“International Agreements and their impact on domestic legislation”

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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”.
Jamaica’s International Obligations

• Jamaica is party to over 30 international and regional environmental agreements. These agreements deal with a wide range of issues including: loss of endangered species, sustainable use of biodiversity, oil spills, protection of wetlands, protected areas, climate change, ozone depletion, hazardous waste management, and pollution from land based sources.
Implementation of International Agreements

- DYC and Seafood and Ting vs. NRCA is recognized as the first judicial decision to “clarify the position of the implementation of multilateral environmental agreements in the Commonwealth Caribbean”.

- 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”.
International Environmental law

• International Environmental Agreements have pushed the development of Jamaica’s national environmental law
• Our obligations under these International Agreements have been implemented by:
  • (1) New Environmental legislation
  • (2) Use of existing legislative provisions
  • (3) Institution of projects and programs
  • (4) Development of policies and action plans
Comprehensive frameworks

• The Convention on International Trade in Endangered Species of Wild Flora and Fauna
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.
- The Endangered Species Act was drafted in 2000 to designate
  (1) The endangered species in Jamaica incorporating international standards into Jamaican law
  (2) Provide for management and recovery measures
  (3) Regulate international and domestic trade.
The Convention on International Trade in Endangered Species of Wild Flora and Fauna

- 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.
Framework for Enforcement

• The Act 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.
Criminal offences

• For any person to trade in specimens without a permit or certificate
• 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.
Challenges

1. Investigating of offences that is obtaining proof of illegal trade which often requires proof of export
2. Enforcement of our maritime borders, when is something exported out of Jamaica
3. Issues with other Caribbean Countries who have no CITES legislation and are therefore unwilling to confiscate goods exported without the required permits and
4. Constant training
Use of Multiple Acts and Regulations

• THE MONTREAL PROTOCOL
Obligations under the Convention

- The Convention requires State Parties to gradually phase out the production and consumption of Chlorofluorocarbons (CFC’s), hydrochlorofluorocarbons, halons, methylbromide and other ozone depleting substances. Jamaica has implemented its obligations under the Convention through the promulgation of Regulations and Orders under various Acts and the implementation of a Country program.
• Jamaica does not manufacture any ozone depleting substances (ODS) 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.

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 Convention through the Trade (Restriction on Importation) (CFC’s) Order.

A ban on motor vehicles air conditioners using CFC’s was made effective April 1, 1999.
The NRCA now (NEPA) is the lead agency implementing the Montreal Protocol. However, the core of the current regulatory framework is the Trade Act, the Food and Drug Act, the Pesticide Act and the Customs Act. S. 215 of the Customs Act addresses breaches involving prohibited goods and can result in forfeiture of the goods or a fine of treble the value of the goods.

Customs officers have enforcement powers.
Challenges

• (1) Implementation of the Convention without a comprehensive legal framework

• (2) Co-ordination of a number of agencies which all have jurisdiction over CFC’s as a substance, drug or pesticide
Implementation under an Existing Act with Regulations

- **BASEL Convention**

The Convention governs the regulation of transboundary movement of waste but also has provisions that apply in Jamaica.

The Regulations allow transit passage of hazardous waste in areas under the jurisdiction of Jamaica with a permit and require permits for the export of such waste.
Offences

- The regulations include offences for
- (1) illegal traffic in hazardous waste (that is import or export of such waste) without the required permits.
- (2) dumping or disposal of any hazardous waste in Jamaica and in any area under the jurisdiction of Jamaica
Challenges

- (1) The highest fine under the regulations is only $50,000.00
- (2) There is currently no specific legislation governing the storage and transportation of hazardous waste generated in Jamaica. The NRCA Act contains only a provision that requires a permit for a hazardous waste disposal facility
- (3) In the enforcement of any such regulations, issues of documentary evidence, expert witness identification of substances and enforcement by Customs becomes crucial.
Ratification of a Convention without National Legislation

- *International Convention for the Prevention of Pollution from Ships (MARPOL Convention, 1973)*
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 Maritime Authority intends to implement MARPOL through a Shipping Pollution Prevention and Control Act. 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.
Challenges

- 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.
Implementation of requirements of a Convention as a part of a National Strategy and Action Plan

The Convention on Biological Diversity
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.
Biodiversity Strategy and Action Plan

- Jamaica’s Biodiversity Strategy and Action plan was completed and sent to Cabinet in March 2003. It spells out programs for action on protected areas, species recovery, monitoring, and methods to address the threats to Jamaica's species. It includes time lines and budgetary requirements to fulfill the obligations of the Convention. It is to become a White Paper and then be implemented by NEPA.
Challenges

• 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.
Conclusions

• A lot of the new developments in International environmental law are slowly finding their way into Jamaican legislation.

• The incorporation of the requirements of these conventions into our national law has to be perceived as an important step towards global and regional environmental goals.