Mark D Griffith and Derrick Oderson

Chapter 6

National laws as an instrument for the implementation of treaty obligations[1]

Introduction

The growth of modern environmental diplomacy over the past three decades or so has led to a growth in the number of Multilateral Environmental Agreements (MEAs), partly in response to concerns about global environmental issues and partly out of a recognition by the international community that such problems cannot be solved by an individual country, irrespective of how strong it may be, but only by collective action among nations. It is through these treaties, conventions and agreements that environmental norms and standards are established and applied. Many of these MEAs have been signed, acceded to and ratified by the Caribbean SIDS, in particular since 1992. The coverage of these MEAs is extensive and addresses a wide spectrum of environmental and natural resources issues which are critical to the environmental and sustainable development of Caribbean SIDS. A selection of some of the most important MEAs which are relevant to the environmental and sustainable use of natural resources in the Caribbean are clustered and presented in Table 6.1. The clusters identified cover, *inter alia*, wildlife and biodiversity conservation; the protection of traditional knowledge; marine and coastal resources, their management and protection and marine safety; the protection of atmospheric systems (i.e. ozone depletion and climate change); sustainable land management; waste and chemical management; and the protection of human health and environmental and cultural and natural heritage.

The growth of liberalisation has brought into sharper focus inter-linkages between trade and environment, in particular the use of environmental measures (i.e. health and safety standards, sanitary and phytosanitary measures, etc.) as non-technical barriers to trade. This broadens the scope of the multilateral agreements which warrant consideration; though not all are regarded, by some, as environmental agreements per se, they are nevertheless important, given inter-linkages between trade and the environment. Agreements which are relevant, in this regard, include the World Trade Organization (WTO) disciplines on the Agreement on Sanitary and Phytosanitary Measures; the Agreement on Technical Barriers to Trade (TBT) and the relevant aspects of the Agreement on the Trade-Related Aspects of Intellectual Property Rights (TRIPs) and the General Agreement on Trade in Services (GATS). In keeping with this trend, Paragraph 31 of the Doha Ministerial Declaration mandates, albeit restrictively, the relationship between existing WTO rules and specific trade obligations set out in MEAs, and the reduction or, as appropriate, elimination of tariff and non-tariff barriers to environmental goods and services. Also, pursuant to paragraph 32, to give particular attention to the effect of environmental measures on market access,

Table 6.1. Indicative list of selected Multilateral Environmental Agreements (MEAs) to which Caribbean SIDS Member States are party

MEA	AB	Bah	Bar	BEL	Cuba	Dom	DR	Gren	GUY	Haiti	Jam	SKN	SL	SVG	SUR	TT
Wildlife/conservation																
Convention of International Trade in Endangered Species, 1972 (CITES)	A 1997	A 1979	A 1992	A 1986	A 1990	A 1995	A 1986	A 1999	A 1977		A 1997	A 1994	A 1982	A 1988	A 1980	A 1984
Convention on the Conservation of Migratory Species (CMS)	A 2007				A 2008											
Convention on Wetlands of International Importance especially as Waterfowl Habitats (RAMSAR)	R 2005	R 1997	R 2005	A 1998	R 2001		R 2002				A 1997		R 2002		A 1985	A 1993
International Convention for the Regulation of Whaling 1948 and 1959	Ad 1982					Ad 1992		Ad 1993				Ad 1992	Ad 1981	Ad 1981		
Protocol Concerning Specially Protected Areas and Wildlife to the Convention for the Protection and Development of the Marine Environment of the Wider Caribbean, 1983 (RE)	S 1990		A 2002	A 2008	A 1998		A 1998				S 1990		A 2000	A 1991		A 1999
Biodiversity/bio-safety, traditional knowledge																
International Plant Protection Convention, Rome, 1951	Ad 2006	Ad 1997	Ad 1976	Ad 1987	R 1976	Ad 2006	Ad 1952	Ad 1985	Ad 1970	Ad 1970	Ad 1969	Ad 1990	Ad 2002	Ad 2001	S[2] 1954	Ad 1970

MEA	AB	Bah	Bar	BEL	Cuba	Dom	DR	Gren	GUY	Haiti	Jam	SKN	SL	SVG	SUR	TT
Convention on Biological Diversity, 1992	R 1993	R 1993	R 1993	R 1993	R 1994	R 1994	R 1996	R 1994	R 1994	R 1996	A 1995	R 1993	A 2003	A 1996	R 1996	R 1996
Cartagena Protocol on Bio-Safety	R 2003	R 2004	A 2002	R 2004	R 2002	A 2004	A 2006	R 2004	A 2008	S 2000	S 2001	A 2001	A 2005	A 2003	A 2008	A 2000
International Labour Organisation No. 169 Concerning Indigenous and Tribal Peoples in Independent Countries (ILO)						R 2002										
Marine protection and safety Convention on the Protection and Development of the Marine Environment in the Wider Caribbean, 1983 (Cartagena Convention) (RE)	A 1986		A 1985	A 1999	A 1998	A 1990	A 1998	A 1987			R 1987	A 1999	A 1994	A 1990		A 1986
Protocol Concerning Co-operation in Combating Oil Spills in the Wider Caribbean, 1983 (RE)	A 1986		A 1985	A 1999	A 1988	A 1990	A 1998	A 1987			A 1987	A 1999	A 1984			A 1990
Protocol Concerning Polution for Land Based Sources and Activities in the Wider Caribbean 1983 (LBS Protocol). (RE)						A 2002										
Protocol of 1973 to the International Convention for the Prevention of Pollution from Ships as Amended (MARPOL 1973/78)	A 1988	A[3] 1983	A[4] 1994	A 1995	A[5] 1992	A[6] 2000	A 1999		A 1997		A 1991	A 1997	A 2000	A 1983	A 1988	A 2000

MEA	AB	Bah	Bar	BEL	Cuba	Dom	DR	Gren	GUY	Haiti	Jam	SKN	SL	SVG	SUR	TT
International Convention on Civil Liability for Oil Pollution Damage, 1969 (CLC, 1969)	A 1997	A 1976	A 1994	A 1991			R 1975		A 1997			A 1994		A 1989		
Protocol of 1992 to Amend the International Convention on Civil Liability for Oil Pollution Damage, 1969 (CLC PROT, 1992)	A 2000	A 1997	A 1998	A 1998		A 2001	A 2000	A 1998			A 1997	A 2004	A 2004	A 2001		A 2000
Convention relating to Civil Liability in the Field of Marine Carriage of Nuclear Material, 1971 (NUCLEAR, 1971)						A 2001										
International Convention for the Establishment of an International Fund for the Compensation of Oil Pollution, 1971 (FUND, 1971)	A 1997	A 1976	A 1994						A 1997			A 1994				
Protocol of 1992 and 2003 to the International Convention for the Establishment of an International Fund for the Compensation of Oil Pollution, 1971	A 2000	A 1977	A 1998 2005	A 1998		A 2001	A 1999				A 1997	A 2005	A 2004	A 2001		A 2000
International Convention relating to Intervention on the High Seas in Cases of Oil Pollution Casualties, 1969; (INTERVENTION, 1969)		A 1976	A 1994		A 1976		R 1975		A 1977		A 1991	A 2005	A 2004	A 1999	A 1975	A 2000

MEA	AB	Bah	Bar	BEL	Cuba	Dom	DR	Gren	GUY	Haiti	Jam	SKN	SL	SVG	SUR	TT
Protocol relating to Intervention on the High Seas in Cases of Pollution by Substances other than oil, 1973 as Amended (INTER-VENTION PROT, 1973)		A 1981	A 1994								A 1991		A 2004	A 1999		
Convention on the Prevention of Marine Pollution by Dumping of Wastes and Other Matter, 1972, as Amended (LC 1972)	DI 1989		DI 1994		EF/SU 1991			DI 1973		DI 1975	DI 1991		DI 1985	DI 2001		
1996 Protocol to the International Convention on the Prevention of Marine Pollution by Dumping of Wastes and Other Matter, 1972, (LC PROT, 1996)			A 2006									A 2004			A 2007	A 2000
International Convention on Liability and Compensation from Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea (HNS Convention, 1996)												A 2004				
International Convention on Oil Pollution Preparedness, Response and Cooperation (OPRC Convention), 1990	A 1999	A 2001				A 2001			A 2002		A 2000	A 2004	A 2004			A 2000
International Convention on Civil Liability for Bunker Oil Pollution Damage, 2001 (BUNKERS 2001)											A 2004					

MEA	AB	Bah	Bar	BEL	Cuba	Dom	DR	Gren	GUY	Haiti	Jam	SKN	SL	SVG	SUR	TT
International Convention for the Control and Management of Ship Ballast Water and Sediment, 2004 (BMB 2004)			A 2007									A 2005				
Marine resources																
United Nations Convention on the Law of the Sea, 1982	R 1989	R 1983	R 1993	R 1983	R 1984	R 1991		R 1991	R 1993	R 1996	R 1983	R 1993	R 1985	R 1993	R 1998	R 1986
Agreement Relating to the Conservation and Management of Straddling Fish Stocks and Highly Migratory Species, 1995		R 1997	R 2000	R 2004									R 1996			R 2006
Chemicals/waste management																
Basel Convention on the Control of Transboundary Movement of Hazardous Waste and their Disposal	A 1993	A 1992	A 1995	A 1997	A 1994	A 1998	A 2000		A 2001	S 1989	A 2000	A 1994	A 1993	A 1996		A 1995
Rotterdam Convention on the Prior Consent Procedures for Certain Hazardous Chemicals and Pesticides in International Trade			S 1998		R 2008	A 2005	A 2005		A 2007				S 1999		A 2000	
Sustainable land management																
United Nations Convention to Combat Desertification	R 1997	A 2000	A 1997	A 1998	R 1997	A 1997	A 1997	A 1997	A 1997	R 1996	A 1997	A 1997	A 1997	R 1998	A 2000	A 2000

MEA	AB	Bah	Bar	BEL	Cuba	Dom	DR	Gren	GUY	Haiti	Jam	SKN	SL	SVG	SUR	TT
Atmospheric/climate systems																
Vienna Convention for the Protection of the Ozone Layer, Vienna, 1985	A 1992	A 1993	A 1992	A 1997	A 1992	A 1993	A 1993	A 1993	A 1993	A 2000	A 1993	A 1992	A 1993	A 1996	A 1993	A 1989
Montreal Protocol on Substance that Deplete the Ozone, 1989*	A 1992	A 1993	A 1992	A 1998	A 1992	A 1993	A 1993	A 1993	A 1993	A 2000	A 1993	A 1992	A 1993	A 1996	A 1997	A 1989
United Nations Framework Convention on Climate Change, 1992	R 1993	R 1994	R 1994	R 1994	R 1994	R 1993	R 1998	R 1994	R 1994	R 1996	R 1995	R 1993	R 1993	R 1996	R 1997	R 1994
Kyoto Protocol	R 1998	R 1999	R 2000	R 2003	R 2002	R 2005	R 2002	R 2002	R 2003	R 2005	R 1999		R 2003	R 2004	R 2006	R 1999
Protection of human health and the environment																
Stockholm Convention on Persistent Organic Pollutants (POPs), 2001	R 2003	R 2005	A 2004	S 2002	R 2007	A 2003	R 2007		A 2007	S 2001	R 2007	A 2004	A 2002	A 2005	S 2002	A 2002
Culture and natural heritage																
Convention for the Protection of World Culture and Natural Heritage, 1972	Ac 1983		Ac 2002	R 1990	R 1981	R 1995	R 1985	Ac 1998	R 1997	R 1980	Ac 1983	Ac 1986	R 1991	R 2003	Ac 1997	R 2005

* Excludes the various Amendments (London Amendment (10.8.1992); Copenhagen Amendment (14.6.1994); Montreal Amendment (10.11.1999) and Beijing Amendment (25.2.2002)).

Legend: AB = Antigua and Barbuda; Bah = The Bahamas; BEL = Belize; Bar = Barbados; Dom = Dominica; DR = Dominican Republic; Gren = Grenada; GUY = Guyana, Jam = Jamaica; SKN = St. Kitts and Nevis, SL = St. Lucia; SVG = St. Vincent and the Grenadines, SUR =Suriname and TT = Trinidad and Tobago.
A = Accession[7]; Ac= Acceptance[8]; Ad=Adherence; R= Ratification[9] and S=Signature, DI = Date of deposit of instrument; EF/Su = Date of Entry into Force or Succession; RE = Regional MEA.

See page 106 for source references.

especially in relation to developing countries, in particular the least-developed among them, and those situations in which the elimination or reduction of trade restrictions and distortions would benefit trade, the environment and development; the relevant provisions of the Agreement on Trade-Related Aspects of Intellectual Property Rights; and labelling requirements for environmental purposes. The trade and environment interface is also present in trade and economic agreements concluded between Caribbean SIDS and third States or group of States. An example of this is the Economic Partnership Agreement (EPA) concluded between the CARIFORUM States, of the one part, and the European Community and its Member States, of the other part, where the Parties[10]:

> ... reaffirm their commitment to promoting the development of international trade in such a way as to ensure sustainable and sound management of the environment, in accordance with their undertakings in this area including the international conventions to which they are party and with due regard to their respective level of development.

The interface between trade policy and the environment is likely to gain increasing importance in the foreseeable future. Unlike national law, Treaties[11] are concluded between two or more States. The process by which treaty obligations are carried out varies, and includes by legislation, executive and/or judicial means. This paper addresses the former – the use of national laws as an instrument for the implementation of treaty obligations. A related question, particularly in the context of Caribbean SIDS, is the extent to which national law is used as a tool for mainstreaming the environmental and sustainable development principles underpinning treaty obligations into national planning processes. The importance of national law to the implementation of treaty obligations, particularly with respect to MEAs, is recognised by the Programme of Action for the Sustainable Development of SIDS[12], which calls for national action to 'enact the domestic legislation required for the implementation of the wide range of international environmental conventions and agreements directly relevant to small island developing States'. This brings into focus the relationship between treaties, more specifically MEAs, and national law in Caribbean SIDS.

The dualist-monist perspectives in international law

Two theories which provide a context for understanding the relationship between international law and national law are the dualistic and monist perspectives, respectively. The theory of dualism considers international law and domestic law as two separate legal orders. International legal instruments therefore do not have direct effect in national law and their applicability is limited if they are not transformed into national legislation. The monism view, on the other hand, contends that there is unity in a given field of inquiry. International law and domestic law, viewed from the monism perspective, are considered as part of the same body of knowledge – 'Law'; the implication is that international law is adopted into national law because it is international law. Closely related to these two theoretical perspectives are the doctrines of 'incorporation'; an exemplification of the monist perspective, and that of 'transformation', which holds that rules of international law do not automatically become a part of domestic law unless expressly adopted by the State. The

determination of which doctrine is applicable to a particular Member State is usually determined by the national law of that country, usually by the constitution.

The status of international law in domestic courts is addressed by Lord Hoffman in *John Junior Higgs and David Mitchell v The Minister of National Security and Others*[13]. Though specific to the Bahamas, this case is equally applicable to countries with common law traditions. It highlights the dualist approach to international law and national law. Lord Hoffman opined that (emphasis added):

> 14. '... the fact that the constitution of the OAS (including the Statute which established and conferred powers upon the Commission) is an international treaty. In the law of England and The Bahamas, **the right to enter into treaties is one of the surviving prerogative powers of the Crown**. Her Majesty **does not require the advice or consent of the legislature or any part thereof to authorise the signature or ratification of a Treaty**. The Crown may impose obligations in international law upon the state without any participation on the part of the democratically elected organs of government.
>
> 15. But the corollary of this unrestricted treaty-making power is that **treaties form no part of domestic law unless enacted by the legislature**. This has two consequences. The first is that **the domestic courts have no jurisdiction to construe or apply a treaty**: see *JH Rayner (Mincing Lane) Ltd. v Department of Trade and Industry* [1990] 2 A.C. 418. So, in the present case, the effect of the treaty in international law may be that The Bahamas has a duty to wait indefinitely for the decision of the Commission or that it has a duty to wait a reasonable time or (given the advisory and non-binding nature of the possible recommendations of the Commission) it has no duty to wait at all. **The courts of The Bahamas have no jurisdiction to pronounce upon this question.**
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> 16. The second consequence is that unincorporated **treaties cannot change the law of the land. They have no effect upon the rights and duties of citizens in common or statute law**: see the classic judgment of Sir Robert Phillimore in *The Parlement Belge (1879)* 4 P.D. 129. They may have **an indirect effect upon the construction of statutes as a result of the presumption that Parliament does not intend to pass legislation which would put the Crown in breach of its international obligations.** Or the existence of a treaty may give rise to a legitimate expectation on the part of citizens that the government, in its acts affecting them, will observe the terms of the treaty: see *Minister for Immigration and Ethnic Affairs v. Teoh* (1995) 183 C.L.R. 273.
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> 17. **The rule that treaties cannot alter the law of the land is but one facet of the more general principle that the Crown cannot change the law by the exercise of its powers under the prerogative.** This was the great principle which was settled by the Civil War and the Glorious Revolution in the seventeenth century. And on no point were the claims of the prerogative more resented in those times than in relation to the establishment of courts having jurisdiction in domestic law. There have been no prerogative courts in England since the abolition of Star Chamber

> and High Commission. But the objection to a prerogative court must be equally strong whether it is created by the Crown alone or as an international court by the Crown in conjunction with other sovereign states. In neither case is there power to give it any jurisdiction in domestic law.'

A number of salient observations can be drawn from the above extract that are relevant to the discussion of national law as an instrument of the implementation of treaty obligations. First, it is the prerogative of the Executive Branch of Government to authorise the signing, accession and/or ratification of Treaties without the participation of the Legislative Branch of Government. In those Caribbean SIDS with common law jurisdictions, the decision to sign and to ratify a treaty is taken by the Cabinet on the advice of the relevant line Ministry, in this case Environment, in close collaboration with the Ministry of Foreign Affairs which is usually assigned the responsibility for signing treaties on behalf of the State. In many instances the end result is such that once the treaty is ratified the Executive Branch, more often than not does not take the next step to transform treaty obligations into national law. In addition, more often than not, the Legislative Branch of Government as well as the general public has little or no information on the content of the instrument which was ratified by the Executive Branch. Despite the enactment of the *Ratification of Treaties Act* (*Chapter 364*) *of the Laws of Antigua and Barbuda*, by the Parliament of Antigua which provides that 'No provision of a treaty shall become, or be enforceable as, part of the law of Antigua and Barbuda except by or under an Act of Parliament' and that 'The instrument of ratification shall be issued under the signature of the Minister responsible for External Affairs', this has not remedied the deficiency of the exclusion of the Legislative Branch in the treaty ratification process by the Parliament of Antigua and Barbuda.

Another observation is that treaties form no part of domestic law unless enacted by the legislature. This is settled case law commencing, as indicated by Lord Hoffman, with the landmark case of *The Parlement Belge*[14] and reaffirmed in *J.H. Rayner (Mincing Lane) Ltd. v. Department of Trade and Industry*[15]. The implication of this is that the domestic courts have no jurisdiction to construe or apply a treaty; nor do treaties change the national law. Hence they have no effect upon the rights and duties of citizens in common or statute law, until they are transformed into national law. It is therefore incumbent on the State to enact the necessary legislation to enable them to honour their treaty obligations. Furthermore, pursuant to Article 27 of the Vienna Convention of the Law of Treaties, a party may not invoke the provisions of its internal law as justification for its failure to perform a treaty. The situation is, however, different in Caribbean SIDS with civil law traditions. In the case of Haiti, pursuant to Haiti's Constitutional Law of 1987, MEAs automatically form part of the legal order upon ratification. The obligations contained therein are enforceable by judges through a legislative action called a Decret (Decree) to be promulgated in the official journal (see Articles 125, 276–1 and 276–2 of the Constitution Law of 1987).

Methods of transforming treaty obligations into domestic laws

Two legal systems predominate in Caribbean SIDS; those Member States with a common law tradition inherited from the British legal system and those with a civil law heritage, namely Cuba, Haiti, the Dominican Republic and Suriname. Legislation in Caribbean SIDS

take two principal forms; primary legislation as a result of an Act of Parliament and secondary legislation, consisting of statutory instruments made by primary legislation and passed in Parliament under summary procedures. Since MEAs do not have direct effect, their ratification by the Executive Branch of Government does not make them automatically part of national law. Rather they must be transformed into national law in order for them to have legal effect. This point is highlighted by Harrison, JA in *Natural Resources Conservation Authority v Seafood and Ting International Limited and DYC Fishing Limited*[16]:

> 'a treaty entered into by the executive of a sovereign state does not automatically become a part of the domestic law unless it has been incorporated by legislation. Only then do any rights and obligations arise hereunder with reference to its nationals.'[17]

Panton, J.A., in the same judgment, emphasised that

> 'It is imperative that the Convention [CITES] should be made part of the domestic legislation as early as possible – if the protection of the environment is a serious national objective. The proper regulation of matters relating to the environment is not something that should be left to individual desire or business interests. The failure to enact appropriate legislation is a recipe for chaos and unfairness.'[18]

A number of methods are employed in the common law jurisdictions of Caribbean SIDS to transform treaty obligations into national law. These methods include giving force to treaty obligations through the incorporation of the text of the treaty or the operative parts thereof; by reference; and the translation of treaty obligations into traditional legislative language by way of an Act of Parliament or through the statutory instruments made by primary legislation under summary procedures, usually in the form of Regulations. An example where the text of the treaty or the operative parts of the treaty is given force in domestic legislation is *The Shipping* (*Oil Pollution*) *Act*, 1994 as Amended 1997, Chapter 296A of the Laws of Barbados. The Convention(s) to which the Act refers are is/are identified in the definition section of the Act as 'An Act to make provision concerning oil pollution of navigable waters by ships, to provide for civil liability for oil pollution by ships and to give effect to certain international conventions relating to pollution'. In the substantive part of the Act, at Part VIII Section 56. (1), the international conventions and protocols to which the Act refers are listed[19]. Provision is made in Part VIII 57 for the resolution of conflicts, should they occur. In such circumstances the provision of the international convention or protocol prevails unless the national regulations applied by the Ministry are different.

Incorporation by reference is usually achieved by way of a statement that the particular treaty or treaties have 'the force of law' in national law. An example of this approach is the *National Conservation and Environmental Protection Act 1987 as Amended 1996* of St. Kitts and Nevis, where a number of MEAs[20] are referred to by 'short title' in the Fifth Schedule of the Act. However, a major weakness of this approach is that the institutional and substantive administrative requirements necessary for the effective implementation of treaty obligations are not spelt out in the legislation. This shortcoming can lead to uncertainty in the administration of the Act. Additional legislative action is usually required to address these uncertainties as in St. Kitts and Nevis, where the Minister responsible for Environ-

ment in the exercise of his powers conferred by 54B (1) of the *National Conservation of Environment and Protection Act, No.5 of 1987* makes the *Substances That Deplete the Ozone Layer (Control) Regulations, 2004*, to facilitate compliance with the treaty obligations of the Montreal Protocol.

Another method used to translate the treaty obligations into traditional legislative language is an Act of Parliament. This method provides more legal certainty in the implementation of treaty obligations. An example of this approach in the Caribbean SIDS is *An Act to Give Effect to the Montreal Protocol on Substances that Deplete the Ozone Layer and for Matters Concerned Thereto, 2004*, (*Cited as the Montreal Protocol* (*Controlled Substance*) *Act, 2004*) enacted by the Parliament of The Bahamas. This Act covers the substantive requirements required by The Bahamas to honour its treaty obligations for, *inter alia*, prohibition of the use of controlled substances in order to protect the ozone layer except those controlled substances used for human or animal health care application, the manufacture or sale of anything containing a controlled substance; the purchase of controlled substances without a certification card issued by the National Ozone Unit as well as the release of such substances into the ambient air. The Act also imposes an obligation on persons who service appliances and vehicles that contain or may contain controlled substances as well as persons desirous of disposing of appliances that contain a controlled substance, on the expiration of that item's useful life. The Act also prohibits the release of controlled substances to the atmosphere as well as empowers the responsible Minister to make specific regulations for carrying out the provisions of the Act.

Another approach which could be used in translating treaty obligations into traditional legislative language is selecting a basket of MEAs with similar or overlapping objectives (i.e. biodiversity) and synergistically clustering the commitments into a single coherent piece of legislation. This approach could be attractive for countries, such as those of the Caribbean, which are faced with a plethora of MEAs to implement and limited human, financial and administrative capacity to effectively do so. This approach – the Model Framework Harmonised Clustering Legislation – is the subject of a pilot project undertaken by the countries of the Organisation of Eastern Caribbean States (OECS) in which the commitments of a cluster of MEAs on biodiversity are translated into one piece of 'model law'. The model law could subsequently be used by individual countries of the OECS as the basis for translating the treaty obligations of the selected MEAs into national law. The overall objective is to develop a holistic and integrated model law that implements five global Conventions – Convention on Biological Diversity (Rio de Janeiro, 1992); Convention on the International Trade in Endangered Species of Wild Flora and Fauna (Washington, 3 March 1973); Convention on the Conservation of Migratory Species of Wild Animals (Bonn, 23 June 1979); Convention for the Protection of the World Cultural and Natural Heritage (Paris, 23 November 1972); and Convention on Wetlands of International Importance Especially as Waterfowl Habitat (Ramsar, 2 February 1971) and the regional MEA on Specially Protected Areas and Wildlife (SPAW) Protocol to the Convention for the Protection and Development of the Marine Environment of the Wider Caribbean (Cartagena des Indias, 24 March 1983) – related to the management and protection of biological diversity[21].

Treaty obligations can also be transformed into national law by way of regulations, under the power conferred by primary legislation. With the exception of a small number of Caribbean SIDS with common law jurisdictions; notably, The Bahamas, Jamaica and Saint Lucia, the substantive obligations under the Montreal Protocol have been transformed into national law by way of regulations. Hence the St. Kitts and Nevis *Substances That Deplete the Ozone Layer (Control) Regulations, 2004*, under the *National Conservation and Environmental Protection Act 1987 as Amended 1996*, and the Montreal Protocol (Substances that Deplete the Ozone Layer) Legislations and Regulations (2006) in Dominica are example of where this approach is being used. The principal regulation, the Belize *Pollution* (*Amendment*) *Regulations, 2002 Part XII Prohibition Of The Manufacture Of Ozone Layer Damaging Substances*[22] made by the Minister responsible for the Environment in exercise of the powers conferred by Section 21 and 44 of the Environmental Protection Act (Cap. 328 of the Revised Laws of Belize 2000), is another example of the use of regulations to transform treaty obligations into national law.

Notwithstanding the various methods which are employed in Caribbean SIDS for transforming treaty obligations into national law, a major constraining factor to achieving this is the availability of adequate legal drafters sufficiently knowledgeable of these instruments, their benefits and costs and implications for national development to expeditiously transform them into national law. This is one of the critical gaps that have implications for effective MEA implementation in Caribbean SIDS. This is one area in which investments could be made by the international community to enable Caribbean SIDS to increase their capacity in the implementation of MEAs.

Learning the hard way: Examples from Caribbean SIDS environmental case law

The transformation of treaty obligations into national law is of critical importance as it gives them legal effect in national jurisdictions. A failure to do so means that those provisions are unenforceable between individuals and entities within a state and any action taken to enforce them would be to act without any legal basis. This lesson has been learnt the hard way by Jamaica in its attempt to enforce CITES. Though Jamaica acceded to CITES in 1977, this MEA was never transformed into its national laws. It enforceability is a central issue in *Natural Resources Conservation Authority v Seafood and Ting International Limited and DYC Fishing Limited*[23].

Seafood and Ting applied to NRCA, the Competent National Management Authority for CITES[24], for a permit to export 227,000 pounds of queen conch (*strombus gigas*), an Annex II listed species[25]. The annual national quota for harvesting and exporting queen conch is set by the Ministry of Agriculture, subject to the approval of the Competent National Authority for CITES, on the advice of a Scientific Authority which it appoints, and which determines whether or not the amount being harvested would be detrimental to the preservation of the species. NRCA in turn advises the CITES Secretariat regarding approval or non-approval. The Convention requires NRCA, as the competent authority designated by Jamaica, to issue a CITES permit before exports of conch can be received by another state party to the Convention.

The NRCA refused to grant the permit on the grounds that the 'Fisheries Division of the Ministry of Agriculture has not approved the granting of the same', and referred the company to the Ministry of Agriculture which declined to grant the permit advising that '... only the Minister of Agriculture can grant permission to obtain allocations for permit to export'. The companies applied by letter to the Minister of Agriculture, but did not receive a reply from the Minister. In the meantime, DYC Fishing was facing mounting unpaid bills. Against these circumstances both Seafood and Ting and DYC Fishing issued writs and an *ex parte* mandatory injunction was granted by Orr, J. on May 31, 1999. The NRCA filed a summons to discharge the said injunction which was dismissed on June 14, 1999 (see an excerpt of the ruling on page 94).

Similarly in *Talisman (Trinidad) Petroleum Ltd. v The Environmental Management Authority*[26] the issue of the enforceability of an MEA – this time the Convention on Wetlands (The Ramsar Convention, Iran, 1971) – was the centre of attention. In this case, the application by Talisman for a Certificate of Clearance (CEC) under the Certificate of Environmental Clearance Rules 2001 (CEC Rules) to undertake a seismic survey in a licensed area, of which an Overlap Area (32 sq. km) falls within the Nariva Swamp and 5 sq. km of the Overlap Area lies within the Wetland proper, was denied. The two primary grounds for refusal to grant the CEC were firstly that the Nariva Swamp had been designated for inclusion in the Ramsar List of Wetlands of International importance under the Ramsar Convention, Iran, 1971. Secondly, that the area is designated an Environmentally Sensitive Area based on the fulfilment of the requirements laid out in Schedules I, II and III of the Environmentally Sensitive Areas Rules, 2001; that the Nariva Swamp Ramsar Site and the Bush Bush Wildlife Sanctuary are Prohibited Areas under the Forests Act, Chap. 66:01; and the Bush Bush Wildlife Sanctuary is declared as a Wildlife Sanctuary under the Conservation of Wildlife Act, Chap. 67:01. The decision was appealed by the respondent on the grounds that although the Ramsar Convention was ratified by the Government of Trinidad and Tobago, it was not embodied into the laws of Trinidad and Tobago, since there was no Act of Parliament incorporating it into local laws; and that while the Convention will be binding upon the Government of Trinidad and Tobago as a signatory thereto, its terms cannot be enforced unless they are brought into effect by local enactment.

These two Caribbean SIDS cases underscore the importance of the role played by national law as an instrument in the implementation of treaty obligations and its contribution to the incorporation of environmental and sustainable principles in domestic legislation. In the Jamaican case, the failure to transform treaty obligations with respect to the issuance of permits in respect of the export of conch from Jamaica proved to be a hindrance to the effective management of its biodiversity. Further, the Minister of Agriculture has no power under any statute or any authority otherwise to assume the right to issue permits to regulate quotas or to dictate or advise or influence who should be granted quotas or in what amounts. This deficiency in Jamaica's national laws was subsequently rectified by the promulgation of *The Endangered Species (Conservation and Regulation of Trade) Act*, 2000 which incorporates Jamaica's obligations under CITES into national law. This Act governs both international and domestic trade in endangered species.

Both of these cases illustrate a general principle of law in common law jurisdictions that

treaties form no part of domestic law unless enacted by the legislature and that the domestic courts have no jurisdiction to construe or apply a treaty. These cases are applicable not only to Jamaica and Trinidad and Tobago, but also to the Member States of the Caribbean Community in general, where the transformation of treaty obligations into national law is the exception rather than the norm. These cases underscore a general trend in Caribbean SIDS with common law jurisdictions of not paying due diligence to completing the necessary legislative action to give legal effect to many of the MEAs to which they are party.

A success story: Jamaica and the implementation of the Montreal Protocol

Notwithstanding the general trend of the failure of many Caribbean SIDS to take the necessary legislative action to transform treaty obligations into national law, there are examples where this has successfully been done. An example of this success is the implementation of the Montreal Protocol (MP) for the phase-out of Ozone Depleting Substances (ODS) which Jamaica ratified in March 1993. The Montreal Protocol requires Developing countries State Parties to gradually phase out the production and consumption of chlorofluorocarbons (CFC) and other ODS. Jamaica commenced its country programme in 1993, in which the Government set the framework for ozone phase-out by adopting clear and ambitious regulations (eventually grouped under an Ozone Act) and established a National Ozone Commission that was also instrumental in providing guidance and ensuring the development and implementation of all national activities[27]. An integral part of the Government's strategy included the ambitious goal of eliminating Annex A Group 1 CFCs consumption completely by 31 December 2005, four years ahead of the phase-out schedule applicable to developing countries under the Montreal Protocol[28].

One of the key instruments used to achieve this target was the codification of the treaty obligations into national law. Since 1991 Jamaica has used several orders and legislation to phase out the production and use of Ozone Depleting Substances as required under the Montreal Protocol. These include the Trade Amendment Order in 2002, which provided for the prohibition of the sale of chlorofluorocarbons (CFC); the Trade (Prohibition of the Importation of Halon) Order in 2002, which bans the importation of virgin halons; and the Pesticides Regulations of 1996[29]. These legislative measures culminated in the enactment of the Ozone Act 2003. These actions contributed to Jamaica meeting its target of early phase-out four years ahead of schedule as required by the Convention and thereby becoming the first country in Latin America and the Caribbean to eliminate CFC consumption sustainably. For its outstanding achievement Jamaica's National Ozone Unit was one of four recipients of the 2003 Outstanding Ozone Unit Award for meeting obligations under the Montreal Protocol in phasing out the use of Ozone Depleting Substances (ODS)[30].

This achievement, however, cannot be attributed solely to the transformation of treaty obligations into national law but instead to a combination of factors: including the sustained and unambiguous commitment of the Government to the implementation of the Protocol provided the context for the country's implementation strategy; the establishment of a strong National Ozone Unit with the necessary authority and capacity and capability for providing guidance and ensuring development and implementation of all relevant activi-

ties proved to be an important factor in Jamaica's success; the establishment of strong intersectoral linkages between various entities of the public service, including the policy arm in terms of the Ministry with responsibility for the Environment; and finally, the regulatory arm in the form of the Ministry of Trade and the Enforcement arm in the form of Customs, the police, fire and Coast Guard, were critical in ensuring compliance.

Another critical factor contributing to Jamaica's compliance and the adoption of ozone friendly technologies is the co-operation established between public sector and non-state actors, in particular, the main private sector industry stakeholders as well as the academic community, particularly the University of Technology. The main private sector stakeholders – the air conditioning and refrigeration sub-sector – were able to organise themselves into the Air Conditioning and Refrigeration Association, thereby influencing, in a more systematic manner, the implementation of national and regional activities. This is supported by a demonstrated commitment by the academic community in Jamaica, in particular the University of Technology, to the institutionalisation of capacity building and development, including research and technology adaptation. The role played by the University system in this regard, as a means of ensuring sustainability, is of significance. A robust and continued public education and awareness campaign also contributed to informing the relevant stakeholders in both the public and non-state sectors as well as the general populace about Jamaica's obligations under the particular international instrument. This led to the informed participation of the key stakeholders; an essential element for effective MEA implementation.

Equally important were the efforts taken as part of the Montreal Protocol (MP) implementation strategy, which comprised both national and regional action, with the view to institutionalising capacity development and awareness building about the substantive requirements for honouring the country's obligations under the Montreal Protocol. The success of this is exemplified by the inclusion of specific guidelines on MP implementation in the training of custom officers as well as inclusion in the curricula of the University of Technology, and formal training on MP implementation for air conditioning and refrigerant specialists. The systematic approach to compliance of the treaty obligations of the MP in Jamaica can also be attributed, in part, to the incentive structure provided by the Protocol by way of the availability of financial resources through the Multilateral Fund for technical cooperation including transfer of technology in support of compliance and the effective implementation of the UNEP Compliance Assistance Programme (CAP). The support provided by Jamaica's participation in the Caribbean National ozone officers' Network[31] also proved to be valuable. The incentive structure provided by the international legal instrument itself and the supporting structures provided by the international community to facilitate the effective implementation of the MEA is also important. Lessons can be drawn from the implementation of the MP to guide Caribbean SIDS in the implementation of other MEAs.

An indirect effect upon the construction of statutes: Catalysts for the development of national environmental law

An indirect effect of the signing and ratification of MEAs by Caribbean SIDS is the potential they have to catalyse the construction of national environmental legislation. This, as

Lord Hoffman opined in *John Junior Higgs v Minister of National Security and Other*[32], arises as a result of the presumption that Parliament does not intend to pass legislation which would put the Crown in breach of its international obligations. The indirect effect of the decision by Caribbean SIDS to be bound by treaties and the implication of this on the construction of national laws takes a number of forms. Judicial action on the applicability of any rights and obligations arising under such treaties with reference to its nationals could serve as a driver for the construction of domestic environmental legislation. This is the case in *Natural Resources Conservation Authority v Seafood and Ting International Limited and DYC Fishing Limited*[33] which led to the promulgation of *The Endangered Species* (*Conservation and Regulation of Trade*) *Act*, 2000 which incorporates Jamaica's obligations under CITES into national law.

Another indirect impact of MEAs on the construction of national law is the requirements that are necessary to ensure compliance. This is best illustrated in Caribbean SIDS with respect to the implementation of the MP. Though many of the Caribbean SIDS signed and ratified the Montreal Protocol in the early to mid-1990s, the transformation of treaty obligations into national law to support the gradual phase-out of the production and consumption of chlorofluorocarbons (CFC) and other ODS is more recent as, for example, the Belize *Pollution* (*Amendment*) *Regulations, 2002, Part XII Prohibition Of The Manufacture Of Ozone Layer Damaging Substances*[34] and the *Refrigeration Technicians* (*Licensing*) *Bill, 2007*, an Act to provide for the registration and licensing of refrigeration and air conditioning technicians; to regulate the practice of refrigeration and air conditioning services; and to provide for matters connected therewith or incidental thereto.

In instances where treaty obligations are not being honoured, as in the case of the Montreal Protocol, a country will be deemed as being in non compliance. Such is the case with a number of Caribbean SIDS, such as Barbados and Haiti, which as of November 2008 were declared as non-compliant with Article 4B of the Montreal Protocol which requires the establishment of licensing systems. In the case of Barbados, until the regulations establishing the licensing system had been gazetted and had become fully operational, the country could not be treated as a Party with a fully operational licensing system as envisaged under Article 4B of the Montreal Protocol[35]. The Implementation Committee, in keeping with its mandate, then had to:

> (b) '… request each of Barbados, Eritrea, Haiti and Tonga to complete the process of establishing and operating a licensing system and to notify the Secretariat immediately after its licensing system becomes operational in accordance with its obligations under Article 4B of the Protocol'[36];

Subsequently, both Barbados and Haiti undertook the necessary legislative amendments under their respective Customs legislation to establish a licensing system for Ozone Depleting Substances (ODS). In the case of Barbados, this was achieved by way of the *Customs* (*List of Prohibited and Restrictive Import and Export*) *Order, 2009*.

In some instances, a country anticipating ratifying a Convention might decide in advance to make provision in its national law for compliance with its potential obligations under that particular instrument. This is the case with Jamaica, which in anticipation of becom-

ing a Party to the Basel Convention, drafted regulations under s. 38(1)(d) of the Natural Resources Conservation Authority Act for implementation of this MEA[37]. The signing of trade and economic agreements between Caribbean SIDS and third States or groups of States, as in the case of the Economic Partnership Agreement concluded between the CARIFORUM Member States, on the one part, and the European Union and its Member States, on the other part (CARIFORUM/EU EPA), also has an indirect influence on MEA implementation. Pursuant to Article 72 (c) of the CARIFORUM/EU EPA, the Parties agree to co-operate and take, within their own respective territories, such measures as may be necessary, *inter alia*, through domestic legislation, to ensure that:

> 'Investors do not manage or operate their investments in a manner **that circumvents international environmental or labour obligations arising from agreements to which the EC Party and the Signatory CARIFORUM States are parties.**' [Emphasis added.]

Another potential indirect effect on the construction of national legislation is likely to be as a result of the application of Caribbean Community Law to Caribbean SIDS which is part of the CSME Zone[38]. This is likely, given that pursuant to Article 217 of the *Revised Treaty of Chaguaramas Establishing the Caribbean Community Including the CARICOM Single Market and Economy* the Caribbean Court of Justice (CCJ) in its original jurisdiction is required to apply such rules of international law as may be applicable. This presumably includes international environmental law. However, at the time of writing there is little precedent in Caribbean Community Law to definitely state the role international environmental law will have in influencing the jurisprudence of the CCJ on environmental and sustainable development issues in the CSME zone.

The transformation of treaty obligations into national law: Fundamental but not necessarily a panacea for effective implementation at the national level

The transformation of treaty obligations into national law is a fundamental and important aspect of mainstreaming environmental and sustainable development principles into the legal structures of Caribbean SIDS. In giving the treaty objectives legal effect, it also confers any rights and obligations arising hereunder with reference to its nationals. However the transformation of treaty obligations into national law in and of itself is not a panacea for effective implementation at the national level, nor an assurance that the principles contained therein are known by a wide cross-section of the populace. As discerned from the Jamaica success story in the implementation of the MP, transformation of treaty obligations into national law is only one step, albeit a very fundamental and important one. Other factors are also important for effective implementation. A few of these are highlighted, including:

- A commitment on the part of the policy-makers to the mainstreaming of environmental and sustainable development principles in national and sectoral planning.
- A strong institutional mechanism at the national level to provide the necessary

leadership and guidance with respect to MEA implementation, as many stakeholders are usually unaware of the obligations contained in the various MEAs and the costs and benefits of MEAs.

- The effective engagement of stakeholders, in particular the interest groups which are key to effective implementation. As deduced from the Jamaica experience, the effective implementation of the MP requires the active participation of a wide cross-section of stakeholders from both the public and non-state sector including the private sector and academia.
- The availability of adequate financial resources to enable actions to be taken in support of the implementation of treaty obligations. In many instances resources might be made available to enable Caribbean SIDS to undertake the various national action plans required under MEAs; however, limited resources are available to implement specific actions arising out of those action plans.
- The institutionalisation of capacity development for the key stakeholders that are required for the effective implementation of the particular MEA. This involves more than the convening of training workshops, but more fundamentally, mainstreaming implementation into existing processes and structures.

From a governance standpoint, the responsibility for MEA implementation in Caribbean SIDS with common law traditions is spread among various entities. For example, the marine protection and safety cluster highlighted in Table 6.1, with the exception of the Cartagena Convention and the Global Programme of Action, usually falls within the mandate of the Ministries dealing with international transport, with a focus on shipping, rather than on marine resources management, aspects. The usefulness of the international instrument as a resource management tool is usually not given the attention it deserves. In addition, the MEAs in the marine resources cluster (see Table 6.1) are usually shared between the Ministry of Foreign Affairs, with the responsibility for the UNCLOS; the Ministry of Agriculture in the case of those instruments relating to living resources; and the Ministries of Environment which unusually have the responsibility for the other related marine resources. With respect to most of the other MEAs highlighted in Table 6.1, it is usually the Ministries of Environment under which these instruments fall, with exceptions. For example, some Ministries of Agriculture have responsibility for the UNCCD. What emerges from an environmental and natural resources management standpoint is a fractured approach to the implementation of MEAs as instruments for mainstreaming environment and sustainable development principles in national and sectoral planning processes.

To illustrate this point, take for example the cluster of MEAs in Table 6.1 in the marine resources and marine protection and safety clusters. Together these MEAs address a number of critical issues of relevance to the protection and sustainable use of living and non-living resources of the marine environment in Caribbean SIDS including: pollution of the marine environment from both ship-generated and land-based sources and the sustainable use of marine biodiversity including fisheries management as well as non-living resources. These MEAs along with other binding (i.e. the relevant elements of the Convention on Biological Diversity, the Convention on the Regulation of Whaling, etc.) and non-binding multilateral agreements (i.e. the Global Programme for Action for the Protection of the Marine Environment from Land Based Sources, FAO Code of Conduct for

Responsible Fisheries, the BPOA, the United Nations General Assembly Resolutions on the Integrated Management of the Caribbean Sea, etc.) provide a framework for the integrated management of the Caribbean Sea; the next frontier for Caribbean SIDS development. However, in the view of the authors, these instruments are not implemented in a holistic and systematic manner so as to facilitate the integrated and sustainable management of the coastal, marine and ocean resources of Caribbean SIDS.

Singh[39] identifies a number of shortcomings in the governance framework of the MEAs addressing the protection and sustainable use of coastal marine resources of the Caribbean Sea including: the sectoral orientation of these MEAs with their own forms of governance, without much regard for synergies between them; the repetitiveness of some of the provisions of the instruments; sometimes different implementing entities at the national level, reflecting the sectoral orientation of the instruments and poor implementation. Despite being parties to these MEAs, the effective management of the coastal, marine and ocean resources of Caribbean SIDS needs strengthening. Caribbean SIDS could benefit from the rationalisation of their national governance structure with respect to the various MEAs addressing marine protection and safety and the sustainable management of living and non-living resources. This, however, should be couched in the broader context of the region's strategic development goals for its coastal, marine and ocean resources, which of necessity must include consideration of the delimitation of their Economic Exclusive Zones (EEZ); the expansion of the merchant marine industry as well as the marine leisure industry, particularly those elements which lend themselves to regional and/or sub-regional development (i.e. yachting industry); fisheries management; pollution control and exploitation of living and non-living resources and the provision of sufficient waste receiving and treatment infrastructure at ports[40].

Conclusion

Participation by Caribbean SIDS in MEAs has costs and benefits. There is no doubt that Caribbean SIDS's participation in a number of MEAs has been beneficial. Their participation also comes with challenges, which are exacerbated by their limited human, technical and financial resources. One such challenge is the transformation of treaty obligations into national law, which is necessary to give legal effect to treaty obligations and in conferring the rights and obligations, with reference to its nationals. The experience in Caribbean SIDS of transforming treaty obligations into national law has been at best uneven. This paper has highlighted a number of factors, including: lack of adequate capacity in environmental drafting; inadequate institutional arrangements for the implementation of MEAs; lack of awareness by both the legislative branch of Government and the public in general about the obligations contained in the various MEAs and the implications for national and regional development; the perception that the implementation of MEAs is a Government responsibility, alone; and the inability of officialdom to perceive the MEAs in a broader sustainable development context which have collectively impeded the effectiveness of MEA implementation in Caribbean SIDS. With increasing focus being placed on the establishment of 'green economies' as the direction of the future, it is likely the Caribbean SIDS will pay more attention to the greening of their economic policies. This will create new oppor-

tunities for examining the costs and benefits of MEAs in Caribbean SIDS. In addition, there is a need in Caribbean SIDS to recognise the application of MEAs as part of a wide process for the support of and the development of an 'environmental industry'[41].

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Notes

1 The views in this paper are those of the authors and do not represent those of any regional or international organisation. Some of the ideas in this paper are drawn from a larger study on 'Environment and the Multilateral Trading System' undertaken by the principal author as part of his UN Sabbatical Award, 2005/2006. The recipient of the Award was hosted by the Economic Affairs Department of the Commonwealth Secretariat in London. The principal author, during his sabbatical, contributed to the conceptualisation of this article in collaboration with Ms. Constance Vigilance of the Small States, Environment and Economic Management Section of the Economic Affairs Division of the Commonwealth Secretariat.

2 On 22 April 1977, the Director-General received from Suriname a formal declaration of succession stating that Suriname considers itself bound by the Convention, which had been previously declared applicable to Suriname by the Kingdom of the Netherlands, and that it accepts the rights and obligations arising therefrom.

3 (with the exception of Annexes III, IV and V of the Convention), (in respect of Annex V) 12 October 1990, (in respect of Annex III) 11 August 1992.

4 (with the exception of Annex IV of the Convention) in respect of Annex IV) 26 November 2001.

5 (with the exception of Annexes III, IV and V of the Convention) (in respect of Annex V) 12 February 2002.

6 (with the exception of Annexes III and IV of the Convention) (in respect of Annex III) 31 August 2001.

7 'Accession' is the act whereby a state accepts the offer or the opportunity to become a party to a treaty already negotiated and signed by other states. It has the same legal effect as ratification. Accession usually occurs after the treaty has entered into force. See Arts.2 (1) (b) and 15, Vienna Convention on the Law of Treaties between States and International Organizations or between International Organizations 1986.

8 The instruments of 'acceptance' or 'approval' of a treaty have the same legal effect as ratification and consequently express the consent of a state to be bound by a treaty. Arts.2 (1) (b) and 14 (2), Vienna Convention on the Law of Treaties 1969.

9 Ratification defines the international act whereby a state indicates its consent to be bound to a treaty if the parties intended to show their consent by such an act. See Arts.2 (1) (b), 14 (1) and 16, Vienna Convention on the Law of Treaties 1969.

10 See Chapter 4, Article 183.4 of the CARIFORUM/EU EPA, Official Journal of the European Union 30.10.2008.

11 Article 2.1(a) of the Vienna Convention on the Law of Treaties, 1969, defines a 'treaty' as an international agreement concluded between States in written form and governed by international law, whether embodied in a single instrument or in two or more related instruments and whatever its particular designation.

12 See X. National Institutions and Administrative Capacity, paragraph 49. (ix).

13 Privy Council Appeal No. 45 of 1999, *John Junior Higgs and David Mitchell v The Minister of*

National Security and Others, From The Court of Appeal of The Bahamas, Judgment of The Lords of The Judicial Committee of The Privy Council, delivered the 14 December 1999.

14 (1879) 4 P.D. 129.

15 (1990) 2 A.C. 418.

16 Judgment in the Jamaica Court of Appeal, Supreme Court Suit C.L. 1999/D-058 and Suit No. C.L. 1999/S-134, Motions 16 and 17 of 1999, July 1, 1999.

17 Per Harrison, J.A. in *Lewis v. Attorney General et al.* (unreported) S.C.C.A. 104/98 dated 18th December, 1988, at page 8, relying on *Maclaine Watson and Co. Ltd. v Trade and Industry* (1989) 3 All E.R.523 at p. 544.

18 Ibid.

19 These include (a) Protocol of 1978 relating to the International Convention for the Prevention of Pollution from ships (1973 as amended); (b) International Convention relating to Intervention on the High Seas in Cases of Oil Pollution Casualties, 1969; (c) Protocol of 1973 relating to Intervention on the High Seas in Cases of Pollution by Substances other than oil; (d) International Convention on Civil Liability for Oil Pollution Damage, 1969; (e) Protocol of 1976 to the International Convention on Civil Liability for Oil Pollution Damage; (f) International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage, 1971; (g) Protocol of 1976 to amend the International Convention on the Establishment of an International Fund for Oil Pollution Damage; (h) International Convention on the Prevention of Marine Pollution by Dumping of Wastes and Other Matter, 1972; (i) Protocol of 1992 to the International Convention on Civil Liability for Oil Pollution Damage; and (j) Protocol of 1992 to the International Convention on the Establishment of an International Compensation Fund for Oil Pollution Damage.

20 CITES, UNFCC, CBD, the Vienna Convention for the Ozone Layer and the Montreal Protocol, 1987; Basel Convention, Civil Liability Convention, 1969 and the International Oil Pollution Compensation Fund Convention, 1971.

21 Daniel Judy, UNEP/OECS Model Harmonised Biodiversity Project, Final Report, January 2006, in UNEP/OECS Model Harmonised Biodiversity Legislation Project, Final Output, June 2006, UNEP and OECS.

22 Gazetted 20th June, 2002.

23 Judgment in the Jamaica Court of Appeal, Supreme Court Suit C.L. 1999/D-058 and Suit No. C.L. 1999/S-134, Motions 16 and 17 of 1999, July 1, 1999.

24 The NRCA as the designated Management Authority for Jamaica in accordance with Article 9(1) (a) of the Convention.

25 The queen conch was placed in Annex II in 1992 as an indication that it had to be strictly regulated in order to avoid its extinction. The Convention provides that an export permit is necessary for specimens of species listed in the Appendices.

26 *Talisman (Trinidad) Petroleum Ltd. v the Environmental Management Authority*, Before The Environmental Commission In The Matter Of The Environmental Management Act, 2000 And The Certificate Of Environmental Clearance Rules, 2001, Republic Of Trinidad And Tobago, No. EA3 of 2002.

27 UNEP, 'Celebrating 20 years of progress in 2007'. Recognition of some of the Exemplary Projects that have been undertaken pursuant to Article 10 of the Montreal Protocol, Ozone Secretariat.

28 Ibid.

29 Brown, Jeremain O, Ozone Act to be Passed by Year-End, Tuesday, Ministry of Lands and Environment, Jamaica Information Service, March 15, 2005, www.jis.gov.jm

30 Jamaica Information Service, Jamaica Applauded For Efforts To Phase Out Ozone Depleting Substances, Ministry of Lands and Environment, Friday, January 16, 2004.

31 Since 1997 this Network has met twice yearly with the aim of having a sustained capacity building forum for National Ozone Officers in the implementation of the Montreal Protocol.

32 Privy Council Appeal No. 45 of 1999, *John Junior Higgs and David Mitchell v. The Minister of National Security and Others*, From The Court Of Appeal Of The Bahamas, Judgment Of The

Lords Of The Judicial Committee Of The Privy Council, Delivered the 14 December 1999.
33 Judgment in the Jamaica Court of Appeal, Supreme Court Suit C.L. 1999/D-058 and Suit No. C.L. 1999/S-134, Motions 16 and 17 of 1999, July 1, 1999.
34 Gazetted 20th June, 2002.
35 UNEP, Report of the Implementation Committee under the Non-compliance Procedure for the Montreal Protocol on the work of its Forty-first Meeting, UNEP/OzL.Pro/ImpCom/41/8, Doha, 12–14 November 2008; Distr.: General: 24 October 2008.
36 Ibid, See Recommendation 41/18.
37 Davis-Mattis Laleta. 'Jamaica's Commitment to the Conservation and Management of Natural Resources Ten Years in Retrospect'. Unpublished Paper, National Environmental and Planning Agency; Kingston, Jamaica, March 2002.
38 The CSME Zone is used to encompass those countries of the Caribbean Community that are part of the CSME. These include Antigua and Barbuda, Barbados, Belize, Dominica, Grenada, Guyana, Jamaica, St. Kitts and Nevis, St. Lucia, St. Vincent and the Grenadines, Trinidad and Tobago and Suriname.
39 Singh, Asha (2008). 'Governance in the Caribbean Sea: Implications for Sustainable Development'. Research Paper, United Nations/Nippon Foundation Fellowship, 122 pp.
40 Griffith, MD and D Oderson. *The Strengthening of the Inner Circle for Environment and Development: The Case of the Caribbean Community*. Prepared for CaribInvest (West Indies) Limited, February 2009.
41 For a more detailed discussion on this issue with respect to the CSME Zone, see Griffith, MD, *A Concept Note on Trade in Environmental Services: Towards the Formulation of a Strategic Framework and Action Plan for the Caribbean Community Single Market and Economy* (CSME). Prepared for CaribInvest (West Indies) Limited and the Caribbean Community Secretariat (CARICOM), January 2009.

Table 6.1
Source: Compiled by the authors from a number of sources. Sources by clusters:
Wildlife/conservation cluster: CITES Secretariat at www.cites.org; CMS Secretariat at http://www.cms.int/; RAMSAR Convention Secretariat at www.ramsar.org; International Whaling Commission at www.iwocoffice.org/commission/member.htm and UNEP at http://www.cep.unep.org/cartagena-convention/#status;
Biodiversity/Bio-safety and traditional knowledge: International Plant Protection Convention, Legal Office at http://www.fao.org/Legal/TREATIES/004s-e.htm; Convention on Biological Diversity Secretariat at www.cbd.org; ILO Convention on Indigenous and Tribal Peoples, 1989 (No. 169), A Manual at www.ilo.org (Date of Ratification as of January 2002;
Marine protection and safety: UNEP at http://www.cep.unep.org/cartagena-convention/#status and IMO, Status of Multilateral Conventions And Instruments In Respect Of Which The International Maritime Organization Or Its Secretary-General Performs Depositary Or Other Functions as at 31 December 2007, 006 IMO, www.imo.org;
Marine resources: United Nations, Division for Ocean Affairs and the Law of the Sea, Office of Legal Affairs, at www.un.org/Depts/los/reference_files/ chronological_lists_of_ratifications.htm#;
Chemical/waste management: Basel Convention Secretariat at http://www.basel.int/convention/about.html and the Rotterdam Convention at http://www.pic.int/home.php?type=t&id=63;
Sustainable land management: UNCCD Secretariat at http://www.unccd.int;
Atmospheric/climate systems: UNEP Ozone Secretariat at http://ozone.unep.org/Ratification_status/ and UNFCC Secretariat at www.unfcc.org;
Protection of human health and the environment: Stockholm Convention Secretariat at http://chm.pops.int/Countries/StatusofRatification/tabid/252/language/en-US/Default.aspx;
Culture and natural heritage: UNESCO World Heritage at www.unesco.org