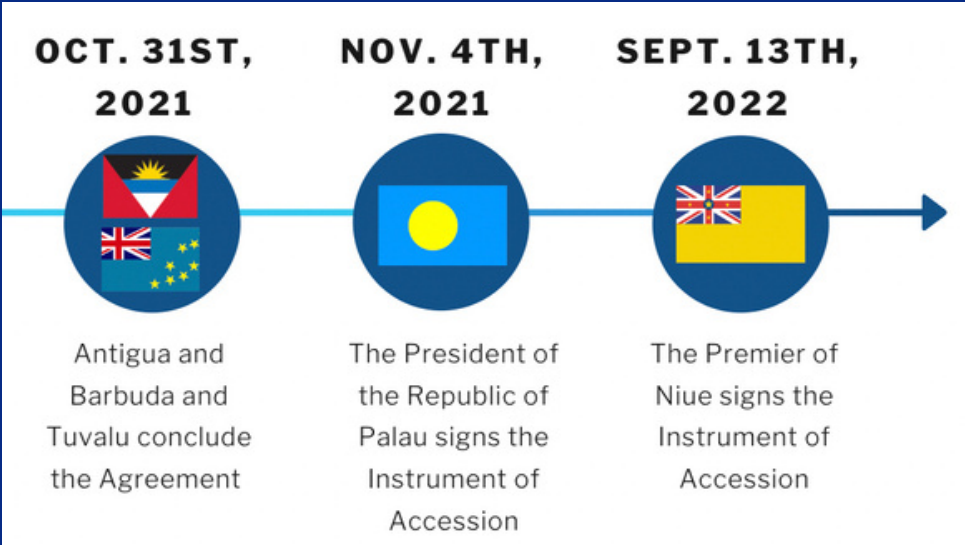
AT A GLANCE: THE PAST YEAR

1. Growth in Membership

Since Antigua and Barbuda and Tuvalu concluded the Agreement establishing COSIS at COP26, two further states have signed the instrument of accession, **Palau** and **Niue**. The Agreement is open to accession by all members of AOSIS.



President of Palau Surangel Whipps Jr., signing the Instrument of Accession on 4 November 2021



2. Appointment of the Committee of Legal Experts

Per Article 2(3) of the Agreement establishing COSIS, the Commission may “appoint experts and advisors as necessary in furtherance of its mandate”. In November 2021, the Co-Chairs appointed a distinguished Committee of 14 legal experts to assist the Commission in its work (CoLE).

COMMISSION OF SMALL ISLAND STATES ON CLIMATE CHANGE AND INTERNATIONAL LAW

COMMITTEE OF LEGAL EXPERTS


PAYAM AKHAVAN, CANADA
CHAIR

Professor of International Law;
Senior Fellow, Massey College, University of
Toronto;
Member of the Permanent Court of Arbitration.


CATHERINE AMIRFAR, UNITED STATES

Co-Chair of the International Dispute
Resolution & Public International Law Group,
Debevoise & Plimpton LLP, New York;
President, American Society of International
Law.


ALAN BOYLE, UNITED KINGDOM

Emeritus Professor of International Law,
University of Edinburgh;
Barrister, Essex Court Chambers, London.


JUTTA BRUNNÉE, CANADA

Dean, University Professor & James Marshall
Tory Dean's Chair, Faculty of Law, University of
Toronto;
Associate Member of the Institut de droit
international.


EDEN CHARLES, TRINIDAD & TOBAGO

Special Representative of the Secretary-
General of the International Seabed Authority
for the Enterprise;
Lecturer, University of West Indies, Faculty of
Law;
Former Chair of the UNGA Preparatory
Committee on the Development of an
International Legally Binding Instrument under
UNCLOS on the Conservation and Sustainable
Use of Marine Biological Diversity of Areas
Beyond National Jurisdiction; Former
Ambassador Extraordinary and Plenipotentiary
of Trinidad and Tobago to the UN.


DAVID FREESTONE, UNITED KINGDOM

Adjunct Professor and Visiting Scholar, The
George Washington University School of Law,
Washington D.C.;
Co-Rapporteur of the International Law and Sea
Level Rise Committee of the International Law
Association;
Executive Secretary of the Sargasso Sea
Commission.


VAUGHAN LOWE KC, UNITED KINGDOM

Emeritus Chichele Professor of International
Law and Fellow of All Souls College, Oxford
University;
Barrister, Essex Court Chambers, London;
Member of the Institut de droit international.


MAKANE MOÏSE MBENGUE, SENEGAL

Professor of International Law, University of
Geneva and Sciences Po Paris, School of Law;
Member of the Curatorium of The Hague
Academy of International Law;
Associate Member of the Institut de droit
international.


PHOEBE OKOWA, KENYA

Professor of Public International Law, Queen
Mary, University of London, Faculty of Law;
Member of the UN International Law
Commission;
Member of the Permanent Court of Arbitration;
Public International Law Advisory Panel, British
Institute for International & Comparative Law.


NILÜFER ORAL, TURKEY

Director of the Centre for International Law and
Senior Fellow, National University of Singapore;
Member of the UN International Law Commission
and Co-Chair of the Study Group on Sea-level
Rise in Relation to International Law;
Member of the Steering Committee,
International Union for the Conservation of
Nature World Commission on Environmental Law.


SHAISTA SHAMEEM, FIJI

Professor and Vice Chancellor, University of
Fiji;
Fellow of the Royal Society of Arts;
Former Director and Chairperson of the Fiji
Human Rights Commission and Former Special
Rapporteur of the UN Human Rights Council.


JEAN-MARC THOUVENIN, FRANCE

Professor of International Law, University of
Paris Nanterre;
Secretary-General of The Hague Academy of
International Law;
Associate Member of the Institut de droit
international.
Partner, International Dispute Resolution, Sygna
Partners, Paris.


PHILIPPA WEBB, AUSTRALIA

Professor of Public International Law, King's
College London;
Barrister, Twenty Essex Chambers, London;
Public International Law Advisory Panel, British
Institute for International & Comparative Law.


**MARGARETHA WEWERINKE-SINGH,
NETHERLANDS**

Assistant Professor of Public International Law,
Grotius Centre for International Legal Studies,
Leiden University;
Adjunct Senior Lecturer in Environmental Law,
Pacific Centre for Environment and Sustainable
Development, University of the South Pacific,
Fiji;
Attorney, Blue Ocean Law, Guam.

3. Meetings of CoLE and COSIS Members

The CoLE and the members of COSIS have met on several occasions in the past year. A brief timeline is presented below (there have also been bilateral and informal meetings alongside these formal meetings):



Key outcomes from the Meetings between the Committee of Legal Experts (CoLE) and the members of COSIS:

First Meeting of the Commission	Second Meeting of the Commission	Third Meeting of the Commission
a) Antigua and Barbuda and Tuvalu become Co-Chairs of the Commission	a) Welcome the Republic of Palau to COSIS	a) Discussion on loss and damage under international law
b) Encourage Members of Alliance of Small Island States to join COSIS	b) Co-Chairs approve list of legal experts and convene a meeting on the ITLOS Advisory Opinion	b) Presentation of CoLE research report and approval of plan of action. Establishment of Committees and Sub-Committees
c) Appointment of Chair of the CoLE	c) Co-Chairs express support for Vanuatu's ICJ Advisory Opinion initiative	c) Decision to encourage all affected states to join COSIS efforts



First meeting of the CoLE, 9 March 2022



Third meeting of the Commission, 26 August 2022

NEXT STEPS

In implementing its mandate, COSIS' goals are to:

- **Assist Small Island States** in efforts to clarify international legal obligations to combat climate change and its effects;
- Contribute to efforts to **develop jurisprudence on climate change** of international courts and tribunals, including through an International Court of Justice (ICJ) advisory opinion; and
- Request an **advisory opinion from the International Tribunal for the Law of the Sea (ITLOS)** on any legal question within the scope of the UN Convention on the Law of the Sea, including with regard to States' obligations under that Convention to **preserve and protect the marine environment**.

Request for an ITLOS Advisory Opinion

Article 2(2) of the Agreement establishing COSIS contains one of the Commission's "most significant express powers".³ That is, the Commission has the authority to request an advisory opinion from ITLOS. The text of the Agreement states:

*"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 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."*⁴

In this regard, it is notable that ITLOS has listed the Agreement establishing COSIS as a Multilateral Agreement Conferring Jurisdiction on the Tribunal.⁵

Furthermore, in its contribution to the Sixth Assessment Report of the Intergovernmental Panel on Climate Change (IPCC), Working Group III recognized the role of climate litigation in affecting "the outcome and ambition of climate governance".⁶ The Report explicitly examines litigation in international courts and tribunals and mentions the initiatives of both COSIS and Vanuatu to request advisory opinions from ITLOS and from the ICJ, respectively.

GLOBAL VOICES OF COSIS



"I and other Pacific leaders look to our culture and environment for wisdom to withstand these uncertain times. Yet we know wisdom without capacity cannot save us. Palau joins other small-island states and Indigenous peoples across the globe in calling on the international community to make 2022 a year of accountability, reciprocity and significant investments in adequate safeguards that ensure basic human rights for the world, enabling us to fulfill our responsibility as custodians of the earth to transfer our lands, our ocean and our cultures to future generations". – **Surangel S. Whipps Jr., President of the Republic of Palau (Time, 6 January 2022)**

"Through the International Court of Justice and the International Tribunal of the Sea, small island states must create strong legal frameworks on climate change" – **Sir Iakoba Italeli, former Governor-General of Tuvalu (Twitter, 13 May 2022)**

"Thank you to the Co-Chairs of COSIS for supporting the Vanuatu ICJ Advisory Opinion. We stand in solidarity with COSIS on its important work and see incredible value in the complementarity of our respective initiatives" – **Odo Tevi, Vanuatu Ambassador to the United Nations (Twitter, 23 February 2022)**

COLLABORATIONS & STRATEGIC PARTNERSHIPS

Support for ICJ Advisory Opinion

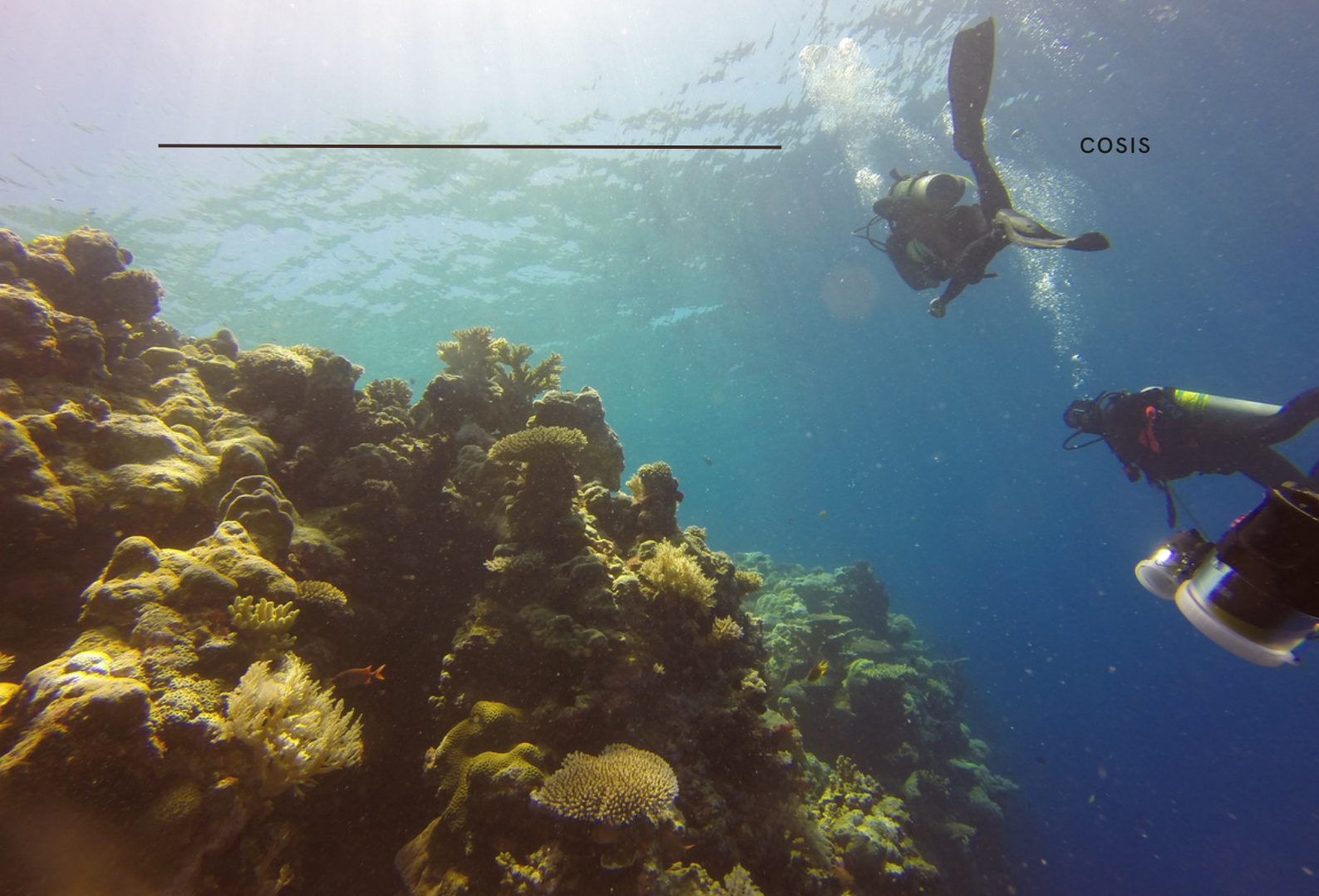
The initiative of COSIS is “not the only one that may result in a request for an advisory opinion [from an international tribunal] on the subject of climate change”.⁷ Since 2018, Vanuatu has been actively exploring its options for securing an advisory opinion from the International Court of Justice (ICJ). In September 2021 at the UN General Assembly, the Prime Minister of the Republic of Vanuatu, Hon. Bob Loughman, announced Vanuatu’s intention to assemble a coalition of states in order to submit a request for an advisory opinion.⁸

Recognizing the benefits of the initiative, on 24 November 2021, the Co-Chairs of COSIS expressed support for the initiative of Vanuatu:

“The Commission expresses its support for the initiative of Vanuatu to request an Advisory Opinion on climate change from the International Court of Justice (“ICJ”) and decides that the Committee of Legal Experts should assist members of the Commission in making submissions to the ICJ as appropriate.”⁹

Vanuatu’s Ambassador to the UN, H.E. Mr. Odo Tevi has thanked the Co-Chairs of COSIS for supporting the initiative and has emphasized his support and solidarity for COSIS and its work. Furthermore, the Ambassador has reiterated the “incredible value in the complementarity”¹⁰ of the two initiatives.

More recently at the 77th session of the UN General Assembly, Prime Minister Browne called on others to support Vanuatu’s Resolution for an ICJ advisory opinion. In particular, he indicated that failure to support Vanuatu’s Resolution “would be a vote to circumvent a decision on the legal obligations of each nation... thereby imperiling human civilization”.¹¹



Outreach

*“A situation globally caused must have a globally just and equitable solution... we neither castigate, nor demand charity... we want justice” - Prime Minister Natano, 77th Session of the UN General Assembly*¹²

Both Prime Minister Browne and Prime Minister Natano gave speeches at the 77th Session of the UN General Assembly emphasizing the urgency of the situation and calling on states to support initiatives that will clarify international law obligations with regard to climate change.

Prime Minister Browne highlighted to the Assembly that the purpose of COSIS will be “to develop and implement fair and just global environmental norms and practices”¹³ and issued a call to states who are equally facing the existential threat of climate change to join the initiative.



"The very existence of our countries is fatally endangered... Is it not right for the rich nations of the world to contribute to alleviating the problems that have been thrust upon small developing states?"

- Prime Minister Browne, UNGA 77

"If the international community allows an entire country to disappear from climate change, what hope will be possible for anyone else?"

- Prime Minister Natano, UNGA 77



Conferences

COSIS has played an active role as an international organization whose mandate is the development of rules and principles of international law concerning climate change. The Members of CoLE have been involved in a number of events over the past year.

Date	Event	Location	Summary
3/9/2022 – 3/23/2022	Capacity Building Course on "International Legal Issues and Developments related to Climate Change and Resilience for Pacific Island Forum members"	Centre for International Law, NUS Singapore	Nilüfer Oral, Payam Akhavan and Margaretha Wewerinke-Singh presented a training module on 'Sea-Level Rise and Human Rights' as part of the capacity building series for PIF members. With the participation of 52 government lawyers from across the Pacific, this was a virtual capacity building opportunity on international legal issues and developments related to a number of Forum priorities, in particular climate change and resilience, oceans, sea-level rise and related issues.
4/1/2022	"Wisconsin International Law Journal Symposium: Climate Change and Law: Global to Local, Legal and Policy Challenges"	University of Wisconsin	Margaretha Wewerinke-Singh spoke on a panel regarding 'International Law and Climate Change' at the Wisconsin International Law Journal Symposium. Her presentation was on 'Protecting the Rights of Present and Future Generations through International Litigation'.
4/21/2022	"Asian Responses to Climate Change", American Society of International Law's Asia-Pacific Interest Group	Virtual	Margaretha Wewerinke-Singh gave a presentation on 'Reflections on COP26' at this seminar.
5/18/2022	The Hague Talks	TU Delft, The Netherlands	Margaretha Wewerinke-Singh gave a lecture on 'Making Polluters Pay for Climate Harm: A 'Next Generation' of Rights-Based Climate Litigation?'
5/23/2022	Expert Meeting with Patrícia Galvão-Teles on Issue Paper of the International Law Commission on Sea-Level Rise and International Law	Geneva, Switzerland	Margaretha Wewerinke-Singh gave a presentation on the "Protection of Persons Issue".

Date	Event	Location	Summary
5/24/2022	"Ambition and Climate Solidarity: What role for the Law? First Lessons from the IPCC for IDDRI's Climate Program"	Université Paris 1 Panthéon-Sorbonne, France	Margaretha Wewerinke-Singh gave a presentation on 'The Role of Climate Science in Litigation' at the seminar. Her presentation addressed the legal initiatives of Small Island Developing States who are disproportionately impacted by climate change, with a particular focus on Vanuatu.
5/31/2022	IUCN WCEL Climate Change Law Specialist Group Contribution to UNEP's 24-Hour Celebration of the Environmental Rule of Law	Nairobi, Kenya	Margaretha Wewerinke-Singh gave a presentation on 'The Role of Environmental Law and the Law of the Sea in Addressing the Climate Crisis and Promoting Sustainable Development'.
6/20/2022 - 6/21/2022	Conference on "Climate Change and International Law: The Promise of an Advisory Opinion from the International Court of Justice", a Joint Initiative of Blue Ocean Law and Leiden University	The Hague, The Netherlands	This conference brought together international legal scholars and practitioners to discuss the role of international courts and tribunals in addressing climate change. Jean-Marc Thouvenin delivered the closing remarks at the Conference and mentioned the COSIS initiative. The talk by Nilüfer Oral (Panel 2: Bringing Climate Change Before International Courts and Tribunals) was focused on the work of the ILC and what issues might benefit from an advisory opinion, but not specifically about COSIS.
7/14/2022	The Hague Academy of International Law	Peace Palace, The Hague, The Netherlands	Jean-Marc Thouvenin gave a presentation during the 2022 Hague Academy of International Law, which included COSIS work.
8/10/2022	Group of Independent Eminent Experts on the Implementation of the Durban Declaration and Programme of Action	UN Offices in Geneva, Switzerland	Margaretha Wewerinke-Singh gave a presentation on 'Links between Racism, Racial Discrimination, Xenophobia and Related Intolerance and Global Emergencies, such as Climate Change, Natural Disasters and Health and Humanitarian Crises'. Her presentation focused on structural inequalities that lead to heightened vulnerability for people of color when it comes to climate change (notwithstanding their lower carbon footprints).

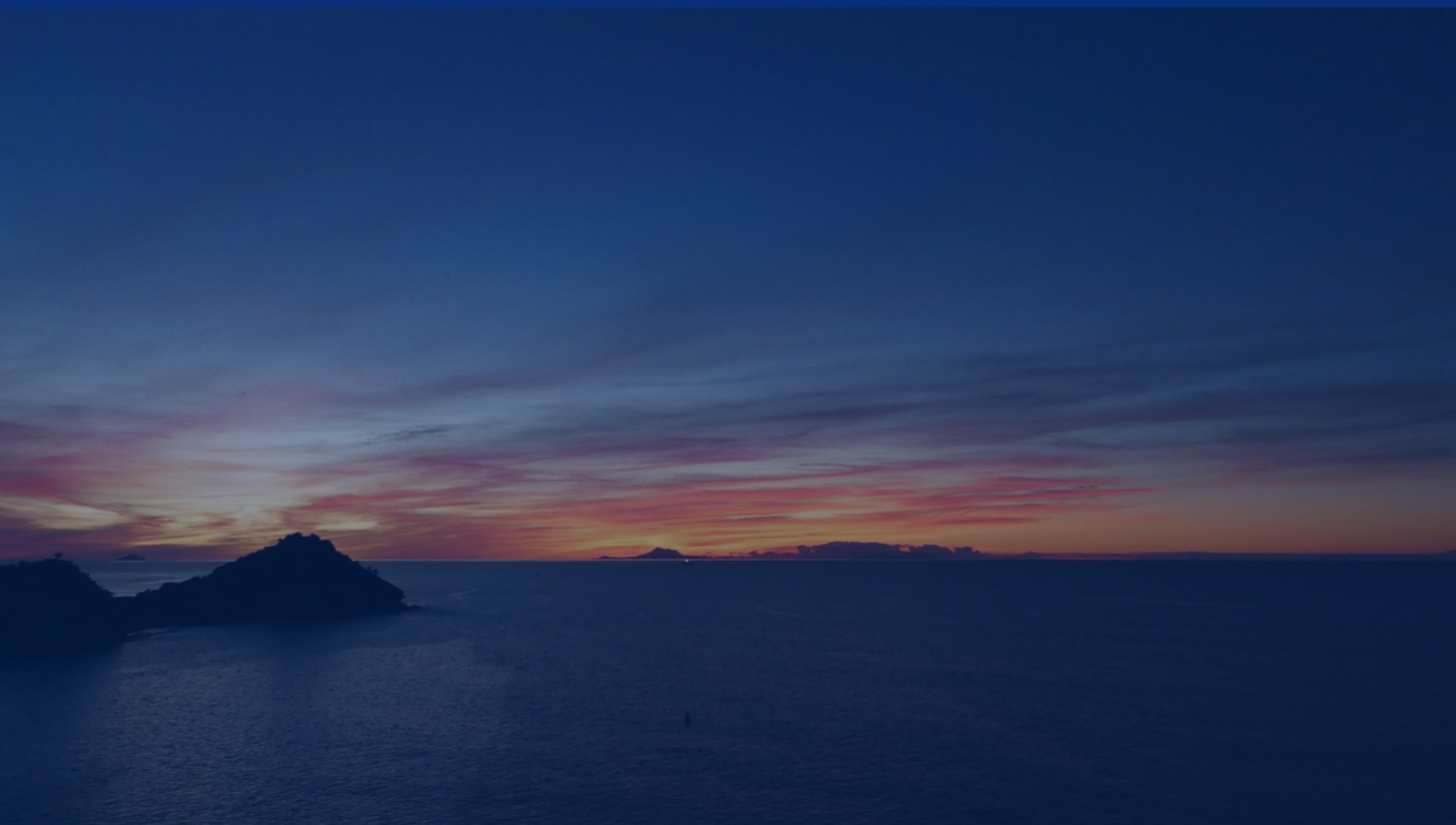
Date	Event	Location	Summary
9/7/2022	"Legal Avenues to Fight Climate Change, Policy Workshop — ITLOS Advisory Opinion"	International Peace Institute	The International Peace Institute and the Permanent Mission of the Principality of Liechtenstein invited Catherine Amirfar to speak at a workshop on the question of an advisory opinion by ITLOS on the legal consequences of climate change on the ocean. The sessions covered the objective of such a request and the strategy for framing and submitting the request.
10/3/2022 – 10/7/2022	"Trade and the Blue Economy"	Collaboration of University of West Indies, Cave Hill and Newcastle University	Eden Charles presented a paper entitled "Opportunities and Challenges Ahead for CARICOM and Blue Economy Agenda" on the 7 October at the Closing session entitled "The Way Forward".
10/20/2022 – 10/22/2022	"International Law Weekend 2022: The Next 100 Years of International Law", The American Branch of the International Law Association	New York City, United States	Catherine Amirfar moderated a panel discussion on the 22nd October entitled "Law of the Rising sea: Where do we go from here?". The Panel included three members of CoLE: David Freestone, Nilüfer Oral and Margaretha Wewerinke-Singh.
10/25/2022	"Climate Reparations: What Must COP27 Deliver?", Commonwealth Foundation	Commonwealth Foundation	Margaretha Wewerinke-Singh discussed climate reparations for Small Island Developing States.

FUNDING

Throughout most of 2021–22, COSIS and the CoLE have worked on a voluntary basis.

COSIS is pleased to announce that the Foundation for International Law for the Environment (FILE) has agreed to provide funding for the work of COSIS in 2022–23.

Discussions are underway to organize a structure in order to receive these funds, with an emphasis on the need for transparency and accountability for the use of funds.



SOURCES

- ¹David Freestone, Richard Barnes, and Payam Akhavan, 'Agreement for the Establishment of the Commission of Small Island States on Climate Change and International Law (COSIS)' (2022) 37 *International Journal of Marine and Coastal Law* 166, p.173
- ²UN Treaties, Agreement for the Establishment of the Commission of Small Island States on Climate Change and International Law (31 October 2021)
- ³Freestone, Barnes, and Akhavan, p.168
- ⁴Art. 2(2) of the Agreement for the Establishment of COSIS (Edinburgh Agreement), see Annex
- ⁵ITLOS, 'International Agreements Conferring Jurisdiction on the Tribunal'
- ⁶IPCC, Third part of the Sixth Assessment Report 'Climate Change 2022: Mitigation of Climate Change, the Working Group III contribution - Technical summary', TS p.111
- ⁷Freestone, Barnes, and Akhavan, p.172
- ⁸United Nations, 'Vanuatu - Prime Minister Addresses United Nations General Debate, 76th Session', YouTube (25 September 2021)
- ⁹Second meeting of the Commission, Decision document, 24 November 2021
- ¹⁰Twitter, Tweet from Vanuatu Ambassador Odo Tevi (23 February 2022)
- ¹¹United Nations, 'Antigua and Barbuda - Prime Minister Addresses General Debate, 77th Session', UN Web TV (23 September 2022)
- ¹²United Nations, 'Tuvalu - Prime Minister Addresses United Nations General Debate, 77th Session', UN Web TV (23 September 2021)
- ¹³United Nations, 'Antigua and Barbuda - Prime Minister Addresses United Nations General Debate, 77th Session', UN Web TV (23 September 2021)

ANNEX: AGREEMENT FOR THE ESTABLISHMENT OF COSIS

AGREEMENT FOR THE ESTABLISHMENT OF THE COMMISSION OF SMALL ISLAND STATES ON CLIMATE CHANGE AND INTERNATIONAL LAW

PREAMBLE

The Parties to this Agreement,

Alarmed by the catastrophic effects of climate change which threaten the survival of Small Island States, and in some cases, their very existence,

Recognizing that Climate Change is the Common Concern of Humanity,

Mindful of the fundamental importance of the oceans as sinks and reservoirs of greenhouse gases and the devastating impact for Small Island States of related changes in the marine environment,

Acknowledging the importance of maritime zones and the significant reliance of Small Island States on marine living resources within such zones, as well as the impacts of climate change on the marine environment including marine living resources,

Affirming that maritime zones, as established and notified to the Secretary-General of the United Nations in accordance with the 1982 United Nations Convention on the Law of the Sea, and the rights and entitlements that flow from them, shall continue to apply, without reduction, notwithstanding any physical changes connected to climate change-related sea-level rise,

Considering that the emission of greenhouse gases by Small Island States is negligible but that they bear a disproportionate and overwhelming burden of the adverse effects thereof,



Recalling the urgent actions for which the Alliance of Small Island States have called repeatedly to address the urgency and fundamental injustice of this situation,

Determined to take immediate action to protect and preserve the climate system and marine environment based on equity and the common but differentiated responsibilities of States to combat climate change,

Recognizing the imperative necessity of pursuing climate justice in accordance with the principles and progressive development of international law in response to the unprecedented crisis facing humankind,

Having regard to the obligations of States under the 1992 United Nations Framework Convention on Climate Change and related instruments, the 1982 United Nations Convention on the Law of the Sea, and other conventions and principles of international law applicable to the protection and preservation of the climate system and marine environment,

Noting the obligation of States to provide compensation for injuries arising from internationally wrongful acts,

Have agreed as follows:

Article 1

Establishment and Mandate of the Commission

- (1) The Commission of Small Island States on Climate Change and International Law ("the Commission") is hereby established.
- (2) The Commission shall have international legal personality.

A handwritten signature or set of initials in black ink, consisting of a large, stylized letter 'G' with a smaller 'S' or similar character inside it, and some additional scribbles.

- (3) The mandate of the Commission shall be to promote and contribute to the definition, implementation, and progressive development of rules and principles of international law concerning climate change, including, but not limited to, the obligations of States relating to the protection and preservation of the marine environment and their responsibility for injuries arising from internationally wrongful acts in respect of the breach of such obligations.

Article 2

Activities and authority of the Commission

- (1) The activities of the Commission shall include *inter alia* assisting Small Island States to promote and contribute to the definition, implementation, and progressive development of rules and principles of international law concerning climate change, in particular the protection and preservation of the marine environment, including through the jurisprudence of international courts and tribunals.
- (2) 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.
- (3) The Commission may appoint experts and advisors as necessary in furtherance of its mandate.
- (4) The Commission may take on such other tasks and responsibilities as the Parties may determine from time to time, including representing the interests of the Parties in international fora.



Article 3
Membership and Structure of the Commission

- (1) All members of the Alliance of Small Island States may become Parties to this Agreement.
- (2) All Parties to this Agreement shall be Members of the Commission.
- (3) The Commission shall be represented by a Chair, or by co-Chairs, among the Parties, who shall be elected by majority vote among its Members, beginning with the entry into force of this Agreement and once every two years thereafter.
- (4) The Commission may adopt its rules and procedures, establish committees and sub-committees, appoint a Secretariat, and make such other decisions that are necessary and appropriate for the discharge of its functions.
- (5) Decisions of the Commission shall be made in principle by consensus, or otherwise by a majority of Members present and voting.
- (6) Member States of the Commission shall bear the costs of the Commission's activities in an equitable manner.

Article 4
Signature, Entry into Force, depositary, accession, reservations

- (1) This Agreement shall be open to signature by all States that are members of the Alliance of Small Island States.
- (2) The Agreement shall enter into force upon signature by two or more States.

A handwritten signature in black ink, appearing to be a stylized name or set of initials, located in the lower right quadrant of the page.

- (3) This Agreement shall be deposited with the Government of Antigua and Barbuda which shall be responsible for its registration with the United Nations in accordance with Article 102 of the Charter of the United Nations.
- (4) Following entry into force, this Agreement shall be open for accession by other States that are Members of the Alliance of Small Island States. For each State acceding to this Agreement, the Agreement shall enter into force on the day after deposit by such State of its instrument of accession.
- (5) Reservations to this Agreement shall not be permitted.

IN WITNESS WHEREOF, the undersigned being duly authorized by their respective Governments, have signed this Agreement.

FOR THE GOVERNMENT OF
ANTIGUA AND BARBUDA



Hon. Gaston Alfonso Browne
Prime Minister

FOR THE GOVERNMENT OF
TUVALU



Hon. Kausea Natano
Prime Minister

DONE in Edinburgh, United Kingdom of Great Britain and Northern Ireland this 31st day of October Two Thousand and Twenty-One.

No. 71092

Certificate of registration

The Secretary-General of the United Nations

hereby certifies that the following international agreement has been registered with the Secretariat, in accordance with Article 102 of the Charter of the United Nations:

No. 56940. **Multilateral**

Agreement for the establishment of the Commission of Small Island States on Climate Change and International Law. Edinburgh, 31 October 2021

Registration with the Secretariat of the United Nations: Antigua and Barbuda, 31 October 2021

Done at New York on 3 February 2022

For the Secretary-General

**Certificat d'enregistrement**

Le Secrétaire général de l'Organisation des Nations Unies

certifie par la présente que l'accord international indiqué ci-après a été enregistré au Secrétariat, conformément à l'Article 102 de la Charte des Nations Unies :

No. 56940. **Multilatéral**

Accord pour la création de la Commission des petits États insulaires sur le changement climatique et le droit international. Édimbourg, 31 octobre 2021

Enregistrement auprès du Secrétariat des Nations Unies : Antigua-et-Barbuda, 31 octobre 2021

Fait à New York le 3 février 2022

Pour le Secrétaire général

QUESTIONS? CONTACT US.

For all inquiries: info@cosis-ccil.org

Twitter: [@cosis_ccil](https://twitter.com/cosis_ccil)



COMMISSION OF SMALL ISLAND STATES

ON CLIMATE CHANGE AND INTERNATIONAL LAW

