

Presentation by E. Anthony Ross, QC P.Eng.

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**Relevant Technologies and International Responses to Bi-National and
Multinational Environmental Issues**

Introduction

It is important that the court system become specialized in terms of its ability to deal with bi-national and multinational environmental issues because the Caribbean Sea constitutes a major world ecosystem and these issues are crucial to the economic development of the Caribbean states. These specialization requirements are clearly stated in the United Nations Conference on Environment and Development, (UNCED), the United Nations Third Law of the Sea Convention, (UNCLOS), and other UN conferences and conventions pertaining to the environment and sustainable development, including regional and international treaties and agreements, and national environmental legislation in CARICOM states. There is hardly a modern treaty that does not have an environmental clause, and it is internationally recognized that small island states are environmentally vulnerable. Protecting and enhancing the environment constitute important policy objectives both nationally and internationally. This has resulted in the new legal domain of International Environmental Law (IEL), the import of which will have to be recognized and responded to by our national and regional court systems. Where national court systems have failed to effectively handle international environmental issues and other issues such as piracy, an activity for which the Caribbean was once famous, reliance has to be placed on international courts, such as the ICJ, and international arbitral tribunals. These institutions will fill the administrative gaps where individual or region states fail. The point is that if we do not establish appropriate court mechanisms for handling international environmental issues, we will be dependent on more costly international courts that are not naturally sensitive to our local issues and miss out on the opportunity to have a court system that is internationally recognized; a recognition that could be of great economic benefit to the Caribbean community (Caricom) region.

This presentation draws on my past relationship with Dalhousie Ocean Studies Program (DOSP) and deals with the topic of “Relevant Technologies and International Responses to Bi-National and Multinational Environmental Issues” in the context that these have influenced the evolution of IEL to what it is today. In doing so, the presentation will address the following main aspects: 1) the evolution of IEL; 2) its relevance to the Caricom; and 3) its implications for the court system in Caricom.

1 The Evolution of International Environmental Law

The legal domain of IEL is relatively new, but has evolved significantly as a result of world attention to the global environment. Three stages of its evolution have been identified:

Stage 1: Creating an Arsenal of Tools;

Stage 2: The transition Stage of Questioning “Effectiveness”; and

Stage 3: The Quest for Effectiveness¹

The first stage commenced with the first macro environmental conference, the 1972 United Nations Conference on the Human Environment (Stockholm), and ended with two macro conferences, the 1992 UN Conference on the Environment and Development (UNCED), and the UN Conference on the Global Programme of Action for the Protection of the Marine Environment from Land-based Activities (GPA). This stage focussed on developing substantive means, including legal and management concepts, principles and actions, with which to promote environmental sustainability.² During this stage, the Third United Nations Convention on the Law of the Sea (UNCLOS/LOS) provided a constitution (Part XII of UNCLOS) for environmental protection of not only the seas, but the planet’s global ecosystems as well, since ecologically the marine environment is inherently interconnected, directly or indirectly, with all terrestrial and freshwater

¹ Shelley Lexmond, “Improving the Effectiveness of Environmental Regimes: “Consilience,” Science, and Common Sense,” *The Future of Ocean Regime-Building: Essays in Tribute to Douglas M. Johnson*, edited by Aldo Chircop, Ted L. Mc Dorman and Susan J. Rolston, Martinus Nijhoff Publishers, 2009.

² Ibid. p490

habitats. The ecological interconnections between land and sea have resulted in overlapping legal domains for LOS and IEL due to the fact that many instruments incorporate principles of each that has brought about a melding of IEL and LOS³.

Agenda 21, 1992, and the GPA are the products of the second stage. Departing from the most legally-binding environmental instruments, both these soft-law instruments provide guidance on how to improve the overall effectiveness of environmental policies and actions. This stage, recognizing the unsound application and implementation of IEL tools, highlighted the need for effectiveness. The third stage, commencing in 1992 with the World Summit on Sustainable Development (WSSD), focussed on the need for effective implementation of IEL tools. These tools were based on IEL principles that include sustainable development, the concept of precaution, integration (several types and levels), cooperation, intergenerational equity, integrated coastal management, best available technology and best environmental practice.⁴ It is the implementation of the IEL in the Caricom that is the objective of this presentation.

2 Relevance to IEL to the Caribbean Community

Apart from Caricom states having to meet the environmental requirements of international, i.e., UN, resolutions emanating from conferences and conventions, the Caribbean has some specific responsibilities and commitments of its own for the Caribbean Sea. In 2000, the United Nations General Assembly approved Resolution 54/225, “Promoting an Integrated Management Approach to the Caribbean Sea in the context of Sustainable Development,” and in 2006 the general Assembly adopted a resolution entitled, “Towards the Sustainable Development of the Caribbean Sea for Present and Future Generations” (A/C. 2/61/L30) that secured the recognition of the Caribbean Sea as a special area in the context of sustainable development by the

³ Ibid. p490.

⁴ Opcit. p488.

international community.⁵ As a result, in 2006, the Association of Caribbean States (ACS) established a management organization for the Caribbean Sea, the Caribbean Sea Commission. The main environmental issues in the Caribbean Sea are climate change (global warming, sea level rise), coral reef degradation, trans-shipment of radio active and hazardous wastes, ocean dumping, and the overexploitation of its fisheries resources. However, within Caricom, Guyana and Belize as member States have, in terms of their large land masses and tropical forests are, important in a global environmental sense in combating world Co2 emissions that effect climate change by the preservation of their forests.

With respect to fisheries, the Caribbean Regional Fisheries Mechanism (CRFM), established by Caricom in 2004, is the common fisheries regime that has recently developed a common fisheries policy for the region. While national fisheries will be managed by national bodies, the highly migratory species will be managed by the CRFM. The surveillance and enforcement of the policy will be implemented by national agencies such as the Coast Guard and national courts. However, in the case of illegal or non-compliance activities of foreign fishing vessels, higher regional courts such as the Eastern Caribbean Supreme Court and the Caribbean Court of Justice could have important roles to play.

3 The Implication for the Court System in CARICOM

From a public law perspective, the court systems in Caricom should not be denied the opportunity to become a part of the relevant technology to the effective implementation of the tools for environmental management in the Caribbean without "appearing" to be legislating from the bench. It has been pointed out that Developments in marine technology have consistently been important drivers in the evolution of international maritime and environmental law. Private law experiences also exemplify the most

⁵ Carlyle Mitchell, "The Legacy of the Dalhousie University Ocean Studies Programme (DOSP) in the Caribbean, *The Future of Ocean Regime-Building : Essays in Tribute to Douglas M. Johnson*, edited by Aldo Chircop, Ted L. Mc Dorman and Susan (J. Rolston, Martinus Nijhoff Publishers,2009) p731.

prominent relationship of marine technology to law, which is to establish the foundation of claims to, or counter-claims against, some form of control, jurisdiction, or sovereignty over the marine environment and its resources. To avoid (or at least work to minimize) mischief claims which have the capacity to congest civil court systems, these marine technologies could become central to the prescribed means by which the public interest marine environment and its resources are to be accessed, used, regulated and managed.⁶

The court system has already been cognisant of the action taken by Caricom States to protect the environment, exemplified by the following core commissions and agencies that these States are members of:

CLC - The International Convention on Civil Liability for Oil Pollution Damage, 1969;

Basel 1989 - Convention on the Control of Trans boundary Movements of Hazardous Wastes and their Disposal, 1989;

The FUND - International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage, 1971;

MARPOL - International Convention on the Prevention of Pollution from Ships 1973/1978;

OPRC - International Convention on Oil Pollution Preparedness, Response and Co-operation, 1990; and

IMO - the International Maritime Organization.

The leading international organization engaged in the furthering of marine pollution prevention.

These commissions and agencies have concentrated mainly on oil pollution and shipping. There are however other important environmental issues that the appropriate court systems will have to address in the future.

⁶ Jay L. Batongbacal, "The Law of the Sea, Marine Technology, and social Justice," *The Future of Ocean Regime-Building : Essays in Tribute to Douglas M. Johnson*, edited by Aldo Chircop, Ted L. Mc Dorman and Susan (J. Rolston, Martinus Nijhoff Publishers,2009) p114.