



# 24-Hour Environmental Rule of Law

The Honourable Mr Justice Winston  
Anderson, Judge of the Caribbean Court  
of Justice

**Symposium to mark the 40th Anniversary of the Montevideo  
Programme and 50 years of International Environmental Law**

Virtual  
31 May 2022

**The United Nations Environment Programme (UNEP)** is the leading global environmental authority that sets the global environmental agenda, promotes the coherent implementation of the environmental dimension of sustainable development within the United Nations system, and serves as an authoritative advocate for the global environment. Inger Andersen is the Under-Secretary-General of the United Nations and Executive Director of the United Nations Environment Programme.

**Address**

**By**

**The Honourable Mr Justice Winston Anderson, Judge of the Caribbean Court of Justice,**

**on the occasion of**

**The symposium to mark the 40<sup>th</sup> Anniversary of the Montevideo Programme and 50 years  
of International Environmental Law**

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I am extremely pleased to share the Caribbean experience as part of this world-wide celebration of the progressive development of environmental law in the context of the 10-year Montevideo Programme, running from January 2020 to December 2029.

The first thing to mention is that there is a tight correlation between landmarks in international environmental policymaking and the development of environmental law in the Caribbean. This is especially so as regards the adoption of the principles of the Stockholm Declaration 1972 and Rio Declaration 1992, which are baseline markers for Caribbean Environmental Law, and which acted as the springboard for the birth and growth of the subject in the region over the last five decades.

The evolution of Caribbean Environmental Law can be seen through the lens of both government and non-governmental entities. Over time, the executive, legislature, and judiciary have assumed greater and greater responsibility for promoting environmental protection. Treaties, resolutions, and declarations have been adopted; a raft of legislation has been enacted; and judicial decision-making increasingly reflects concern for protection of the environment. Non-governmental entities have given a voice to the public in environmental matters and have helped to organize environmental law into a scholarly and respected legal discipline followed by generations of university students.

Let us then now proceed, as tribute to the occasion, by profiling the Caribbean past and trajectory while acknowledging the significant practical and policy challenges which still lie ahead.

## **Executive**

The executive branch of government in the Caribbean was slow off the mark in environmental policy and treaty making. The 1972 Stockholm Conference was attended by only 3 Caribbean States: Guyana; Jamaica; and Trinidad and Tobago. In the decade that followed, scarcely any real progress was made; CITES and the World Heritage conventions received the first and **only** Caribbean ratifications. Some Caribbean governments began to assign environmental policy-making responsibility to specific ministries, but the environmental portfolio was usually an “add-on” to an already established ministry and low priority was given to the environmental appendage.

Things changed dramatically in the decade 1982 -1992 which began with the adoption of the United Nations Convention on the Law of the Sea (UNCLOS). Caribbean contribution to the UNCLOS process was so significant that the Convention was adopted in Montego Bay, Jamaica, and the International Seabed Authority located in Kingston, Jamaica. All Caribbean countries quickly ratified or acceded to the Convention, which featured Part XII on the regulation of marine pollution, one of the most serious problems in the region.

Since 1982, the Executive has stepped up its game considerably. There has been widespread support for UNEP’s Caribbean Environment Programme<sup>1</sup> which was placed upon firm legal footing in 1983 with the adoption of the Cartagena Convention for the Protection and Development of the Marine Environment of the Wider Caribbean Region<sup>2</sup> and its 3 supplementary protocols. Caribbean states became significantly more active in ratifying the various legacy environmental conventions including CITES, World Heritage, RAMSAR, and MARPOL.

By the time of the Rio Declaration in 1992, the Caribbean was all in. Every State accepted the Rio Declaration principles and the 1992 Climate Change and Biodiversity Conventions, and these instruments became increasingly reflected in domestic legislation. The Rio Conference inspired the Global Conference on the Sustainable Development of Small Island Developing States held in Barbados in 1994. This built on the Rio Declaration by adopting the Barbados Declaration and the

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<sup>1</sup> UN Environment Programme, Caribbean Environment Programme 1981.

<sup>2</sup> The Cartagena Convention for the Protection and Development of the Marine Environment of the Wider Caribbean Region (adopted 24 March 1983, entered into force 11 October 1986).

Barbados Programme of Action to address the special concerns of Small Island Developing States (SIDS).

Caribbean states were also motivated to engage in regional environmental policymaking. In 1989, Ministers of the Environment adopted the Port of Spain Accord, which pledged “political impetus” for responding to environmental management issues in fourteen specific areas. The St. George’s Declaration by the OECS in November 2000 proclaimed, ‘the principles of sustainable development by which human conduct affecting the environment is to be guided and judged’.

Among the most recent achievement of Caribbean environmental foreign policymaking was the active engagement in negotiating the trailblazing 2018 Escazu Agreement to elaborate environmental access rights, previously stated in Principle 10 of the Rio Declaration. 10 Caribbean states adopted the Agreement whilst it was open for signature and 5 have gone on to ratify the Agreement thus permitting its entry into force in 2021.

## **Legislature**

Caribbean legislatures have also made great strides in the past 50 years in enacting laws to implement specific MEAs and to incorporate many of the Rio Declaration principles. In 1991, there was just one piece of “true environmental legislation” in the region (the Natural Resources Conservation Authority Act of Jamaica) but this quickly became a precedent for similar legislation throughout the region, some of which expressly adopted Rio Declaration principles. For example, the Environmental Management Act of Trinidad and Tobago commits to a national strategy for sustainable development, and the Environmental Protection Act of Guyana expressly requires use of current principles of environmental management in the Rio Declaration.

I should also highlight a seminal development in the region’s legislative landscape: the inscription of environmental rights into the Constitution. The original independence Constitutions obtained from the UK in the 1960s contained absolutely no reference to environmental protection. Some countries have remedied this deficit. The 1967 Constitution of Guyana was replaced in 1980 and then revised by the amendments in 2003 to provide that ‘everyone has the right to an environment that is not harmful to his or her health or well-being’ and that ‘The State shall protect the

environment for the benefit of present and future generations’. And after decades of debate, the 1962 Constitution of Jamaica was amended by the Jamaican Charter of Fundamental Rights and Freedoms Act 2011, to guarantee the right to enjoy a healthy and productive environment, ‘free from the threat of injury or damage from environmental abuse and degradation of environmental heritage’.<sup>3</sup> Other countries and territories are following these examples.

## **Judiciary**

The judicial branch has seen a significant uptake in the number of environmental cases presented for adjudication and there has been a noticeable shift in judicial attitudes towards how these cases are treated. The first three Caribbean attempts in 1993,<sup>4</sup> 1996,<sup>5</sup> and 1998<sup>6</sup> to seek judicial review of environmental decision-making were all wrecked on the rock of standing despite there being genuine issues of environmental damage by the challenged development.

Those days are long gone and standing is now routinely recognized. A challenge was allowed in 2004 to the decision to construct a 50-metre hydroelectric dam in the rainforest of Belize;<sup>7</sup> in 2006, two environmental NGOs stopped permission to construct a hotel at the ecologically sensitive area on the north coast of Jamaica;<sup>8</sup> in 2009 an environmental group in Trinidad blocked government’s permission for the construction of a bauxite smelter; they had standing because they were ‘a public-spirited organization’.<sup>9</sup>

This liberalization of standing to permit investigation of government decision-making in environmental matters will likely be strengthened when the Escazu Convention on Access Rights fully takes effect.

Another development, not to be overlooked, has been the attempt to sensitize regional judges to the important issues in environmental protection. Caribbean judges have participated in judicial

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<sup>4</sup> *Spencer v Canzone De Mar* A.G. (1993) H.C. 1 (Antig. & Barb.)

<sup>5</sup> *Scotland District Association Inc. v. Attorney-General and others* (1996) 53 W.I.R. 66 (C.A.).

<sup>6</sup> *Spencer v Attorney-General of Antigua and Barbuda* A.G. (1998) C.A. 3 (Antig. & Barb.).

<sup>7</sup> *Belize Alliance of Conservation Non-Governmental Organizations v. The Department of the Environment* (2004) 64 W.I.R. 68 (P.C.) (on appeal from Belize) (U.K.).

<sup>8</sup> : *Northern Jamaica Conservation Authority et al. v. Natural Resources Conservation Authority and National Environmental and Planning Agency* J.M. (2006) S.C. 49.

<sup>9</sup> *People United Respecting the Environment and Rights Action Group* CV 2007-02263, C.V. 2007-02263 (judgment June 16, 2009) (High Ct. of Trin. & Tobago).

symposia held in St Lucia (2001); Johannesburg, South Africa (2002); Trelawny, Jamaica (2004); Montego Bay, Jamaica (2011), World Congress, Brazil (2012), Bay Gardens, St Lucia (2012); and the First Inter-American Congress on the Environmental Rule of Law, Montego Bay, Jamaica (2014). It should also be noted that there is planned, a judicial seminar on Environmental Justice for St Lucia in October 2022.

These exposures have undoubtedly sensitized judges and strengthened the judicial perspective on environmental matters. In a Jamaican case, the court pointedly suggested to the legislature that it was ‘imperative that the [CITES] convention should be made a part of the domestic law of Jamaica as early as possible’, if, that is, the protection of the environment was really a serious national objective.<sup>10</sup> And in a case from Trinidad and Tobago, the Court went out of its way to extoll the virtues of public participation in environmental decision-making.<sup>11</sup>

### **Non-Governmental**

A final brief comment on the role of non-governmental entities and the linkage of that role to future challenges. As already evident, NGOs have championed environmental causes, including challenging environmental decision-making in court. Civil society was proactive in the Escazu negotiation process and will no doubt take an active interest in its implementation.

However, the specific role of the academy and university ought not to be overlooked. In 1992, when the Cave Hill Faculty of Law of the University of the West Indies approved my proposal for the inclusion of Environmental Law on its curriculum, there was a great paucity of legal material on the subject; we had to trespass on other well-established courses in order to find sufficient materials to fill the semester: Criminal Law, the Law of Torts, Administrative Law, and so on.

But 30 years have changed everything. There is now a mountain of environmental declarations & resolutions, MEAs, legislation & regulations and judicial decisions, all underpinned by core and emerging environmental principles. These features have made the study of environmental law a genuine and authentic legal discipline now taught not just at Cave Hill but also at the Law Faculties in Jamaica, in Trinidad and Tobago and in Guyana. Regional universities have graduated literally

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<sup>10</sup> *Natural Resources Conservation Authority v. Seafood and Ting International Ltd.* (1999) 58 W.I.R. 269.

<sup>11</sup> *Talisman (Trinidad) Petroleum Ltd. v. The Environmental Management Authority* Decision of Environmental Commission, No. EA3 (2002) (Trin. & Tobago).

hundreds of environmental law students many of whom have gone on to graduate studies in the field, some of whom have made environmental law their lives' work.

It is to this army of cohorts that we bequeath the travails and the triumphs of the past 50 years and the challenges yet to be faced and wrestled to the ground: ensuring unanimous acceptance of important MEAs; making sure of implementation of environmental standards; guaranteeing trans frontier environmental justice – so that, for example, those Caribbean countries that suffer the effects of Climate Change have access to resources and technology for adaptation and compensation. And additionally, challenges of clarifying, developing and giving content to new principles: special protection for environmental activists; environmental limits on property rights; the non-retroactive principle; the environmental rule of law.

Stockholm, Montevideo and Rio may be our legacy to these emerging environmentalists, but their task will be unbelievably more difficult than ours: maintaining respect for existing environmental norms and principles whilst creating new ones – all this amid an increasingly polarized and dangerously militarized world.

May the past 50 years inspire them; and may their efforts inspire the generations of environmental defenders yet to come.

Thank you.