



## The Law and Policy of Biodiversity Conservation in the Caribbean: Cutting a Gordian Knot

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## GUEST EDITORS' INTRODUCTION

# The Law and Policy of Biodiversity Conservation in the Caribbean: Cutting a Gordian Knot

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Once upon a time, not very long ago, the Caribbean seemed like an ideal region in which to demonstrate the power and efficacy of international environmental law for solving many if not most of the problems of biodiversity conservation.<sup>3</sup> This part of the world, which can be formally defined as the Wider Caribbean Region (WCR)<sup>4</sup> but is simply referred to, here, as the Caribbean, was a natural proving ground for the regional seas programs developed and advocated through the United Nations Environment Program (UNEP) in the early 1970s and subsequently supported by much of the rest of the UN system, as well as by a diversity of international environmental and development non-governmental organizations (NGOs) and aid agencies.<sup>5</sup>

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<sup>3</sup> The basis for this view is nicely laid out in Marian A.L. Miller, *Protecting the Marine Environment of the Wider Caribbean Region*, 1996 *GREEN GLOBE Y. B.* 37-45 (1996).

<sup>4</sup> Miller cites the definition offered by the United Nations Environment Program (UNEP) as “the Gulf of Mexico, the Caribbean Sea, and the areas of the Atlantic Ocean adjacent thereto, south of the 30 degree north latitude and within 200 nautical miles of the Atlantic coasts’ of any of the regional states.” *Id.* at 37, quoting the language of Article 2 of the Cartagena Convention (Convention for the Protection and Development of the Marine Environment of the Wider Caribbean Region [Cartagena de Indias, Colombia, 24 March 1983], 22 I.L.M. 221 {1983}).

<sup>5</sup> The international law of oceans and seas, including a superb history and background analysis of the regional seas programs, is presented in Chapter 10 of DAVID HUNTER, JAMES SALZMAN & DURWOOD ZAEKE, *INTERNATIONAL ENVIRONMENTAL LAW & POLICY*, 2d ed. (2002). See also the web site of UNEP’s Regional Seas program, <http://www.unep.org/regionalseas/About/default.asp>. The program now covers eighteen regions of the world and is, thus, one of the most globally comprehensive initiatives for the protection of marine and coastal environments—the Antarctic, Arctic, Baltic, Black Sea, Caspian, Eastern Africa, East Asian Seas, Mediterranean, North-East Atlantic, North-East Pacific, North-West Pacific, South Pacific, Red Sea and the Gulf of Aden, ROPME Sea Area, South Asian Seas, South-East Pacific, Western and Central Africa, and the Wider Caribbean.

On the one hand, the rich, even fabulous, diversity of both terrestrial and marine ecosystems and species in the region, to say nothing of its extraordinary scenic splendor and appealingly complex cultural heritage, cries out for protection and preservation.<sup>6</sup> On the other hand, the Caribbean, as one of the most valuable sources of oil in the world and a major global magnet for tourism, is both an origin and destination for serious marine and land-based pollution that demands tough and effective regulation.<sup>7</sup> On both counts, by the late 1970s and early 1980s, as was the case at the time with other places on the planet, the Caribbean appeared to be a prime candidate for the negotiation and enforcement of multilateral environmental agreements (MEAs).<sup>8</sup> The chief agreement, the Cartagena Convention for the Protection and Development of the Marine Environment of the Wider Caribbean Region, was adopted in 1983 and entered into force in 1986.<sup>9</sup> Additional protocols have tried to extend the reach and impact of the original convention. One of them is a Protocol Concerning Specially Protected Areas and Wildlife (SPAW), adopted in 1990 but not in force until 2000.<sup>10</sup>

While there has been no shortage of enthusiasm in some quarters, even as recently as 2002,<sup>11</sup> for the ability of MEAs to bring the demands of environmental protection and economic development into better balance in the Caribbean—provided certain not altogether insignificant resource constraints could be met—other assessments of the present status and future prospects for the Caribbean have introduced doubts and complicating factors.<sup>12</sup> The

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<sup>6</sup> See David Read Barker, *Biodiversity Conservation in the Wider Caribbean Region*, 11 REV. EUR. & COMP. INTL L. (RECIEL) 74, 74-75 (2002).

<sup>7</sup> Pollution problems from marine and land-based sources, as well as a wide range of other resource assessments, are the subject of an excellent series of Caribbean Environment Program technical reports, most available in htm or pdf formats. See <http://www.cep.unep.org/information-services/cep-technical-reports/cep-technical-reports-listing/>.

<sup>8</sup> These various governing instruments are described at and accessible from a web site that also reports data on signature and ratification. See [http://www.unep.org/regionalseas/Programmes/UNEP\\_Administered\\_Programmes/Caribbean\\_Region/default2.asp](http://www.unep.org/regionalseas/Programmes/UNEP_Administered_Programmes/Caribbean_Region/default2.asp).

<sup>9</sup> Convention for the Protection and Development of the Marine Environment of the Wider Caribbean Region, (Cartagena de Indias, Colombia, 24 March 1983), 22 I.L.M. 221 (1983).

<sup>10</sup> Protocol Concerning Specially Protected Areas and Wildlife in the Wider Caribbean Region (Kingston, Jamaica, 18 January 1990), 1 Y.B. INTL ENV'T L. 441 (1990), and online at the web site cited *supra* note 8.

<sup>11</sup> Barker, *supra* note 6, at 82-83, is generally enthusiastic about the potential for law to make a difference but does complain about complacency in regional governments as they face the problems of implementing MEAs. Earlier assessments were either uncritical or mildly so. See Alessandra Vanzella-Khoury, *Implementation of the Protocol Concerning Specially Protected Areas and Wildlife (SPAW) in the Wider Caribbean Region*, 30 U. MIAMI INTER-AM. L. REV. 53 (1998) and Charlotte de Fontaubert & Tundi Agardy, *Critical Analysis of the SPAW Protocol: The Dilemma of Regional Cooperation*, 30 U. MIAMI INTER-AM. L. REV. 85 (1998).

<sup>12</sup> The constraints are nicely summarized by Miller, *supra* note 3, at 42-44. Other much more narrowly legal but nonetheless cogent reasons for being doubtful about the promise of MEAs are offered in Winston Anderson, *Implementing MEAs in the Caribbean: Hard Lessons from Seafood and Tuna*, 10 RECIEL 227 (2001).

clear and simple thread linking international law to a brighter future for the Caribbean has raveled itself into a Gordian knot. And it is no longer as clear as it once was that, of all the possible intervention strategies that might be used to address pressing regional issues of conservation and development, legal strategies alone can be relied upon to deliver conservation gains. This is why there has been a recent growth of interest in partnerships for implementation and in the language of multi-level governance, and an associated emphasis on more effectively translating the requirements and directives of supranational law into national and local law and practices.

It has become increasingly clear, for example, that as a result of globalization and shifting patterns of world trade the region is undergoing a major economic transformation.<sup>13</sup> One important outcome of this is an intensification of local demands that economic development be given at least as much priority as environmental protection, whether on the agendas of Caribbean governments or those of donor agencies and NGOs.

In addition, the states of the Caribbean, of which there is a large number,<sup>14</sup> fall into categories that have become increasingly prominent and privileged in the speech of international relations since the international conference on environment and development held in Rio de Janeiro in 1982 and the formulation there of Agenda 21.<sup>15</sup> Many of them are small island developing states (SIDS) that have successfully sought attention for their concerns in a separate and prominent agenda and associated negotiating process, reflected in the 1994 Barbados Programme of Action (BPOA) and the

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<sup>13</sup> Ramesh F. Ramsaran, *Domestic Policy, the External Environment, and the Economic Crisis in the Caribbean*, in MODERN CARIBBEAN POLITICS 238-258 (Anthony Payne & Paul Sutton, eds. 1993); JAY R. MANDLE, PERSISTENT UNDERDEVELOPMENT: CHANGE AND ECONOMIC MODERNIZATION IN THE WEST INDIES (1996). For many Caribbean SIDS economic transformation has been made difficult by the end of preferential trading status with the European Union (EU), which has shifted the focus of the economy from agriculture (especially bananas and sugar) and fisheries to services, and most especially tourism. Also, in spite of their acknowledged vulnerabilities, their graduation from Least Developed Country status has greatly reduced the Official Development Assistance (ODA) they receive. The Global Environment Facility is a major funder of regional biodiversity projects. See Global Environment Facility, GEF and Small Island Developing States, Jan. 2005, and at [http://thegef.org/Outreach/outreach-Publications/GEF\\_SIDS\\_ENG.pdf](http://thegef.org/Outreach/outreach-Publications/GEF_SIDS_ENG.pdf)

<sup>14</sup> The exact number depends on when and how the Caribbean region is defined. Miller, *supra* note 3, at 37, puts the number at 25, excluding France, the Netherlands, and Britain, which exercise sovereignty over overseas territories in the region. A more recent estimate puts the number at 36 states and territories. Benedict Sheehy, *Does International Marine Environment Law Work? An Examination of the Cartagena Convention for the Wider Caribbean Region*, 12 GEO. INT'L ENVTL. L. REV. 441 (2004). Either way, the number is large. The way states deal with the issues they face is also affected by policy styles stemming from a number of historic influences on the region. The main cleavage is between the Anglophone Commonwealth Caribbean and the Hispanic Caribbean, but with important French and Dutch influences. Indeed, some of the islands still have territorial status. The analyses in this issue focus mainly on the Anglophone Caribbean and need to be supplemented by attention to other cultural groupings.

<sup>15</sup> For a very basic introduction, see PAMELA CHASEK, DAVID DOWNIE & JANET WELSH BROWN, GLOBAL ENVIRONMENTAL POLITICS, 4th ed. 30-39 (2006), [hereinafter CHASEK].

2005 Mauritius Strategy of Implementation.<sup>16</sup> They range across the World Bank income classifications, with most of the Latin American countries, Haiti, and Jamaica in the low or low middle income categories (poor countries), with the remaining SIDS, Costa Rica, Mexico, Panama, and Venezuela in the upper middle income brackets, and with the dependent territories in the high income bracket.<sup>17</sup> With a few exceptions, their capacity to analyze their own problems and act effectively to solve them can reasonably be described as poor and, in relation to that of other states, impaired.<sup>18</sup> In some cases, although they are states with exceptional vulnerability to the worst and most immediate impacts of global climate change, their ability to respond, absent significant external assistance, is minimal.<sup>19</sup>

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<sup>16</sup> The increasing self-consciousness of SIDS and the growth of special international interest in their welfare can be traced—but only by very diligent researchers with a catholic taste and prodigious memory for acronyms—on several basic web sites: <http://www.un.org/special-rep/ohrlls/sid/default.htm>, <http://www.un.org/esa/sustdev/sids/sids.htm>, <http://www.sidsnet.org/>, and [http://portal.unesco.org/en/ev.php-URL\\_ID=12117&URL\\_DO=DO\\_TOPIC&URL\\_SECTION=201.html](http://portal.unesco.org/en/ev.php-URL_ID=12117&URL_DO=DO_TOPIC&URL_SECTION=201.html). The Earth Negotiations Bulletin (ENB) of the International Institute for Sustainable Development (IISD) does yeoman's work in tracking and explaining the international community's attention to SIDS. A good way to understand much of the relevant history is to read the report on the SIDS PrepCom at CSD-12 in New York, April 2004, <http://www.iisd.ca/download/pdf/enb0841e.pdf>, and the summary report of the Mauritius International Meeting, January 2005, <http://www.iisd.ca/download/pdf/enb0847e.pdf>.

<sup>17</sup> One way to get a sense of countries' relative wealth is to look at the World Bank's classifications: <http://siteresources.worldbank.org/DATASTATISTICS/Resources/CLASS.XLS>. Definitions are not consistent among aid agencies, however. Further information on relative policy performance across countries can be found in the UN Human Development Index: [http://hdr.undp.org/reports/global/2005/pdf/HDR05\\_complete.pdf](http://hdr.undp.org/reports/global/2005/pdf/HDR05_complete.pdf).

<sup>18</sup> For an introduction to the notion of capacity development for the environment, see Stacy D. VanDeveer and Geoffrey D. Dabelko, *It's Capacity Stupid: National Implementation and International Assistance*, 1 GLOBAL ENVTL. POL. 18-29 (2001) and, for a revisionary update, Ambuj D. Sagar and Stacy D. VanDeveer, *Capacity Development for the Environment: Broadening the Scope*, 5 GLOBAL ENVTL. POL. 14-22 (2005). SIDS, especially those which are Middle Income Countries (MICs), are also caught on the margins of a globalized three-speed political economy, consisting of the advanced industrial triad (North America, Europe, and South Asia), the Brazil-Russia-India-China (BRIC) states, and the poor South. In biodiversity conservation, the country with an established reputation is Costa Rica. Eduardo Silva, *National Environmental Policies: Costa Rica*, in CAPACITY BUILDING IN NATIONAL ENVIRONMENTAL POLICY: A COMPARATIVE STUDY OF SEVENTEEN COUNTRIES 147-175 (Helmut Weidner & Martin Jänicke, eds., 2002) and PAUL F. STEINBERG, ENVIRONMENTAL LEADERSHIP IN DEVELOPING COUNTRIES: TRANSNATIONAL RELATIONS AND BIODIVERSITY POLICY IN COSTA RICA AND BOLIVIA (2001). Belize is also demonstrating improved performance, with the help of substantial GEF grants. Exceptions may also be expected in the countries where the University of the West Indies (UWI) is based: Jamaica, Barbados, and Trinidad and Tobago, and in St. Lucia, home of the Organization of East Caribbean States (OECS), the Caribbean Environmental Health Institute (CEHI) (<http://www.cehi.org.lc/>), and the OECS Environment and Sustainable Development Unit (<http://www.oecs.org/esdu/>). The SEASCAPE project, a proposed Commonwealth Human Ecology Council program of work to analyze and build capacity for sustainable development in Caribbean SIDS, should also be noted here.

<sup>19</sup> THE REGIONAL IMPACTS OF CLIMATE CHANGE: AN ASSESSMENT OF VULNERABILITY (Robert Watson, Marufu Zinyowera & Richard Moss, eds., 1997), Chapter 10, or <http://www.grida.no/climate/ipcc/regional/239.htm>.

Taken altogether, then, the Caribbean states, particularly the SIDS in the Alliance of Small Island States (AOSIS),<sup>20</sup> have become principal subjects in a remarkable profusion of international events and conversations about sustainable development that began in Barbados in 1994,<sup>21</sup> followed through into the World Summit on Sustainable Development held in Johannesburg in 2002,<sup>22</sup> and thence to the Mauritius International Meeting in January 2005. The same dialog, much of it still quite inconclusive as to the priority sustainable development gives to conservation, continues to swirl in and out of a bewildering array of institutional venues more or less focused on the ongoing work of the Commission on Sustainable Development (CSD).<sup>23</sup>

But while the astonishing growth in the last two or three decades of what might now reasonably be called the sustainable development industry has substantially transformed the international political context for debating and deciding the future of the Caribbean it has not resolved a very basic underlying question.<sup>24</sup> To what extent is the successful pursuit of sustainable development—if that is, indeed, the future of the region—dependent on

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<sup>20</sup> See <http://www.un.org/special-rep/ohrlls/sid/aosis.htm>.

<sup>21</sup> U.N. General Assembly, *Report of the Global Conference on the Sustainable Development of Small Island Developing States*, U.N. Doc A/CONF.167/9 (Bridgetown, Barbados, 25 April-6 May 1994).

<sup>22</sup> For a short, critical introduction to this history, the role the U.S. has played in it, and the disappointments it has yielded, see Stacy D. VanDeveer, *Green Fatigue*, 2003 WILSON Q. 55-59 (Autumn 2003). VanDeveer endorses, as have we, *supra* note 16, the value of the Earth Negotiations Bulletin as a way of keeping pace with and perspective on this profusion of activity, including new developments affecting MEAs and their interrelationships.

<sup>23</sup> The Commission on Sustainable Development (CSD) was established by the United Nations General Assembly in December 1992 as a mechanism for following up on the Conference on Environment and Development (Earth Summit) held earlier that year in Rio de Janeiro. CSD reviews progress with the implementation of Agenda 21 and the Declaration on Environment and Development, both outcomes of the Rio summit, and provides policy guidance to follow up the Johannesburg Plan of Implementation (JPOI) agreed to in 2002 at the World Summit on Sustainable Development. The JPOI affirms the status of CSD as the high-level forum for sustainable development within the UN system. CSD meets annually in New York, in two-year cycles, with each cycle focusing on clusters of specific thematic and cross-sectoral issues, the first year focusing on review, the second on legislative drafting. SIDS issues are one cross-cutting theme for each CSD meeting, with one day allocated to SIDS at the May 2006 meeting of CSD. See generally <http://www.un.org/esa/sustdev/csd/aboutCsd.htm> and for the work on small island developing states <http://www.un.org/esa/sustdev/sids/sids.htm>. See also JAN MCHARRY *et al.*, *THE PLAIN LANGUAGE GUIDE TO THE WORLD SUMMIT ON SUSTAINABLE DEVELOPMENT* (2005).

<sup>24</sup> The industry and its not entirely happy relationship to the use, perhaps overuse, of conferencing in the UN system is critically analyzed in Gill Seyfang, *Environmental Mega-Conferences: From Stockholm To Johannesburg And Beyond*, 13 GLOBAL ENVTL. CHANGE 223-228 (2003). See also Frederick A.B. Meyerson, *Burning the Bridge to the 21st Century: The End of the Era of Integrated Conferences*, 7 PECS NEWS 1 (Autumn 2002) (a publication of the Environmental Change and Security Project of the Woodrow Wilson International Center for Scholars); CHASEK, *supra* note 15, at 261-278, explaining *inter alia* the origins of the Millennium Development Goals (MDGs) during the 55th UN General Assembly, which gave some fresh impetus to the sustainable development movement and have been taken seriously in Europe and elsewhere, but have not enjoyed great attention in the U.S. But see Pedro A. Sanchez and M. S. Swaminathan, *Cutting World Hunger in Half*, 307 SCIENCE 357-359 (2005). In the Caribbean, the relevance of sustainable development thinking and practice to tourism is critical and is explored in

the prior establishment of the rule of law, including but not limited to the negotiation and enforcement of a sensible framework of environmental MEAs, such as the Cartagena Convention and its protocols?<sup>25</sup>

Thirty years ago, the operating assumption was that legal commitments had precedence. Where the law brought order and stability, if you will, commerce and prosperity would follow—a variant perhaps of the old adage that trade follows the flag. But in the intervening years, as the ease with which states, even small states with poor economic prospects, can enter into binding legal commitments has been matched against their willingness and ability to enact and enforce domestic laws consistent with their international obligations, the value of environmental MEAs to regions such as the Caribbean has grown more rather than less uncertain.<sup>26</sup>

The other important factor contributing to a sense that the way forward with biodiversity conservation in the Caribbean requires cutting a complex Gordian knot, rather than the straightforward application of familiar and tested remedies, is that much more is known about the region than used to be the case. It would be a mistake to overemphasize this point, inasmuch as the scientific, technical, and behavioral science literature on the Caribbean is thin on the ground and very far from being a central preoccupation of modern academic scholarship, either in the region itself or elsewhere in the world.<sup>27</sup> As appreciation for the importance and value of the region has grown, however, it has attracted greater scrutiny.<sup>28</sup> And one of the most

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ISLAND TOURISM AND SUSTAINABLE DEVELOPMENT: CARIBBEAN, PACIFIC, AND MEDITERRANEAN EXPERIENCES (Yorghos Apostolopoulos & Dennis Gayle, eds., 2002).

<sup>25</sup> The vital importance of this question, above and beyond its relevance to the Caribbean, and the case for reinvigorating international environmental law, provided it incorporates fundamental elements of fairness, are argued in Wolfgang Sachs, *Rio+10 and the North-South Divide*, World Summit Papers of the Heinrich Böll Foundation No. 8 (Berlin 2001) and Carl Bruch and John Pendergrass, *Type II Partnerships, International Law, and the Commons*, 15 *Geo. Int'l Env'tl. L. Rev.* 855 (2003). Other analysts take the view that the future of sustainable development rests much less on its linkage to improved multilateral MEAs than it does on recognition that the multilateral processes of negotiation and decision making focused on sustainable development are essentially political and have many outcomes that participants find valuable. *See* GLOBAL CHALLENGES: FURTHERING THE MULTILATERAL PROCESS FOR SUSTAINABLE DEVELOPMENT (Angela Kallhague, Gunnar Sjöstedt & Elisabeth Corell, eds., 2005) [hereinafter KALLHAGUE]. In more foundational terms, there is even a case to be made that the Gordian knot can only be cut by reconceiving economics as a discipline and development as a process. *REIMAGINING GROWTH: TOWARDS A RENEWAL OF DEVELOPMENT THEORY* (Silvana De Paula & Gary Dymnski, eds., 2006).

<sup>26</sup> The negotiation and adoption of environmental MEAs was accompanied in most cases by the expectation that there would be resource and technology transfers to aid implementation. This has occurred only to a very limited degree. So, the limited ability and willingness of signatories to implement is not entirely a function of their own preferences.

<sup>27</sup> One important focus for such scholarship is the Caribbean Studies Association (<http://sta.uwi.edu/caribbeanstudies/index.asp>) and its new Environment and Sustainability Subgroup.

<sup>28</sup> A landmark work in this regard is JAMES FAIRHEAD & MELISSA LEACH, *SCIENCE, SOCIETY AND POWER: ENVIRONMENTAL KNOWLEDGE AND POLICY IN WEST AFRICA AND THE CARIBBEAN* (2003) [hereinafter FAIRHEAD

fascinating outcomes of this research is that there is another side to the coin of capacity.<sup>29</sup>

On one side of the coin, it is true that on many measures small developing states, especially island states like those in the Caribbean, lack the capacity to analyze, and, more particularly, to deal with their problems unaided.<sup>30</sup> On top of their obvious lack of financial resources, for example, they have in most cases a weak infrastructure of universities and research institutions. This limits their ability to deploy and benefit from the best methods and models of ecological management.<sup>31</sup> Their public institutions are typically staffed, certainly at the lower levels, by overtaxed civil servants whose loyalty and service to their own governments, ministries, and agencies is pressured by brain drain and brain drift.<sup>32</sup> Corruption—or absence of good governance—cannot entirely be discounted as a factor.<sup>33</sup> And implementing

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& LEACH]. See also ENVIRONMENTAL ISSUES IN LATIN AMERICA AND THE CARIBBEAN (Aldemaro Romero & Sarah West, eds., 2005).

<sup>29</sup> As recognized by Sagar and VanDeveer, *supra* note 18. See also Stacy D. VanDeveer and Ambuj D. Sagar, *Capacity Development for the Environment: North and South*, in KALLHAGUE, *supra* note 25, at 259-271.

<sup>30</sup> The GEF and United Nations Development Program (UNDP) of National Capacity Self Assessments, a capacity needs analysis across most developing countries, is relevant, here, as is the related capacity development program for biodiversity conservation (UNDP-GEF, Developing Capacity, Conserving Biodiversity, Sustaining Livelihoods: Lessons for the Future, November 2004). For Caribbean SIDS, the Commonwealth plays a key, but discreet, role in supporting environmental diplomacy at the regional level. Nicholas Watts, *Progress on WSSD—Raising the Profile of the Commonwealth*, in COMMONWEALTH MINISTERS REFERENCE BOOK 72-76 (Commonwealth Secretariat, London 2005).

<sup>31</sup> In response to this capacity need, the University Consortium for Small Island States (UCSIS) (involving universities in the West Indies, the US Virgin Islands, Mauritius, Malta, and the South Pacific) was launched at the Mauritius International Meeting in January 2005, with a specific remit to promote education and cooperation for sustainable development in SIDS. See Nicholas Watts, *The University Consortium for Small Island States and the Commonwealth*. Unpublished report (Commonwealth Secretariat, London, February 2006).

<sup>32</sup> The problems created by these stresses include indivisibility. This arises from the need for people occupying government posts to address the normal range of executive and administrative tasks, whether the population is ten thousand or a hundred million and leads to a large proportion of public employees in relation to the population at large in some SIDS. It also means that economies of scale are sometimes missed, communications can be expensive, and research and analysis are skimmed. This all works against the development of a sustainable, well-resourced administration, no matter how well qualified particular individuals may be. The structure of career opportunities in the environment and sustainable development fields is also a factor. In countries where much of the relevant budget comes from multilateral and bilateral international donors or from international NGOs, the NGO sector may be more attractive for some well-qualified people than the state sector. The result is considerable professional mobility between sectors. And the state often depends on NGOs as partners to secure funding and implement projects. Although international brain drain is a recognized problem for SIDS, in this situation a more appropriate term may be 'brain drift,' where human resources remain in-country but move to other sectors, or to international organizations or to NGOs, and are thereby lost to the government apparatus for environmental management.

<sup>33</sup> We note, however, the stable democratic heritage of most Commonwealth Caribbean states. Paul Sutton, *Democracy in the Commonwealth Caribbean*, 6 DEMOCRATIZATION 67-86 (1999); Henry Srebrnik, *Small Island Nations and Democratic Values*, 32 WORLD DEVELOPMENT 329-341 (2004).

agencies, beyond the fact that they often lack clear and consistent political oversight and accountability, have little or no experience of working together. Inter-agency collaboration and coordination, and problem solving team work, more broadly, are scarce commodities, although much in demand.

There are also difficulties keeping up with important shifts in international diplomacy and policy development. Travel to international meetings where best practices are discussed and possibilities for moving in new policy directions are charted is expensive, only a few can go, and there is an inevitable tendency to be either overwhelmed or co-opted by the other actors who are participants in the policy development and implementation process.<sup>34</sup> Any searching examination of capacity, then, especially if it focuses, as most do, on the ability of formal institutions to do their work and meet their legally established goals, is bound to find serious deficiencies.

On the other side of the capacity coin, however, anthropologists, sociologists, and policy analysts among others, not just in the Caribbean but also in other regions of the world, have discovered remarkable strength and resilience.<sup>35</sup> An interest in what actually happens on the ground, in villages

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<sup>34</sup> It has long been recognized that participation in the UN system seriously strains the capacity of developing countries to articulate their interests and to be effective participants in what has now become a very complex array of conferences, bargaining, and negotiation sessions. The first grouping formed to address this issue, the Group of 77 (G-77), dates from 1964 and is still the largest coalition of Third World countries at the UN. See generally Adil Najam, *The View from the South: Developing Countries in Global Environmental Politics*, in *THE GLOBAL ENVIRONMENT: INSTITUTIONS, LAW, AND POLICY*, 2d ed., 225-243 (Regina Axelrod, David Downie & Norman Vig, eds., 2005). Additional strains are associated with the recent emphasis in the international community, especially at the UN, on closer regional integration of policy. Thus, meetings of the CSD, for example, are now preceded by regional international meetings of states and stakeholders to develop regional positions, and to give small states a chance to have influence in a manageable agenda-setting group. The institutionalization of regionalism in the Caribbean, however, is far from settled and numerous overlapping groupings exist for different purposes. Some countries, like Belize or Trinidad and Tobago, participate actively in both Caribbean and Latin American groups. Account also needs to be taken of Cuba, a sort of regional whale in the aquarium. Cuba enjoys close relations in health policy, marine biology, and coastal zone management with other Caribbean states, Hispanic and Anglophone, but in other areas its regional impact is muted by poor understanding of what environmental policies it has and how they work. *But see* the ten articles about Cuba assembled in *Environmental Law and Sustainable Development in 21st Century Cuba*, 16 *TULANE ENV'T L. J.* 517-861 (2003). SIDS also face problems in effectively negotiating MEAs. If environmental line ministries are responsible for negotiations, for example, the commitments they make may not be supported by ministries of trade and finance at home. By the same token, if the latter negotiate they may lack the technical knowledge to reach an environmental outcome consistent with their own and broader national interests. When SIDS have delegations of one or two, or even five or six, whereas states from the global North send upwards of a hundred delegates, even team-working negotiators from SIDS are hard pressed to keep an overview of the whole negotiating process. This does not detract, however, from SIDS' successes, for example in island biodiversity at the Eighth Conference of the Parties to the Convention on Biological Diversity (CBD) in Curitiba, March 2006. See <http://www.iisd.ca/download/pdf/enb09363e.pdf>. Alison Drayton has been helpful in developing these insights.

<sup>35</sup> One useful tracer appears in the lengthy list of references in FAIRHEAD & LEACH, *supra* note 28, at 242-261.

and communities where conflicts between conservation and development usually take a much more concrete form than they do at international scientific conferences and ministerial meetings, has various motivations.

In some cases, there is genuine curiosity about how things work.<sup>36</sup> In other cases, inquiry is driven by a desire to establish the necessary and sufficient conditions under which community-based natural resource management (CBNRM) might take root and thrive.<sup>37</sup> And in still other cases curiosity may be driven by strong beliefs in the value of having local people participate in politics and policy development in relation to issues that directly affect their livelihoods and lives.<sup>38</sup>

Setting motivation aside, however, research reveals strongly held and remarkably consistent views about the relationships between people and nature among the people who live in the Caribbean. These views may not be entirely consistent with received scientific understandings of these same relationships. But they can be intensely held, enjoy great legitimacy, and demand respect.<sup>39</sup>

Research shows in other words that local communities, often but not always comprising traditional or indigenous populations, can have a high degree of self-awareness, well-developed ideas about what can and should be done to advance their welfare, and informal organizational skills sufficiently robust and sustained to challenge and hold accountable the formal institutions whose lack of capacity to act reasonably and responsibly has been the subject of so much recent attention.<sup>40</sup> There are, in short, once one scratches the surface and looks beyond legal and political formalisms, great reservoirs of energy, organization, and skill in Caribbean countries that were neither

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<sup>36</sup> *Id.*

<sup>37</sup> This is a central theme of the articles contained in Arielle Levine and Geoffrey Wandesforde-Smith (eds.), *Wildlife, Markets, States, and Communities in Africa*, 7 J. INT'L WILDLIFE L. & POL'Y 135-216 (2004).

<sup>38</sup> In the Caribbean, as we acknowledge below, the leader in this regard is the Caribbean Natural Resources Institute (CANARI). See <http://www.canari.org> and, for a lengthy list of relevant studies and reports, <http://www.canari.org/subject.html>. But while the shift to a more participatory policy style can be seen as morally necessary and more equitable and effective than a top-down impositional approach it needs careful deployment. To secure the buy-in of stakeholders, for example, especially traditional users of resources, involvement has to occur early and allow trust to be built up over time. The increased emphasis SIDS are placing, in part because there is more participation, on the need to introduce culture as a fourth pillar of sustainable development, in addition to ecology, economy, and society, also affects biodiversity conservation outcomes. It frequently means that traditional uses of biodiversity resources have to be recorded and valued. And it may very well also mean that traditional uses, for example in fisheries, have to be allowed to continue even as commercial and external users are more firmly regulated. These subtleties, which now seem commonplace, were foreign to Miller when she wrote just a decade ago that successful institution building for Caribbean conservation would most likely be "a top down process." Miller, *supra* note 3, at 44.

<sup>39</sup> This is the major preoccupation of FAIRHEAD & LEACH, *supra* note 28.

<sup>40</sup> Sagar and VanDeveer, *supra* note 18.

recognized nor accorded much respect 30 years ago, when the Cartagena Convention system was initiated.

So, where do we go from here? What factors are likely to shape the future of biodiversity conservation in the Caribbean? What, if anything, does international law have to do with it? And how are the many, small, and predominantly poor states of the Caribbean region going to make, as they should, their own sovereign mark on a conservation and development future in which so many, better resourced, and better connected actors have a strong, vested interest? We have assembled in this issue of the *Journal* a small collection of articles that begin to address these issues.

Let us now explain how we think this collection relates to the themes we have articulated and how it might open up possibilities for additional contributions down the road.

Peter Richardson and colleagues associated with the Marine Turtle Research Group at the University of Exeter put the spotlight clearly on international law. They examine four treaties with direct relevance to and potentially major, positive impacts on the conservation of key marine species in the British Overseas Territories of the Caribbean: the Convention on International Trade in Endangered Species (CITES), the Convention on Migratory Species (CMS or the Bonn Convention), the SPAW Protocol to the Cartagena Convention, and the Inter-American Convention for the Protection and Conservation of Sea Turtles (IAC).<sup>41</sup> For these international agreements to work, as is the case for any others, there has to be enactment of domestic legislation.

The situation described is somewhat unusual, however, because the Overseas Territories of the Caribbean are not sovereign. Domestic legislation to implement the four agreements must be enacted by the United Kingdom. Britain takes the view that the Territories themselves have to have an appropriate and acceptable legislative and institutional framework in place before it will sign and ratify agreements on their behalf. And thus, within a common policy style based on the British administrative tradition, the stage is set for a compelling comparative analysis. There is an interesting degree of variance in the extent to which the various Territories have responded to the four agreements. What explains this?

The article deals with several key variables: the terms of reference and requirements of the agreements themselves, the character of the relevant territorial laws and implementing institutions, relative capacities for monitoring marine resources and ecosystems, and territorial differences in the values, especially the economic values, attached to the resources themselves. It seems quite clear from the analysis that, as it stands, international law is not well suited either to the variety of conditions that obtain in the Territories

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<sup>41</sup> They are Anguilla, the British Virgin Islands, the Caymans, Montserrat, and the Turks and Caicos.

or to striking a satisfactory contemporary balance between conservation and development goals. Indeed, there is a hint that as time goes by the agreements at issue here—all of them stemming from what we earlier recalled as the international environmental law heyday years of the 1970s—are less and less suitable for the tasks at hand. Certainly, the key to their having any impact is much more in the hands of Territory governments than in those of the international community. But do they have the will and the wherewithal to make what are, in effect, adaptive adjustments to a settled legal regime?

Jonathan Rosenberg is also concerned with the structures and processes of adaptability in Caribbean states. His starting point is not law, however, but policy, and specifically the terms under which donor agencies condition the assistance they provide for resource management projects in the eastern Caribbean. He is especially interested in conditions that aim to promote environmental sustainability and participatory decision making. These conditionalities, if they are imposed by donors, both individually and in coordination, have the theoretical advantage of maximizing the value of project funding, minimizing overlap among projects, and reducing transaction costs for aid applicants. In fact, however, these conditionalities are not typically enforced either by donors or by recipient governments. So, if sustainability and participation both of which are laudable goals are to be realized, who will do the work?

The answer comes in the form of what Rosenberg dubs triple alliances, informal partnerships among mid-level officials at aid agencies, the representatives on the ground of domestic implementing agencies, and community based groups articulating the stake various local interests have in successful project outcomes. These triple alliances have the ability to integrate the work of key policy actors at what might be called the implementation interface.<sup>42</sup> They are, Rosenberg maintains, efforts to institutionalize relationships among funders, recipient governments, and affected communities that are direct, sustained, and constructive. The story of the triple alliances involved with the development and application of forest policy in Grenada and the management of a marine reserve in Dominica reveal interesting patterns of trust and dependency. In the best case, important contributions come from all corners of an alliance: technical expertise as well as social, political, scientific, and moral support from donor representatives; legitimate authority from local line agencies; and knowledge of local needs as well as credibility from local stakeholders.

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<sup>42</sup> Rosenberg's interest in this phenomenon seems to us to be analogous to the interest students of public administration and policy implementation have long taken in street-level bureaucrats, both in the United States and other countries. For an excellent recent overview, see Heather C. Hill, *Understanding Implementation: Street-Level Bureaucrats' Resources for Reform*, 13 J. PUB. ADMIN. RES. & THEORY 265-282 (2003).

There are obvious risks involved in drawing conclusions from limited case study evidence. In neither of Rosenberg's examples does a regard for sustainability and participation pose a challenge to the dominant economic priorities of governments. On the face of it, however, triple alliances seem attractive in a global conservation and development context in which neo-liberal conditionality remains a powerful idea. For one thing, they offer a way on the ground, working with local implementing agencies and communities, for donor agencies to get around the reluctance of governments to accept conditionalities and allow foreign investors to shape national development priorities. In addition, triple alliances have capacity and accountability benefits. Direct funding of local projects can tap informal sources of expertise and build the social capital needed to meet conditionalities. And there is the prospect, finally, that triple alliances, as informal, multi-level pro-sustainability and pro-participation coalitions, can help SIDS do a better job than they have in the past of managing persistent conflicts between growth and sustainability. In effect, Rosenberg is saying, partnerships formed under the radar of national politics are important innovations because they replicate in-country the success non-governmental, governmental, and intergovernmental actors from the South have had in promoting international conservation and development regimes.

The other two, shorter articles elaborate on these themes. Several authors associated with the Caribbean Natural Resources Institute (CANARI) briefly review the development in the region of progressive conservation policy, which is understood as policy that puts great emphasis on stakeholder participation to guarantee outcomes that are both equitable and effective. Given its unchallenged primacy in the region in promoting participatory policy processes, CANARI is particularly well-placed to ask whether and how the participation expectations implicit in international agreements can be translated into reality. The authors approach the question by laying out their normative view of the preconditions needed to make participation meaningful and effective. And they then measure the SPAW Protocol against these standards.

The results, as they have played themselves out in a number of specific instances, are not impressive. One important conclusion to be drawn from this story is that, as the Marine Turtle Research Group emphasizes, the fate of international agreements is much more closely tied to conditions on the ground than to the language of the law, which can be weak and obfuscatory even when, as is true of the SPAW Protocol, the treaty is owned by the governments of the region. The other important observation prompted by the work of CANARI and its contribution here, is that progressive conservation agendas have a much more precarious existence in SIDS, such as those in the Caribbean, than they do in larger, richer countries. The preconditions for meaningful and effective participation are easily undermined when supportive

institutions withdraw, for example, when local organizations collapse, or when national legislation fails to buttress democratic ideals.

We give some space, finally, to a detailed description of the processes by which the United States government, during the current Bush Administration and working largely through the National Oceanic and Atmospheric Administration of the Department of Commerce, has promoted partnerships in the Caribbean as a means to overcome the lack of resources for capacity building and technical assistance. In fact, the White Water to Blue Water (WW2BW) partnership is somewhat different from other so-called Type II partnerships formed during and after the Johannesburg Summit. It is a partnership the chief purpose of which is to spawn new partnerships, rather than to accomplish specific actions on the ground.

By some measures, WW2BW is clearly impressive. The description, here, of the history of WW2BW leaves no room for doubt that putting partnerships together is a process that consumes substantial resources of time, money, energy, and organizational skill, not just on the part of the United States but also for all the other actors in the system. The opportunity costs of investing in partnerships, at least in the form in which the Bush Administration has advocated them, are very, very high.<sup>43</sup> There is no doubt, either, that the four major themes around which WW2BW has been organized are well-chosen and arguably central to biodiversity conservation and development in the region: the integrated management of watersheds, the management of resources in the marine ecosystems of the Caribbean, the development of more sustainable practices in the tourism industry, and reductions of the environmental footprint of marine transportation. Unfortunately, the clarity of these points does not altogether offset the evident neglect of issues other students of partnerships have raised, issues that go the value of partnerships, whether considered individually or collectively as an intervention strategy.<sup>44</sup> We are deeply skeptical of the idea that partnerships alone can cut the Gordian knot, but we leave the question open and invite readers to join the conversation.

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<sup>43</sup> No data are offered on these costs. They would appear on the face of it, however, to be much, much larger than the costs associated with the other sorts of partnerships Rosenberg and CANARI have in mind.

<sup>44</sup> Just as Agenda 21 produced a surge of sustainable development initiatives by local governments in the wake of the Rio Summit, the Johannesburg Summit generated a host of sustainable development (Type II) partnerships between state, private sector, and civil society organizations. And these have been claimed as a conspicuous, recent success for sustainable development. Recent, general criticisms, however, both of Type II partnerships and of the U.S. role in promoting them as a sensible way of changing conditions on the ground have been, not to put too fine a point on it, direct and uncompromising. See, e.g., Liliana B. Andonova and Marc A. Levy, *Franchising Governance: Making Sense of the Johannesburg Type II Partnerships*, in 2003/2004 Y. B. INTL CO-OPERATION ENV'T & DEV. 19-31 (Olav Schram Stokke & Øystein B. Thommessen eds., 2003); Ina von Frantzius, *World Summit on Sustainable Development Johannesburg 2002: A Critical Analysis and Assessment of the Outcomes*, 13 ENVTL POL. 467-473 (2004).