



GOVERNMENT OF JAMAICA

INTERVENTION BY

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TO THE UNITED NATIONS**

**ON THE REPORT OF THE INTERNATIONAL LAW COMMISSION (ILC) TO
THE UNITED NATIONS GENERAL ASSEMBLY - CLUSTER 1**

**IN THE MARGINS OF THE INTERNATIONAL LAW WEEK OF THE 74TH
UNITED NATIONS GENERAL ASSEMBLY**

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Mr Chairman,

My delegation is pleased to lend our voice to these active discussions on the ILC report, which has been presented by the Commission, as is customary, for the consideration of Member States. As this is the first time my delegation is taking the floor, please do allow us to extend congratulations to you and the newly appointed bureau, and to assure you of Jamaica's fullest support during your tenure.

Distinguished Colleagues,

My delegation expresses its appreciation to the ILC for the report on its seventy-first session and to the Rapporteurs for their fulsome and thought provoking reports. We look forward to their treatment of the topic, "Sea-level rise in relation to international law", which has been included in the ILC's long-term programme of work. General Assembly Resolution 73/265 which takes note of this, "*calls upon the Commission to take into consideration the comments, concerns and observations expressed by Governments during the debate in the Sixth Committee.*" My delegation takes this opportunity to express our comments, concerns and observations with the hope that the Commission will address these in its deliberations.

It is the view of my delegation that the three specific sub-topics identified by the ILC in the syllabus prepared in 2018, namely, issues related to the law of the sea, issues related to statehood and issues related to the protection of persons affected by sea-level rise, should be addressed in a manner that may practically assist States in determining the appropriate measures to adopt and lay the basis for the progressive development of rules of international law in relation to climate change, in particular, state responsibility, the precautionary approach, mitigation, adaptation, damage and loss, and compensation.

The work undertaken since 2007 by the International Law Association (ILA) on sea-level rise as regards the implications for international law, has progressed from an examination of normal baselines with particular reference to low-lying, small island developing states (SIDS) to a much broader review encompassing the possible complete inundation of State territory or loss of parts of a State's territory or maritime zones due to sea-level rise, and the implications for statehood, nationality and human rights. The reports of the ILA are thought

provoking. Due note is taken of the resolutions adopted by the 78th Conference of the International Law Association, held in Sydney, Australia, 19–24 August 2018; in particular to the proposal that the baselines and the outer limits of maritime zones of a coastal or an archipelagic State that have been properly determined in accordance with the 1982 Law of the Sea Convention, should be maintained and need not be recalculated, should sea level changes affect the geographical reality of the coastline. The proposal is made *de lege ferenda*.

The proposal runs counter to the statement of the ILA Baselines Committee that, as a matter of international law, “(c)oastal states may protect and preserve territory through physical reinforcement, but not through the legal fiction of a charted line that is unrepresentative of the actual low-water line.” (ILA 2018 Report, page 11)

The weight of the jurisprudence supports the position adopted by the ILA Baselines Committee. The Bay of Bengal case (Bangladesh v India) (paragraphs 213-215) tells us that maritime delimitation is not dependent on what may likely occur in the future; the Tribunal noted that “(t)he issue is not whether the coastlines of the Parties will be affected by climate change in the years or centuries to come.” What matters is the “physical reality at the time of the delimitation”. The Nicaragua/Honduras case reminds us that we cannot live in the past. The International Court of Justice was unwilling to construct a boundary line that “may appear arbitrary or unreasonable in the near future” given the changing nature of the coastline which, in the Court’s words, exhibited “a very active morpho-dynamism.” (paragraph 277)

State practice in support of the proposed way forward as reflected in the ILA resolution is highlighted in the ILA Report; reference is made, most notably, to the declaration made by the Polynesian Leaders Group on 16 July 2015 (the Taputapuātea Declaration on Climate Change), and the more recent, March 2018, declaration by eight (8) Pacific Island leaders (‘The Delap Commitment on Securing Our Common Wealth of Oceans – reshaping the future to take control of the fisheries’). Both declarations call for acceptance of defined baselines in perpetuity irrespective of the possible implications of sea-level rise.

Jamaica is a member of AOSIS, the Alliance of Small Island States (AOSIS) - an intergovernmental organization which was established in 1990 during the Second World Climate Conference in Geneva. AOSIS is on record as being the

first group of countries to raise concerns on sea-level rise in the negotiations on the United Nations Framework Convention on Climate Change (UNFCCC). The Prime Minister of Jamaica, the Most Honourable Andrew Holness, in a recent Op Ed with the Prime Minister of Fiji noted that – and I quote:

“For us, inaction on climate change is too costly. We stand to lose the most because of our small size, open and fragile economies and the high exposure of our populations, critical infrastructure and main economic drivers to extreme events, sea-level rise and other hazards. The world stalls but we have no choice but to act. While we are least responsible, climate change poses an existential threat that has spurred us, the leaders of two island-nations, to act decisively.”

The studies that have been undertaken indicate that reports of battering waves coupled with rising sea levels have caused significant beach erosion along Jamaica’s coastline within the last five years; coastal inundation and storm surge potentially places the entire coastline at risk. A new Building Act came into force on 15 January 2019 and is the mechanism through which new building standards will be imposed. Additionally, Development Orders under the Town and Country Planning Act, will make provision for flooding, sea level rise, and setbacks from waterways and water bodies.

The National Water Policy that was tabled in Parliament in June 2019 expresses concern that a decrease in groundwater levels, coupled with the expected rise in sea levels, would result in salt water intrusion and a contamination of the ground water sources which provide 85 percent of the nation’s water supply. A Draft Water Sector Adaptation Strategy to Address Climate Change and the Climate Change Policy Framework and Action Plan have been prepared.

Yet while the costs of dealing with brackish water and the loss of productive agricultural land to saline soils poses significant sustainable development challenges for Jamaica, there need not be implications for our maritime boundaries if the necessary remedial measures are taken at the appropriate time.

Jamaica has undertaken extensive work to address coastal erosion along the Palisadoes Spit causing flooding and deposited sand and debris on the road access to the Norman Manley International Airport rendering it impassable. We

are now deploying SeaWalk technology in Port Royal to provide a floating cruise ship pier, thus avoiding dredging and extensive infrastructural works typically required to construct a conventional berthing system. This is required due to the environmentally sensitive nature of the area and the need to preserve the sunken city and treasures that it may hold.

All States may construct harbour works, dikes, groynes or similar features. It is accepted that the outermost permanent harbour works which form an integral part of the harbour system are regarded as forming part of the coast for the purposes of delimiting the territorial sea (UNCLOS, article 11). A number of States have taken measures to reclaim land, and have built extensive concrete and rock breakwaters around natural features to protect them from erosion.

The ILA 2018 Report (at page 10) notes that, "(a)lthough it is generally accepted that coastal States may undertake physical measures to maintain their existing baselines, it was recognised that for many coastal States this would not be a feasible option due to the costs involved." The ILA Report observes that this is "an expensive course of action that would excessively penalise the poorest and most vulnerable States." (ILA 2018 Report, page 13)

A large percentage of Jamaica's population (approximately 25%) is concentrated near to the coastline. Critical infrastructures like port facilities, tourism centres and dense population centres are located within Jamaica's coastal zone. Sea level rise and storm surges will impact these critical infrastructures economically since an estimated 90% of GDP is produced within the coastal zone. Sea level rise is also expected to exacerbate coastal erosion, resulting in damage or increased loss of coastal ecosystems, threatening property and infrastructure located in coastal areas and resulting in salt water intrusion of underground coastal aquifers.

It is generally anticipated that sea-levels will rise globally by approximately one metre by the year 2100. The future rise in the Caribbean is not expected to be significantly different from the projected global rise. Jamaica's First National Communication in the context of the UNFCCC indicated that the Intergovernmental Panel on Climate Change (IPCC) in 1990 estimated that the cost to protect Jamaica from one metre of sea level rise would be USD462 million – that figure, now some three decades later, would be significantly higher.

As high as the cost is to protect Jamaica from sea-level rise, we cannot afford not to do so. As already stated, an estimated 90% of GDP is produced within the coastal zone.

Jamaica is an archipelagic State and has fulfilled the requirements established in article 47 of the 1982 Law of the Sea Convention. Like all archipelagic States the possible loss of an archipelagic basepoint because of sea level rise is a concern. However, reasonable measures may be taken to prevent this, provided that adequate funds are available. UNCLOS, article 47(4) allows for the use of low-tide elevations in certain circumstances, and paragraph (7) of article 47, provides for the *de facto* assimilation of waters lying within the fringing reefs of islands and atolls with land areas for the purpose of computing the ratio of water to land under paragraph 1 of article 47.

Jamaica, like almost all States represented in this room is a party to the UNFCCC and the Paris Agreement. However these agreements do not address the myriad legal issues that potentially arise from slow onset events, such as sea-level rise. Providing clarity on the underlying general principles of international law and customary norms and suggestions as to how the law may be progressively developed on various issues, in particular, state responsibility, the precautionary approach, mitigation, adaptation, damage and loss, and compensation in relation to sea-level rise would be a welcome and valuable contribution by the ILC.

My delegation hopes that the work to be undertaken by the ILC on sea-level rise will spur the development of the international law on climate change in a manner that supports security and stability and protects the most vulnerable communities and States.

Thank you.