Judge Anthony Lucky 27th June 2017

## Symposium -Enhancing Ocean Governance in the Caribbean

# Legal Developments in Marine Environmental Protection

If the environment could speak, would it express satisfaction with the performance of those who are meant to protect its interest?
Therefore, it is necessary to consider whether the developments in the Local, Regional and International forum provide adequate and meaningful protection for the marine environment.
Are we doing enough as Governments, Judges, members of various professions, environmentalists and nongovernmental organisations and interested persons to ensure protection of the marine environment?
In any event, whatever performance ratings are given to the Local, Regional and International Institutions and groups responsible, the question still remains how would the environment judge us all?
In my opinion, regardless of performance ratings , the important criteria is to equate the protection of the environment and biodiversity conservation to that of a fundamental right; with swift and accessible avenues to an administrative or judicial arm of its State.
Usually we speak of man versus the environment or man and the environment. But has the time come for man to realise that he is part of the environment and not just one of many species in a community which is alive with biodiversity?

Being an integral part of the biodiversity that forms the environment, it is the responsibility of humans to champion the causes and cases of the environment because the environment cannot speak for itself. During this address I will give my answers to the concerns earlier mentioned and hope that you would consider them in the context of enhancing ocean governance in the Caribbean Region.

## The United Nations Convention on the Law of the Sea. (UNCLOS)

UNCLOS is considered by many international jurists to be the Constitution of the Oceans and accordingly, every subsequent treaty development concerning the oceans should be related to the Convention. It sets definitions of the Territorial Sea, the Contiguous Zone, the Exclusive Economic Zone and the Continental Shelf and the sovereign rights and duties of States .It provides for Dispute Settlement for infringement of such rights and established a Court to function in accordance with the Convention (UNCLOS) and the Statute of the Court. The Convention is a consolidation and codification of the law as it exists in 1982 and its articles provide for further development through the wide and generous interpretation of the international Courts and Tribunals.

The preparation of this Convention required the participation of jurists of many States. We can all be proud that international lawyers from the Caribbean,( Grenada, Guyana, Jamaica and Trinidad and Tobago in particular ) made significant contributions to the formation of the United Nations Convention on the Law of the Sea( the Convention) (UNCLOS) ,which was signed at Montego Bay in Jamaica on 10th December 1982 by 119 States. The ratification by the Caribbean States brought the Convention into force in 1994. States Parties to the Convention now amount to 167. The headquarters of the International Seabed Authority is in Kingston,

Jamaica, the headquarters of the Caribbean Fisheries Commission is in Belize, the Institute of International Relations and Diplomatic Academy, University of the West Indies is in St. Augustine, Trinidad, and the Caribbean Court of Justice is in Port of Spain Trinidad. It follows that the Caribbean is already playing a part in the development of the Law of the Sea. The fact that there are Judges from the Caribbean in the two principal International Courts, the International Court of Justice (Judge Patrick Robinson of Jamaica) and the International Tribunal for the Law of the Sea (Judges Doliver Nelson of Grenada, (dec'd) Judge Lennox Ballah( Trinidad,(dec'd) and currently, Judge Anthony Amos Lucky,(Trinidad and Tobago), and only last week,Dr. Wanda-Lee DeLandro Clarke,(also of Trinidad and Tobago) was elected as a member of the Commission on the Limits of the Continental Shelf. This is consistent with the continuation of Trinidad and Tobago's leading role on matters pertaining to the Law of the Sea and with maritime issues. It also supports the view that the Caribbean States continue to contribute to the growth of the jurisprudence of the Law of the Sea.

Since 1982, apparently, with the provisions of the Convention in mind, several States signed and ratified related conventions; for example The United Nations Framework Convention on Climate Change (UNFCCC) that entered into force on 21 March 1994,; the Convention on Biological Diversity (CBD) that entered into force on 29 December 1993 [note *that the above mentioned conventions were signed by Trinidad and Tobago however to date they have not been incorporated in the Laws of Trinidad and Tobago]*

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The 1982 Convention on the Law of the Sea provides for a range of regional arrangements and international co-operation mechanisms.

Considering the Convention on the Law of the Sea as a "Constitution", it is open for Judges to give a wide and purposive interpretation of relevant articles, thereby adding to the jurisprudence of International Law. The provisions in The Convention are incorporated in the laws of Caribbean States. Parts XII and XIII provide for Protection and preservation of the Marine Environmental and Marine Scientific Research.

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## Existing Regional and International Conventions,

I would like to begin by referring to the Ramsar Convention. It is the oldest multilateral international conservation convention and the only one to deal with one habitat or ecosystem type, wetlands. The Convention works closely with the International Union for the Conservation of Nature

**The Ramsar Convention** *on Wetlands of International Importance especially as Waterfowl Habitat* is also known as the **Convention on Wetlands**. The Convention's mission is ""the conservation and wise use of all wetlands through local and national actions and international cooperation, as a contribution towards achieving sustainable development throughout the world". It calls upon contracting parties to recognize the interdependence of humans and the environment as well as the ecological functions of wetlands, such as wildlife habitat, nutrient cycling, and flood control. It is my view that the wetlands of a country contribute to the biodiversity of the marine environment .

Several Caribbean States are parties to the Convention [for example Antigua and Barbuda, Bahamas, Barbados, Belize, Jamaica, St Lucia and Trinidad and Tobago] and have incorporated the provisions in their local laws. The Ramsar Convention was cited in the environmental protection cases in Belize, Jamaica and Trinidad and Tobago.( **Belize** *Belize Alliance of Conservation Non-Governmental Organisations v The Department of the Environment Belize Electric*

*Company Limited, Privy Council 29 January 2004;* **Jamaica,** *The Northern Jamaica Conservation Association & Ors v The Natural Resources Conservation Authority and Ors, No.HCV 3022 of 2005; and in* **Trinidad and Tobago** *Emmanuel Lucky v Trinidad leaseholds Ltd***, (1922)** *and Stollmyer v Trinidad Leaseholds ltd; Jabar and Jabar v the Minister of Agriculture, Lands and Fisheries and the Attorney General, .C.A. 630/1993* {referred to as the Nariva Swamp Case]; the following three matters were heard together :Harris Maxime and Others People Respecting the Environment v the Environmental Management Authority, and Smelta Karavan v the Environmental Management Authority .

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## Let us examine the Caribbean Region

You may ask **what** has all of this to do with Caribbean governments, peoples and the law enforcement agencies, and, I must add the judicial arm of Caribbean States in this era of regionalism and globalisation? Further **why** is the Law of the Sea important and **how** is it relevant? My answer simply is that with the exception of Belize, Guyana and Suriname, Caribbean States are part of a chain of islands, surrounded by the Caribbean Sea, the Atlantic Ocean and the coasts of our Latin American neighbours. Consequently the main focus ought to be on the Law applicable to the coastal States and Caribbean Sea.

In his book From Columbus to Castro Dr. Eric Williams writes “of the West Indies, more than of most geographical areas, we are one world. But, in intellectual, as in political matters, the Caribbean is a geographical expression.” At that time Dr.Williams, like many West Indian scholars, was of the view that if the West Indian chain of islands was a united group it could have possessed considerable influence in international affairs. However, today, 47 years later, the

situation is very different, because the Caribbean is more than a "geographical expression". The Caribbean Sea is a large oceanic basin with an area of 1.02 million miles (2.64million square kilometres) with almost 90 per cent of its circumference separated from the open ocean (the Atlantic) by either continental or insular land masses, (the chain of Caribbean islands).It is a classic example of a semi enclosed sea, as defined in article 122 of the United Nations Convention on the Law of the Sea (the Convention). While the Caribbean Sea contains vast resources it is also fraught with all the vulnerabilities, – waste from oil and gas exploitation, fishing, shipping ,pollution from economic and industrial development and the effects of climate change, – factors that will associate and affect its fragile eco system. The Caribbean Sea is also the second most important area of marine species and marine biodiversity in the world. It is a heavily traversed sea area which provides both economic and recreational support (including tourism) to the people of the region. Tourism is a major earner for many of the Caribbean States. Therefore, we have to consider how these beneficial resources can be carefully managed so that resources would be beneficial to the peoples of the Caribbean and are protected from economic and physical harm and the marine environment meaningfully protected

The Caribbean Sea is a major shipping route to the Americas and to the Pacific Ocean through the Panama Canal .Therefore it is necessary for Caribbean States to jointly manage, monitor and regulate certain specific activities, including the shipment and transhipment of nuclear and other hazardous materials. Therefore, Caribbean States should ensure that laws and regulations are not only in effect but are implemented where necessary. We must be proactive and not reactive.

Since 1982, apparently, with the provisions of the Convention in mind, several States signed and ratified related conventions; for

example The United Nations Framework Convention on Climate Change (UNFCCC) that entered into force on 21 March 1994,; the Convention on Biological Diversity (CBD) that entered into force on 29 December 1993 [note *that the above mentioned conventions were signed by Trinidad and Tobago however to date they have not been enacted. In the Laws of Trinidad and Tobago]*

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The Caribbean now has a form of unification with the coming into force of the Revised Treaty of Chaguaramas establishing the Caribbean Community (CARICOM) including the Caricom Single Market Economy (the CSME), the establishment of CARICOM, (Headquarters in Guyana) the Caribbean Court of Justice (CCJ) (Trinidad and Tobago), the Caribbean Region Fisheries Management (CRFM), (Belize) and the International Seabed Authority (ISA)(Jamaica), the University of the West Indies (UWI)and The University of Trinidad and Tobago (UTT) The foregoing play a significant role in protecting the marine environment

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The CARICOM proposal that the Caribbean Region should seek judicial recognition of the Caribbean Sea as a special area in the context of sustainable development was made after considering several proposals at a meeting of Heads of State. A critical element in this process is the support of all States and territories located in and bordering the Caribbean Sea. Political consensus, involving, inter alia, the United Kingdom, the United States, France, the Netherlands, and the continental and Caribbean Countries, is crucial.

Caricom cannot be the sole vehicle in a joint proposal for judicial recognition of “ownership “of the Caribbean Sea. Collaboration and cooperation of the Association of Caribbean States (ACS), the Alliance of Small island States (AOSIS), the Group of Latin American

and Caribbean States (GRULAC), the IMO, UNDP and UNESCO are vital and therefore political agreement is essential. Therefore, States should immediately take positive action, not only by concluding regional or international conventions but by including the provisions of the relevant International Agreements and Conventions in domestic legislation.

States have been making efforts through their local laws and participation in Regional and International Conventions and treaties to protect the environment and Courts over the years have applied the relevant laws to ensure that the environment is protected. I will refer to some cases later.

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## Protection of the Caribbean Sea and the Gulf of Paria.

Environmental challenges that face the region and the Catibbean Sea include-

- ozone depletion;
- rise in sea levels;
- climatic change;
- loss in biodiversity, toxic and hazardous products and waste leading to the pollution of rivers and seas;
- depletion of fresh water resources;
- shipping;
- overfishing;
- piracy; and,
- Oil and gas exploration.

Before considering laws governing the Caribbean Sea and surrounding States, it will be convenient to examine the current situation in the Gulf of Paria, specifically with respect to our immediate neighbour, Venezuela. Briefly, the 1990 Treaty is in force. (Treaty between Trinidad and Tobago and Venezuela)One of the salient provisions is Article IX which specifies that: "*The contracting parties shall adopt all measures for the preservation of the marine environment in the marine areas to which the present treaty refers "*(i.e. the marine areas in the Gulf of Paria and surrounding areas. So I pose the question: is this article being infringed? With respect to the boundaries agreed upon and the fishing agreements, are these being observed by both sides?

Among the Caribbean States there are mechanisms and institutions to deal with the above concerns. These have and are being addressed at the CARICOM and International levels.

For example Trinidad and Tobago has passed the following Acts based on and consistent with the relevant provisions of the United Nations Convention on the Law of the Sea.

- Territorial Sea and Contiguous Zone (1;51), Archipelagic Waters and Exclusive Economic Zone, and the Continental Shelf Acts
- Fisheries Ch,57:51,Marine Areas Preservation and Enhancement;Litter930;52Oil Pollution of Territorial Waters

## Further Developments

Caribbean States are members of most of the Conventions relating to the Law of the sea, for example UNCLOS in which Parts XII and XII provide for Protection and Preservation of the Marine Environment .and Marine Scientific Research. The provisions of these conventions are incorporated in the domestic laws of Caribbean States.

## The Legislature

The legislature recognises the need to pass and implement laws and regulations to protect the environment. In doing so, the legislative arms of governments in the Caribbean take an active part in the development of the laws to protect the marine environment.

At the United Nations Ocean Conference earlier this month on the proposal to create a Blue Charter of Principles for sustainable ocean development .Secretary-General ,Patricia Scotland put forward the initiative as a way of helping Commonwealth member governments to "*ensure maritime industries are managed in a way that preserves and promotes ocean health"* .The Blue Charter would apply to ocean governance specifying the 16 principles and values of the Commonwealth Charter, including environmental protection, good governance, justice and peace, human rights and gender equality, and the recognition of the needs of vulnerable nations and young people.

*"The Blue Charter will help countries develop an integrated approach to the building of the blue economy, one which considers the value of often overlooked sectors such as artesian fishing as well as the role of women and young people. It will help policy makers to adopt a regenerative model of development and find commonsense solutions to challenges such as marine pollution, illegal, unregulated and unreported (IUU) fishing and harmful trade subsidies".*

Prime Minister of Grenada, Dr. Keith Mitchell, one of the high level speakers at the Commonwealth side event supported the Blue Charter proposal noting that his country's economy is increasingly reliant on coastal tourism.

In my view his statement is applicable to CARICOM and its member States with their full range of interests in the environment (tourism, fishing, endemic marine biodiversity, its role as a carbon sink, transportation of oil, gas methanol and other chemicals, petroleum

and natural gas exploration) have expressed particular concern with respect to pollution of their air, streams, rivers and seas. In the case of many Caribbean islands, their environment is an important on-going resource and, if well monitored and well preserved, is one that may be potentially sustainable.

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## CONSTITUTIONS OF NATIONS

Many nations have recognized the need to address protection and preservation of the environment and have included provisions in their Constitutions to reflect this commitment. Modern constitutions versus traditionally framed documents recognize that the environment needs protection and that the citizenry must play its part in preservation of the environment and biodiversity conservation.

By way of example, The Guyana Constitution places an onus on the State and its citizens, in separate provisions, to preserve the environment. In the Preamble of the Constitution all citizens undertake to –

> **"Demonstrate our commitment to protect our natural environment and endowment;"**

Section 25 states -

> **"Every citizen has a duty to participate in activities designed to improve the environment and protect the health of the nation."**

And section 36 states -

> **"In the interests of the present and future generations, the State will protect and make rational use of its land, mineral**

> **and water resources, as well as its fauna and flora, and will take <u>appropriate measures</u> to conserve and improve the environment."**

The advantage of such responsibilities articulated in unequivocal language, better equips the Court to make its decisions with full disclosure that environmental concerns will be front burner considerations.

I accept that the use of the phrases 'rational use' and 'appropriate measures' as they appear in Section 36 lack specificity. But, in my view, and rightly so, such phrases enable a court to assess each matter on a case by case basis and to have before it, comprehensive and thorough reports from experts in the fields of environmental study to assist the Court in its determination. By so doing, it encourages citizens to become more aware of environmental issues and impacts and forces environmental agencies to ensure that their investigations and findings comply with the tenets of integrity and accuracy.

And while Constitutions provide protection of the environment, so have the domestic laws by providing all champions of the environmental cause with powerful legal weaponry to defend the rights of biodiversity. Environmental laws must therefore be holistic and contain severe sanctions for breach. The laws must not be framed in nebulous terms or superficial wordings that prove hollow when tested in the Courts.

## The Role of the Courts

In my opinion the Courts, National and International have a fundamental role in the interpretation and application of the relevant laws.

This question of whether judges are doing enough to develop jurisprudence and interpret laws is relevant to all judges who sit in courts, panels or tribunals; determining matters in which environmental issues arise.

*It is accepted that Judges do not make law, but they can point out deficiencies or ambiguities in the law or give a wide interpretation of an article or section of a treaty of Convention to assist in the development of the jurisprudence of international law.*

The Caribbean Court of Justice can also play a significant role if called upon in accordance with Section 60 of the Caribbean Court of Justice Act

Article 60 of the Treaty deals with Fisheries Management and Development (See Annex)

Note the following:

"1.The Community, in collaboration with the competent national, regional and international agencies and organizations, shall promote the development, management and conservation of the fisheries resources in and among the Member States on a sustainable basis. (my emphasis).

1. The Community shall effect the promotion and facilitation referred to in paragraph 1 by:

   (a) …

   (b) establishing mechanisms to provide assistance in:

   (i) the development, management and conservation of the fisheries resources;
   (ii) the discharge of obligations relating to fisheries resources arising under Articles 62,63 and 64 of the United Nations Convention on the law of the Sea.(1982)

The Land Reclamation Case (Malaysia v Singapore)

I sit as a judge on an International Tribunal which is mandated to, amongst other things, protect the environment and I have often asked myself, how far am I allowed to go as judge, when confronted with competing rights of States in which there are hotly contested environmental impacts.

Such a situation occurred in the above case in which I sat and there was great diversity in the approach that was taken by the ITLOS Tribunal. In the particular matter, the expert for one State said that there was significant damage to its waters caused by the reclamation work conducted by the other party.

The expert for that other party testified that there was no damage being caused to the marine life or any pollution or blockage of the waters forming the subject matter of the complaint.

After hearing the evidence in the matter, the judges of the Tribunal were not unanimous in the decision. The majority ruled that there should be discussion and cooperation between the States to address the concerns of the party alleging marine destruction while the minority decisions indicated that the reclamation work should cease on a stayed or permanent basis. I will get back to that case later in the lecture as I was one of the dissenting judges.

You see, damage to the environment is irreparable and time is always of the essence. Diplomatic approaches to save the environment while laudable, do not allow for restoration of permanent damage. I have witnessed in my country, the closure of visits to the Buccoo Reef of Tobago because for decades, tourists were allowed to walk freely on the coral and break off pieces from the reef as memorable keepsakes.

While the need for industrial development is appreciated, so too must there be consideration to the environmental costs when such activity is undertaken. Again, I draw reference to smelter projects and highways in Trinidad and Tobago which are being put on hold because of real fears that the environment and biodiversity would be severely affected.

## Recent Decisions of Courts

Bearing in mind that most rivers flow into the ocean, It will be useful to mention recent important judgments of the Courts in New Zealand and India

New Zealand river is the world's first 'legal person'

Under legislation passed, the Whanganui river has been formally declared a living entity.

The legislation is the first time a river has been given a legal identity [Getty Images] ********

A New Zealand river revered by the Maori has been recognised by parliament as a "legal person", in a move believed to be a world first.

Under legislation passed on Wednesday that combines Western legal precedent with Maori mysticism, the Whanganui river has been formally declared a living entity.

"[It] will have its own legal identity with all the corresponding rights, duties and liabilities of a legal person," Attorney-General Chris Finlayson said.

"The approach of granting legal personality to a river is unique."

The river, known by Maori as Te Awa Tupua, is the third longest in New Zealand.

Finlayson said the local Maori iwi, or tribe, had been fighting to assert their rights over the river since the 1870s, in New Zealand's longest-running legal dispute.

"This legislation recognises the deep spiritual connection between the Whanganui iwi and its ancestral river," he said.

It deems the river a single living being "from the mountains to the sea, incorporating its tributaries and all its physical and metaphysical elements".

In practical terms, it means the river can be represented at legal proceedings with two lawyers protecting its interests, one from the iwi the other from the government.

The iwi also received an NZ$80m ($56m) settlement from the government after their marathon legal battle, as well as NZ$30m to improve the river's health

Himalayan glaciers are granted 'rights of human beings' for protection Agency France-Presse [April 01, 2017] ·

An Indian court has recognized Himalayan glaciers, lakes and forests as "legal persons" in an effort to curb environmental destruction, weeks after it granted similar status to the country's two most sacred rivers.

In a decision that aims to widen environmental protections in the mountainous region, the court granted the legal standing to glaciers Gangotri and Yamunotri that feed India's venerated Ganga and Yamuna rivers, which won the status in a landmark judgement in March.

"The rights of these entities shall be equivalent to the rights of human beings and any injury or harm caused to these bodies shall be treated as injury or harm caused

to human beings," the highest court in Himalayan state of Uttarakhand said in its ruling on Friday.

It said Yamunotri glacier, which is the source for Yamuna river was shrinking at an alarming rate.

Gangotri, which feeds the river Ganga and is one of the largest glaciers in the Himalayas, is also "receding fast," the court said.

"In over 25 years, it has retreated more than 850 meters [2,800 feet]," a two-judge bench of justices Rajeev Sharma and Alok Singh said.

The court also extended the status of "living entity" to swathes of the Himalayan environment, including waterfalls, meadows, lakes and forests.

On March 20, the same court ordered that both Ganges and Yamuna rivers should be given "living entity" status to conserve them, in a decision cautiously welcomed by activists who expressed hope that it would signify more than just a symbolic gesture.

Both rivers are considered holy by millions of Hindus, who ritualistically bathe, drink and scatter the ashes of their dead in the water.

The rivers that crisscross most of the country before flowing into the sea have witnessed massive pollution near human habitations mainly due to dumping of untreated sewage and industrial waste.

The court argued the unusual step was necessary because the hallowed rivers upon which Hindu rites are conducted were "losing their very existence."

The public must also play its role in ensuring that decisions that will affect the environment and biodiversity are the subject of informed public consultation.

The right to life and not to be deprived thereof except by due process of law, which is enshrined in most, if not all Constitutions, may have to be read as a right to each individual to protect himself or herself from the acts of others which will destroy the environment or biodiversity.

Whatever approach or action is taken, of one thing we can be sure – It is the Courts that must fulfil their mandate to protect the world for this generation and all generations to come.

## Conclusion

When I began I posed four questions

In the light of the foregoing, I must say that the environment is speaking through us humans. Can we answer in the affirmative? Are we are doing our best to protect the environment through the arms of government, the NGOs and the institutions responsible? It seems to me that the infrastructure is in place. The law continues to provide the measures. But can we honestly say that the law is being applied and implemented? It is time to face reality. Is anything being done about oil spills in the Gulf of Paria? The spread of the oil slick into the Caribbean Sea: the pollution of our rivers, transshipment of nuclear waste through the Caribbean Sea, IUU fishing in the Caribbean Sea and in the Exclusive Economic Zones of coastal States bordering the Atlantic Ocean. We have the resources and the laws to govern; perhaps we can look forward to implementation.

The public must also play its role in ensuring that any action which will affect the environment and biodiversity are the subject of informed public education and consultation.

Whatever approach or action is taken of one thing we can be certain. We must fulfill the mandate to protect the Caribbean Sea and by extension the world, for this generation and the generations to come.

*"The Caribbean is a rich biodiversity hotspot. It has over 11,000 plant species and about 72 percent of these are found only in this region. However, Caribbean islands need to reinforce their legislation and policies to protect their genetic resources in case a country's resources are accessed and developed commercially to ensure the country benefits from it."* (, 20 June 2017 (IUCN) -The International Union for Conservation of Nature (IUCN) and the United Nations Environment Programme (UN Environment)

Let us be enthusiastic, passionate and committed towards enhancing ocean governance in the Caribbean by adhering to and implementing the law.

As I end let me state that I acknowledge and appreciate all those who have helped in the preparation of this presentation

Thank you for your kind attention.

***Annex I*** Tue, 20 Jun 2017

Caribbean, 20 June 2017 (IUCN) -The International Union for Conservation of Nature (IUCN) and the United Nations Environment Programme (UN Environment) are increasing its efforts to help Caribbean countries boost fair access to their genetic resources and equitable sharing of benefit derived, through the release of two short videos on the Nagoya Protocol.

Photo: Fotografías: https://pixabay.com/es/ • http://es.freeimages.com/ • http://www.freepik.es/

The two videos – a short two and a half minutes and longer 10 minutes production – introduce viewers to the Nagoya Protocol and what it will mean for them individually and the Caribbean as a whole. They are a part of a regional/national awareness campaign on the Nagoya Protocol – which is still new to the Caribbean.

*"We made the videos because we wanted people to easily understand what the Nagoya Protocol is and what it means for the Caribbean Region,"* said **María Pía Hernández, Coordinator of the IUCN's Biodiversity and Rights Unit,** as she explained that prior to the Nagoya Protocol there were no guidelines in place to ensure that countries and individuals were properly compensated for the use of their traditional knowledge and genetic resources.

*"It is also very important that countries sign on to the Protocol so that they can protect their natural resources, as well as get compensation and other benefits depending on how the resources are used,"* said **Dr Grethel Aguilar, Regional Director of the IUCN's Regional Office for Mexico, Central America and the Caribbean**. The IUCN is the world's largest and most diverse environmental union composed of both government and civil society organizations, working for a just world that values and conserves nature.

The Nagoya Protocol is an international agreement that focuses on the fair and equitable sharing of the benefits from the sustainable use of genetic resources. It is

an agreement that has particular relevance for researchers and prospective business developers that use the Caribbean's natural resources. The Protocol was adopted on October 29, 2010 in Nagoya, Japan, and entered into force on 12 October 2014. It has been ratified by 78 parties, which includes 77 UN member states and the European Union. It is the second Protocol to the CBD; the first is the 2000 Cartagena Protocol on Biosafety.

The IUCN Regional Office is partnering with the United Nations Environment Programme in a project funded by the Global Environment Facility (GEF) to work with regional governments, research institutions and other partners in the Caribbean to support countries to overcome barriers linked to poor understanding of ABS, the Nagoya Protocol and the implications of protocol ratification and requirements for implementation.

The project works with other partners as Caribbean governments, regional institutions (CARICOM, OECS), Secretariat of the Convention on Biological Diversity and GIZ-ABS initiative in eight Caribbean countries (Antigua and Barbuda, Barbados, Grenada, Guyana, Jamaica, St. Kitts and Nevis, St. Lucia and Trinidad and Tobago**). The Caribbean is a rich biodiversity hotspot. It has over 11,000 plant species and about 72 percent of these are found only in this region. However, Caribbean islands need to reinforce their legislation and policies to protect their genetic resources in case a country's resources are accessed and developed commercially to ensure the country benefits from it.**

The two promotional videos will be disseminated to regional media houses and other key national stakeholders over the next few months. They will also be available on the IUCN's website and social media sites. The two minute video gives a basic introduction of the Nagoya Protocol while the 10 minute one gives more detail about how it works in practice

## *Annex II*

*Relevant Articles of the Treaty of Chaguaramas*

*Article 60 of the Treaty deals with Fisheries Management and Development, it reads:*

*"1.The Community, in collaboration with the competent national, regional and international agencies and organizations, shall promote the development, management and conservation of the fisheries resources in and among the Member States on a sustainable basis. (my emphasis).*

2. *The Community shall effect the promotion and facilitation referred to in paragraph 1 by:*

*(a) …*

*(b) establishing mechanisms to provide assistance in:*

*(iii) the development, management and conservation of the fisheries resources;*

*(iv) the discharge of obligations relating to fisheries resources arising under Articles 62,63 and 64 of the United Nations Convention on the law of the Sea.(1982)*

*(c)…*

*(d)…*

*(e)…*

*(f) …*

3. *The Community shall collaborate with the Member States in:*
   - *(a) the management of straddling and highly migratory fish stocks;*
   - *(b) ongoing surveillance of their exclusive economic zones;*
   - *(c) the delimitation of maritime boundaries; and*
   - *(d) safeguarding their marine environment from pollutants and hazardous wastes." ( my emphasis).*
   - *(e)*

*I therefore contend that this article provides that the Community is empowered to carry out the functions prescribed therein, not the CCJ. The rights and obligations set out therein are conferred solely upon the Community. Mechanisms are established to provide assistance in "the discharge of obligations relating to fisheries resources arising under articles 62, 63 and 64 of the United Nations Convention on the Law of the Sea". These "mechanisms" do not include the CCJ. If the CCJ was empowered to carry out any of the functions prescribed in the Article, then it is a reasonable expectation that the wording of the article would have been different.*

*Article 65 provides for environmental protection. The article confers power on the Community to implement and promote measures with respect to the environment. (Again reference to the CCJ is notably absent.).*

*Article 140 specifies the duties of Member States, the Community and The Council of Trade and Development (COTED) with respect to the Development of Maritime Transport Services. (This article omits mention of the CCJ.)*

## Addendum

- *Note that the Institute of Marine Affairs (IMA) has identified the need for a comprehensive marine policy that integrates the London Protocol and other international and marine legal instruments but to date this has not been done.*
- *An attempt was made to introduce legislation in 2000 and again in 2002 and 2004.*
- *The Bill, the Shipping (Marine Pollution) No.2 Bill was read in March 2005 and sent to a select committee of the House.*
- *No work was done by the Committee and it lapsed.*

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