International Agreements and their impact on domestic legislation

International Environmental law is now a recognized area of specialization in International law. The Permanent Court of International Justice has defined international law in the case of SS Lotus as the law governing:

“Relations between states, rules of law binding upon states as expressed in conventions or by usage generally accepted principles of law”\(^1\).

International environmental law therefore consists of conventions, protocols, customary rules and soft law instruments. International environmental law has been recognized as one of the fastest growing areas of international law and has grown in scope from regulating sectoral issues like whaling and migratory birds to addressing more anthropocentric concepts like sustainable development.

The UNEP register of treaties in the field of the environment lists 216 multilateral and regional environmental instruments. The Jamaican Government is a State Party to over 30 international and regional environmental agreements\(^2\). This is in recognition of the many environmental challenges it faces as a small island developing state including issues associated with loss of endangered species, importance of protection of wetlands, climate change, sea level rise, ozone depletion, hazardous waste management, and pollution from land based sources. The Government has expressed its willingness to address these national and global issues by co-operation among States through multilateral and regional agreements and steps have been taken to adopt administrative, policy and legal mechanisms to implement these agreements.

This paper will outline the status of our implementation of some of the international conventions which Jamaica has ratified and will speak to challenges in incorporation of these conventions into domestic law.

\(^1\) American case book series 1994
\(^2\) A list of International Environmental Agreements to which Jamaica is a party is attached.
The development of national legislation in Jamaica governing environmental issues has been pushed by the growth of international environmental law. Jamaica like other developing countries has gradually begun to understand the importance of negotiating environmental agreements. The incorporation of principles and rules into domestic law has happened at a slower pace. National Programs have been adopted and existing laws and regulations have been adapted to implement various treaty obligations but there are only a few conventions for which there has been a comprehensive legal framework promulgated. Work to adopt appropriate frameworks however is progressing. In Jamaica this has taken on even greater importance after the decision of DYC and Seafood and Ting vs. NRCA\(^3\) which is recognized as the first judicial decision to:

“Clarify the position of the implementation of multilateral environmental agreements in the Commonwealth Caribbean\(^4\).”

It was found in this 1999 case per Downer J.A.:

“that legislation is necessary to implement the provision of the treaty is a constitutional imperative…this court was compelled to decide the important issues in this case on common law principles”.

It is clear therefore that without national legislation international environmental agreements may not be enforced in the Jamaican courts. It is accepted law that International instruments between states only create legal obligations between states and not between state and individual or two individuals. Thus a treaty does not have domestic effect until legislation has been passed by parliament\(^5\).

Conventions have been implemented by a variety of means including comprehensive legal frameworks, regulations under current acts including the declaration of orders, by

---

\(^3\) Suit No. C.L. 1999/S134 Court of Appeal (Jamaica) dated 1July, 1999.


\(^5\) This is subject to the exceptions laid down in R. v. Director of Public Prosecutions and Another ex parte Dafney Schwartz [1976] 24 WIR 491 and the North Sea Continental Shelf Cases [1969] ICJ Rep. 3 paras 71 and 72 which address the adoption of customary rules into domestic law.
use of existing legislation and through the adoption of policies, action plans and programs.

**The Convention on International Trade in Endangered Species of Wild Flora and Fauna**

Jamaica became a party to the CITES Convention on April 23, 1997. It is recognized as one of the most important International Conventions that seeks the protection of endangered species of flora and fauna from over-exploitation through the restriction and regulation of international trade. It obligates States Parties to restrict trade in specimens listed within Appendices I, II & III in accordance with the requirements of the Convention.

The Act implementing the Convention in Jamaica is entitled the Endangered Species (Protection, Conservation and Regulation of Trade) Act 2000. It provides a comprehensive framework for implementation of the convention. It designates officers of the NRCA, Customs officers, Police or Jamaica Defence Force, Fishery inspectors, Marine officers, Aquaculture inspectors, Forestry officers, Park managers and Rangers to enforce the Act. The Act defines endangered species as including any animal or plant species threatened with extinction. The Act applies to any whole or part of such animal including flesh, skin, bone, blood, any reproductive material and any ready recognizable part. In the Act “Trade” includes export, import, re-export, introduction from the sea and domestic trade. The Appendices are translated into Schedules in the Jamaican Act containing lists of species. Schedule I contains species which are threatened with extinction and may not be traded commercially unless within confined exceptions. Schedule II contains species for which trade is strictly controlled and Schedule III contains species for which individual countries wish to regulate within their own jurisdiction to prevent over exploitation. There is an additional Schedule IV added to the Jamaican Act, which contains endemic species, which require an export permit for any international trade from Jamaica, this is a requirement that goes further than the Convention that is the Jamaican Act adopts stricter domestic measures than are required by CITES pursuant to Article XIV of the Convention. There are a number of species on these lists found in Jamaica including marine turtles on Schedule I, queen conch, some of Jamaican orchids and mahogany on Schedule II.
Criminal offences are provided in the Act for the following: -

(1) For any person to trade in specimens without a permit or certificate liable on summary conviction before a Resident Magistrate to a fine not exceeding two million dollars or to imprisonment for a term not exceeding two years or to both such fine and imprisonment or on conviction on indictment in a Circuit Court to a fine or to imprisonment for a term not exceeding ten years or to both such fine or imprisonment.

(2) For a person to enclose in or with any letter, parcel or packet or other matter sent by post any endangered species or knowingly using for the transportation of any endangered species any mail bag, van aircraft, ship or other vehicle for carrying mail. There are also offences in the Act for false or misleading statements, threatening an authorized officer and failing to keep appropriate trade records. Fines range from two hundred thousand dollars to two million dollars.

The Act was drafted to designate the endangered species in Jamaica; incorporate international trade standards into Jamaican law; provide for management and recovery measures for endangered species but primarily to regulate international trade. It should be noted that the Act makes it an offence to trade without the required permits as opposed to making it an offence to be in possession of endangered species. The Act was drafted in this manner as there is a significant amount of trade in the species listed in Schedule II of the Act. Possession of some of Jamaicans endemic species however is an offence under a separate Act that predates this Act the Wildlife Protection Act.

There have been many challenges in implementing this Act chief among them is investigating the offences. There has been a difficulty in obtaining proof of illegal trade which often requires proof of export or import and the requisite chain of custody. Enforcement of our maritime borders has also raised challenges because of the extensive borders Jamaica has, both poaching in our waters and trade occurring via boats. Another problem has been in seeking to seize goods which have been exported without the required permits, other Caribbean Countries who have no CITES legislation are often unwilling to confiscate goods exported without the required permits. Finally
because of the complexity of the legislation constant training of custom and other officers is required to acquaint persons of the requirements of the law.

**MONTREAL PROTOCOL**

Jamaica became a party to Vienna Convention for the Protection of the Ozone Layer and the Montreal Protocol on March 31, 1993. The Protocol requires State Parties to gradually phase out the production and consumption of Chlorofluorocarbons (CFC’s), hydrochlorofluorocarbons, halons, methylbrominde and other ozone depleting substances. Jamaica has implemented its obligations under the Protocol through the promulgation of Regulations and Orders and the implementation of a Country program. Jamaica began implementation of the Protocol through the design of a “country program” in March 1997. The Country Program sets out the projects that need to be implemented to achieve the phase out under the Protocol.

Jamaica does not manufacture any ozone depleting substances or refrigeration equipment and therefore implementation of the convention has been through the restriction of imports into the country. The Protocol requires developing countries to phase out consumption of ozone depleting substances and equipment using ODS to prescribed levels required by the Protocol. The Trade (Prohibition of Importation) (Equipment containing CFC’s) Order was passed in 1998 to ban the importation of equipment containing CFC’s and halons (except propellants in metered dose inhalers). The items listed in the Schedule of the Order include halon-based fire fighting equipment, refrigerators, deep freezers, air conditioning units, soda fountains, aerosols, foams and solvents using CFC 11, 12, 113, 114 and 115. A ban on motor vehicles air conditioners using CFC’s was made effective April 1, 1999.

In July 1, 1999 Jamaica instituted a program to restrict its consumption of CFC’s to the average of consumption levels as recorded in 1995/7 as required under the Protocol through the Trade (Restriction on Importation) (CFC’s) Order. These Regulations introduce a quota system for the establishment of levels for all importers and a schedule for phasing out from July 1999 to December 2005.
The NRCA is the lead agency implementing the Montreal Protocol. However the core of the current regulatory framework is the Trade Act (which allows restriction and prohibition of goods), the Food and Drug Act (which defines these substances as ‘Drugs” and requires a permit for import), the Pesticide Act (methyl-bromide is a registered pesticide) and the Customs Act. The Customs Act s. 215 addresses the import of prohibited or restricted goods without the required licenses and permits and can result in forfeiture of the goods or a fine of treble the value of the goods.

There are a number of challenges in the implementation of this Protocol chief among them is the lack of a comprehensive framework. This has been recognized and an overarching Act entitled the Ozone Act has been drafted to comprehensively implement this Convention into Jamaican law and harmonise the relationship between the multitude of agencies which have jurisdiction over these substances and provide regulation over ODS from cradle to grave. The Act will therefore provide for offences for illegal trade in ODS, import of ODS without the required labelling standards, failure to dispose of ODS and equipment in the appropriate manner and also offences for the Discharge of ozone depleting substances into the atmosphere and for persons handling ODS without the required licence.

**BASEL Convention**

Jamaica became a party to the Basel Convention on April 23, 2003. The Natural Resources (Hazardous Waste) Regulations 2002 have been promulgated to implement the Basel Convention. The regulations have been promulgated under the Natural Resources Conservation Authority Act 1991. The Convention governs the regulation of transboundary movement of waste but also has provisions that apply in Jamaica. The regulations ban the importation of hazardous waste into the island. They allow transit of hazardous waste in areas under the jurisdiction of Jamaica with a permit and require permits for the export of such waste. The regulations include offences for illegal traffic in hazardous waste (that is import or export of such waste) without the required permits in the case of export and also include an offence to dump or dispose of any hazardous waste in Jamaica and in any area under the jurisdiction of Jamaica.
There are numerous challenges in the implementation of these regulations chief among them is the fact that the highest fine under the regulations is only $50,000.00 and as such will not act as a deterrent. There is also currently no specific legislation governing the storage and transportation of hazardous waste generated in Jamaica and thus there is not complete regulatory control over hazardous waste. The NRCA Act contains only a provision that requires a permit for hazardous waste disposal. Also the enforcement of these regulations will require investigations which involve many issues of documentary evidence and enforcement by customs therefore becomes crucial.

**International Convention for the Prevention of Pollution from Ships (MARPOL CONVENTION, (1973) IMO**

Jamaica became a party to MARPOL 73 and the 1978 Protocol on June 13, 1991. MARPOL has not yet been implemented in Jamaica. MARPOL governs the prevention of pollution from ships including the regulation of oil, garbage and sewage. The Shipping Act was passed in 1998 but did not include any legislation to implement MARPOL. The Shipping Act however sets up the Maritime Authority with the mandate under s. 8 of the Act to: Administer the registration of ships; Inspect ships for purposes of maritime safety and the prevention of marine pollution; Establish maritime training and safety standards

The Maritime Authority intends to implement MARPOL through a Shipping Pollution Prevention and Control Act. A Bill has just been completed and is currently being discussed. This Act will implement the MARPOL Convention dealing with prevention of pollution, the OPRC Conventions on response in Oil spills and the IMO Compensation Conventions. The Bill addresses liability issues and includes offences for the discharge of pollutants into waters from ships, failure to report pollution and seeks to regulate transfer of oil to ships, design and construction of equipment to prevent pollution, labelling requirements, provisions for reception facilities and certification of ships compliance with international standards.

There will be challenges in implementing this new Act governing MARPOL into Jamaican law. Chief among them is the enforcement and monitoring of these new
standards over both local and foreign vessels. Also to be considered will be the collection of evidence and the prosecution of offenders against this Act.

**CARTAGENA CONVENTION**

Jamaica became a party to the Convention for the Protection and Development of the Marine Environment of the Wider Caribbean Region on May 1, 1987. This Convention is the only regional environmental treaty negotiated for the Wider Caribbean. This treaty provides a framework for the implementation of other multilateral treaties including the London Dumping Convention and MARPOL 73/78. A number of very detailed protocols have been negotiated under the Convention including:

1. The Protocol Concerning Cooperation in Combating Oil Spills in the Wider Caribbean Region (The Oil Spills Protocol)
2. The Protocols Concerning Specially Protected Areas and Wildlife in the Wider Caribbean Region (The SPAW Protocol)
3. The Protocol Concerning Pollution from Land-based Sources and Activities in the Wider Caribbean Region (LBS Protocol)

The Cartagena Convention provides obligations on States Parties to prevent, control and reduce pollution of the Convention Area by discharges from ships, aircraft’s, man-made structures at sea, coastal disposal or discharges emanating from rivers, estuaries, coastal establishments, outfall structures, land based sources, exploration of the sea bed and discharges from the atmosphere. The Convention requires measures to be taken to protect rare and fragile ecosystems as well as habitats of endangered species and to establish protected areas. There are also obligations to co-operate in pollution emergencies, develop contingency plans, and to institute technical and other measures to assist in the planning of major development projects and ensure the assessment of the potential effects of such projects on marine areas, particularly coastal areas especially to ensure the prevention of pollution of the Convention area.

No specific legislation was enacted by Jamaica to become a party to the Cartagena Convention. There is however national legislation, which implements aspects of the Convention. The NRCA Act (section 10) contains provisions that allow the Authority to
require an Environmental Impact Assessment for certain prescribed categories of development as well as such information as it deems fit. It is an offence to fail to submit an EIA by the proponent. This Act also makes provision for the control of discharges of sewage and trade effluent or any poisonous, noxious or polluting substance (section 12). It makes it an offence to discharge such substances into water or on the ground without a license from the NRCA. There is also provision under the NRCA Act (section 5) for the declaration of Parks and Protected Areas for the protection of habitats and eco-systems, while the Wildlife Protection Act and the Trade in Endangered Species Act includes a list of Jamaica's endangered animals which are protected and regulated in terms of trade.

As this is a framework Convention the chief challenges will be to implement the specific requirements of the Protocols under the Convention and ensure that the obligations which require action from various government agencies with different responsibilities are co-ordinated and implemented in a timely fashion. There are a number of other global and multilateral conventions with similar provisions and it will be a challenge to incorporate these differentiated obligations into domestic law.

**Biodiversity Convention**

Jamaica became a state party to the Convention on Biological Diversity on January 6, 1995. The Objectives of this Convention are to conserve biological diversity, promote the sustainable use of biological diversity and to ensure the fair and equitable benefit sharing from its use. This convention requires states to implement some of their obligations by putting in place an appropriate legal framework to regulate protected areas, control the spread and introduction of alien invasive species, regulate the risks associated with the release of living modified organisms and respect preserve and maintain the knowledge innovations and practices of indigenous and local communities. The Convention however requires the preparation of a national strategy for the conservation and sustainable use of biodiversity from which a country will implement its obligations. A Biodiversity Strategy and Action Plan (green paper) has been prepared and was discussed throughout the island it was sent to Cabinet in March 2003. Legislation will be required to be prepared to fully implement Jamaica’s obligations under the Convention and will include provisions incorporating the concept of biodiversity “the
variability of living organisms from all sources” into legislation, incorporating provisions on access to genetic resources including permits for collection of species and the conduct of research on these species. Also new legislation is to be put in place to govern the safe handling and release of living modified organisms.

There will be many challenges in implementing the provisions of this Convention chief among them will be to implement the Convention within the current structure of domestic law. Currently there are two other pieces of legislation the Wildlife Protection Act and the Trade in Endangered Species Act that regulate the conservation of species in Jamaica. In addition including concepts such as access to genetic resources within the legislation will be complex and challenging to regulate. The financial requirements to implement the projects identified in the plan are also extensive.

**Conclusion**

These are just some of the examples of implementation of Jamaica’s international environmental law obligations. It is clear that a lot of the new developments in International environmental law are slowly finding their way into Jamaican legislation. There are numerous conventions which all have discreet obligations, requirements for new legislation, management, monitoring and enforcement. This poses a great challenge to Jamaica. Jamaica has implemented numerous obligations required under these conventions both by the implementation of projects and programs, the development of action plans and the promulgation of the necessary legislation. It is clear that as Jamaica takes steps to ratify many other important environmental conventions our national legal framework will develop and expand government’s regulatory control over numerous activities that have an impact on the environment. The incorporation of the requirements of these conventions into our national law has to be perceived as an important step towards global and regional goals but which will bring many national challenges that still have to be addressed.
INTERNATIONAL ENVIRONMENTAL CONVENTIONS, TO WHICH JAMAICA HAS EITHER SIGNED OR RATIFIED

1. International Plant Protection Convention, 1951
2. Convention concerning the Protection of the World Cultural and Natural Heritage, 1972
3. Treaty banning Nuclear Weapon Tests in the Atmosphere in outer space and under water, 1963
5. Convention on the Prohibition of the Development, Production and Stockpiling of Bacteriological (Biological) and Toxin Weapons, and on their Destruction, 1972
7. Convention on the Territorial Sea and the Contiguous Zone, 1958 [This Convention is now embodied in the Law of the Sea Convention]
8. Convention On The High Seas, 1958 [This Convention is now embodied in the Law of the Sea Convention]


17. Protocol concerning Cooperation in combating Oil Spills in the Wider Caribbean Region, 1983

18. Protocol on Land-Based Activities that Pollute the Marine Environment (LBS)

19. Protocol concerning Specially Protected Areas and Wildlife, 1990(SPAW)


22. Protocol relating to Intervention on the high seas in cases of Marine Pollution by substances other than oil, 1973 (as amended)


27. Montreal Protocol on Substances that Deplete the Ozone Layer, 1987

28. London Amendment to the Montreal Protocol on Substances that Deplete the Ozone Layer, 1990

29. Copenhagen Amendment to the Montreal Protocol on Substances that Deplete the Ozone Layer


32. Convention on Biological Diversity, 1992


34. Convention on Wetlands of International importance especially as waterfowl habitat (RAMSAR), 1971

35. Protocol to Amend the Convention on Wetlands of International Importance especially as Waterfowl Habitat, 1982

36. Regina Amendment to the Convention on Wetlands of International importance especially as Waterfowl Habitat, 1987


39. United Nations Convention to Combat Desertification in those countries experiencing serious drought and/or desertification, particularly in Africa

40. Stockholm Convention