

DOMESTIC PROGRAMS FOR IMPLEMENTING MULTILATERAL ENVIRONMENTAL AGREEMENTS: ESTABLISHING MEA IMPLEMENTATION MECHANISMS

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SUMMARY

Describes the framework of legislative, institutional structure and processes for Caribbean multilateral environmental agreements (MEA) implementation including the process of Caribbean treaty making, the requirement for implementing legislation, and the utility of having national implementing institutions. The place of regional project-based activity is briefly outlined.

1 ENVIRONMENTAL TREATY MAKING

The legislative/institutional structure and process for establishing MEA implementation mechanisms are inseparably connected with the general principles of environmental treaty making. In the Caribbean, the Cabinet is responsible, on behalf of the State, for the adoption of all international environmental agreements. This is in keeping with basic constitutional principles that the Executive has a monopoly on treaty making. The Minister of Foreign Affairs generally represents Cabinet in this regard but there are several exceptions to this rule. For example, in relation to MEAs of especial global significance it may be that the Prime Minister (even if not the Minister of Foreign Affairs) signs on behalf of the State. A Minister in relation to whose portfolio the subject matter of a particular treaty falls may be authorized by Cabinet to adopt that treaty. Other representatives may be empowered to act on behalf of the State by the conferral of "full powers".

As a general rule, there is no necessary conjuncture between environmental treaty making and any assessment of the

institutional/managerial resources/capabilities available for implementation. However in one case the lead environmental agencies is empowered to negotiate environmental treaties initiated by regional and international inter-governmental organizations (see: National Conservation and Environment Protection (Amendment) Act, 1996 (St Christopher and Nevis) (No. 12 of 1996), sect. 4 2B (iv)). Less pointedly the agency may be authorized to establish and coordinate institutional linkages locally, regionally, and internationally (see e.g., Environmental Management Act 1995 (Act No. 3 of 1995) (Trinidad & Tobago), sect. 16 (1) (i)).

2 THE REQUIREMENT FOR AND TYPOLOGY OF IMPLEMENTING LEGISLATION

2.1 Requirement

The law of the Caribbean for the most part knows nothing, generally speaking, of self-executing treaties: the operating assumption is that legislation is required to give the force of law to environmental treaty obligations. This is the basis for the decision given, for example, by the Court of

Appeal of Jamaica in the Natural Resources Conservation Authority v. Sea Food and Ting (1999) in respect of the Convention on International Trade in Endangered Species of Flora and Fauna (CITES). Although Jamaica is a contracting party to CITES the Natural Resources Conservation Authority could not impose a quota and export permit system to implement that Convention in the absence of specific enabling legislation enacted by the Parliament of Jamaica.

Given that treaty law generally has no force in Caribbean law without implementing legislation, it might be expected that when a Caribbean State takes the solemn decision to become a party to a treaty, implementing legislation would follow as a matter of course. This logic was not reflected in British practice, which is replete with treaties that have not been followed by enacting legislation. The situation in the Caribbean, until the departure from tradition by Antigua and Barbuda in its pioneering Ratification of Treaties Act (cap. 364), universally reflected the illogicality of the British tradition inherited by Caribbean states.

2.2 Typology

The speed of legislative response to the international obligation to enact enabling statutes could be a function of the typology of legislation adopted. In basic terms enabling legislation may implement a MEA by re-enactment; i.e., by repeating verbatim or by paraphrase, the substantive provisions of the treaty to which the State is party. The Act excludes those substantive treaty provisions in respect of which the State entered a reservation. Implementation by re-enactment is the traditional Caribbean approach and places a premium on State possession of legislative drafting resources, familiarity with the nuances of international treaty law, and sensitivity to the translation of "soft law" treaty

obligations into "hard law" legislative rights and duties.

An alternative to the traditional implementation by re-enactment is the more modern approach of incorporation by reference, a good example of which is provided by the National Conservation and Environment Protection (Amendment) Act, 1996 (St Christopher and Nevis) (No. 12 of 1996). There are many variations on incorporation by reference (see Anderson (1998), at pp. 198-200) but the classic form comprises a short statute whose central provision is that the treaties listed (and sometimes reproduced in a schedule) have "the force of law" in the country concerned. Incorporation in this way represents an economy of legislative competence and facilitates speedier Parliamentary response to the responsibility for legislative action. Correspondingly, other difficulties may be presented in terms of actual implementation and compliance, as is explained below.

3 IDENTIFICATION OF A NATIONAL IMPLEMENTING AGENCY

In the Caribbean, there is no necessary co-relation between treaty making and the identification or designation of national implementing agencies. The Ministry of Foreign Affairs, although generally responsible for treaty making, is not usually involved in the designation of national focal points or project-based implementation strategies except for those MEAs that fall specifically within the substantive portfolio of that Ministry. There is therefore a disjuncture between the agency responsible for accepting environmental obligations on behalf of the state and those responsible for designating the agencies/groups that are to comply with those obligations. This is unsatisfactory since the Organization of Eastern Caribbean States (OECS) Case Studies and Workshop (1998) suggested instances in which envi-

ronmental agencies were unaware of the nature and extent of international environmental rights and obligations binding on the state.

Neither is the problem resolved by the mere enactment of implementing legislation, whether by re-enactment or reference. Implementing legislation might not resolve the conundrum of identifying the most suitable implementing agency for the simple reason that the legislation is often silent on the point. In other instances the legislation may place the responsibility on a parochial agency having no over-arching responsibility for environmental management in the country.

In the absence of formal rule or standard practice concerning responsibility for designating national implementing agencies the best tradition appears to allow for the ministry with responsibility for the environment to assume, *de facto*, the task of assigning implementation of specific MEAs to particular agencies. In Jamaica, the Ministry of Housing and the Environment performs that function. Alternatively, the lead environmental agency may interpret its legislative environmental mandate as sufficiently broad to encompass the award of responsibilities for MEA implementation. This appears to be the position in Trinidad and Tobago with the Environmental Management Authority.

In these instances therefore, a distinction must be drawn between the political focal point for MEAs (usually the Ministry of Foreign Affairs) and the technical focal point (generally the Ministry of the Environment and/or the lead environmental agency).

4 IDENTIFICATION OF FOCAL POINTS FOR IMPLEMENTING ACTIVITY

Designation of a national implementing agency must often be supplemented by identification of a specific focal point

for implementing activity in respect of specific environmental conventions. The most successful Caribbean approaches to date (e.g., in Jamaica, Trinidad and Tobago, St. Kitts and Nevis) have involved identification of the focal point with the lead environmental agency or the delegation by that agency to other subsidiary bodies over whom the agency exercises some control.

The reasons for the appointment of focal points are not always logical and appear not to follow any standard criteria. Treaties may be assigned on the basis of recognized specialist competence and qualification (e.g., the assignment of United Nations Framework Convention On Climate Change (UNFCCC) to Meteorological office in Jamaica). Alternatively, a MEA whose subject matter was traditionally dealt with by a particular government Department may be assigned to that Department. A new MEA concerning conservation of forest would be assigned to the Forestry Department, Ministry of Agriculture, Forestry and Fisheries. A new MEA on conservation of biological diversity containing provisions for protection of intellectual property rights while making provisions for areas not traditionally dealt with in Forestry may nonetheless be similarly assigned. MEAs may be allotted to a department on the basis of the personal competence, skill and experience of a particular individual. Such assignment often "follows" the person where he/she is relocated to another Department or even after leaving the Civil Service. This is the case even though new Department/Private Sector agency might be an inappropriate location for those treaty-implementing responsibilities.

In practice responsibility for implementing MEA is increasingly assigned to the national lead environmental agency either because of the existence of the required competence and skills in house, or in default of such qualifications being found elsewhere. The lead agency often co-opts

“outside” expertise to complement its own; the University of the West Indies and the Institute for Maritime Affairs (Trinidad & Tobago) are examples of quasi-government institutions that provide expertise in this regard. NGOs and private consultants may also be contracted to perform particular tasks.

5 AVAILABILITY OF RESOURCES AND PROJECT-BASED ACTIVITY

Caribbean public sector resources tend to be limited and do not allow for acquisition and retention of scientific, technical and other expertise on a permanent basis. Externally funded regional project-based activity often represents the “nuts and bolts” of environmental treaty implementation (see for example, the work of Caribbean: Planning for Adaptation to Global Climate Change (CPACC), Wider Caribbean Initiative on Ship Generated Wastes (WCISW), and OECS Waste Management Project (below)).

National project-based activity has been used to facilitate the drafting of implementing legislation and compilation of inventories of greenhouse gases and ozone depleting substances, and the reporting on remedial measures to the relevant conferences of parties. Similarly, inventories have been made of national biological diversity resources and remedial National Strategic Action Plans formulated. Areas of cultural and natural heritage of outstanding universal value have been identified and conserved, especially vulnerable species and ecological areas have been designation and Management Plans formulated. Endangered species of wild fauna and flora have been identified and their international trade regulated. Contingency plans have been drafted, assimilation exercises conducted and regional alerting and telecommunications systems established in preparation for

dealing with major oil spills. Plans have been developed for construction of oil reception facilities in ports.

National Environmental Agencies and/or the Focal Point for the relevant Convention are generally responsible for identifying possible lines of funding, drafting and submitting the project proposal, engagement of consultants, monitoring implementation and compliance with the project document with the terms of the convention. Projects are generally organized on a national or local basis. Successful project based activities have represented significant variation on this theme. For example, implementing activities have been initiated and largely controlled by international agencies; projects have been organized on a regional and sub-regional basis. Sustainability is a ubiquitous problem that permeates all project-based implementing activity.

6 ESTABLISHMENT OF MONITORING PROCESSES

It is widely acknowledged that the nature and content of the rules in the conventions is critical to ensuring that multilateral environmental agreements are complied with. Most MEAs operate on the basis of self-reporting. Provisions may be made for the regularity of reporting, reporting formats, and national assistance in respect of international inspection and monitoring. These provisions in turn generate the national establishment of systems for ensuring the generation of information and data, and for monitoring implementation and compliance.

7 ENVIRONMENTAL TREATY MAKING

7.1 Introduction

The Ratification of Treaties Act of Antigua and Barbuda was enacted to remedy a fundamental defect in Caribbean law

and practice by legislating a role for Parliament in treaty conclusion and thus facilitating public awareness. The Act provides that certain treaties cannot be accepted by the State unless the approval of Parliament is first obtained. Accordingly, the Act furthers the objectives of participatory democracy by giving parliament, parliamentarians, and by extension, the populace, a voice in the treaty conclusion process. Anecdotal reports suggest that the Act has been the catalyst for a significant increase in public appreciation of, and sensitivity to environmental treaties, among others.

7.2 The Ratification Requirement

A treaty to which the Act applies must be ratified by Parliament before the Minister of Foreign Affairs may deposit an instrument of formal acceptance. There are two different procedures for ratification. Where the treaty concerns the status, security, sovereignty, independence, unity or territorial integrity of the country, ratification must be by Act of Parliament. As regard these treaties, too, Parliament must be afforded the opportunity to debate any relevant act of a foreign state (section 3 (5)). Legislative approval is also required if the treaty is to become enforceable as part of the law of the land (section 3 (2) (a)). Where the treaty concerns the relationship of the country with any international organization, agency, association or similar body, Parliament may ratify by way of Resolution. It follows from the foregoing that an Act of Parliament or Resolution may ratify MEAs.

Mixed views have been expressed concerning the overall impact of the Act. On the positive side, public information and awareness, as well as democratic discussions on treaty obligations and implications are facilitated. On the negative front, treaty acceptance becomes politicized and subject to lengthy parliamentary debates. Grandstanding and political attacks can lead to delays in treaty acceptance. Treaty

adoption has also been slowed by failure to adopt treaties within the slated parliamentary sessions, necessitating a 'rollover' into a subsequent session.

7.3 Ratification and Implementation

The Ratification of Treaties Act ratification process bears no necessary relationship to implementation of the treaty provisions in the law of Antigua and Barbuda. It is perfectly possible for Parliament to ratify the treaty without the treaty becoming part of national law. This is apparent from the fact that parliamentary ratification may be by way of an Act or Resolution. A treaty may also be ratified by Resolution with its provisions being legislated into local law on a subsequent occasion.

Where the route of implementing legislation is taken, the treaty may be adopted by repetition of its provision or by reference. In the latter case, the convention will normally be included as a schedule to the implementing Act.

The general lack of automatic incorporation/implementation is evident in section 3, paragraph 3. This is to the effect that "no provision of a treaty shall become part of the law of Antigua and Barbuda except by or under an Act of Parliament." Antigua and Barbuda has therefore given an enhanced legislative status to the old dualism of the British common law. The Act does not attempt to articulate international law into the national law in such a way as to make treaties accepted by the state the source of rights and obligations for individuals without more. Nonetheless, the democratization process is envisaged as bringing greater awareness of international law making into the national realm.

7.4 Reform of Rules Governing Parliamentary Participation

The Ratification of Treaties Act model could be improved by the adoption of an amendment to Caribbean constitu-

tions that entrenches the principle of parliamentary participation in treaty making. Constitutional entrenchment would bring greater protection to the ratification process by making it immune from repeal by ordinary Act of Parliament and would enhance the international law efficacy of the process. Embodiment in constitutional law implies that the process is manifest and of fundamental importance in furthering the objectives of democratization and governance in civil society, and that treaties concluded in defiance of the process cannot be regarded as legally binding upon the state.

8 IMPLEMENTING LEGISLATION

8.1 Incorporation by Re-enactment

8.1.1 General

Traditionally, most treaties have been incorporated by re-enactment i.e., repetition, in the statute, of the treaty provisions. The usual procedure is that the treaty is identified by name in the definition section of the Act; the substantive sections then repeat, verbatim or by paraphrase, the provisions of the treaty, but the final clauses and any provisions to which the state has entered a reservation are excluded. A standard variation is for the statute to make no reference at all to the treaty while laying down rules that are, for the most part, in conformity with the treaty requirements. In the present context, re-enactment is particularly evident in relation to treaties establishing substantive rules of environmental standards. The main weakness of transformation by re-enactment is the risk of inconsistency between the treaty and legislation because of misinterpretation, omissions, and the insertion of incongruous provisions. The Law of the Sea provides a particularly fertile area for researching such inconsistencies. For example, Trinidad and Tobago is virtually unique in reproducing verbatim, the Law of the Sea Convention's

provisions that the innocent passage of a foreign ship through territorial waters is compromised if the ship engages in any act of 'willful and serious' pollution contrary to the Convention. (Compare Article 19 (2) (h) of UNCLOS with s. 12 (2) (h) of the Archipelagic Waters and Exclusive Economic Zone Act 1986 (Act No. 24 of 1986) of Trinidad and Tobago). Elsewhere passage is deemed non-innocent if there is "any act of pollution calculated or likely to cause damage or harm to the state, its resources or its marine environment." (See e.g., s. 7 (1) (d) Barbados Territorial Waters Act 1977 (cap. 386); s. 7 (1) (d) The Maritime Areas Act 1982 (18/1982) (Antigua & Barbuda) a clear deviation from the conventional position).

In addition to the difficulty of ensuring consistency, there are practical problems relating to the resources required to articulate the burgeoning volume of binding international obligations into the increasingly complex network of domestic legislation. In *Natural Resources Conservation Authority v. Seafood and Ting* (1999) the Court of Appeal of Jamaica castigated the Executive for its failure to incorporate the provisions of the CITES by domestic legislation but the fundamental problem appears to have been related to the lack of available drafting resources. Assistance from international organizations in the form of the familiar 'model legislation' or 'code of recommendations and guidelines' has not proved adequate to the difficulty.

Theoretically, the failure to adopt the required legislation leaves the State vulnerable to an international claim in state responsibility, although any claimant state would be required to prove that the failure to enact implementing legislation caused the damage/loss of which it complained.

8.1.2 Shipping Oil Pollution Act 1994 as Amended 1997 (Barbados)

The Shipping (Oil Pollution) Act

1994 (1994-16) as amended by the Shipping (Oil Pollution) Act 1997 (1997-22) provides an excellent example of incorporation by re-enactment. The principal Act received the assent on 29th April 1994 and entered into force on 12th May 1994. Its avowed purpose was 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 relation to pollution of the sea.”

The conventions re-enacted are listed in Part VIII:

- Protocol of 1978 relating to the International Convention for the Prevention of Pollution from ships (1973 as amended);
- International Convention relating to Intervention on the High Seas in Cases of Oil Pollution Casualties, 1969;
- Protocol of 1973 relating to Intervention on the High Seas in cases of Pollution by Substances other than oil;
- International Convention on Civil Liability for Oil Pollution Damage, 1969;
- Protocol of 1976 to the International Convention on Civil Liability for Oil Pollution Damage;
- International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage, 1971;
- Protocol of 1976 to amend the International Convention on the Establishment of an International Fund for Oil Pollution Damage;
- International Convention on the Prevention of Marine Pollution by Dumping of Wastes and Other Matter, 1972.

The Amendment of 1997 made provision for the re-enactment of two additional international agreements:

- Protocol of 1992 to the International

Convention on Civil Liability for Oil Pollution Damage;

- Protocol of 1992 to the International Convention on the Establishment of an International Compensation Fund for Oil Pollution Damage.

Part I deals with Preliminary matters. The short title of the Act is presented. There is an elaborate Interpretation section of key concepts that basically repeats the conventions’ definitions. Part II adopts the substantive provisions of Under Annex 1 of MARPOL 73/78 in relation to the prevention of oil pollution. Part III deals with shipping casualties and purports to incorporate the provisions of the 1969 Intervention Convention as amended by the Protocol of 1973. Part IV deals with Civil Liability for Oil Pollution and incorporates the 1969/1992 Civil Liability Convention. Part V establishes the International Oil Pollution Compensation Fund in accordance with the terms of the 1971/92 Fund Convention. Part VI deals with various aspects of enforcement and attempts to incorporate those provisions of MARPOL 73/78 that give jurisdictional competence to the coastal and port states. Part VIII concerns identification of the conventions and protocols that are being re-enacted. A list of these agreements was presented above. The Act resolves any conflict between itself and the conventions by providing (s.57) that in the event of a conflict “the provision of the international convention or protocol prevails unless the Minister otherwise provides by such regulations as he may make in that behalf.”

8.2 Incorporation by Reference

8.2.1 General

The technique of incorporation by reference involves the conferral of the force of municipal law upon rules the substantive content of which are found in the multilateral environmental treaty. Although stated in

terms of an alternative to re-enactment, incorporation by reference may involve re-enactment of treaty provisions while simultaneously requiring that specific issues be resolved by direct reference to the treaty.

The classical illustration of incorporation by reference, however, eschews re-enactment with consequential provisions for resolving conflicts. Instead, a typically short statute has as its central provision, a section legislating that the treaty or treaties have “the force of law” in the local jurisdiction. The text of the conventions incorporated in this way is generally reproduced in a schedule or several schedules to the Act. In more modern style the MEAs are simply listed in the schedule or schedules.

8.2.2 The National Conservation and Environmental Protection Act 1987 as Amended 1996 (St. Kitts & Nevis)

The National Conservation and Environment Protect Act, 1987 (No. 5 of 1987) as amended by the National Conservation and Environment Protection (Amendment) Act, 1996 (No. 12 of 1996) provides that “The International Conventions specified in the Fifth Schedule shall have the force of law in Saint Christopher and Nevis”.

The Fifth Schedule does not reproduce the texts of the conventions thus incorporated into domestic law. Rather, the Schedule simply lists, by short title, the International Conventions and Agreements made part of local law in this way as follows:

- Convention on International Trade in Endangered Species of Wild Fauna and Flora 1973;
- United Nations Convention on Climate Change 1992;
- United Nations Convention on Biological Diversity 1992;
- Vienna Convention for the protection of

the Ozone Layer, 1985 and Montreal Protocol on Substances that Deplete the Ozone Layer 1987;

- Basel Convention on the control of trans-boundary movement of Hazardous Waste 1989;
- Civil Liability Convention 1969;
- International Oil Pollution Compensation Fund Convention 1971.

As a preliminary matter it may be observed that the full benefit of this extreme form of incorporation was not obtained. Several of the conventions listed have been superceded. In particular the International Maritime Organization (IMO) and the International Oil Pollution Compensation Fund have been actively encouraging states to denounce the 1969 Civil Liability Convention and 1971 Fund Convention in favor of the Protocols of 1992, which are intended to replace these conventions. Severe financial and legal problems are anticipated for the dwindling number of contracting parties to the original agreements. Less dramatically, virtually all of the remaining conventions have been or are being amended protocols adopted by contracting parties.

The Act does enable the Minister “from time to time” to add or remove any convention in the Fifth Schedule by way of Notice, which shall be published in the Gazette and be laid before the National Assembly (s. 54C). However the history of policy formulation, administration and legislative activity is not encouraging; legislative apathy and inertia have been blamed for not providing timely responses to environmental problems (see *Natural Resources Conservation Authority v. Seafood and Ting* (1999)).

Another substantial concern is whether, as alluded to earlier, this stragem of incorporation of reference accomplishes its objective. The conventions listed as having the force of law make substantial requirements of contracting parties. For

example CITES requires designation of a Management Committee and Scientific Committee. These institutions are essential to the developments of rules providing for imposition of quotas and export permits as was dramatically illustrated in *Natural Resources Conservation Authority v. Seafood and Ting* (1999). These institutions also evaluate whether international trade in the species would be detrimental to the survival of the species. On the one hand the provision that CITES “has the force of law” creates a qualitative difference from the position, which existed in Jamaica. On the other hand, such a provision does not, per force, create the required institutions.

The other MEAs incorporated by reference similarly make institutional, administrative, and policy requirements of the State of Saint Christopher and Nevis. National authorities are required to develop national inventories of greenhouse gas emissions and greenhouse gas removals by sinks and to strengthen research capabilities (UNFCCC, 1992). Obligations exist to identify and monitor components of biological diversity and to develop a National Strategic Action Plan to deal with loss of biological diversity (CBD, 1992). National authorities must make provision for the freeze in consumption of chlorofluorocarbons (CFCs) by July 1, 1999 and the complete elimination of their use by 2010 (Montreal Protocol 1987, as amended). There are obligations relating to establishment of competent authorities and focal points, notifications to importing states and re-importation with regard to the trans-boundary movements of hazardous wastes (Basel Convention, 1989). Specific legislative provisions must be made for the litigation and judicial proceedings in respect of civil liability for oil pollution damage (CLC, 1969). There are obligations of notification to the International Oil Pollution Compensation Fund in respect of the

names and addresses of persons within the territory who import more than 150,000 tons of oil in any one calendar year (1971 Fund Convention).

Such illustrations of the obligations arising under the various conventions serve to support the point that merely providing that the Conventions have the force of law within the country may not be sufficient; further institutional, administrative, and policy-making may all be required to complement incorporation by reference.

9 NATIONAL IMPLEMENTING AGENCIES AND FOCAL POINTS

9.1 Anguilla: The Anguilla National Trust

In Anguilla and other dependencies/associated states MEA acceptance lies with the United Kingdom although consultation with national authorities would take place as a matter of course before any such Agreement was extended to the dependency.

The Anguilla National Trust has broad responsibility for coordinating/critiquing MEA implementation. In discharging this function the Anguilla National Trust has developed an conservation programme aimed at increasing (a) public awareness, (b) participation by stakeholders at the community level, (c) institutional support, and (d) public and private sector sensitivity related environmental issues.

The Anguilla National Trust has analysed the implications of acceptance of the Cartagena Convention and Specially Protected Areas and Wildlife in the Wider Caribbean Region (SPA) Protocol in anticipation of Anguilla’s inclusion in these Agreements under the UK’s ratification (see: Ijahnya Christian “Preservation for Generations”). The Anguilla National Trust suggests that given Anguilla’s small size, becoming part of the Party to the Protocol and Convention would not only be useful

but necessary if the protection and development of the marine environment and coastal resources is to be assured.

The Anguilla National Trust found that a number of the practices required for implementation were already being pursued but that the legislative framework was inadequate; the practices were not legally obligatory and may therefore ultimately be ineffective. Private land ownership and the cultural attitude of Anguillians to land also signaled the need for a strong degree of public discussion and public awareness of the objectives and provisions of the Protocol and the Convention so as to engender public support at the point of implementation. The fact that Government is a major land owner means that the state itself will need to be familiar with the Convention and Protocol and their supporting documents, and to be assured of the Agreements' concern for increased economic growth in tandem with protection of critical environmental assets.

Preserving sea turtles, one of the objectives of SPAW Protocol and CITES illustrates some of the difficulties of MEA implementation. The four species of sea turtle found in Anguilla are the hawksbill (*Eretmochelys imbricata*), leatherback (*Dermochelys coriacea*), green (*Chelonia mydas*) and loggerhead (*Caretta caretta*). Conservation efforts have organized around the Sea Turtle Conservation Project, which is supported by the Wider Caribbean Sea Turtle Conservation Network (WIDECAST). Continuing problems that frustrate the effectiveness of the conservation measures include:

- The less than complete compliance with the existing moratorium by Anguillian fishermen.
- The unlawful harvesting of turtles by fishermen from neighboring islands.
- The need to integrate the protection of these and other species into existing and proposed legislation for protected areas.

In particular, it is not clear that the legislation on marine parks, for example, is sufficient or adequate to ensure the protection of sea turtles and other endangered marine life. The hope was expressed that Anguilla's inclusion in the SPAW Protocol would create an opportunity to address the legislative requirements. Poaching by citizens of European Union countries that are already Parties has been highlighted as requiring redress at the highest levels. This means that the integrated management objective of the Cartagena Convention and SPAW Protocol would include not just collaboration between partner agencies at the national level but perhaps arrangements for legislation and jurisdiction sharing at transnational levels.

The Anguilla National Trust is also of the view that the requirements of the SPAW Protocol could strengthen initiatives to engage landowners in conservation planning for the generating revenue from their lands. Traditionally, owners of coastal lands have thought of development in terms of hotels (villas etc.), restaurants and other facilities of this type. Inclusion in the SPAW Protocol could facilitate national thinking about the importance of landscape, leaving lands in their natural state for low impact activities such as bird watching, the scientific and amateur study of flora, and passive recreation.

As regards environmental impact assessments, the Anguilla National Trust is of view that these should be mandatory for all major projects and projects to be developed in environmentally sensitive areas whether they be Government of Anguilla projects or those involving private investors. Again, the legislative and institutional framework is weak but participation in the Convention and Protocol was seen as creating the opportunity for prioritization of training courses that can strengthen Anguilla's capability, co-ordination, conduct, evaluation, EIAs and reviewing their

reports. The provisions should also ensure that development decisions are based on the recommendations of such reports and that they involve public consultation.

9.2 The Bahamas: The BEST Commission

MEA implementation in The Bahamas is generally unsatisfactory. Formal institutional and regulatory initiatives are fragmentary and largely uncoordinated. Informal initiatives exist upon an inadequate or non-existence legislative basis. There is a widely acknowledged need for institutional strengthening that results in a legislatively established lead agency with broad powers of environmental management.

The Bahamas Environment, Science and Technology (BEST) Commission was instituted by administrative procedure within the context of the recent developments in international environmental policy making. Following his attendance at UNGCSIDS (which adopted Agenda 21's call for integration of environment and development within the context of suitable institutional arrangements, the Prime Minister caused the establishment of The BEST Commission. The BEST Commission functions within the Prime Minister's Office and is the de facto national environmental agency pivotal to effective implementation of several environmental treaties and to provision of advice and recommendations, and the facilitating of inter-agency co-ordination and co-operation. In short, the Commission is an attempt to provide an interim solution to the gaps in the institutional and regulatory landscape.

In relation to its role as implementing agency for MEA implementation the Commission has created a number of sub-committees. The National Climate Change Committee is the focal point for implementation of the UN Climate Change Convention. The Ramsar Committee is the focal point for

implementation of Ramsar Convention and identification and management of wetlands of international significance. The Biological Diversity Committee is concerned with implementation of the United Nations Convention on Biological Diversity Convention and is in the process of preparing a national strategy for biological diversity sustainability. Ad Hoc Committees are established as appropriate. The strategy of implementation by sub-committees facilitates the co-opting of competence and technical expertise from individuals, groups and organizations without outlandish outlays of financial resources. Service on the sub-committees is generally voluntary.

More problematic is the lack of legal status in the Commission. No legally binding obligations exist in relation to the functioning of the Commission. Consultation with it may be by-passed or ignored when inconvenient or inexpedient. There may be no legal basis for the involvement of BEST in MEA implementation; an issue that could call into question the validity of the environmental measures taken by the Commission. Accordingly, the Commission has sought support from international donor agencies in reviewing its institutional and juridical arrangements. Sub-component II of the Inter-American Development Bank-sponsored Environmental Management Policy and Institutional Strengthening Project is to be focused on preparation of a detailed institutional and organizational assessment and recommendations for the BEST Commission and other agencies involved in environmental management. The Project is also intended to develop a long-term financial plan for BEST and to assess the capacity in the government agencies for quality control, monitoring and enforcement.

9.3 Guyana: the Environmental Protection Agency The Environmental Protection

Agency Act 1996 was established by the Environmental Protection Agency (EPA) as the national lead environmental agency of Guyana. The Guyana EPA has the substantive mandate and the institutional and administrative apparatus similar to those in Trinidad and Tobago.

Particular insights may be gained in relation to MEA implementation in Guyana by considering the implementation of the UNCBD. Guyana signed the Biological Diversity Convention in June 1992 and ratified it in August 1994. General oversight responsibility for conservation of biological diversity is conceded to the lead environmental agency, the EPA, because of that Agency's broad administrative and implementation powers.

UNCBD implementation is assisted by legislative support derived from fisheries legislation (e.g. Fisheries Act 1957, Fisheries Regulation, 1962, Fisheries (Aquatic Wildlife Control) Regulation 1966); forestry (The Forest Act and Forestry Commission Act); wildlife (Wild Birds Protection Act 1987). However, this legislation is generally outdated and inappropriate for solving modern biological diversity problems. Legislation in relation to bio-safety and intellectual property rights is even more inadequate.

A National Biodiversity Strategy was formulated in 1997 and a National Biodiversity Action Plan is being developed with local and international expertise.

The most innovative step taken by Guyana pursuant to its commitment to conserve biological diversity was the conclusion of the agreement in 1995 with the Commonwealth Secretariat for the establishment of the Iwokrama International Centre for Rain forest Conservation and Development Programme. The Programme Site covers 60,000 hectares of Guyana's rainforests that under the Agreement are dedicated to the international community. The stated objective is to conserve biologi-

cal diversity and promote sustainable development, and equitable and sustainable utilization of tropical rain forests that will bring lasting ecological, economic and social benefits to the peoples of Guyana and contribute to the world's knowledge of critical aspects of rain forest management and development. The Agreement is embodied in and receives legal status from the Iwokrama International Centre for Rain Forest Conservation and Development Act 1996.

9.4 Jamaica: The Natural Resources Conservation Authority

The Natural Resources Conservation Authority (NRCA) is the central agency for the implementation for multilateral environmental agreements in Jamaica and its centrality has been recognized within the United Nations system (NRCA Mission Statement). The Authority has been designated as the focal point for activity related to effectuating Jamaica's rights and obligations under several specific MEAs. The Authority provides support and a coordinating function in relation to all environmental agreements to which the Government of Jamaica is party. The Authority also performs the role of "default agency"; where an MEA is not the responsibility of any other specific agency it may be taken that Authority has the responsibility for its implementation. To this end the Authority has undertaken or coordinated a number of MEA project-based activity, developed a large number of policy documents critical to MEA implementation, and delegated management functions related to MEA implementation to Non-Governmental Organizations.

The multilateral environmental treaties for which the Authority has specific implementing functions include:

- Vienna Convention for the Protection of the Ozone Layer, Vienna, 1985.
- Montreal Protocol on Substances that deplete the Ozone Layer, Montreal 1987.

- London amendment to the Montreal Protocol on Substances that deplete the Ozone Layer, Copenhagen 1990.
 - Copenhagen amendment to the Montreal Protocol on Substances that deplete the Ozone Layer, Copenhagen 1992.
 - Montreal amendment to the Montreal Protocol on Substances that Deplete the Ozone Layer, Montreal 1997.
 - Convention on International Trade in endangered Species of Wild Flora and Fauna (CITES).
 - Convention on Wetlands of International Importance especially as Waterfowl Habitats.
 - Convention for the Protection and Development of the Marine Environment of the Wider Caribbean Region, Cartagena de Indias, 1983 (Cartagena Convention).
 - Protocol to the Cartagena Convention concerning Cooperation in Combating Oil Spills in the Wider Caribbean Region [Oil Spills Protocol].
 - Protocol to the Cartagena Convention on Specially Protected Areas and Wildlife.
- Administration of multilateral environmental treaties necessarily falls upon the Natural Resources Conservation Authority in the absence of specific designation of other agency because the Authority has broad responsibility for protecting and conserving the physical environment of Jamaica. Conventions that are administered by the Natural Resources Conservation Authority in the absence of special designation of another agency include.
- Convention on Transboundary Movement of Hazardous Waste and their Disposal (BASEL Convention).
 - Convention on the Conservation of Migratory Species of Wild Animals Bonn, 1972.

The Authority necessarily plays a

coordinating role in relation to the implementation of all environmental treaties by virtue of its lead agency status. The Authority has broad responsibility for protecting and conserving the physical environment of Jamaica. There are also statutory provisions requiring consultation and collaboration between the Natural Resources Conservation Authority and other agencies exercising environmental functions. Coordination is presently most evident with Planning and Ministry of Agriculture officials. MEAs in relation to which the Natural Resources Conservation Authority performs a support/coordinating role include:

- Convention concerning the Protection of the World Cultural and Natural Heritage, 1972 [in conjunction with the Jamaica National Heritage Trust].
- International Convention on the Prevention of Pollution from Ships, London 1973 (MARPOL) [in conjunction with the Ministry of Transport].
- Protocol of 1978 relating to the International Convention for the Prevention of Pollution from Ships, London 1973 [in conjunction with the Ministry of Transport].
- United Nations Convention on the Law of the Sea, Montego Bay [in conjunction with the Ministry of Foreign Affairs].
- International Convention for the Safety of Life at Sea [in conjunction with the Ministry of Transport].
- United Nations Framework Convention on Climate Change, New York, 1992 [in conjunction with the Meteorological Office].
- Kyoto Protocol to the United Nations Framework Convention on Climate Change, Kyoto, 1997 [in conjunction with the Meteorological Office].
- Convention on Biological Diversity, Rio de Janeiro, 1992 [in conjunction with the Institute of Jamaica].

- United Nations Convention to Combat Desertification, Paris, 1994 [in conjunction with the Ministry responsible for Water].

The Natural Resources Conservation Authority has been relatively successful in the implementation of MEAs falling directly or indirectly within its purview. The Authority has attracted international funding for several of its activities in addition to the domestic sources of funding identified in its parent statute. The Authority has been able to undertake several MEA project-related activities, develop a large number of policy documents that directly impact MEA implementation. Where constraint of resources has threatened to curtail implementing activity the NRCA has developed the innovative technique of delegating management functions to Non-Governmental Organizations. NGOs are authorized in this way upon the Natural Resources Conservation Authority's approval of their corporate and institutional suitability management plans, plans for attracting funding, and indication of reasonable prospects for sustainability.

9.5 Trinidad and Tobago: The Environmental Management Authority

Prior to 1995, environmental management in Trinidad and Tobago was characterized by a lack of environmental and conservation focus. Over forty separate pieces of environmental legislation existed with many obsolete with inadequate penalty structures little cross-sectoral linkages and no facility for the establishment of broad environmental standards. After a gestation period compared to that of an elephant (Trinidad Guardian Newspaper 94-09-14) the Environmental Management Act of Trinidad and Tobago was assented to on 7th March 1995 (Act No. 3 of 1995). Not the least interesting aspect of the Act of 1995 is the unprecedented array of institutions

established with varying kinds of responsibility for environmental management. The lead agency is undoubtedly the Environmental Management Agency, but there is also an Environmental Trust Fund, and the Environmental Commission. The Environmental Trust Fund was established to finance the operations of the Authority and derives resources from government, endowments, international donors, payment for EMA's services, and borrowings. The European Commission has a broad mandate to hear environmental disputes that may be conferred on the Commission and exercises the jurisdiction and powers equivalent to a High Court.

There are no express provisions in the EMA pertaining to MEA implementation but the Authority is necessarily pivotal to the effectuation of all MEA obligations. The general functions of the Authority which necessarily impinge upon MEA implementation include the following:

- Make Recommendations for a National Environmental Policy.
- Develop and implement policies and programmes for the effective management and wise use of the environment.
- Co-ordinate environmental management functions performed by persons in Trinidad and Tobago.
- Make recommendations for the rationalization of all governmental entities performing environmental functions.
- Promote educational and public awareness programmes on the environment.
- Develop and establish national environmental standards and criteria.
- Monitor compliance with the standards, criteria and programmes relating to the environment.
- Take all appropriate actions for the prevention and control of pollution and conservation of the environment.
- Establish and coordinate institutional

linkages locally, regionally and internationally;

- Undertake anything incidental or conducive to the performance of any of the foregoing functions.

The range of its functions and powers made the Environmental Management Authority the natural focal point for multilateral environmental agreement implementation. On this ground, the Authority has sought and obtained a loan from the World Bank to facilitate its institutional and administrative work relevant to the effectuation of such agreements as SPAW, United Nations Framework Convention on Climate Change, the Convention on Biological Diversity, and the Basel Convention. An important stumbling block remains the passage of enabling legislation to provide the framework for implementation. Particular concerns have been expressed that neither the Basel Convention nor MARPOL 73/78 has attracted the required domestic legislation. External funding is, however, assisting with the development of the Environmental Code, expected to be completed March 2000.

In executing its MEA implementation functions the EMA acts in concert with regional project-based activities and institutions. Particular mention was made of the Caribbean Planning for Adaptation to Climate Change in relation to the UNFCCC, and the Wider Caribbean Initiative on Ship Generated Wastes in relation to efforts to implement the MARPOL convention.

As done elsewhere, the EMA has engaged in the practice of delegating MEA implementation function to agencies over which it exercises supervisory, or at least coordinating, functions. Such agencies are in charge of attracting their own funding and marshalling their own technical competence and expertise. The Forestry Division of the Ministry of Agriculture seeks to implement CITES by inter alia, providing for declaration of sanctuaries and protected areas,

and provides for protected species such as the leatherback turtle.

9.6 St. Kitts & Nevis: The Department of the Environment

Of all Caribbean framework legislation, the National Conservation and Environmental Protection Act 1987, 1996 of St. Kitts and Nevis makes the most explicit provisions for the articulation of the lead environmental agency (Department of the Environment) into MEA implementation. The Department of the Environment is expressly empowered to negotiate environmental treaties initiated by regional and international inter-governmental organizations and non-governmental organizations. The Department also has the function of implementing environmental policies, programmes and projects in order to achieve sustainable development. This function must be contextualized against the background where seven major MEAs are incorporated by the same statute and given the "force of law" in St. Kitts & Nevis. For further commentary see above.

10 OECS- RECENT DEVELOPMENTS

The Fifth Meeting of the Organisation of Eastern Caribbean States (OECS) Ministers' Environment Policy Committee, held in Montserrat, November 22 and 23, 2001, endorsed the recommendation from the Ninth Meeting of the Technical Advisory Committee (TAC) that a Task Force on Multilateral Environmental Agreements and Documents be established. The objective of the Task Force would be to make recommendations to the Environment Policy Committee on viable approaches to be adopted for the negotiation and implementation of, and compliance with, multilateral environmental agreements. Consideration would be given to the reduction of costs and achievement of efficiency; enhancement of compliance;

and more effective implementation.

The inaugural meeting of the Organization of Eastern Caribbean States-Natural Resources Management Unit Task Force on Multilateral Environmental Agreements and Documents was held at the OECS Secretariat, St. Lucia on March 27, 2002.

Both the Environment Policy Committee and the Task Force recognize several characteristics of treaty making and implementation in the OECS sub-region

- Inadequate participation in negotiation, lack of adequate discussion or even notification to national stakeholders prior to signing and ratification, absence of implementing legislation and institutional support, and failure to supply material and human resources for compliance were among the deficiencies identified. The divorce between state protocols for negotiation and implementation, and the fragmentation in the institutional arrangements for implementation, were identified as further obstacles to be dealt with.
- The sub-region is considering the need to revise the current methods of negotiation and implementation of MEA/Ds and that some degree of regionalization, based upon one or other of the following paradigms:
 - The Regional Negotiating Machinery
 - The South Pacific Regional Environmental Programme
 - The Alliance of Small Island States
 - Caribbean Community
 - Organization of Eastern Caribbean States-Natural Resources Management Unit Task Force
- That there was support for the position put forward in the Recent "Anderson" Report that this function could be performed by the OECS-NRMU and that the establishment of the office of Treaty Officer would be useful in that context.
- That the regional body chosen to fulfill this task should be fully accredited.
- That protocols and procedures should be established that would enable the regional body to attend negotiating sessions, conferences of the parties, and other relevant meetings, using the financial resources available from the secretariats of the conventions whenever possible.
- That the regional body would make recommendations on negotiations and implementation strategies but that ultimate decision on binding international rights and obligations would remain in the individual states, thereby preserving state sovereignty.
- That the regional entity should undertake to review and evaluate, on a continuing basis, the pitfalls and benefits arising from environmental agreements, drawing upon existing documentation wherever possible.
- The regional body would perform a catalytic role in ensuring the preparation and coordination of negotiating positions in all relevant international forums.
- That under the auspices of the regional entity or otherwise the following tasks would be undertaken:
 - Investigation of the feasibility of having a single environmental law providing regulatory and institutional support for negotiation and implementation;
 - Evaluation of the cost of compliance and of all available financial resources for compliance;
 - Provision of periodic training seminars, workshops, short courses on multilateral environmental agreements utilizing resources available at UWI and other regional institutions;
 - The further integration of the various Caribbean Community Ministerial Councils in relation to environmental

management issues;

- Examination of the feasibility of using regional conventions to implement global agreements (e.g., using SPAW to implement CITES) thereby reducing costs and furthering efficiencies.

11 RESOURCES AND PROJECT BASED ACTIVITY

11.1 Organization of Eastern Caribbean States: Solid and Ship-Generated Waste Management Project

The independent governments of the Organization for Eastern Caribbean States (OECS) have the beneficiaries of loan, credit and grant funds from the International Bank for Reconstruction and Development (IBRD), the Caribbean Development Bank, Global Environmental Facility and other agencies to finance the Solid and Ship-Generated Waste Management Project. The objective of the Project is to address the problems of managing ship and shore generated waste in the countries of Antigua and Barbuda, Dominica, Grenada, St. Kitts and Nevis, St. Lucia, and St. Vincent and the Grenadines. The improvement of solid waste management systems in the OECS is anticipated to enhance the quality of both terrestrial and marine environments.

The Project has both national and sub-regional components. The national components include provision of materials and equipment to enhance solid waste storage, collection, treatment and disposal, and the handling of ship-generated wastes. The regional component involves management support and the provision of technical assistance to the countries in order to improve the regulatory environment, strengthen management capabilities, improve day to day monitoring of waste management systems and identify opportunities for waste reduction, recycling, recov-

ery and re-use. Specifically, the project supports and provides for five principal programmes:

- Construction of new sanitary landfills or the upgrading of existing landfills.
- A system of waste collection and disposal for MARPOL Annex V wastes.
- Enhancement of waste collection, including, where appropriate, development of transfer stations, and provision of equipment.
- Waste minimization/recycling through analysis of policy measures needed for encouraging waste minimization.
- Institutional strengthening, including development of legislation on solid waste and environmental health as well as public education programmes.

The initiation and operationalization of this project has greatly facilitated practical steps at the national level to implement relevant conventions such as MARPOL 73/78, and the London Convention, 1972, 1996.

11.2 Wider Caribbean Initiative on Ship-Generated Waste

The proliferation of MEAs relating to protection of the marine environment has informed IMO policy in relation to Caribbean states. At the Organization of American States/International Maritime Organization/USAOD/Government of Puerto Rico Workshop on Oil Pollution Regulation and Enforcement held in San Juan, Puerto Rico 11-15 October 1982 the International Maritime Organization estimated that over 30 treaties regulating the discharge of maritime pollution could be identified. In this context the Organization projected that in future more emphasis had to be placed upon the implementation and enforcement of the existing Conventions rather than the creation of new Conventions. The Organization offered assistance on a regional basis to Caribbean countries and Caribbean states

indicated a preference for technical assistance with the development of the required implementing legislation, and technical and financial assistance with regard to the development of port reception facilities.

Within this general context the International Maritime Organization conducted a number of Missions to several of the region's developing countries in the early 1980s. A Mission by the International Maritime Organization Inter-Regional Consultant on Marine Pollution was made to the Caribbean Islands of Antigua, Montserrat, Puerto Rico, Cayman Islands, and The Bahamas from 3 February to 3 March 1981; to the Republic of Guyana from 18 to 24 March 1980; and to the Commonwealth of The Bahamas 25 February to 11 March 1981. (The Three Reports are available as International Maritime Organization Publications compiled by Cmdr. T.M. Hayes).

International Maritime Organization was responsible for introducing the Draft Protocol Concerning Cooperation in combating Oil Spills in the Wider Caribbean to the first meeting of legal experts convened by the Executive Director of UNEP in New York from 7 to 11 December 1981 to consider flexible and general legal regional arrangements to support the then emerging Caribbean Environment Programme. The Draft was considered in detail at the second meeting of Legal Experts opened by UNEP in cooperation with International Maritime Organization at the UN Headquarters in New York from 7 to 16 July 1982. At this meeting the International Maritime Organization indicated the possibility of linking the draft protocol to the Convention. After a third and final meeting of the Legal Experts in Santo Domingo, from 3-5 November 1982 the Convention and Oilspill Protocol were finalized. Both instruments were adopted at the Conference of Plenipotentiaries on the Protection and Development of the Wider

Caribbean Region at Cartagena de Indias, Colombia, from 21 to 24 March 1983 and entered into force on 11 October 1986. The Cartagena Convention, like others developed under UNEP Regional Seas Programme, is a framework document requiring cooperation among contracting states; to safeguard the integrity of this approach parties are required to accept more detailed commitment to prevent marine pollution from at least once specific source. The Oilspill Protocol remained, until June 1991, the only protocol to have been adopted pursuant to this policy. Since the Cartagena Convention requires that each contracting state becomes, simultaneously, a contracting party to at least one of its protocols, it followed that, for the first eight years of the Convention's existence, acceptance of the OILSPILL Protocol was a necessary precondition to becoming a party to the Cartagena Convention (Anderson (1997) at p. 225).

There was a relative lull in International Maritime Organization activity in the Caribbean until the development of the Wider Caribbean Initiative on Ship-Generated Waste. Wider Caribbean Initiative on Ship-Generated Waste is a Technical Assistance Project developed on the request of the 22 Developing Countries in the Wider Caribbean region. The objective is to support implementation of the International Convention for the Prevention of Pollution from Ships (MARPOL 73/78) and the Special Area designation of Annex V of the Convention. The Project is funded by the Global Environmental Facility through the World Bank, and is implemented by the International Maritime Organization.

Most developed countries have ratified MARPOL 73/78 but the status of ratification for developing countries in the Wider Caribbean region is relatively modest. Even where some States have ratified, little or no action has been taken to implement the requirements of the Convention. MAR-

POL 73/78 is perceived to be a highly technical instrument making special demands in terms of provision of port reception facilities and the like which require external technical and financial assistance. A need specifically recognized was that of the development of national legislation to enable enforcement of the Convention.

Programme activities were envisaged to encourage countries of the region to invest in port reception facilities, waste management infrastructure and institutional training programmes. These would contribute towards the longer-term goal of ending the discharge of all-ship generated wastes into the waters of the Caribbean Sea. Project activities included:

- Assistance to governments and port authorities on legal, technical, and institutional measures needed to implement MARPOL 73/78.
- Provision of a forum for considering options and for reaching a regional consensus on the actions to be taken.
- Assisting ports in the Wider Caribbean Region in setting tariffs for receiving Annex I, II and V wastes, including cost recovery for waste management systems.

11.3 Caribbean Planning for Adaptation to Climate Change Project

One of the most significant initiatives in Caribbean implementation of UNFCCC has been the development of the Caribbean Planning for Adaptation to Climate Change Project funded by the Global Environmental Facility. The Caribbean Planning for Adaptation to Climate Change Project is currently undoing important institutional changes but as initially conceived Project had its origin in the Global Conference on the Sustainable Development of Small Island Developing States which took place in Barbados in April/May 1994. In the words of the

Caribbean Planning for Adaptation to Climate Change Project Document (1997): "During the Conference, the small island developing states of the Caribbean requested GS/OAS assistance in developing a project on adaptation to climate change for submission to the Global Environmental Facility."

The Global Environmental Facility Council approved the project as part of its Work Program in May 1995. Caribbean countries and the Caribbean Community have maintained an active level of participation throughout the project preparation phase. A Project National Focal Point (NFP) was designated for each country. During the project preparation phase, two regional workshops and a national consultation workshop took place in each of the eleven participating countries. A third regional workshop on the project was held as part of the pre-appraisal review of the project document.

In the words of the Project Document: "The project's overall objective is to support Caribbean countries in preparing to cope with the adverse effects of global climate change, particularly sea level rise, in coastal and marine areas through vulnerability assessment, adaptation planning, and capacity building linked to adaptation planning. Project encouraged adoption of specific measures for strengthening regional capability for

- monitoring and analyzing climate and sea level dynamics and trends, seeking to determine the immediate and potential impacts of global climate change;
- identifying areas particularly vulnerable to the adverse effects of climate change and sea level rise;
- developing an integrated management and planning framework for cost-effective response and adaptation to the impacts of global climate change on coastal and marine areas;

- enhancing regional and national capabilities for preparing for the advent of global climate change through institutional strengthening and human resource development.

11.4 Integrated Coastal Zone Management Project

The Integrated Coastal Zone Management Project emerged to satisfy the requirements of the Sustainable Development of Small Island Developing States-Programme of Action and has intimate linkages to Caribbean Planning for Adaptation to Climate Change. Integrated Coastal Zone Management is one of the most effective ways of planning for adaptation to climate change. To this end the OAS contracted consultants in 1998 to conduct a survey and make recommendations on integrated coastal zone management and legislation in selected countries of the Anglophone Caribbean. In 1999 US Agency for International Development (USAID) contracted consultants to broaden the Integrated Coastal Zone Management Project to include recommendations in respect of all Caribbean countries, albeit by categories. Category 1 focuses on the mainland states of Guyana and Belize. Category 2 on the larger/more developed islands such as Jamaica, Bahamas, Trinidad and Tobago, and Barbados. Category 3 includes the island states of the Organization of Eastern Caribbean States.

The Integrated Coastal Zone Management Project Report record that integrated coastal zone management is assuming increasing importance in the Caribbean. Management systems are being developed to deal with growing problems of coastal deterioration caused by rapidly expanding levels of beach tourism, growing urbanization of coastal lands and coastal sand-mining used to support the construction industry in coastal areas and elsewhere. Exposure of coastal areas to

the risk of maritime oil pollution has also encouraged the stimulation of pollution control legislation.

The tradition of fragmented administrative approach to coastal zone management has experienced significant improvement in the last ten years. Currently, Caribbean countries present a multiplicity of management frameworks. There was independent stand-alone coastal zone legislation, umbrella legislation regulating coastal resources as a component within a comprehensive environmental strategy, and fragmented legislative systems in which the coastal zone is managed on an ad hoc basis in response to specific problems. In every instance, recognition of the vulnerability of the coastal zone to sea level rise and the requirement for regulation of pollutants that cause climate change tends to be implied and not expressed.

The consultants were of the view that sustainable management of coastal resources raises continuing challenges even for those countries with sophisticated management strategies. Here questions of explicating management objectives, integrating international controls, and testing, improving and maintaining efficient management strategies predominate. The existence of improved coastal management practices in some Caribbean countries provides important lessons for the regional management of coastal resources. This is especially valuable in relation to small island states with similar coastal zone problems but without the human, material or technical resources to fashion an indigenous management strategy. Adoption of new legislation in these countries brings questions of ensuring suitability to the specific local context. There are further issues of ensuring the legislation's integration into the pre-existing legal infrastructure.

Significant legislative and institutional improvements, associated with the Integrated Coastal Zone Management

Project and similar project-activity have occurred in Barbados (See: Coastal Zone Management Act 1998) and Belize (Coastal Zone Management Act 1998 (No. 5 of 1998)); and there is heightened activity in relation to ICZM in such countries as St. Lucia, Jamaica, and The Bahamas.

11.5 Regional Project Activity in Relation to Biological Diversity

In relation to the Convention on Biological Diversity (Biodiversity Convention), adopted at the Rio Earth Summit in 1992, a 1997 Review of the Implementation of the Small Island Developing States-Programme of Action United Nations Economic Commission for Latin America and the Caribbean suggested that conservation of biological diversity had been promoted by researchers and environmental and conservation organizations. However, it was found that the subject "has not found widespread support among the general population" (UNECLAC Review (1997) at p. 24). Key issues identified in the Review included the following:

- Lack of inventory of biological resources.
- Lack of integrated strategies for the management of terrestrial and marine biodiversity.
- Inadequate socio-economic and biological research on key species.
- Increasing habitat degradation and destruction.
- Unsustainable exploitation of commercially important indigenous species.
- Insufficient or non-existent safeguards against loss of rights to genetic resources.

A major regional project activity has been the relatively low budget (US\$0.6 million) "A Conservation Assessment of the Terrestrial Eco-regions of Latin America and the Caribbean" funded by the World Bank, Global Environmental Facility and

World Wildlife Fund. The executing agencies were the World Wildlife Fund and International Bank for Reconstruction and Development.

The Project was conceptualized on the basis of limited resources and the need to balance conservation interests and the imperatives of economic development. These considerations suggested that an objective regional framework can be a useful input to help guide the investment decisions of regional organizations such as the International Bank for Reconstruction and Development, Global Environmental Facility, or major international conservation NGOs, such as World Wildlife Fund. To this end, the International Bank for Reconstruction and Development contracted the World Wildlife Fund to carry out an in-depth study to assess the conservation status of terrestrial biodiversity in Latin America and the Caribbean. LAC was divided into 178 natural terrestrial units, called ecoregions, as well as 13 mangrove complexes. Using an approach based on the science of landscape ecology and conservation biology, the conservation status and biological distinctiveness of each ecoregion was determined. As regards Small Island developing states in the Caribbean the Project focused upon identification of biological resources, land resources and capacity building. The Project resulted in a published Report highlighting the most biologically valuable and threatened ecoregions of LAC.

Important regional activity to protect biological diversity is carried on under the Caribbean Environmental Programme, which forms the core of the UNEP's Regional Seas Programme in the Caribbean. Conservation of biological resources falls within the objective of the SPAW Protocol and thus overlaps considerably with the UN Convention on Biological Diversity.

The direct impact of these regional activities upon national implementing

efforts may be characterized as average. Traditional regulatory activities in such sectors as fisheries and forestry involving the taking of measures for the conservation of biological resources have evolved along separate lines. Admittedly, the widespread adoption of CBD and the increasing acceptance of the SPAW Protocol have encouraged a spate of recent activities. With Global Environmental Facility support virtually all-Caribbean countries have prepared or are preparing individual biodiversity strategy and action plans and a related first report to Conference of Parties to the Biological Diversity Convention. Funding from other external agencies sometimes demonstrate a preference for private sector-led initiatives. For example, the Montego Bay Marine Park Trust benefited from a US\$25,000 grant from USAID. The Trust was the first local community group to be delegated authority for the management of park resources. The grant was used to establish basic administrative systems and equipment needed to strengthen the Trust's administrative capabilities as it prepared to assume the official responsibility for the Marine Park's sustainable management. Similarly, the private sector oriented BEST Commission in The Bahamas secured IADB funding for institutional review and strengthening. Also the National Wetlands Committee of Trinidad and Tobago, a Cabinet appointed inter-sectoral committee, responsible for formulating a wetlands policy through which the wise use of the country's wetlands can be achieved, has attracted external funding. Much of the policy formulated by the Committee was in compliance with the guidelines listed in the Ramsar Convention on Wetlands but obviously also facilitate the conservation of biological resources.

12 GUIDELINES FOR MEA IMPLEMENTATION

12.1 Introduction

The most effective MEA implementing strategies are those supported by legal, administrative, institutional, technical and funding arrangements that address directly carrying out of the obligations under the conventions. Such arrangements provide a catalyst for ongoing environmental management objectives and allow for capacity building and thus respond to the requirement of facilitating the long-term sustainability of environmental management activity.

There are no prescribed formal national guidelines governing the operationalisation of MEAs in any Commonwealth Caribbean country. However, over time various practices have evolved which would, probably, be regarded as more effective in some countries of the region than in others.

The following Guidelines for MEA Implementation are drawn mainly from the experience of those Caribbean countries that have expended most energy and resources in trying to come to terms with the carrying out of MEA obligations. The Guidelines are a work in progress and are suggested as useful points for information discussion and analysis rather than as models for uncritical national action.

12.2 Environmental Treaty Making

MEA implementation has evolved on the basis of processes that require development of two types of national focal points, the political focal point and the technical focal point

The political focal point is generally the Ministry of Foreign Affairs, which is responsible for environmental treaty making on behalf of the state whereas the technical focal point is generally responsible for formulating and executing a national work programme in accordance with country obligations under the convention. In practice the technical focal point may be a

Ministry, Government Department, statutory corporation, or a semi-private sector agency.

Under the present arrangements the obligations of the political focal point end with the act of formal acceptance, unless, perchance, performance of the treaty falls within the substantive purview of the Ministry. This could be unsatisfactory since instances have arisen where other agencies of state have been unaware of the acceptance of an MEA and therefore of their responsibilities for carrying out obligations under the agreement. At minimum there should be clear administrative procedures by which the political focal point conveys the nature and extent of state acceptance of MEAs to all relevant public and private sector stakeholders with relevant functions to perform.

An alternative to administrative notification is provision for overlapping jurisdiction between the technical and political focal points. This is the case in St. Kitts and Nevis where the Department of the Environment is given statutory powers to participate in the negotiation and conclusion of environmental treaties. This procedure has obvious advantages in terms of awareness and preparedness for implementation of relevant treaty obligations. Caribbean countries should:

- Identify/ensure clear delineation of the principal political and technical focal points for MEAs and ensure adequate levels of staffing and funding.
- Ensure that the political focal point is aware of and in regular contact with the technical focal point or technical focal points responsible for implementation of each MEA.
- Ensure proper notification procedures by the political focal point of all accepted MEAs accepted by to all relevant agencies and actors.
- Provide, as appropriate, for the involve-

ment by the technical focal point in the negotiation, conclusion, and acceptance of MEAs.

- Ensure that the political focal point does not communicate final acceptance or ratification of the MEA to the Secretariat of the Convention until any required implementing legislation has been enacted.

12.3 The Ratification Process

The traditional procedure for environmental treaty making involves final acceptance or ratification by Cabinet acting through the Minister of Foreign Affairs. The Executive had and exercised a complete monopoly over treaty negotiation, conclusion, acceptance or ratification on the ground that external affairs fell within the monopoly of the Executive. Parliament played no role in treaty making.

Consistent with the constitutional principle that Executive could not make law for the citizenry, MEAs concluded on behalf of the state had no direct effect within the national legal system unless and until Parliament intervened to pass an enabling or implementing Act. In order to be effective domestically, the treaty had to "incorporated" or "transformed" into national law by legislation. There are several instances in where the Executive entered into treaties that cannot properly be implemented because there was an absence of implementing legislation (see e.g., *National Resources Conservation Authority v. Seafood and Ting* (1999) (Jamaica Court of Appeal)). Parliament, in its deliberative discretion could also decide against the legislative implementation of the treaty provision.

The dualistic approach to treaty making and treaty implementation followed in the Caribbean is, generally speaking, inefficient and outdated.

Antigua and Barbuda, uniquely, adopts a more modern approach. In that country, Parliament is legislatively given a role in treaty ratification. Before MEAs and

other treaties can be considered binding on the state. This procedure facilitates the involvement of the Parliament in the treaty making process. Televised parliamentary debates on treaty ratification also encourage public awareness, education and involvement. The process is intended and has the practical effect of empowering public participation at every stage of the implementation cycle as required by the Rio Declaration and basic tenets of participatory democracy.

Following parliamentary final approval of the MEA, official communication of the final acceptance or ratification is communicated to the Convention Secretariat the Executive (normally the Minister of Foreign Affairs).

Caribbean countries should:

- Identify or establish, as appropriate, clear procedures for MEA ratification.
- Legislate a role for Parliament in treaty acceptance and ratification.
- Ensure that the description of treaties requiring Parliamentary approval or ratification is broad enough to include all significant MEAs.
- Ensure development of procedures mandating that approval by Parliament be followed by communication of the state's acceptance by the political focal point to the Convention Secretariat.
- Ensure public broadcast and/or dissemination of Parliamentary debates and discussions on treaty ratification.
- Ensure that Parliamentary approval or ratification reflects, simultaneously, legislative incorporation of the MEA into domestic law.
- Subject MEA denunciation to a process of parliamentary involvement similar to that of MEA acceptance.
- Work toward constitutional entrenchment of the Parliamentary approval or ratification/denunciation process.

- Ensure, between the time of signing and ratification of the MEA, that the state and all its organs refrain from activity that would defeat the object and purpose of the treaty.

12.4 Passage of Enabling or Implementing Legislation

In the Caribbean constitutional system, the decision to accept a MEA must be conjoined with Parliamentary passage of enabling legislation; i.e., legislation that incorporates relevant provisions of the convention thus allowing for its application domestically.

Pragmatism argues that the legislation should be adopted prior to final ratification of the Convention. This avoids the unfortunate situation illustrated in *Natural Resources Conservation Authority v. Seafood & Ting* (1999) in which national environmental agencies have no legal authority to adopt measures to implement conventions to which the state is party because Parliament has been slow to enact the enabling legislation.

Incorporation "in advance" of ratification is generally preferable but could result in the delay of treaty acceptance during the research, drafting and passage of the law. Drafting, technical, and financial assistance may be available from the Secretariats of some of the Conventions.

Enabling legislation, whether enacted before or after ratification may be of at least two types. Legislation may incorporate by (a) re-enactment or (b) reference.

Incorporation by re-enactment is generally preferable because institutional, administrative, regulatory and penal measures required by the MEA may be translated into domestic law at the same time. This method also allows the state to translate any "soft law" type obligations into appropriate "hard law" legislative standard and to omit provisions in respect of which the state entered a reservation. Final clause may

also not be incorporated.

However, this approach places a premium on the possession of drafting skills and technical competence. There is also the risk that conventional obligations could also get lost in the translation resulting in inconsistency between the legislation and the MEA. Where the wording of the legislation is clear and unambiguous the local courts are constitutionally obliged to apply it even if in contravention of provisions in a convention to which the state is a party.

Incorporation by reference has the advantage of speed and simplicity. Ratification need not be delayed for legislative considerations and the giving of "the force of law" to the MEA must mean some inter-penetration of the Agreements into the national legal system.

However, the obligations of the referenced agreements are not necessarily (and not usually) thereby fulfilled. In particular incorporation by reference does not create any required institutions in domestic law.

The combination of both methods could possibly provide the best technique in this regard. Where incorporation by re-enactment is impractical within the required time frame, incorporation by reference may be chosen as a temporary expedient. As soon as possible after the incorporation by reference, the referring legislation should be supplemented by substantive provisions contained in ancillary legislation as soon as practicable.

Caribbean Countries should:

- Ensure the passage of implementing or enabling legislation prior to final acceptance or ratification of the MEA.
- Provide for the acquisition and retention of suitable drafting skills and expertise.
- Where necessary, accept/solicit assistance with the drafting of implementing legislation from the Secretariat of the Convention and/or from competent international global and regional organizations.

- Consider the relative merits of legislation that implements by re-enactment as compared with legislation that implements by reference.
- Where because of limited resources, exigencies of time, or other reasons, passage of full implementing legislation is impractical, consider utilization of the abbreviated form of incorporation by reference illustrated by the National Conservation and Environmental Protection Act (Amendment) 1996 of St. Kitts and Nevis.
- Combine, as appropriate, the methods of implementation by re-enactment and reference.
- Ensure that the implementing legislation is consistent with the and fulfills the MEA obligations.
- Ensure that implementing legislation creates any required institutional, administrative and policy-making arrangements.
- Ensure that implementing legislation provides all appropriate administrative.
- Ensure that the implementing legislation provides adequate penalties and incentives to foster compliance with the MEA.
- Provide that in the event of conflict between the domestic legislation and the MEA, the MEA should prevail unless the relevant Minister, by formal procedure, provides expressly to the contrary.
- Ensure that the courts are empowered to take judicial notice of MEAs that have been incorporated into domestic law.
- Ensure that implementing legislation is revised and updated to keep pace with amendments to the treaty regimes that have been accepted by the state.

12.5 The Technical Focal Point: the National Implementing Agency

In the best practice, the technical focal point is also the national implement-

ing agency for MEA operationalisation.

A national implementing agency constitutes an important element in the programme of MEA implementation. Such an agency is the catalyst for environmental management and for continuing public information and awareness. The agency may also possess powers in relation to the negotiating international environmental agreements and given the typically broad environmental mandate is necessarily central to MEA implementation. Regulatory techniques include "command and control" as well as market-oriented strategies. The latter is increasingly recommended in MEAs, particularly the United Nations Framework Convention On Climate Change and its Kyoto Protocol.

The nature of the implementing function necessarily means that the NEA must be a cross-sectoral and coordinating body rather than the sectoral institutions that traditionally characterize Caribbean regulatory arrangements.

It may be that organization within the government (e.g., as a Department of the Environment within a Ministry of the Environment) may provide greater functional independence than organization as a "parastatal" organization (e.g., a statutory corporation). The bureaucratic tradition and trade union involvement in the civil service could give such a Department significant autonomy as compared with a statutory corporation where members of the Board are appointed and dismissed in the sole discretion of a Minister. Contra wise, legislating establishing Environmental Departments tends not to bind the Crown (or State) and therefore do not control governmental activity. This contrasts with the legislative arrangements in respect of "parastatal" bodies such as the Natural Resources Conservation Authority in Jamaica or the EMA in Trinidad and Tobago.

The technical focal point is gener-

ally responsible for formulating and executing a national work programme in accordance with country obligations under the convention. All day-to-day responsibilities fall under the management of the technical focal point. In practice the technical focal point may be a Ministry, Government Department, statutory corporation, or a semi-private sector agency.

The modus operandi varies but there are common elements to some of the more effective technical focal points.

Caribbean countries should develop a broad legislative framework that:

- Provides the policy framework within which MEA implementation takes place.
- Constitutes a technical focal point for MEA implementation.
- Ensures that the technical focal point is the national lead environmental agency.
- Decides, on the basis of the comparative advantages, between establishment of the lead agency within the government as opposed to establishment as a statutory corporation.
- Allows for at least minimum functional and financial independence of the agency.
- Provides that the mandate of the agency includes the co-ordination and supervision of other bodies having environmental functions.
- Ensures availability of both "command and control" measures as well as market oriented strategies.
- Ensures that the agency dedicates specific resources to MEA implementation.

The National Environmental Agency, as Technical Focal Point, should:

- Adopt specific MEA implementation strategies.
- Determine the rights and obligations accruing under the Agreement.
- Identify relevant local skills, expertise

and allied resources.

- Ensure the ascertainment of the likely impact of the treaty on economic growth and development.
- Ascertain the treaty's likely impact on sound regulation of relevant environmental problems.
- Ascertain the treaty's probable catalytic role in furthering local environmental management objectives.
- Ascertain whether and in what specific ways the treaty recognizes the special needs of developing countries.
- Ascertain whether the treaty provides assistance for participation in meetings and working groups to assure full participation.
- Ascertain whether the treaty establishes funding mechanisms and procedures for transfer of technology for treaty implementation.
- Ascertain whether the treaty allows for adjustment of obligations and timetables to recognize the social, economic, and development needs of developing countries.
- Ensure that the state derives all financial and technical resources for implementation available under the treaty.
- Ensure attendance at meetings, workshops and seminars concerned with implementation.
- Ensure the submission of timely reports, inventories etc, to the Secretariat of the convention.
- Liaise closely with the Secretariat of the Convention and (with any required clearance from the political focal point) promptly communicate problems that impede compliance with the treaty.
- Ensure proper organization and execution of project based implementing activity.
- Ensure compliance with relevant laws, including the prosecution of offenders.
- Ensure establishment and observation of proper domestic MEA monitoring and compliance procedures.
- Ensure proper coordination with regional and sub-regional bodies responsible for MEA implementation projects.
- Oversee the employment of private consultants/NGOs to provide necessary skills and expertise not available "in-house".

Where no national environmental agency exists, Government should:

- There should be the convening of a steering committee to oversee the MEA's operationalisation.
- The steering committee should be 'high powered' and appointed by Cabinet or the Minister with competence for implementation of the MEA (e.g., the Minister of the Environment).
- The steering membership of the steering committee should comprise competent persons from government agencies, civil society and NGO who possess appropriate skills and expertise relevant to the particular convention.
- The steering committee should act under the general advise and subject to the general supervision of the relevant Minister.
- In appropriate cases, constitute the steering committee as the technical focal point.

12.6 Regional and Sub-Regional Project-Activity

Regional and sub-regional project activities provide critical linkages between the global MEA and the national implementing agency. National institutions and administrative arrangements benefit significantly from the presence and operation. Harmonization of national implementing activity is fostered across a region with common historical, juridical and cultural

characteristics. Existing regional integration agreements (e.g., Caribbean Community) reinforce the desirability for harmonization. Regional project activity also lends to transfer of technical and financial resources and local capacity building that in turn promotes sustainability.

The critical importance of regional and sub-regional activity argues for the development of appropriate project proposal to international donor/financing agencies. Important requirements are made of such proposals in terms of clarity of objectives, institutional and administrative arrangements, viability, and sustainability. Increasingly, too, international agencies are demonstrating a readiness to fund private sector oriented management schemes and proposals should reflect this consideration in appropriate circumstances.

Caribbean countries should:

- Cooperate in MEA implementation by working through existing regional organizations such as Caribbean Community, Caribbean Environment Programme/ United Nations Environment programme, Organization of the Eastern Caribbean States, Association of Caribbean States.
- Stimulate and negotiate the conclusion of regional arrangements that are specifically designed for MEA implementation.
- Ensure that regional implementation projects reflect and respond to the local prioritization of needs.
- Ensure that regional projects contain initiatives that facilitate local capacity building and institutional strengthening.
- Ensure that attention is given to the project's long-term sustainability.
- Keep complete records of project activity within their individual territory.
- Ensure closest possible coordination between the focal point of regional activity and the national technical focal point.
- Ascertain and evaluate the precise contribution of the regional project on MEA implementation objectives and obligations.
- Report on contribution of regional project to Multilateral Environmental Agreement implementation to the Secretariat of the MEA.