REGIONAL AFFAIRS

CARICOM

Towards Effective Environmental Cooperation and Governance (Part 1)

by Ronald Singh*

In the face of … realities of the high environmental, economic and social vulnerabilities, the Caribbean countries were among the first to take a strong interest in the international discussions on climate change, on biodiversity and on forests. Our nations have also become increasingly aware of the imperative of good land management to their sustainable development.[1]

Edwin W. Carrington, Secretary-General, CARICOM

Special Concerns of CARICOM States

The environmental concerns of the Caribbean islands were considered as far back as the mid-eighteenth century with British colonial recognition of a link between social improvement and environmental protection. The St Vincent Botanical Garden, established in 1765, was the first such institution in the Americas. By the end of the nineteenth century, forest reserves were set up along the ridges in Carriacou and eucalyptus was brought in to dry up the swamp. This was followed by grass barriers, and in St Vincent, terraces were built to prevent soil erosion.[2] These environmental concerns and activities, however, were not sustained. Unwitting and uncaring practices during the last hundred years have assaulted the environment resulting in numerous negative physical and climate changes.

CARICOM[3] States have not been spared; they are saddled with numerous environmental hazards, some natural, while others have emerged out of the shortsighted socio-economic, political and cultural practices of their citizens.

Islands and low-lying coastal States are vulnerable to natural disasters, particularly hurricanes,[4] volcanic eruptions,[5] extensive droughts and floods. While data on the long-term socio-economic impacts of natural disasters are not readily available, the nexus between economic and environmental vulnerability, and size, was reinforced by the experiences of the northeastern Caribbean during the 1990s, when Hurricanes Marilyn and Luis and Tropical Storm Iris battered the environment, and caused a drop in the annual gross domestic product among the countries of the Organisation of the Eastern Caribbean States.[6] Usually, the poor are the worst hit by natural disasters, as seen during Hurricane Katrina.[7] Further, in extreme weather situations, CARICOM small farmers suffer failed crops and disrupted water supplies, making it difficult to sustain the economic needs of their families.

Mitigating the burden on future generations, and reversing the negative impacts on our environment require concerted efforts for the radical redesigning of behaviour mechanisms for a sustainable future,[8] based on the reality that people fuel social progress, create and consume wealth, develop and improve science and technology, and by those very activities and interactions, shape and transform the environment. In many CARICOM States, taking corrective actions may prove extremely difficult, for many reasons. The livelihood of a huge number of people depends entirely on "slash and burn" farming practices and indiscriminate felling of trees for fuel. On one hand, the forests represent the lungs of future generations, while on the other they provide much needed food for people today.[9] Furthermore, a huge number of people are not cognisant of their environmentally harmful practices. Another reason is people's individualistic tendency and capacity to be unaware or uncaring. Even now, there are people who believe that nature has its way of balancing forces and replenishing stocks.

Reconciling such differences, and balancing economic pursuits with environmental concerns dictate responses that cannot be piecemeal; they must be carefully thought out and collectively drafted to reduce poverty while increasing opportunities for sustainable living based on sound socio-economic, sustainable resource management, and environmental protection policies. At CARICOM level, sustainable development cannot be attained unless each country undertakes common but differentiated actions and responsibilities to implement the recommendations of Agenda 21.[10] These undertakings can be fostered only by strengthened national, regional and international support networks and cooperation that provide information on weather patterns and climatic conditions, offer assistance in various forms, and fashion new collaborative financing systems for the implementation of needed

* Ronald Singh, LL.M., Pace University School of Law; M.S., Hunter College/CUNY; LL.B. (Hons.), University of London; B.Sc., University of Guyana; Adjunct Faculty, Department of Human Services, Touro College. R. Singh is a student of Professor Nicholas A. Robinson, whose support and astute guidance in the preparation of this paper are gratefully acknowledged.

** This article is the first of a two-part series and is condensed from a more in-depth analysis.

0378-777X/07/$17.00 © 2007 IOS Press

actions.[11] Those mechanisms require shared ethical values that create a sense of community and inspire cooperation[12] in forging a capacity to care about a better environment, and the well-being of future generations.

After thirty-five years, with elaborate goals, programmes and institutions, CARICOM is still groping for "real" cooperation.[13] The Chaguaramas Treaty[14] establishing CARICOM was hailed as a defining moment in the history of the Commonwealth Caribbean, filled with the hope of regional integration, as the political leaders sought to unite the islands and the mainland by providing for the continuance and strengthening of cooperation. Nevertheless, the desire to ensure present and future generations enjoy the benefit of a healthy environment has become a universal aspiration that can provide a common ground between remarkable diverse interests,[15] through mutual regional recognition of the human, economic and other potential harms to the environment.

Focus of this Study

This study posits a "carrot and stick" approach to forging environmental cooperation and governance. It focuses on convergent and divergent sustainable development policies, strategies, programmes and plans of action in the management of the natural and biodiversity resources within CARICOM. The analyses are restricted to environmental regional cooperation, the search for alternative sources of energy, and a sustainable regional tourism industry using a carrot and stick framework.

Carrot and Stick Framework for Environmental Cooperation

The Caribbean is probably one of the most balkanised regions in the world[16] because of its geographic, economic and political fragments historically moulded by imperial powers. The oldest colonial area in the world, its socio-economic and political development has been shaped by the Dutch, French, British, Spanish, and more recently, the US systems of planning.[17]

Making CARICOM a functioning unit requires building functional bridges and links both between states and between the various fragments through wider and potent instruments of cooperation. The most popular argument for governmental intervention in market processes is the failure of the market to equate private and social costs of economic activities and the resultant inefficiency of resource allocation. Environmental goods and services that traditionally have no market value demonstrate the failure of the market principle[18] and it is within this environmental policy framework the state intervenes through market-based instruments (e.g., trade permits), non-market based instruments (i.e., taxes based on the 'polluter pays' principle) or a combination of the two models.[19] Within this framework environmental policies must be effectively monitored and enforced, and this is accomplished by the overriding legal authority of the state to which society has delegated all such responsibilities.[20]

Given the lack of voluntary cooperation in CARICOM, carefully thought out incentives have the potential to achieve sustained inter-governmental cooperation. These carrots can include offers of financial assistance and transfers of environmentally friendly technology directly related to the problem at hand. Incentives may include more broadly based offers, such as increased foreign aid or reduced debt-related burdens and removal or softening of non-discriminatory trade barriers. But a State, or group of States, must take the lead at the supra-national level in the construction of an environmental agenda and the legal framework for compliance. However, in a carrots-only regime, the costs of ensuring compliance among the affected states are usually high. The incentives to take such responsibility are therefore, usually small compared to the benefits of waiting for another to bear those. The interactions between States in a pre-international regime setting can be seen as a game, where activities detrimental to the shared environmental concerns continue to take place and nations strategically wait to see if another takes the lead role. The existing international agreements demonstrate that developed nations take the role of leader and the developing nations that of follower. Intuitively this is an appealing concept since the leader must have both the financial power to offer carrots and the political power to threaten with sticks.[21]

Once an international regime is established, the responsibility shifts to the leadership to ensure the sustainability and effectiveness of the agreement through compliance among the affected states. In a carrots-only regime, the leader must choose a combination of carrots in order to change the international setting from non-cooperation to cooperation.[22] The downside of this approach is that the states being wooed have an incentive to distort their environmental activities to ensure greater pay-offs and attract greater benefits. Such distortions can come either in terms of communication of environmentally degrading activities or in terms of an actual thrust towards greater environmental damage. In the face of asymmetric information, these scenarios can result in misallocation of valuable resources to the countries that communicate dishonestly and away from those with genuine environmental needs.

A sticks-only regime, though not the most viable for CARICOM, involves the threat of punishment to free-riders and the enforcement of that threat should it become necessary. "Sticks" can include trade restrictions, decreased foreign aid and a reduction in the transfer of technology. However the sticks needed to deter free-riding altogether often lack the power,[23] i.e., economic and political clout. While a wide range of trade restrictions have been used or proposed towards the protection of environmental interests, some trade restrictions have been condemned. For example, the GATT Secretariat 1991 and 1994 ruled against such a stick – a United States law which imposed a trade ban on the commercial importation of tuna from countries whose fishing methods endanger dolphins.[24]

Recognising the socio-economic, cultural and political heterogeneity of the nation states within CARICOM, the "carrot and stick" framework holds great promise for the harmonisation of regional environmental policy. These economies share common resources upon which most of

0378-777X/07/$17.00 © 2007 IOS Press

them depend for their sustainable future – the Caribbean Sea and a rich biodiversity. CARICOM can address concerns on several levels, i.e., national, regional, CARICOM-Latin America and CARICOM-International. With this in mind, the carrot and stick framework for environmental governance would adopt a soft "dangling the carrot" approach aimed at encouraging cooperation for the general socio-economic well-being of the region, rather than implementing harsh "stick" measures which may lead to resentment and greater fragmentation.

An integral part of this general framework is the creation of links. The major players and stakeholders would have strategic roles in bridging the gaps and creating connections to facilitate regional integration and cooperation. The national or country level comprises civic society, non-governmental organisations (NGOs), environmental institutions and educational institutions; the regional level involves the CARICOM Secretariat, regional environmental organisations/institutions and NGOs. These arrangements also apply to CARICOM-Latin American cooperation as part of the wider-Caribbean region (WCR). The international level involves the CARICOM Secretariat, NGOs, regional environmental and educational organisations and institutions. CARICOM's diplomats occupy a unique, but under-utilised position around the world. With a functional framework, they can be an invaluable link to huge sustainable financial flows for environmental programmes and projects. Finally, at each level the best practice approach should prevail, underscored and managed/coordinated by entities with successful track records. Within the framework, intergenerational environmental projects/programmes should be adopted to ensure continuity.

Models of Regional Cooperation and Governance

A meaningful discussion on CARICOM's experiment with regional integration and governance demands a brief introduction to the European Union (EU) and South East Asian (ASEAN) models of regional cooperation and governance. There are many converging and diverging trends which help to underscore those mechanisms which CARICOM may borrow for its sustained environmental cooperation.

The different approaches of ASEAN and the EU were dictated by the differences in the nature of the two regions, in the circumstances at the time of the founding of their respective associations, and in their relationships among the states. Unlike Europe, the newly independent states of South East Asia had not warred against one another. The disputes that marked their relationships largely grew out of their colonial legacies and the circumstances of their formation as states.

The mutual suspicion, tension and conflicts among the new nations – Indonesia, Malaysia, the Philippines and Singapore, involve the most sensitive human attributes, such as race, ethnicity and religion. The very newness of the region's national experience, and the fact that ethno-religions and groups straddled national boundaries made nation building very difficult.[25] The ASEAN political leaders opted to advance a common cause through informality and loose arrangements, and by emphasising personal relations among leaders, ministers and officials and peer influence, rather than institutions; they relied on consensus and common interests rather than on binding commitments.[26] At the 1967 Bangkok Declaration which established ASEAN, the Foreign Minister was forthright when he mentioned:

> *… it is easy to give birth to a new organization… the difficult task is to give flesh and blood to the concept, by marrying nationalist thinking with regional thinking … regional existence means painful medications to nationalist practices and difficult adjustments*.[27]

Forty years later, at the Third Asia Economic Forum on "Leadership Needs and Challenges in the Twenty-First Century: Asian Perspective" Ong Keng Yong, ASEAN Secretary-General, impressed with the success, pointed out:

> *… it is the shared vision of the ASEAN Leaders that has guided the region towards closer cooperation and economic integration, persevering through tough times including the 1997–1998 financial crisis. And… strong leadership and commitment that contribute to the timely implementation of regional initiatives thus far. … There have been some hiccups along the way, but these have been resolved through consultative and consensual statesmanship and a shared sense of common purpose*.[28]

The region now envisions a "…Green ASEAN with fully established mechanisms for sustainable development to ensure the protection of the region's environment, [and] the sustainability of its resources…"[29] This vision weaves together demographic dynamics, socio-cultural factors, economic growth and natural resource and environmental protection.

The converging experiences of these regional arrangements have tremendous bearing on the future of CARICOM endeavours. The current level of cooperation within the ASEAN grew out of difficult circumstances, some of which are not uncommon in the Caribbean.

Strategic Linkages for Sustainable CARICOM Cooperation

Contemporary issues of sustaining economic and social development amidst changes at both global and regional levels, signal the need for cross-cutting measures that will provide information for dealing with a number of socio-economic problems likely to arise from these new developments. Public management of the environment may be developed and/or enhanced through effective involvement of civil society induced by incentives, and enforcement tools of central government and of local institutions. The co-management or shared responsibility approach[30] of managing natural resources has become increasingly popular among conservationists and development practitioners in recent years. It overcomes the short-

0378-777X/07/$17.00 © 2007 IOS Press

comings of both centralised management and community-based approaches that hinder harmonisation of conflicting interests among diverse stakeholder groups. It includes the provision of a favourable policy framework and institutional capacity of organised user groups to co-manage resources.

CARICOM's effective management of environmental resources requires cooperation, which in practice is usually codified in international environmental agreements. The harmonisation of environmental policy within CARICOM can be addressed on several levels. However, given the heterogeneity of the nation states, and the extent of fragmentation, the question arises as to which country should take the lead role?

What is missing, too, are not just the bridges linking the various stakeholders but getting the stakeholders to cross those bridges. It is crucial to map and analyse strong and weak linkages between stakeholder groups involved in the priority integration sectors. Allowing each sectoral body to commit to and have ownership of integration initiatives and programmes can strengthen the implementation capacities. But for this to work, all stakeholders must be willing and genuinely committed. Engagement of the private sector, including through regular meetings between the government and the private sector, provide a platform for open discussion and information sharing, and create a common perspective of regional priorities among the stakeholder groups.[31] It is also important to note that the public sector culture and entrepreneurial culture of the private sector are fundamentally different. To bridge these two seemingly disparate cultures needs dialogues about new roles through new partnerships. Businesses and industry groups should participate fully in the integration process.

Courtesy: Google

Against this background, the task of pursuing simultaneous efficiency, equity and acceptability objectives seems daunting. But strengthening and/or incorporating certain basic mechanisms at the regional level, and country level in some cases, would provide a platform from which cooperation for environmental management and conservation can be launched. In essence, there should be more linkages among the various mechanisms and institutions. Linkages must also be multidirectional, i.e., crisscrossing the region, and linking the wider world, through vertical and horizontal connections.

Intra-CARICOM Cooperation and Negotiation

Within CARICOM, the countries that would lend themselves to a leadership role are those that are economically strong. Leaders must have the financial power to offer carrots or wield sticks. Given the need for environmental policy homogeneity within a free trade area, the stick policy of trade restrictions may no longer be feasible. Thus, compliance, self-enforcement and disincentives to free-riders must be achieved through mainly carrots-only policies, in the absence of viable trade threats.

The carrot approach assumes that CARICOM will have the power or political will to effect positive regional environmental changes without the cooperation of the rest of the WCR. Under a CARICOM-centric strategy therefore, it would not be feasible to ignore the rest of the WCR and focus on CARICOM environmental harmonisation; the lack of regulation in the WCR will result in negative consequences for the entire region. It may also act as a disincentive to internal harmonisation. In the absence of cooperation with the rest of the WCR, the benefits of harmonisation are unclear and the incentives to free-ride even greater.[32]

The options for broader action are generally two: either the rest of the WCR strategies can follow CARICOM's established plan, or they can create a plan of action and induce CARICOM to comply using the carrots and sticks approach. Given the relative size of the rest of the WCR in relation to CARICOM, those countries are unlikely to passively follow an agenda derived only by the CARICOM group. This means that the negotiations will then take place between CARICOM as a group and the rest of the WCR, either with their own sub-groups or themselves as an environmental policy-harmonised body. The issue then centres on who will emerge as the leader to set the tone for the regional environmental policy agenda. If the leader that emerges is a non-CARICOM country or group of countries, the incentive may then be for CARICOM to follow the harmonised environmental regulations of those bodies, and so the issues of carrots and big sticks in terms of the leader ensuring compliance and self-enforcement become relevant. Some areas of mutual cooperation and harmonisation where the carrot and stick principle can be applied are now looked at more closely.

Controlling Marine Pollution: Carrots or Sticks?

The oceanographic features of the Caribbean region make the area particularly prone to toxic accumulation. Long-term protection of the marine environment requires significant regional and international cooperation, particularly with the notion of the large marine ecosystem approach that recognises that marine pollution and marine resources do not respect geographical or political bounda-

0378-777X/07/$17.00 © 2007 IOS Press

ries.[33] Fish species are ectothermic (cold-blooded), thus changes in water temperature would have a major impact on their growth and maturity throughout the affected region, as well as on their susceptibility to disease and ultimately on the food chain. Pollution, and particularly, warming oceans would radically change the distribution of stocks and highly migratory species.

With regard to marine resources, cooperative management is also vital as one way of avoiding over-fishing.[34] For example, agents may undertake to collectively harvest, or control the damage inflicted, share resource stocks, and to split associated profits or costs by pre-negotiated formulae. Such agreements increase economic efficiency by internalising stock and diffusion externalities arising from non-cooperative management. They can be made self-enforcing to varying extents by incorporating economic carrot-incentives – typically a programme of transfer payments among the agents – to discourage breaches and a subsequent return to non-cooperative behaviour. Self-enforcing mechanisms are particularly useful when "binding" agreements are not feasible because no external body exists to impose sanctions upon those breaching the agreement.[35] The self-enforced dynamic contracts with transfer payments have also been addressed in the context of cross-border/transboundary environmental pollution problems.

Functional cooperation should be motivated by the fact that Caribbean nations share the important common natural linkage of the Caribbean Sea. This defining feature of the region is a fragile ecosystem highly vulnerable to pollution from the myriad economic activities on densely populated coastlands, especially the passage of hazardous materials[36] and the volume (more than half the world's total) of cruise fleets that pass through CARICOM waters. Protecting this tourism "milch-cow" therefore requires the concerted efforts of all the stakeholders. In this case, the carrot is clearly the benefits (actual and future) derived from this ecosystem.

Further, the UN Convention on the Law of the Sea has expanded the exclusive economic zones (EEZs)[37] as compared to the marine areas formerly claimed by Caribbean countries. This means an increase in both the size of the marine area that nations must protect, and the overlap of the areas that various countries can claim as EEZs. In most such cases, national EEZ boundaries have not yet been negotiated. The EEZ concept has potentially broadened the scope of CARICOM's individual nations' responsibilities while at the same time increasing the need for cooperation among their governments.

To address some of these concerns, the CARICOM heads of government launched an initiative in the International Maritime Organization (IMO), under which the Caribbean Sea has been designated as a "special area" for purposes of certain controls on shipping, dumping and other maritime activities. This designation is important in the context of sustainable development of the Sea, which must be managed Caribbean-wide. But the lingering question as to who should take the lead role in such management is still unanswered. A case in point is Barbados, whose economy is built largely on service industries and tourism, and is not a significant trader in hazardous waste. However, transshipment of such wastes occurs and the environmental and health risk warrant implementation by way of sound precaution. Barbados may thus need to be induced by carrots for regional cooperation.

As an example, operationalising the Basel Convention has been problematic because of the (a) lack of adequate resources, (b) weak and fragmented institutional arrangements, and (c) lack of appropriate legislation. The Basel Convention requires a partnership between Government and its civil society and NGO partners, particularly the business sector. However, the present CARICOM institutional arrangements responsible for implementing the Basel Convention do not facilitate the fostering of this partnership.

More recently, CARICOM governments seem to have assigned priority to the sustainable management of the Caribbean Sea that led to the *United Nations Resolution on Promoting an Integrated Approach to the Caribbean Sea in the Context of Sustainable Development*.[38] The management regime is based on the principles embodied in co-management, and allows for the responsibility for resource management and ocean stewardship to be shared between the governments of the region and relevant stakeholders. Thus, CARICOM's response to cooperation from Barbados fits squarely into the need for a co-management and "carrot" approach which offers incentives for regional well-being. These enabling activities are to be complemented by selective capacity-building programmes, aimed at creating or strengthening endogenous conditions and capabilities necessary to prepare a long-term programme for adaptation. The project aims to execute a comprehensive programme of human-resource development for upgrading the skills of technicians and officials from participating countries in areas relevant to global climate change and adaptive planning.[39]

Additionally, the various components of the approach to protect the Caribbean Sea were designed to increase existing knowledge about the extent and sources of coral reef degradation, establish a long-term monitoring programme that over time will show the effects of global warming on coral reefs and consider economic valuation of resources in selected coastal ecosystems.[40] Further, two pilot studies demonstrate the design and use of economic and regulatory approaches to environmental protection in response to threats from sea-level rise. They utilise innovative approaches to environmental regulation, such as the use of economic incentives, to provide flexible, cost-effective alternatives to traditional regulatory policies.[41] Clearly, the carrot and stick approach holds potency as Member states are induced by the dangling carrots to participate in these projects and programmes. Similarly, this framework is applicable to subsequent related projects (e.g., biodiversity conservation) that

0378-777X/07/$17.00 © 2007 IOS Press

require stakeholders' commitment to environmental co-operation.

Conservation of Biodiversity Resources

The Convention on Biological Diversity (CBD) is the first global agreement on the conservation and sustainable use of biological diversity.[42] CARICOM Member States that are signatory to the CBD are required to prepare National Biodiversity Strategies and Action Plans aimed at meeting the objectives of the CBD. For many countries, this undertaking represents the first comprehensive inventory of their terrestrial biodiversity. Such an inventory is necessary for any sustainable conservation since it indicates what currently exists. In this connection, it should be noted that 40% of the plant life in the Caribbean is found nowhere else on earth,[43] and the natural environment, including biodiversity, provides the primary social safety net for the rural populations of the region and is one of the few forces limiting malnutrition and massive urban migration. In addition, biodiversity has an extremely important economic value through revenues from biodiversity-related sources.[44] In more than 60% of the region, coral reefs are threatened and much of the region's mangroves have been lost due to coastal development, over-fishing, marine pollution, run-off from deforestation and farming, and industrial and urban pollution.[45]

A 1997 Review of the Implementation of the SIDS-POA for the UN Economic Commission for Latin America and the Caribbean (UNECLAC) suggested that biodiversity conservation has not found widespread support among the general population because it has been promoted by researchers and environmental and conservation organisations.[46] Nevertheless, some selected aspects of biodiversity management have been practised by forestry and fishery officials in the region as part of their sector management programmes, but national biodiversity strategies have remained a low priority. A Memorandum of Cooperation[47] between CBD and the Cartagena Convention for the Protection and Development of the Marine Environment of the Wider Caribbean Region was agreed in 1997. It covers *inter alia,* institutional cooperation, exchange of information and experience and joint conservation action. Despite inherent flaws, the Agreement is an innovative step in the rationalisation of overlapping treaty requirements.[48]

Regional cooperation is still a long way off. The preservation of sea turtles,[49] under the ambit of CITES[50] and the Wider Caribbean Sea Turtle Conservation Network (WIDECAST),[51] illustrates some of the difficulties with cooperation for implementation. The common problems are:

- non-compliance with the existing moratorium by fishermen;
- unlawful harvesting of turtles by fishermen from neighbouring islands; and
- failure of legislation to protect these and related species, either directly or through legislatively protected areas.

These programmes and arrangements suggest conservation of biodiversity is receiving some attention. However, given that such programmes have generally been under-funded in CARICOM, the carrot framework has not yet met its potential in generating cooperation, which would in turn lead to both more financing for conservation and preservation of the resources upon which the sustainable economic health of the region depends. To succeed, it would require a vibrant regional and extra-regional networking among the influential players.

International Environmental Cooperation and Negotiation

In international environmental negotiations, the agenda is set by the developed countries that emerge as the uncontested leaders of the cooperation. The issue then centres on the strength of the regional voice in defending regional developmental goals and having an input into the exploitation of the regional environmental resources that are so necessary for the provision of goods and services to regional communities. Strengthening the regional position requires a clear, well articulated and harmonised policy towards international environmental issues.

Recognising the importance of international cooperation for environmental management, Nicholas Robinson pointed out that:

> *The need for more effective international cooperation to safeguard Earth's environment has been evident since before the UN Stockholm Conference on the Human Environment in 1972. That Conference provided for the establishment of the United Nations Environment Programme (UNEP), and perhaps it was because of the success of the UNEP that nations came to recognize the need for nations to take ever more effective international measures to prevent environmental degradation around the world.*[52]

The success of the ASEAN way should guide and inform similar initiatives of CARICOM. ASEAN, formed in 1967 as an economic organisation, has gained international political recognition. The rising political importance in the international political economy is forged by several factors*, two of which are relevant to CARICOM*. First, the member *states are drawn together by mutual concern for greater physical security*; and second, while all ASEAN countries are committed to rapid *economic growth* as their top national priority, *they realise it can be achieved only through their own effort and not by relying on the economies of the industrially advanced countries* (emphasis added). This latter point, I vehemently contend, should be etched into CARICOM's vision as the leaders and stakeholders charter the region's future.

Recognising its small population as a disadvantage, CARICOM implemented two key initiatives to broaden its political and economic alliances: the Caribbean Forum of African, Caribbean and Pacific States (CARIFORUM), which marshals the independent countries in the Community together with the Dominican

0378-777X/07/$17.00 © 2007 IOS Press

Republic to interface with the European Union (EU) under the Lome Convention; and the Association of Caribbean States (ACS), a mechanism for consultation, cooperation and action, that brings together all the countries of the Caribbean Basin with a population of over 200 million. The purpose is to identify and promote the implementation of policies and programmes with the objectives of harnessing, utilising and developing the Region's collective capabilities.[53]

In the wake of the Rio Conference and subsequent international environmental conferences, many developing countries including the CARICOM States have sought to design basic legal instruments for environmental protection and the sustainable management of natural resources. Many have adopted national framework environmental laws,[54] created new environmental agencies and established environmental impact assessment procedures. However, these mechanisms so far have not been effective in forging regional cooperation in the management and conservation of the region's environment and biodiversity resources. In the absence of effective enforcement procedures, other means of bringing together the region's economies to pursue their common goal must be sought. To that end, foreign policy and environmental diplomacy, among other mechanisms, hold the promise of attracting countries to engage in regional cooperation, they are, in essence, enticing carrots.

Foreign Policy and Environmental Diplomacy

A pillar on which CARICOM's strength is predicated is the coordination of the foreign policies of its independent Member States. As a collection of small sovereign states, individual and separate foreign and external economic policy is much more likely to divide rather than to integrate the region. A key objective of CARICOM has therefore been to approach its external political and economic negotiations (such as the Free Trade Area of the Americas (FTAA) and the World Trade Organization (WTO)) as a single, coordinated unit. For example, to ensure effective coordination in the field of external economic negotiations, CARICOM has established the regional negotiating machinery (RNM) to undertake regional and multilateral trade negotiations on its behalf. The subscription of the Dominican Republic and Cuba to the RNM demonstrates the contribution of this approach to unifying the Caribbean.[55]

However, the Region's foreign policy must be facilitated by certain critical mechanisms and institutions such as diplomats, their embassies, and the CARICOM Secretariat.

Special Role of Diplomats

Scientific and technological advances, in the face of the environmental perils of the modern world necessitate changes in the diplomatic focus of countries. To that end, it is important for the Caribbean to embrace new forms of relations, i.e., the emerging environmental diplomacy. Diplomats are uniquely placed to contribute to this new direction. They can intensify their global activities through the creation of networks to promote greater engagement and broader international cooperation for sustainable environmental conservation. They have access to the people who can influence the financing of projects, but they need to be facilitated through training for a modern diplomatic role in a region that is groping for a shared vision, goals and cooperation. CARICOM ambassadors are isolated from the region, to some extent from their respective countries and too frequently, do not present a common front in matters of regional interest. In their fragmented approach, all want to be the first to grab what they can for their individual economies. They are either unaware, or choose to relegate to lesser importance, the notion that financial flows can be far greater and more effectively utilised when procured through a regional front and disbursed on a project priority-based objective.

Recognising this ethnocentric behaviour, international financial institutions have been more eager to negotiate with NGOs and civil society, such as the Jamaica Parks in Peril Program.[56] Diplomats should be more proactive in negotiating and participating in regional meetings where the major lending and financial institutions will gather with CARICOM governments and other related public officials, NGOs, environmental and educational institutions and other stakeholders to highlight regional needs and target specific projects and programmes. However, unless a regional position is taken, the financial inflows will be piecemeal and not sufficient. One reason is that international financial institutions and donor agencies are more inclined to finance intergenerational projects which would positively impact a greater number of people under stable management with a successful track record of managing environmental programmes and projects.

Role of the CARICOM Secretariat

The Secretariat is pivotal to regional integration and environmental governance.

As the Secretary-General Carrington pointed out: "… the Secretariat plays an integral role to the entire structure by providing the main technical and administrative support".[57] Recognising this role, the Secretariat, in January 2002, assumed the mantle of leadership for the Caribbean Renewable Energy Development Programme, and established a Project Management Unit for the Programme to prepare for full implementation in accordance with the requirements of the funding agency, the Global Environment Facility as well as the United Nations Development Programme. This effort built on the earlier work by the Caribbean Energy Information System and important regional stakeholders including government ministries, the University of the West Indies, the Caribbean Development Bank, the Association of Caribbean Electric Utilities, and the Caribbean Solar Energy Society.

The CARICOM Secretariat has also forged cooperation between the Caribbean Renewable Energy Development Programme and the partners at the United National Development Programme who provided guidance in the preparation of the Programme, and in mobilising an additional grant from the Global Environment Facility. The CARICOM Secretariat was able to procure additional support from the German Aid Agency (and from pledged

0378-777X/07/$17.00 © 2007 IOS Press

contributions from a regional partner to the Programme, the Global Sustainable Energy Island Initiative).[58]

But despite the Secretariat's recent invigorated role, it still has a long way to go in bringing about the level of cooperation and integration needed for regional environmental governance. For one thing, it needs to involve more of the regional players and stakeholders in its action plans. One way is to work more closely with regional ambassadors and diplomats, and to get more stakeholders, NGOs, regional and international environmentalists, educators, and financial and donor agencies and organisations at round-table discussions. In essence, the Secretariat must serve as a facilitator in the initial arrangements, and subsequently as the regional focal point for the coordination of regional environmental activities.

The second part of this article in the next issue will detail the role of regional educational and environmental institutions is discussed. CARICOM's need to search for alternative sources of renewable energy, utilising the abundance of natural elements, the importance of sustainable tourism, and a hybrid model of environmental governance are presented within the carrot and stick framework.

Notes

1 See Remarks by Edwin W. Carrington, Secretary-General of The Caribbean Community (CARICOM) at the Partnership Reception co-sponsored by the Global Environment Facility (GEF), the CARICOM Secretariat and the Pacific Islands Forum (PIF), 12 January 2005 in Mauritius at http://www.caricom.org/jsp/speeches/sids-partnershipreception-carrington.htm.

2 Janet H. Momsen, "Introduction", *Environmental Planning in the Caribbean* 3–4 (J. Pugh and J. H. Momsen (Eds), 2006).

3 Established by the July 4, 1972 Treaty of Chaguaramas, Trinidad & Tobago. Leaders of the newly independent Commonwealth Caribbean economies – Trinidad & Tobago, Guyana, Jamaica and Barbados – at the Seventh Heads of Government Conference – decided to transform the existing Caribbean Free Trade Association (CARIFTA) into a Common Market and establish the Caribbean Community (CARICOM)).

4 Jonathan Skinner, "Disaster Creation in the Caribbean and Planning, Policy and Participation Reconsidered", *Environmental Planning in the Caribbean* 55 (J. Pugh and J.H. Momsen (Eds), 2006). Hurricanes are named after the Carib Huracan (god of Evil) and are annual features of the Caribbean (from June to November.) Hurricanes can produce extremely heavy rainfall which often results in floods and considerable destruction of property.

5 Montserrat, a CARICOM Member State where a volcano last erupted in 1995 displacing more than half of its approximately 11,000 population from the 103km^2 area. Current population is about 5,250. The French territory, Martinique, and CARICOM Member, St Vincent, are other volcanic islands in the region.

6 A sub-regional bloc of seven small-island states established by the Treaty of Basseterre, St Kitts, June 18, 1981. Members are Antigua/Barbuda, Dominica, Grenada, Montserrat, St Kitts/Nevis, St Lucia, and St Vincent & the Grenadines.

7 See Leslie G. Fields, "One Heckuva Snafu: The Environmental Justice Implications of Katrina", *Human Rights* 33: 5–8 (ABA 2006), for a discussion on the hurricane-devastated New Orleans in the USA, which displaced hundreds of thousands, mainly poor people.

8 See Ronald Singh, "CARICOM: Time for a Paradigm Shift", *The Caribbean Journal*, Dec. 4, 1999, for a discussion on behaviour and attitude changes needed among Caribbean leaders.

9 *Id.* "The Rainforests: Lungs of the Future, Food for Surviving Today"*, The Caribbean Journal*, June 16, 2001, which discussed the need for the developed world to finance more preservation projects while offering incentives for slash and burn farmers to curb the practice.

10 The 1992 UN Earth Summit, otherwise referred to as Agenda 21, Rio Summit, Rio Declaration, among others, identified the major environmental problems and presented a detailed action plan for their solutions.

11 See Koh Kheng-Lian and Nicholas A. Robinson, "Strengthening Sustainable Development in Regional Inter-governmental Governance", *Singapore J. Int'l. Comp. L.* 6: 640 (2002).

12 Steven C. Rockefeller, "The Need for a New Planetary Ethic", *Green Law* 10: 3 (2007).

13 "CARICOM chairman to push progress on functional cooperation" (April 2, 2007) at http://www.caribbeannetnews.com/news-760–39-39–.html (note: the chairman's tenure ends June 2007).

14 *Supra,* note 3.

15 R.V. Percival, C.H. Schroeder, A.S. Miller and J.P. Leape, *Environmental Regulation: Law, Science, and Policy* 1 (Aspen) (2003).

16 See Edwin W. Carrington, "CARICOM: Toward Making the Caribbean Whole" (keynote address delivered to the seventh Annual North-East Regional Caribbean Students Conference at MIT, on April 2, 1999) for discussion on sustained cultural, economic, social, scientific and technological advancement; promoting opportunities for cooperation and concerted action on trade and investment issues; and establishing, consolidating, and augmenting cooperative and institutional arrangements that are responsive to the region's various cultural identities, development needs and normative systems, at http://www.caricom.org/jsp/speeches/mitspeech.htm.

17 Janet H. Momsen, *supra* note 2 at 1.

18 A.K. Farmer, J. Kahn, J. McDonald and R. O'Neill, "Rethinking the Optimal Level of Environmental Quality: Justifications for Strict Environmental Policy", *Ecological Econ.* 36: 461–473 (2001).

19 Ian Bailey, "European Environmental Taxes and Charges: Economic Theory and Policy Practice", *Applied Geography* 22: 235–251 (2002).

20 G. Muller-Furstenberger and G. Stephan, "Environmental Policy and Cooperation beyond the Nation State: An Introduction and Overview", *Structural Change and Econ. Dynamics* 8: 99–114 (1997).

21 *Id.*

22 *Id.*

23 *Id.*

24 See Andrea Lenschow, Greening: "The European Union – Are there Lessons to be learned for International Environmental Policy?"*, Global Envtl. Change* 12: 241–245 (2002). See also Scott Barrett, "Self-enforcing International Environmental Agreements", *Oxford Econ. Papers* 46: 878–894 (1994).

25 *Id.*

26 *Id.*

27 See *The Straits Times*, March 17, 2006, Review 25, excerpts from Gretchen Liu (Ed.), "Singapore Foreign Service: The First Forty Years" (Didier Millet, 2006) at http://www.nst.com.my/.

28 See Remarks by H.E. Ong Keng Yong, Secretary-General of ASEAN at the Third Asia Economic Forum on "Leadership Needs and Challenges in the Twenty-First Century: Asian Perspective" Phnom Penh, Cambodia, April 2–5, 2007 at http://www.aseansec.org/20600.htm.

29 See ASEAN Vision 2020 at http://www. aseansec.org/1814.htm.

30 Drawing on empirical studies conducted in Kenya, co-management was successful in meeting the needs and interests of local communities and conservationists in the conservation and management of wildlife.

31 *Supra,* note 16. Some of these measures were alluded to by the Secretary-General's keynote address. These principles were expressed at the Rio Earth Summit, 1992.

32 Andreas Lange and Carsten Vogt, "Cooperation in International Environmental Negotiations due to a Preference for Equity", *J. Pub. Econ*. 87: 2049–2067 (2003).

33 See P.A. Scheren, A.C. Ibe, F.J. Janssen and A.M. Lemmens, "Environmental Pollution in the Gulf of Guinea – A Regional Approach"*, Marine Pollution Bulletin* 44: 633–641 (2002). See also R. Morrison, "The Regional Approach to Management of Marine Pollution in the South Pacific"*, Ocean and Coastal Management* 42: 503–521 (1999).

34 William C.C. Burns, "Potential Causes of Action for Climate Change Impacts under the United Nations Fish Stocks Agreement", *Sustainable Dev. L. & Pol'y* VII: 35 (2007) (discussing the Kyoto Protocol and UNFA).

35 See V. Kaitala and M. Pohjola, "Optimal recovery of a shared resource stock: a differential game model with efficient memory equilibria"*, Nat. Resource Model* 3: 91–117 (1988).

36 Especially the movement of nuclear waste between Europe and Asia.

37 Other rights and responsibilities (relating to mining, pollution and other uses of the sea floor) extend up to 350 miles under UNCLOS's provisions regarding national jurisdiction over their outer continental shelf or OCS (an area that is defined geologically), where the OCS extends beyond the 200 n.m. range. See www.guilford.edu/geology/Geo141/Fishing%20Stats.ppt.

38 See GA Resolutions 54/224-5 at islands.unep.ch/dga54224.htm; see also http://www.un.org/esa/sustdev/sids/sids.htm (for additional information).

39 CPACC Project Document (1997).

40 Factors include temperature stress, sea-level rise, and hurricanes (The Coral Reef Monitoring for Climate Change in the Bahamas, Belize, and Jamaica). The Coast Vulnerability and Risk Assessment Component of that monitoring programme involves Barbados, Grenada and Guyana which participate in the development of vulnerability and risk assessments of their coasts. The Economic Valuation of

0378-777X/07/$17.00 © 2007 IOS Press

Coastal and Marine Resources Component involves Dominica, Saint Lucia, and Trinidad and Tobago and considers economic valuation of resources in selected coastal ecosystems at risk from sea-level rise.

41 Formation of Economic and Regulatory Proposals Component implemented two pilot studies in Antigua and Barbuda and St Kitts and Nevis to demonstrate the design and use of economic and regulatory approaches to environmental protection in response to threats from sea level rise.

42 Biological diversity (biodiversity) is the wide variety of plants, animals and micro-organisms on Earth and their natural patterns of existence. Biodiversity also includes genetic differences within each species, as well as ecosystem varieties. Biological resources are the foundations for future generations, thus protecting biodiversity is very vital. The loss of biodiversity can threaten our food supply, as well as reduce opportunities for recreation and tourism.

43 See http://www.usaid.gov/our_work/economic_growth_and_trade/eg/trade/report/01main_tcb.pdf.

44 For example tourism and timber and non-timber forest products (e.g., nuts, herbs, etc).

45 See USAID, *supra,* note 69.

46 See UNECLAC REV. 24 (1997) (for details and explanations).

47 The Memorandum of Cooperation between CBD and the Cartagena Convention and its Protocols, agreed on in 1997, resulted from overlaps. Biodiversity protection in CARICOM and Latin America falls under the Caribbean Environmental Programme (CEP) which forms the core of the UNEP's Regional Seas Programme in the Caribbean. Since conservation of biological resources falls within the objective of the Specially Protected Areas and Wildlife (SPAW) Protocol, there are considerable overlaps with the CBD.

48 Anderson W., "Overlapping Treaty Regimes and the Memorandum of Cooperation between SPAW and CBD", *Envtl. Pol'y L.* 25: 237, 240–41 (1998).

49 The four species of sea turtle found in Anguilla are the hawksbill (*Eretmochelys imbricata*), leatherback (*Dermochelys coriacea*), green (*Chelonia mydas)* and loggerhead (*Caretta caretta*).

50 See Convention on International Trade in Endangered Species at http://www.cites.org/.

51 See *Multilateral Environmental Agreements Implementation in the Caribbean: Report and Guidelines* (2000) at http://www.ramsar.org/key_unep_governance1.htm.

52 *Supra*, note 11. Nicholas Robinson is currently Professor of Environmental Law at Pace University Law School; and a former Chair of the IUCN Commission on Environmental Law.

53 *Edwin W. Carrington, supra,* note 16.

54 See USAID, *United States Government Initiatives to Build Trade Related Capacity in Developing and Transition Countries* (2001) at http://www.usaid.gov/our_work/economic_growth_and_trade/eg/trade/report/01main_tcb.pdf.

55 See Caribbean Community at http://www.caricom.org/jsp/pressreleases/pres133_06.jsp; see also http://2005.sice.oas.org/.

56 See Parks in Peril at http://www.usaid.gov/locations/latin_america_caribbean/environment/pip.html. The largest site-based conservation programme in Latin America is a partnership among USAID, The Nature Conservancy, foreign governmental organisations and non-governmental organisations in 17 countries. Over the past 16 years, Parks in Peril has dramatically improved the conservation status of 45 national parks and nature reserves covering more than 45 million acres in Latin America and the Caribbean. These protected areas encompass a variety of ecosystem types, including tropical forests, coral reefs, and savannahs.

57 *Supra,* note 16.

58 See Opening Remarks by Ambassador Lolita Applewhaite, Deputy Secretary-General, Caribbean Community (CARICOM) on The Occasion of the Opening of the Inception Workshop for the Caribbean Renewal Energy Development Programme (CREDP), May 17, 2004, Georgetown, Guyana (funding of the order of US$3.726 million) at http://www.caricom.org/jsp/speeches/credp_inception _workshop-applewhaite.htm.

EU

Contribution to the Fight Against Illegal Fishing
– The Right Tools for the Job –

by Joe Borg*

During recent years the international community has come to better understand the dangerous scope and enormous potential for damage, arising from illegal, unreported and unregulated fishing activities (IUU). Today it is widely recognised that IUU activities are by no means a bagatelle. Large-scale illegal fishing is a big business, and more often than not it takes the form of highly profitable and highly organised international crime. The global turnover of IUU fisheries has recently been estimated at in excess of EUR 10 billion. IUU fishing is one of the chief challenges we have to address on our way to establishing sound and sustainable management of our maritime resources. The fight against illegal fishing is a fight to preserve marine biodiversity. It is above all part of the fight against global economic crime.

IUU operators not only cause tremendous environmental and economic damage, they also do a lot to tarnish the public image of the fishing industry. The vast majority of fishermen are honest operators whose main concern is to earn a reasonable living. Although they often have to work in very difficult conditions, both physically and financially, they value their profession, and their reputation, highly. They also understand that fish are not a limitless resource. When it is necessary to impose limitations on catches from stocks which are vulnerable to overfishing, most fishermen are willing to follow the rules laid down. They know that these restrictions may be painful in the short term, but that they are in their own long-term interest.

However, there is a small but significant minority of operators who do not see things that way. I am not referring to those which occasionally overfish their quota, although this is a practice which naturally we cannot approve of. I am talking rather about the 'hard core' of operators who are committed to illegal, unreported and unregulated fishing as a business model. And as the *guestimate* figure of a turnover of EUR 10 billions shows, it can be a very profitable model, if one is not caught.

The European Union, together with its international partners, has long been aware of the problem posed by illegal fishing. Today the EU considers IUU fishing a major challenge, not least because we are the largest market for fisheries products in the world. Over the past years, I have made therefore tackling IUU a major priority for the EU Common Fisheries Policy. We have increased our sponsorship of international coordination and research on the IUU phenomenon, and we have continued to advocate

* EU Commissioner for Fisheries and Maritime Affairs.

0378-777X/07/$17.00 © 2007 IOS Press

more efficient surveillance and sanctions mechanisms not only in the FAO, but also in the more than a dozen Regional Fisheries Management Organisations (RFMOs) in which Europe is represented.

Control and enforcement are rising ever higher on the fisheries management agenda. But traditional control techniques and associated sanctions, while vital, are inadequate to tackle the specific challenge posed by large-scale IUU activities in international waters. We have to admit that our present control systems are simply not designed to deal with 'pirate' vessels flagged to third countries which have neither the will nor the means to enforce the law. Such operators often trade their illegal catches half way round the world until they become untraceable, before selling them on through more legitimate channels. Illegally caught cod from the Barents Sea, for example, may travel tens of thousands of kilometres to be processed into fillets on the opposite side of the world, before re-entering the EU market in all apparent innocence to end up unrecognisable on our supermarket shelves. Recent estimates suggest that the EU is penetrated each year by imports of illegal fish products worth up to EUR 1.1 billion – and the true figure may be far higher.

Illegal fishing is attractive to wrong-doers because its economics makes sense. IUU operators are spared many of the costs which legitimate fishermen have to bear. They can also focus on the species which are the most sought after, and thus most valuable. They do not have to worry about whether or not quota is available. As a result, the profits can be huge. This highly complex form of organised crime has now reached such a scale that it is dangerously jeopardising many precious fish stocks and pillaging the interests of legitimate fishermen.

Against this background, the European Commission has prepared a package of political and legal measures including a comprehensive new regulation to combat IUU activities, which will enter the legislative process from October 2007. Our proposal focuses on two key goals. First, we need to have the tools to prevent illegal fishing not just when operators are caught red-handed at sea, but at every stage throughout the supply chain. This means that we need control systems that can identify and trace fish products at every step along the way from net to plate. If we can prevent IUU operators from selling their products to consumers, then we can hit them where it hurts most – in the purse.

To achieve this, countries and other relevant actors such as the European Union will need to secure their own markets. But they will also need to work together. Almost everywhere around the globe, fishing on the high seas is regulated by RFMOs, and it is these organisations which need to be strengthened and empowered. Examples of best practice include the 'port state' control scheme introduced last year by the North East Atlantic Fisheries Commission (NEAFC), which makes prior notification by the flag state a condition for landing fish, so that the receiving port can be sure that the vessel is licensed to catch the fish, and the fish has been caught within quota. Another example which should be held up for emulation is the new control scheme established as part of the multi-annual management plan for eastern bluefin tuna agreed by the International Commission for the Conservation of Atlantic Tuna (ICCAT) in November 2006. This scheme provides, among other things, for full traceability throughout the supply chain, prior notification of landing, and reciprocal inspections on the high seas.

The EU has been a driving force supporting the adopting of these schemes. They are models of their kind, and point the way forward for fisheries control globally.

The second goal of our proposal is to make it far more difficult for the operators and owners of IUU vessels to disguise their identity and so avoid detection and punishment. At present, a number of states run what are known as 'Flags of Convenience', when they fail to exert adequate control over the vessels listed in their register. This makes it easy for those who are up to no good to transfer their operations around the world without being asked embarrassing questions. While continuing to pursue multilateral action within the UN and other bodies, we believe that the EU should not wait for other nations to join us in this fight. We will therefore be seeking to establish a fair and transparent mechanism to black list states and vessels which deliberately choose to place themselves outside the international legal order. We also plan to make it much easier to pursue EU nationals who engage in illegal fishing activities outside EU waters.

Of course, for our international actions to be credible, we need to ensure that our own house is in order, too.

Courtesy: Greenpeace

This will mean working with the EU Member States, which are responsible for controlling and sanctioning their nationals, to ensure that fisheries regulations are rigorously respected in European waters too.

IUU fishing on the high seas is one of the greatest challenges – if not the greatest – now facing the international fisheries management community. The survival of many of our major commercial fisheries depends upon our success. The best way to close down illegal fishing operations is to make them unprofitable – that is, to ensure that the financial risks involved are no longer worth taking. If we can achieve that, then we will have won a major victory on the road to a genuinely sustainable fishing industry for the 21st century. We should spare no effort on the way.

0378-777X/07/$17.00 © 2007 IOS Press