



**PERMANENT MISSION OF JAMAICA
TO THE UNITED NATIONS**

INTERVENTION BY

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WORKING GROUP ON ENVIRONMENTAL IMPACT ASSESSMENTS

**INTERGOVERNMENTAL CONFERENCE ON AN INTERNATIONAL
LEGALLY BINDING INSTRUMENT UNDER THE UNITED NATIONS
CONVENTION ON THE LAW OF THE SEA ON THE CONSERVATION
AND SUSTAINABLE USE OF MARINE BIOLOGICAL DIVERSITY OF
AREAS BEYOND NATIONAL JURISDICTION**

**UNITED NATIONS, NEW YORK
11TH SEPTEMBER 2018**

Thank you and good afternoon Mr. Facilitator. At the outset, Jamaica would like to congratulate you on your reappointment and assure you of Jamaica's full support in the deliberations of this Working Group.

We align with the views previously expressed by CARICOM in mentioning the decision of the International Court of Justice in the *Construction of a Road in Costa Rica along the San Juan River (Nicaragua v. Costa Rica)*, as this case highlights the consensus that the obligation to conduct an EIA is recognized as a general principle of international law. Furthermore, since this obligation has the status of customary international law, it applies to non-Parties to UNCLOS as well. As outlined by the International Court of Justice in that case, an EIA is required once there is a risk of significant adverse impact in a transboundary context, and particularly on a shared resource.

We would extract that principle to underscore the importance placed on conducting an EIA where there is such a risk to shared resources. In its 2011 *Advisory Opinion on Responsibilities and Obligations of States Sponsoring Persons and Entities with Respect to Activities in the Area*, the ITLOS Seabed Disputes Chamber referring to this customary obligation which was previously outlined in the *Pulp Mills Case*, and noted that: (1) the obligation to conduct an EIA may also apply to activities with an impact on the environment in an area beyond the limits of national jurisdiction; and (2) "shared resources" may also apply to resources that are the common heritage of mankind. We feel it is important to bear the principles emanating from these decisions in mind in our discussions.

In terms of Item 5.6 on monitoring, reporting and review, we align with G77 and China, AOSIS, and CARICOM and note that in the *Construction of a Road* case, the ICJ emphasized the continuing nature of the EIA obligation which includes a due diligence obligation to monitor the effects of the project throughout the life of the project, and the obligation to notify and consult with all potentially affected States, which in this setting would include adjacent coastal states. The ICJ also noted the obligation of States to cooperate in the performance of these obligations.

And so, taking these elements together, in response to the question you raised regarding this cluster, it is our view that monitoring and review should not just be left to the State of the operator/proponent. There should be reporting to and monitoring of any approved activities at the international level.

In respect of Item 5.5, we would also highlight the recent *Advisory Opinion on Environment and Human Rights* of the Inter-American Court of Human Rights, in which that Court also noted the duty of States to develop contingency plans for responding to incidents that impact the marine environment, and would suggest that this could be another useful element of the content of the EIA.