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CARIBBEAN INTEGRATION WITHIN THE CARICOM FRAMEWORK: THE SOCIO-HISTORICAL, ECONOMIC, AND POLITICAL DYNAMICS OF A REGIONAL RESPONSE TO A GLOBAL PHENOMENON

Christopher P. Malcolm[†]

I. INTRODUCTION

THE Caribbean Community (CARICOM) was established under the Treaty of Chaguaramas in 1973. CARICOM was established to foster greater cooperation among Caribbean states, and it has been the main vehicle through which recent attempts at economic integration of the commonwealth Caribbean have been pursued. Although CARICOM was not established to achieve a political union, it has the capacity to engender greater political cooperation among CARICOM Member States.¹

In and of itself, greater political cooperation is desirable; however, some fear that further integration will inevitably result in a backdoor means of achieving a political federation under the guise of CARICOM. It is not surprising, therefore, that those opposed to a political union within the commonwealth Caribbean have been sceptical about CARICOM.²

CARICOM is one of several Caribbean institutions and is also one of several attempts made to integrate the commonwealth Caribbean.³ At present, there are several socio-historical and other factors which militate against Caribbean integration. However, there are significant considerations within and without CARICOM, which support, if not dictate, further Caribbean integration. Within CARICOM, the establishment of the Caribbean Single Market and Economy (CSME) and the Caribbean

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1. Revised Treaty of Chaguaramas, July 4, 1973, art. 6, *available at* <http://www.caricom.org/archives/revisedtreaty.pdf> [hereinafter Revised Treaty].

2. *See generally* WEST INDIAN COMMISSION, TIME FOR ACTION: THE REPORT OF THE WEST INDIAN COMMISSION: A SYNOPSIS (Black Rock 1992).

3. The institutions include the University of the West Indies (UWI) and the West Indies Cricket Team; the integration efforts have included the British West Indies Federation (Federation), the West Indies Associated States (WIAS), and the Organisation of Eastern Caribbean States (OECS).

Court of Justice (CCJ) are indicative of the desire for further Caribbean integration.⁴ Without CARICOM, the imminent establishment of the Free Trade Area of the Americas (FTAA),⁵ the deepening integration within the European Union (EU), the economic impact of the World Trade Organisation (WTO), and the overreaching realities of globalisation⁶ suggest that a deeper level of integration within CARICOM is necessary and should be pursued apace.

Regional integration involves myriad considerations. Insofar as integration within CARICOM is concerned, the socio-historical realities of colonialism are critical. British colonialism evidenced the first instance of integration in the commonwealth Caribbean.⁷ Colonialism is also historically linked to the current level of disintegration within the region;⁸ thus, an examination of Caribbean integration should involve adequate reference to the impact of colonialism. This article will not exhaustively explore the historical underpinnings of colonialism; instead, it will examine aspects of the political, judicial, and economic realities of the past and present attempts, including colonialism, to integrate the Caribbean. It will also include recommendations for further integration within the CARICOM framework.

Although the commonwealth Caribbean will be in focus, CARICOM includes Member States that are not a part of this historical grouping.⁹ Notwithstanding the apparent limitation in scope, the central questions related to regional integration within the CARICOM framework apply to all Member States with equal force. Thus, the recommendations set out in section IV are intended for the benefit of CARICOM Member States, whether they are within or without the commonwealth Caribbean.

Section II will examine the socio-historical realities that led to the establishment of CARICOM; section III will examine the impact of externalities on CARICOM; section IV will include recommendations for further integration within CARICOM; and section V will conclude the article.

4. The CSME will commence operations among Trinidad, Barbados, and Jamaica in 2004 and should be extended to all contracting parties in 2005.

5. The timetable for the FTAA indicates that it should be realised in 2005. However, current political and other factors suggest that this timetable may be unrealistic.

6. See Vijay Govindarajan & Anil Gupta, *MASTERING GLOBAL BUSINESS* (London: Financial Times Prentice Hall 1988). Globalisation is there defined as, "the growing economic interdependence among countries as reflected in increasing cross-border flows of goods, services, capital and know-how."

7. Insofar as Britain was concerned the Caribbean represented a single region under her control.

8. See Williams, *infra* note 10.

9. The non-commonwealth Caribbean members of CARICOM are Suriname and Haiti.

II. HISTORICAL PERSPECTIVE

A. INTRODUCTION

Since 1492, Europe has had a critical level of involvement in the Caribbean region. Slavery and colonialism were at the heart of Europe's presence in the Caribbean and the main imperial powers were Britain, Spain, and France. A detailed examination of the colonial governance structure is beyond the scope of this article. However, on the evidence the political and institutional arrangements in each Caribbean territory betrayed a close resemblance to those that existed in its imperial power. It is not surprising, therefore, that the colonial legacy inherited by the commonwealth Caribbean includes a Westminster parliamentary model and a common law, judicial system

B. BRITISH COLONIALISM

Reduced to essentials, British colonialism evidenced an organisation or non-organisation of Caribbean states for the economic welfare of Britain.¹⁰ A detailed examination of British colonialism is beyond the scope of this paper; however, the political, legal, and economic realities of colonialism, insofar as they impact the question of Caribbean integration, will be considered.

1. Political

Under the Westminster parliamentary model, there are three arms of government: the Executive, the Legislative, and the Judiciary. Of the three, the Executive and the Legislative are political. Executive authority is vested in Her Majesty, the Queen of England¹¹ and Parliament performs the legislative functions.¹² Her Majesty is a recognised Member of Parliament¹³ and appeals from decisions of the Court of Appeal lie with her.¹⁴ In essence, Her Majesty is clothed with enormous constitutional powers and the balance of power even if she does not exercise it, resides in her, not in the elected representatives of the people.

British West Indian colonialism, *inter alia*, entrenched the British Monarch as the head of state and a Westminster parliamentary model. The system of governance was carefully organised so that the territorial leadership reported and was directly accountable to Britain. Further, under British colonialism the democratic rights of the people were curtailed and, in Jamaica, for example, universal adult suffrage was not granted until 1944. Although a detailed examination of British colonialism evidences instances of procedural and other structural changes in govern-

10. See generally Eric Williams, *FROM COLUMBUS TO CASTRO: THE HISTORY OF THE CARIBBEAN 1492-1969* (London: Andre Deutsch Limited 1970).

11. JAM. CONST. § 68(1) (Order in Council 1962), available at <http://www.georgetown.edu/pdba/Constitutions/Jamaica/jam62.html>.

12. *Id.* § 3.

13. *Id.* § 34.

14. *Id.* § 110.

ance, the constitutional power of the Monarch as head of state remained intact throughout, and English, more so than local circumstances, determined the scope and effectiveness of Caribbean politics.¹⁵

The constitutional head of state in most commonwealth Caribbean countries is the Queen of England. She is represented by a local governor general whose jurisdiction reflects her constitutional authority, and the conduct of parliamentary and other political proceedings bear significant resemblance to how those proceedings are conducted in England.¹⁶ Within CARICOM, as a whole, the political landscape reflects greater diversity; however, notwithstanding, or perhaps as a result of the socio-historical legacy of colonialism, the concepts of political independence and self determination among Member States is fiercely guarded, and this could impede the value and significance of CARICOM.

2. *Judicial*

The judicial systems in the commonwealth Caribbean involved, and with the exception of Guyana still involve, a hierarchy with the Judicial Committee of the Privy Council (JCPC) at the apex. Although the current legal system in Guyana evidences aspects of Romano-Dutch law and that in St. Lucia evidences aspects of the French Civil law, the dominant legal system in the commonwealth Caribbean is the common law. Further, the organisation and administration of the courts, the method of advocacy, the training of legal practitioners, and the legislation in force betray an unmistakable link to the English legal system and the era of colonialism.¹⁷

A detailed examination of the judicial systems which obtained under British West Indian colonialism, is beyond the scope of this article. However, the current four tiered system in most commonwealth Caribbean jurisdictions, which includes a Magistrates' Court, a High/Supreme Court, a Court of Appeal, and the JCPC, is a remnant of the colonial judicial system. Interestingly, although Guyana no longer allows appeals to the JCPC, its three tiered system betrays the significant impact of the judicial system which developed under British West Indian colonialism.¹⁸

In general, the legal systems in the commonwealth Caribbean and the jurisprudence on which they rely are an unequivocal statement of indebtedness to the English legal tradition. It is not surprising, therefore, that Caribbean judges often treat decisions of the House of Lords and the English Court of Appeal as binding, although such decisions, *stricto sensu*, are merely persuasive authority.¹⁹

15. See Williams, *supra* note 10.

16. Trinidad and Tobago, Guyana, and Dominica are republics and the Queen of England is not maintained as the head of state under their constitutions.

17. See generally Rose-Marie Belle Antoine, *COMMONWEALTH CARIBBEAN LAW AND LEGAL SYSTEMS* (London: Cavendish Publishing Ltd. 1999).

18. *Id.*

19. See *King v. R* [1968] 12 W.I.R. 268.

The homogeneity of the legal systems in the commonwealth Caribbean, which is a remnant of British colonialism, is positive for regional integration. Homogeneity, *inter alia*, enables a more seamless harmonisation of legislation and judicial proceedings than in circumstances where harmonisation is required across distinct legal systems. Within CARICOM, as a whole, harmonisation is more problematic as the several jurisdictions of CARICOM evidence both common law and civil law legal systems. Further, within the civil law legal systems, some jurisdictions within CARICOM have been influenced by the French civil law, others by the Spanish civil law, and yet others by the Dutch civil law.²⁰ The juridical challenges to harmonisation are not insurmountable; in the absence of an unequivocal commitment to harmonisation, however, those challenges could impede the growth and development of CARICOM.

3. Economic

The economic arrangements established under British colonialism served the primary interest of England.²¹ Notwithstanding the objective of colonial economic arrangements, the trade and investments régime in the commonwealth Caribbean evidences a debt to the era of colonialism. In the financial sector, for example, British banks, particularly the Barclays Bank, and British banking practices have had a significant impact on the economic arrangements in CARICOM. In the circumstances, it is not surprising that the Bank of Jamaica, for example, which was established as the central bank of Jamaica in 1960 was modelled on the Bank of England.

The plantation was at the heart of colonialism; hence, under colonialism, the primary economic arrangements were in furtherance of property rights. These arrangements, for example, included the establishment of departments for the collection of stamp duty and transfer tax.²² Plantation economics also required the existence and maintenance of a reliable market. England was the primary market for the commodities produced in the commonwealth Caribbean and she maintained that capacity even after the demise of British West Indian colonialism.²³

C. FEDERATION

The idea of a Federation of British West Indian Colonies [the Federation] was mooted at the Conference of Roseau in 1932. In the succeeding years, 1932-1947, the Federation idea remained current and, in 1947, the Conference of Montego Bay mandated its establishment. Notwithstand-

20. See generally Antoine, *supra* note 17.

21. See Williams, *supra* note 10.

22. Departments such as those for the collection of stamp duties and transfer tax, which were established under British colonialism, are still relied upon in the commonwealth Caribbean.

23. Trade relations with the UK were maintained on a preferential basis under the Lomé / ACP arrangements. Those arrangements have since been superseded by the Cotonou partnership between the EU and the ACP countries.

ing the 1947 mandate, there was a considerable implementation lag, and the Federation agreed upon was not realised until 1958.²⁴

The Federation was established under a British initiative. From a British perspective, the objectives were administrative efficiency and centralisation; the West Indian territories on the other hand, were interested in political independence.²⁵ The Federation structure included the establishment of a British West Indies Parliament and a Federal Supreme Court. The idea of a free trade area within the commonwealth Caribbean was mooted and the establishment of CARICOM was conceptualised under the Federation.²⁶

Although the Federation was intended as a political union, it never gained the unequivocal support of the leading Caribbean politicians. Indeed, leading political luminaries, such as Norman Manley, Alexander Bustamante, and Eric Williams refused to contest the federal elections. Given the lack of political support, the federal structures were weak and disintegration and collapse was inevitable.²⁷

In the end, the Federation was short-lived, lasting from 1958-1962 and it is difficult to evaluate its performance. It appears, however, that the overriding question of nationalism among individual countries, interpreted by some commentators as political and jurisdictional insularity, rendered performance difficult. The question of nationalism highlighted, *inter alia*, rival political conceptions which have been blamed for the disintegration and eventual collapse of the Federation.²⁸

Notwithstanding the failure of the Federation, the current dynamics of regional integration betray reliance, and in some instances dependence, on the ideas and institutions that were proposed and developed under it. The existence, *inter alia*, of CARICOM, the CCJ, the UWI, and the proposed customs union indicate the positive impact of the Federation. Further, although regional leaders distance themselves from the idea of a political union, the establishment and maintenance of CARICOM indicates and requires the existence of a quazi-political union.

D. CARICOM

The disintegration and collapse of the Federation did not herald an unwillingness to enter into regional trade and investment arrangements. The leaders of the Caribbean recognised the need for closer cooperation in external trade and investments negotiations, and this led, *inter alia*, to

24. See Leonard Tim Hector, *Fan the Flame*, available at <http://www.candw.ag/~jardinea/ffhtm/ff970704.htm> (last visited Sept. 2003).

25. *Caribbean Islands: The West Indies Federation, 1957-62*, available at http://www.workmall.com/wfb2001/caribbean_islands/caribbean_islands_history_the_west_indies_federation_1957_62.html (last visited Sept. 2003) [hereinafter *Caribbean Islands*].

26. See *History of Caricom*, available at <http://www.caricom.org> (last visited Sept. 2003) [hereinafter *History of Caricom*].

27. See *Caribbean Islands*, *supra* note 25.

28. See Williams, *supra* note 10, at 508.

the establishment of the Caribbean Free Trade Association (CARIFTA) in 1965. It was agreed that CARIFTA would signal the beginning of what would become a Caribbean Common Market and in 1972, the Seventh Caribbean Heads of Government Conference agreed to transform CARIFTA into the Caribbean Community (CARICOM).²⁹

CARICOM was established under the Treaty of Chaguaramas in 1973. The objectives of CARICOM are: the sustainable economic development of Member States, cooperation in foreign relations, and functional cooperation in the provision of regional services and activities.³⁰ The attainment of those objectives has required, *inter alia*, the establishment and maintenance of a bureaucratic structure with a Conference of Heads of Government (CHG) at the apex.³¹

An analysis of the organisational structure of CARICOM and its stated objectives indicate support for CARICOM as a quazi-political institution. The objectives require, *inter alia*, harmonised, if not joint, policy decisions on questions regarding international trade and investments negotiations, regional customs and tariffs regimes, free movement of labour within CARICOM, and the establishment of the CCJ. Semantics aside, those initiatives would be stillborn without concession of political authority by individual countries. Further, concession of political authority on those questions infers the existence of a quazi-political union.

CARICOM is an ongoing initiative and its growth and development should continually reflect the socio-historical, political, and economic realities of domestic, regional, and international affairs. Its organisational structure provides for the establishment and maintenance of a Bureau of the Conference, which is required, *inter alia*, to initiate proposals, update consensus, and secure implementation of CARICOM decisions in an expeditious and informed manner. Consequently, CARICOM has the inherent capacity to coordinate a regional regime on international trade and investments arrangements in a pro-active manner.³²

Notwithstanding the lapse of thirty years since its establishment, CARICOM has failed to sufficiently capture the grassroots support in the commonwealth Caribbean. In essence, CARICOM represents a political and intellectual initiative about which the people have not been sufficiently informed; thus, the support and involvement of the common man is limited due to his general lack of awareness.³³ Consequently, its growth and development has been subject to the whims and fancy of politicians, and it can, as was the ill-fated British West Indies Federation be an object for

29. See *History of Caricom*, *supra* note 26.

30. Revised Treaty, *supra* note 1, Preamble.

31. Revised Treaty, *supra* note 1, art. 12.

32. Revised Treaty, *supra* note 1, art. 12(1).

33. See Winston Dookeran, *Address delivered at Conference on Caribbean Public and Private Financial Sector Collaboration on the Impact of the Euro on the Regional Trade and Monetary Policy* (Oct. 8, 1999), available at <http://www.central-bank.org.tt/communications/speeches/sp991008.pdf>.

partisan political gain.³⁴

Although CARICOM suffers, *inter alia*, inadequate public relations machinery, it is the pre-eminent regional integration initiative within the commonwealth Caribbean. In recent years external events such as the imminent establishment of the FTAA, the establishment of the WTO, and the increasing significance of globalisation have resulted in a more purposeful and proactive CARICOM. The Council for Trade and Economic Development (COTED) is a principal organ of CARICOM. COTED is an organ of CARICOM, which is of particular significance in the establishment and maintenance of a regional trade and investments regime. Insofar as trade and investments is concerned, the most significant achievements of CARICOM are the establishment of the Regional Negotiating Machinery (RNM), the establishment of the Caribbean Court of Justice (CCJ), if only in its original jurisdiction, and the imminent establishment of the Caribbean Single Market and Economy (CSME).³⁵

1. RNM

The RNM was established to further an overall CARICOM strategy for the development, coordination, and execution of external trade-related negotiations. Thus, the core functions of the RNM are to: advise, coordinate, facilitate, and negotiate. In essence, the RNM is a primary catalyst in the creation of an enabling environment through which the region is able to maximise the benefits available from trade in the global market.³⁶ Consequently, the RNM should ensure that the sustainable development of CARICOM is not impeded by the challenges of global trade arrangements.

At present, the RNM is involved, *inter alia*, in negotiations under the WTO Doha Development Agenda, in devising an Economic Partnership Agreement (EPA) between the African Caribbean and Pacific (ACP) countries and the European Union (EU) and in FTAA negotiations. It is also involved in bilateral negotiations, which includes CARICOM, such as CARICOM-Canada, CARICOM-Venezuela, and CARICOM-Costa Rica.³⁷

The financial and other resources of the RNM are not unlimited; indeed, the RNM suffers the fate of several regional institutions—lack of adequate funding. Notwithstanding the financial and other constraints, the RNM has taken a pro-active approach to trade and investments nego-

34. See Micheal Burke, *Federation and History*, THE JAMAICA OBSERVER, July 17, 2003, available at <http://www.jamaicaobserver.com/columns> (last visited Sept. 2003).

35. The RNM was established in 1997, the CCJ could become operational in mid to late 2004, and the CSME should be realised in 2005.

36. Caribbean Regional Negotiating Machinery, *About the RNM*, available at http://www.crnrm.org/about_the_rnm.htm (last visited Sept. 2003).

37. Caribbean Regional Negotiating Machinery, *Negotiating Theatres*, available at http://www.crnrm.org/negotiating_theatres.htm (last visited Sept. 2003).

tiations. It has, for example, commissioned studies, which deal, *inter alia*, with the impact of biodiversity in CARICOM trade negotiations, the implications of EU enlargement for CARICOM, and the policy implications of size.³⁸ It has also sponsored a professional training programme which is aimed at enhancing the region's trade negotiation machinery.³⁹ Those initiatives should inure to the greater benefit of CARICOM, and they indicate the intention of the RNM to prepare the region adequately for the challenges of global trade and investments negotiations.

2. CSME

The Conference of Heads of Government passed revisions to the Treaty of Chaguaramas in 1989 enabling the establishment of the Caribbean Single Market and Economy (CSME). Since 1989, a number of protocols have been developed and approved as pre-requisites to its establishment and maintenance. Contrary to popular belief, the CSME infers more than the existence of a common market; it speaks to a single economy, thus, the arrangements within it transcend the question of customs and tariffs—require unequivocal political cooperation and the existence of a supra-regional political authority.⁴⁰

Although the possibility of free market access within CARICOM is significant to Member States, the opportunities of the CSME transcend intra-regional trade; thus, the debates around the CSME, insofar as they focus on intra-regional trade, are limited in scope. A properly developed and coordinated CSME should make the region, *inter alia*, more attractive to foreign investors, and should facilitate easier and more beneficial access for regional entrepreneurs who are interested in the international markets.⁴¹

3. Sovereignty

The concept of sovereignty is critical to the existence of individual countries. However, the concept is understood not by reference to a precise definition but on recognition of particular incidents, such as self-governance and the capacity to gain acceptance as a sovereign state in the international community. The incidents of sovereignty are not set in stone, and the concept, as it is now understood, varies significantly from how it would have been understood in 1962. In the area of commercial activity, for example, the modern trend recognises that a sovereign state

38. Caribbean Regional Negotiating Machinery, *Documents and Studies*, available at http://www.crnrm.org/documents_&_studies.htm (last visited Sept. 2003).

39. Caribbean Regional Negotiating Machinery, *RNM Update of January 23, 2001*, available at <http://www.crnrm.org> (last visited Sept. 2003).

40. See Havelock R. Brewster, *The Caribbean Single Market and Economy: Is it Realistic without Commitment to Political Unity?* Mar. 14, 2003, available at <http://www.uwichill.edu.bb>.

41. See Richard Bernal, *The Role of the Single Market and Economy in Preparing CARICOM for the Challenges of Globalization*, available at http://www.thebriefingroom.net/R_Bernal.pdf (last visited Sept. 2003).

that enters the market is subject to the rules of dispute settlement, which are applicable in that market.⁴² Further, various multi-national and bilateral treaties require sovereign states to treat persons from other states in a manner that is no less favourable than how nationals are treated.⁴³

Within CARICOM, the question of sovereignty bears particular significance to individual countries. The pre-occupation, even to the point of jurisdictional insularity, some may argue is best explained by reference to the socio-historical realities of the region. In relative political terms, the countries of the commonwealth Caribbean are young and they all have a shared history of slavery and colonialism.⁴⁴ It is not surprising, therefore, that most persons in the commonwealth Caribbean are unwilling to sacrifice their democratic right to political independence and self-determination. Unfortunately, sovereignty to the point of jurisdictional insularity is regressive and unsuitable within a common economic area.

Within a regional framework, strict adherence to the doctrine of political independence and self-determination could result in unnecessary, if not unintended, trade and investment barriers. Thus, if economic integration is the objective, Caribbean states must be prepared to concede aspects of their political independence for the good of the region. Among other powers, the political directorate of every sovereign state is authorised to determine and apply internal financial regulations without reference to other states; however, if financial regulations within a common economic area, such as the CSME, vary from country to country, the distinctions that result could create non-tariff trade barriers, which would impede intra-regional trade and financial activity.⁴⁵

The CARICOM framework recognises, *inter alia*, the need for legislative harmonisation and the concession of political authority to the CHG by individual countries.⁴⁶ It is surprising, therefore, that many of those who support CARICOM are adamant that CARICOM should not involve a political union. Given the socio-historical realities of the commonwealth Caribbean and the history of the short-lived British West Indies Federation, the opposition to a political union is understood. However, the CARICOM framework requires a quazi-political, if not a full political union; therefore, the question is not whether but how to maintain and, if necessary, broaden the political union which exists within CARICOM.

42. *Kuwaiti Airways Corp. v. Iraqi Airways Co.*, [1995] 1WLR 1147, 1171, (HL), per Lord Mustill.

43. Revised Treaty, *supra* note 1, art. 7.

44. British West Indian slaves were emancipated on August 1, 1838, and Jamaica, which was the first West Indian Territory to obtain political independence from England, became an independent country on August 6, 1962.

45. Professor Cynthia Crawford Lichtenstein, in a lecture given at Queen Mary University of London on Friday June 14, 2003, posited that, "uneven regulations in the global financial markets are a hindrance to trade in financial goods and services. In effect, the uneven regulations are non-tariff trade barriers."

46. Revised Treaty, *supra* note 1, art. 12.

4. CCJ

At present, the most controversial issue within CARICOM is the establishment of the CCJ. The CCJ was conceived as a final appellate court for the countries of the commonwealth Caribbean. However, the agreement establishing the court provides that it will serve in its original jurisdiction as an invaluable operational component of the CSME.⁴⁷ The rationale, at least on the surface, for the original jurisdiction of the CCJ is that the CSME requires a predictable and cost effective mechanism for dispute settlement. In this vein, those in support of the CCJ argue that it would be an ideal dispute settlement mechanism for the CSME; thus, although the CCJ was not initially conceived as a trade and investment dispute settlement mechanism, it will accommodate this objective.

Notwithstanding the provision for trade and disputes settlement under the CCJ, it has been labelled a 'hanging court.' This criticism, justifiable or not, has its supporters and some commentators argue that the CCJ will effectively deny the people of the commonwealth Caribbean a superior quality of justice which is now provided by the JCPC. On the evidence, local courts are under-funded and in many instances under-staffed. Further, the fate of regional institutions, such as the UWI, questions the preparedness and capacity of the region to adequately maintain the CCJ. It has also been argued that there is a real possibility that there will be political interference in both the appointment of judges and in the operation of the CCJ.⁴⁸

The arguments against the CCJ do not present a complete picture; however, a detailed examination of the arguments for and against its establishment is beyond the scope of this article. It appears that the concerns, important as they are, are logistic in nature and do not justify an unwillingness to consider and ultimately support the establishment and maintenance of the CCJ. Insofar as the trade and investment jurisdiction of the CCJ is concerned, the question is whether an alternative dispute settlement mechanism, such as ICSID arbitration under the Washington Convention or the Additional Facility Rules, could not be relied upon by the CSME.

a. Jurisprudence

The development of a truly Caribbean jurisprudence is the most attractive feature of the CCJ. Like every other region, the Caribbean is unique and a jurisprudence of its own will entrench and sustain the sovereign aspirations and self-determination of the Caribbean people. It will, *inter alia* enable decision making that is informed by local circumstances. Fur-

47. See *Agreement Establishing the Caribbean Court of Justice*, part II, (as amended on July 10, 2000), available at <http://www.caricom.org/archives/agreement-ccj.htm> [hereinafter *Agreement*].

48. Bernice V. Lake, *The Caribbean Court of Justice: Public Confidence and the Role of the Media*, Address at The Fifth Annual Caribbean Media Conference (May 16, 2002), available at <http://www.caricom.org/archives/ccj-lake.pdf>.

ther, although trade and investment is an international phenomenon, trade usage and custom within the Caribbean has been influenced by the socio-historical realities of the region; thus, the development of a predictable trade and investment framework under the CSME requires the establishment and maintenance of a dispute settlement mechanism that understands the socio-historical realities of the Caribbean.

A Caribbean jurisprudence does not imply an insular or inward looking jurisprudence. Indeed, the agreement establishing the CCJ recognises that the judges can be chosen from any of the several jurisdictions of the commonwealth.⁴⁹ Further, insofar as the trade and investment jurisdiction of the CCJ is concerned, the judges are empowered to apply principles of international law.⁵⁰ In any event, at common law there is an established doctrine of persuasive precedent that would enable judges of the CCJ to apply legal decisions from other jurisdictions. Consequently, a regional jurisprudence should not result in a diminished source of juridical reference and the personal integrity of judges, drawn from within and without the Caribbean, together with the protective watch of the various Caribbean bar associations and other interest groups should result in the desired quality of justice.

b. ICSID

The International Centre for the Settlement of Investment Disputes (ICSID) was established under the Washington Convention in 1965. The ICSID, sponsored by the World Bank, was established, *inter alia*, to facilitate the settlement of investment disputes between contracting states and nationals of contracting states.⁵¹ Article 53 of the Convention excludes the application of national laws; thus, an award of ICSID arbitrators is binding on the parties in the proceedings and is not subject to appeal or any other remedies, except those provided in the Convention.

The administrative capacity of the ICSID was broadened under the Additional Facility Rules. Those rules, *inter alia*, enable the ICSID Secretariat to administer the settlement of disputes where one of the parties is not a state or national of a contracting state.⁵² Proceedings under the Additional Facility Rules are not governed by the Washington Convention; thus, the dispute which is subject to Additional Facility proceedings need not involve an investment in the sense of the Convention but it must involve a transaction which by the intention of the parties, its duration or importance goes beyond an ordinary commercial contract. The enforcement mechanism under the Convention is not available in Additional Facility proceedings. Consequently, those proceedings must depend on

49. *Agreement*, *supra* note 47, art. IV(9).

50. *Agreement*, *supra* note 47, art. IX(g).

51. Washington Convention on the Settlement of Investment Disputes between States and Nationals of other States, Mar. 18, 1965, preamble and art. 1, available at http://www.asser.nl/ica/wash_en.htm.

52. ICSID Additional Facility Rules, Jan. 1, 2003, art. 2, available at <http://www.worldbank.org/icsid/facility/facility.htm>.

national laws for their efficacy and awards qualify for recognition and enforcement under the New York Convention.⁵³

The ICSID facility⁵⁴ is an internationally recognised method of dispute settlement. The Additional Facility Rules, for example, have become very important in recent years and arbitration there is the preferred method for the settlement of investment disputes within NAFTA. The proposals for the settlement of investment disputes under the FTAA also prefer arbitration under the Additional Facility Rules.⁵⁵ Preference for the ICSID facility is not only a convenient alternative, most importantly, preference avoids the uncertainty that could result if a specialist court was set up to deal with trans-national disputes without the unequivocal political support of all interested parties. In the context of CARICOM, if the parties agree and the necessary contracts are entered into, the ICSID facility could be relied upon for the settlement of disputes under the CSME. Although the possibility exists, the facility may not provide an optimum, or even a satisfactory method for the settlement of disputes under the CSME.

The ICSID facility is a commercial arrangement and it does not rely on, nor does it facilitate economic or political integration. Accordingly, those who argue in support of a 'private sector driven' economic integration within CARICOM have no basis on which to oppose dispute settlement under the ICSID facility. It appears, however, that the ICSID facility cannot or should not be relied on as a stand-alone facility where dispute settlement within a regional economic area is contemplated. Under NAFTA for example, interpretation of the NAFTA, as distinct from the arbitration agreement, is without the jurisdiction of the arbitrators.⁵⁶ Similarly, even if arbitration under the Additional Facility Rules is preferred under the CSME, it may be necessary to rely on an internal CSME / CARICOM mechanism to interpret the Treaty of Chaguaramas and the protocols that establish and control the CSME.

In the final analysis, CARICOM is more than a trade and investments vehicle; it is a quazi-political, economic arrangement, hence, it requires an internal mechanism for the settlement of disputes under the CSME. Accordingly, the ICSID facility and other internationally accepted dispute settlement mechanisms, such as International Chamber of Commerce (ICC) arbitration or ad hoc arbitration under the United Nations Commission for International Trade Law (UNCITRAL) Arbitration Rules, which do not promote economic or political integration, are un-

53. JULIAN D.M. LEW ET AL, *COMPARATIVE INTERNATIONAL COMMERCIAL ARBITRATION* (The Hague: Kluwer Law International 2003), at chs. 28-117 *et seq.*

54. For present purposes, the ICSID facility includes arbitration under the Washington Convention and the Additional Facility Rules.

55. See Second FTAA Draft Agreement, Nov. 1, 2002, Chapter on Investment, draft art. 15(7), available at http://www.alca-ftaa.org/ftaadraft02/draft_e.asp#II.

56. North American Free Trade Agreement Between the Government of the United States, the Government of Canada, and the Government of the United Mexican States, Dec. 17, 1992, 1992 WL 812384, at * 12 [hereinafter NAFTA].

suitable for dispute settlement within the CSME. The question for regional leaders, therefore, if they are committed to economic integration within CARICOM, is not whether but how best to entrench and demonstrate their unequivocal support for an internal dispute settlement mechanism, such as the CCJ.

III. IMPACT OF EXTERNALITIES

A. INTRODUCTION

The current realities of trade, investment, development, and diplomacy would be unrecognisable to anyone interested in these areas whose reference period pre-dates 1973. Although the current realities are significant, a detailed examination of the complex matrix of political, legal and economic facts, which they involve, is beyond the scope of this article. In short, among the major trade and investment participants, the conduct of business now betrays a significant level of disciplinary interconnectedness and jurisdictional indifference. Further, the effects of modern technology and an increasing level of global competition require investors to produce their goods and services in an environment that facilitates cost-effectiveness and efficiency.⁵⁷

The change in circumstances, which distinguishes the current state of the global market, has resulted from a combination of technological, intellectual, economic, and political factors. Improvements in technology, for example, mean that an investor can as easily conduct his business in Jamaica from a base in Australia, as could an investor based in Jamaica who conducts business in Jamaica. Further, as a result also of improvements in technology, among other facts, it is much easier to conduct business across traditional product and sector barriers; consequently, the astute investor is primarily concerned with questions of economies of scope and scale regardless of the place and manner in which his objectives are realised.

In the end, the factors that influenced the disintegration of the British West Indies Federation, may be irrelevant when the utility or viability of CARICOM is considered. In addition, the impact or likely impact of the FTAA, the EU, international trade and investment liberalisation, the WTO, regional trade blocks without CARICOM, international standardisation, and globalisation mean that the question of further Caribbean integration within or without the CARICOM framework must be given serious and unequivocal attention. The following sub-sections of this article will examine the impact of those realities on the question of Caribbean integration.

57. Aleem Mohammed, *The Movement of Goods: Issues and Challenges for the CSME*, available at http://www.thebriefingroom.net/Dr_Aleem_Mohammed.pdf (last visited Sept. 2003).

B. THE FTAA AND THE EU

The FTAA and the EU are critical to the trade and investments regime in CARICOM. The FTAA, on the one hand, will become an integral trade and investment arrangement in which CARICOM states are contracting parties. The EU, on the other hand, represents an external arrangement which is unlikely to involve CARICOM Member States as contracting parties. Membership in the EU is not delimited by traditional geographical considerations; if it were, the admission of Turkey to membership would not have been contemplated. Consequently, CARICOM membership in the EU is not impossible; however, in all likelihood the EU will remain an arrangement that is external to CARICOM Member States.

The socio-historical realities of the Caribbean and the current trade and investments arrangements that exist between the EU and CARICOM Member States suggest that even after the establishment of the FTAA, the EU will retain a critical balance of power in the Caribbean.⁵⁸ Further, the EU represents a major international trade and investment area; thus, it is very significant to all other participants in international trade and investments. It also represents a commanding political presence and its impact on the process of globalisation and international standardisation is undeniable.⁵⁹

1. FTAA

The FTAA represents an initiative within the Western Hemisphere that should, *inter alia*, enable CARICOM Member States to pursue sustainable economic development through the creation of a favourable, predictable, transparent, and stable hemispheric climate for liberalising trade and investment. *Stricto sensu*, the FTAA initiative, since it will involve the Caribbean countries as contracting parties, is not external *per se*. However, it is U.S. driven and trade and investments negotiations under it by CARICOM are best treated as negotiations for entry into an external arrangement. In essence, the initiative is an outgrowth of the North American Free Trade Agreement (NAFTA) and its primary concerns are the development and strengthening of free market infrastructures, the establishment and maintenance of democratic and accountable political institutions, and adherence to the rule of law.⁶⁰

The Second FTAA Draft Agreement provides that its objectives include trade liberalisation with a view to generate economic growth and prosperity, contribution to the expansion of world trade and elimination

58. David Greenaway & Chris Milner, *Implications of European Union Enlargement for CARICOM Countries*, available at <http://www.crnw.org> (last visited Sept. 2003).

59. The G7, which includes the most prominent members of the EU, has had the greatest impact on the international standardisation process.

60. See JOSEPH J. NORTON, FINANCIAL SECTOR LAW REFORM IN EMERGING ECONOMIES 269 (The British Institute of International and Comparative Law 2000).

of barriers, restrictions, and/or unnecessary distortions to free trade among parties.⁶¹ The Agreement also provides, *inter alia*, for the better of Most Favoured Nation (MFN) or National treatment by the host country to investors of other contracting parties.⁶² Insofar as the settlement of investments disputes between the state and investors is concerned, Draft Article 15(7) provides for arbitration under UNCITRAL Rules or the ICSID facility. Although the Agreement provides for settlement of disputes by arbitration, the interpretation of Annexes shall be conducted by the FTAA Commission.⁶³

The requirement for MFN or National treatment is a standard feature of bi-lateral and multi-lateral investments treaty arrangements. MFN or National treatment infers fair and equitable treatment; however, in some treaty arrangements, as will be the case under the FTAA Agreement, the parties specifically commit to a standard of fair and equitable treatment.⁶⁴ The obligation to accord MFN, National, or Fair and Equitable treatment is a contractual undertaking, the breach of which can result in significant damages or other remedies.⁶⁵

2. EU

The EU is a quazi-political economic union.⁶⁶ Since its creation, it has entered into a succession of preferential trade arrangements. These arrangements have included the post Lome Convention and the Cotonou Agreement, which was concluded in Benin on June 23, 2000. The Cotonou Agreement is of particular significance to CARICOM; it represents a partnership agreement that enables African Caribbean and Pacific (ACP) countries duty free access to the European Economic Area (EEA) on industrial and processed agricultural imports on a non-reciprocal basis. The Cotonou Agreement violates the provisions of Article I of the GATT; however, a waiver has been granted until 2007, thereafter, it could be replaced with WTO compatible trading arrangements.⁶⁷

The Cotonou Agreement indicates recognition by the EU that the countries of the commonwealth Caribbean have special needs. Thus, it avoids the broad brushes of an international trade and investments environment and the trade rules that govern it have been ameliorated, albeit as a short-term measure. The implications of size and the special needs of

61. See General Articles of the FTAA Agreement, draft art. 2, available at http://www.alca-ftaa.org/ftaadraft02/draft_e.asp.

62. See Chapter on Investments, draft art. 5, available at http://www.ftaa-alca.org/ftaadraft02/draft_e.asp#IN.

63. See Chapter on Investments, draft art. 20, available at http://www.ftaa-alca.org/ftaadraft02/draft_e.asp#IN.

64. See Chapter on Investments, draft art. 6, available at http://www.ftaa-alca.org/ftaadraft02/draft_e.asp#IN.

65. *CME Czech Republic BV v. Czech Republic*, Partial Award, available at <http://www.mfcr.cz/static/Arbitraz/en/Partial/Award.doc> (last visited Apr. 8, 2004).

66. Treaty on European Union (consolidated version) Preamble EU Treaty (Maasticht 1992), O.J. 1997 c340/149, preamble and art. 2 [hereinafter EU Treaty].

67. See Greenaway & Milner, *supra* note 58.

CARICOM are significant and they are an important consideration in the current ACP/EU post Cotonou negotiations.⁶⁸ The RNM is responsible for the current negotiations on behalf of CARICOM and it is anticipated that the post Cotonou Economic Partnership Agreements (EPA) will adequately recognise those special needs.

C. INTERNATIONAL TRADE LIBERALISATION, REGIONAL TRADE BLOCKS, AND THE WTO

1. *Global Perspective*

The establishment of regional trade and investments arrangements is an international phenomenon. The phenomenon, which involves myriad socio-historical, economic, and political considerations, is in essence a response to the global dominance of free market politics and economics. More and more countries have come to recognise that in a global, even if not a completely free market, quazi-political and economic integration is a necessity for their survival and sustainable development. Indeed, the phenomenon is pervasive to the extent that several countries involve themselves in more than one trade and investments arrangement.

Within South East Asia, for example, there are two major trade and investments arrangements. Those arrangements are the Asia-Pacific Cooperation (APEC) and the Association of Southeast Asian Nations (ASEAN). Although the objectives of APEC and ASEAN are not identical, there are considerable areas of overlap, and the membership in APEC is essentially the same as the membership in ASEAN. In Eastern Europe, there are also a number of trade and investments arrangements. Those arrangements include the Commonwealth of Independent States (CIS), the Eurasian Economic Community (EURASEC), Georgia, Ukraine, Azerbaijan and Moldova (GUAM), and the Black Sea Economic Cooperation (BSEC). As in South East Asia, there are considerable areas of overlap in the scope and membership of those arrangements. Insofar as the commonwealth Caribbean is concerned, the regional trade and investments arrangements include CARICOM, the Organisation of Eastern Caribbean States (OECS) and the FTAA.

A detailed examination of the various regional trade and investments arrangements indicates, *inter alia*, the need for rationalisation and greater cooperation. Notwithstanding these limitations, the proliferation and apparent increase in the significance of regional trade and investments arrangements evidences an underlying belief in their value and the positive impact they can have on individual countries.

The WTO is the leading international institution, insofar as the establishment and maintenance of a liberalised international trade and investments regime is concerned. The WTO is an outgrowth of the General

68. Anthony Peter Gonzales, *Policy Implications of Smallness as a Factor in the Lome, FTAA and WTO Negotiations*, available at <http://www.crnw.org> (last visited Sept. 2003).

Agreement on Tariffs and Trade (GATT). However, the jurisdictional scope of the WTO is broader than the jurisdiction conferred on the GATT. Further, unlike the GATT, the WTO is a *de jure* international organisation;⁶⁹ consequently, through it a more predictable and internationally accepted regime is realisable. It provides, *inter alia*, a mechanism for the achievement of greater coherence in global economic policy-making, and it includes a mechanism for the settlement of trade and investments disputes.⁷⁰

The question concerning regional trade blocks is whether they will or should become redundant within the WTO regime. Although regional trade blocks, as does the WTO, address trade and investments arrangements, the existence of the WTO does not justify their abandonment. Regional trade blocks perform an integral quazi-political role and in an era of increasing globalisation and international standardisation, they represent a realistic opportunity through which small developing states can impact the process of globalisation and international standardisation.⁷¹

2. CARICOM Perspective

Free market politics and economics, which have led to an increase in international trade and investment liberalisation, are of particular significance to CARICOM. In the area of trade in financial services, for example, NAFTA provides that each contracting party, subject to its own national regulatory framework, should permit persons from other contracting parties to establish and maintain financial institutions in its territory.⁷² Within the WTO regime, the General Agreement on Trade in Services (GATS), which deals with trade in financial services, requires contracting parties to grant MFN treatment to services and service suppliers from other contracting parties. MFN treatment under the GATS is a negotiable discipline, which applies, in the absence of limitations, to those services and modes of supply for which specific commitments have been undertaken.⁷³

A similar provision to the NAFTA provision on trade in financial services, among other provisions, will become a part of the FTAA regime.⁷⁴ Most CARICOM countries will become contracting parties under the GATS; thus, the realities of the free market, which include international trade and investment liberalisation and an increase in the significance and

69. See *WTO Factsheet 4*, available at http://bitd.metco.net/policy_factsheets/wto4.html (last visited Sept. 2003).

70. Marrakesh Agreement Establishing the World Trade Organisation, Apr. 15, 1994, art. III [hereinafter WTO Agreement].

71. See Canute James, *Caribbean Basin – Strength lies in regional alliance*, FIN. TIMES, Sept. 20, 2000, available at <http://specials.ft.com/world/economy2000/FT30Q5UPBDC.html> (last visited Sept. 2003).

72. NAFTA, *supra* note 56, ch. 11, art. 1403(4).

73. General Agreement on Trade in Services, Apr. 15, 1994, WTO Agreement, Annex 1B, 33 I.C.M. 1168 (1994), art. 11 [hereinafter GATS].

74. Second Draft Agreement, Chapter on Investment, available at http://ftaa-alca.org/ftaadraft02/eng/ngine_1.asp.

importance of the WTO regime, will have an even more significant impact on the Member States of CARICOM when the FTAA and the GATS are realised.

Although the trade and investment objectives of CARICOM are similar, albeit on a smaller scale, to those under the FTAA, the maintenance and strengthening of CARICOM, especially in its capacity as a quasi-political union, is critical. Within the FTAA, CARICOM, not to mention the individual countries within CARICOM, will represent a minority trade and investments party. In the absence of an unlikely Federation of CARICOM states, each Caribbean country will enter into the FTAA as a contracting party in its own right. However, should individual countries enter into FTAA negotiations on a national rather than a regional basis the viability of CARICOM and the sustainable development of the Caribbean region will be threatened.

In the case of NAFTA, Mexico was the minority contracting party. Mexico, without sufficient foresight and preparedness perhaps, embraced a close and 'partnership-like' trade and investments relationship with the United States and Canada; unfortunately, many commentators believe that it conceded the most and paid the greatest price in NAFTA negotiations.⁷⁵ Although CARICOM is not a political union, *per se*, it is imperative that negotiations within and without the FTAA recognise CARICOM as a representative institution; otherwise the fate of Mexico and worse will be the inevitable result for individual Caribbean countries in FTAA and other external trade and investments negotiations.

The Caribbean countries are developing countries, none of which is financially or otherwise able, by itself, to establish and maintain a satisfactory negotiating machinery. Through a regional framework, however, the capacity to establish and maintain a representative negotiating machinery is enhanced. Within CARICOM, the RNM has been established and will advise CARICOM members in international trade and investments negotiations. Although the RNM was not established to further a political union, representative negotiations through it indicate if not require the existence of a quasi-political union.

D. GLOBALISATION AND INTERNATIONAL STANDARDISATION

Globalisation represents the growing economic interdependence among countries in the area of trade and investments. It is an evolving process, which is reflected in the development of integrated global markets in a variety of goods and services.⁷⁶ Although regional initiatives, such as the CSME, involve the development of an integrated market in goods and services, *stricto sensu*, regional initiatives, which are by nature limited in their territorial reach, do not represent a global market.

75. See NORTON, *supra* note 60, at 269.

76. See Govindarajan & Gupta, *supra* note 6.

The trade and investments arrangements that are developed and applied under regional initiatives often betray reliance on extra-regional trade usage and practice. Consequently, the integrated market in goods and services within regional trade arrangements represent globalisation at a micro-level. At a macro-level, the WTO regime could be considered a component of globalisation. However, at present, the WTO regime is unpredictable in some areas and unsettled in others; thus, even the WTO regime would not qualify, *stricto sensu*, as a global arrangement.⁷⁷

Although no global market exists in the sense of a single institutional arrangement, particular trade and investment practices have global reach and are of international significance. In the area of financial services, some commentators argue that from the point of view of the world's more substantial capital users and investors, a global market in financial products has already been realised.⁷⁸ Insofar as the commonwealth Caribbean is concerned, it is of particular significance that the dominant financial institutions are multi-national banks. In Jamaica, for example, Canadian banks are dominant and the financial sector is greatly influenced by Canadian financial practices. In general, the financial institutions within CARICOM are influenced by global trends and maintain an international trade in cross-border flows of financial products and services, capital, and know-how.

Multi-national banks impact local business in two ways. First, the business conduct of multi-national banks reflects the international scope of their operations. Second, the complexity of international financial transactions has introduced new linkages and interdependencies between markets and institutions that could transmit problems and disruptions between places and institutions almost instantaneously.⁷⁹ In short, the business conduct of multi-national banks represents globalisation in practice; thus, CARICOM must represent a preparedness to understand and adequately respond to the evolving realities of globalisation.

International Standardisation is a necessary corollary to international trade liberalisation and globalisation. The international standards setting process assumes that international trade and investments require predictability and efficiency. Weights and measures are of ancient vintage and it is not surprising, therefore, that they represent the most time honoured and acceptable international standards. Insofar as trade in goods and services is concerned, a number of international institutions and other entities, such as the World Trade Organisation (WTO), International Organisation of Securities Commissioners (IOSC), International Accounting Standards Committee (IAIS), and the Basle Committee on

77. WTO Agreement, *supra* note 70, at preamble (they recognize the need to develop, not maintain, an integrated multilateral trading system).

78. See SAMUEL L. HAYES III & PHILIP M. HUBBARD, *INVESTMENT BANKING: A TALE OF THREE CITIES* 339 (Boston: Harvard Business School Press 1990).

79. See E. Gerald Corrigan, *Challenges Facing the International Community of Bank Supervisors*, in *FEDERAL RESERVE BANK OF NEW YORK QUARTERLY REVIEW* (Autumn 1992).

Banking Supervision have been established, each with a clear objective to achieve some degree of international standardisation. Thus, they have sought to standardise accounting and financial regulations, customs, and tariffs and the manner in which service providers are treated when they invest outside of their own jurisdictions.

The international standards setting process involves myriad political, socio-historical, and economic considerations. Although the term 'international' suggests a global consensus, invariably international standards are established by and for the primary benefit of developed countries. In some instances, developing countries voluntarily adopt international standards, in other instances however, those standards are directly or indirectly imposed on them.

In the area of banking supervision, for example, most persons would accept that banks and other financial institutions should be subject to appropriate regulatory and supervisory standards. Arguably, the Basle Committee on Banking Supervision has developed a commendable capital adequacy framework for the regulation of banks; unfortunately, the capital adequacy framework was developed without the input of developing countries and may not be appropriate for their needs. Notwithstanding the limitations of the Basle framework, implementing the standards established under it may become a pre-condition to financial support from the IMF and the World Bank.⁸⁰

Although privatisation and liberalisation are not usually considered as international standards, in reality privatisation and liberalisation represent a pervasive instance of international standardisation. The IMF and the World Bank, among other international institutions, espouse the virtues of privatisation and liberalisation. Further, since the 1980s privatisation and liberalisation have represented their dominant development thinking; thus, IMF and World Bank borrower members are 'encouraged' to privatise state-owned entities and liberalise their economies.⁸¹

Privatisation of state-owned entities and liberalisation of their economies have had a significant impact on the countries of the commonwealth Caribbean. In the case of Jamaica, for example, privatisation and liberalisation of the financial sector was actively pursued, with the 'encouragement' of the IMF and the World Bank, during the 1980s and 1990s. A detailed examination of the privatisation and liberalisation of the Jamaican financial sector and the consequences of that process are beyond the scope of this article. In short, subsequent to its privatisation and liberalisation, the Jamaican financial sector suffered a financial crisis. On the

80. See Andrew Cornford, The Basel Committee's Proposals for Revised Capital Adequacy Standards: Mark 2 and the State of Play, *UNCTAD Discussion Paper No. 156*, Sept. 2001, available at <http://r0.unctad.org/en/pub/a156-01.en.htm> (last visited Sept. 2003).

81. See Economic Overview, *The Jamaican Economy, Fiscal Year 1 April 2001 – 31 March 2002*, available at <http://www.emjamusa.org/economy.htm> (last visited Sept. 2003).

evidence, the privatisation and liberalisation of the Jamaican financial sector was ill-timed, if not ill-advised. It is not surprising, therefore, that the sequence of financial sector liberalisation has been identified as one of the fundamental causes of the Jamaican financial sector crisis of the 1990s.⁸²

International standardisation, like globalisation, will continue to have a significant impact on the sustainable development of CARICOM. As individual countries, the members of CARICOM have had little impact on globalisation and international standardisation. This means that the global framework which promotes the international trade in goods and services has been developed and maintained without any real input from CARICOM Member States. The CARICOM framework allows Member States an opportunity to maintain a critical presence in the global market; through the framework, member concerns can be represented to the international community and they will be able to have a more meaningful impact on international trade and investments arrangements.

IV. RECOMMENDATIONS

A. INTRODUCTION

The recommendations here may not be novel; however, they require continued emphasis and the political directorate in CARICOM must indicate a demonstrable and unequivocal commitment to implement apace those recommendations that can withstand the rigors of academic and practical evaluation. CARICOM should not become an inward looking initiative; however, it is imperative that it solicits and involves the will of the Caribbean people. Thus, although the experience of other regional integration initiatives can be instructive, local circumstances are paramount and they should inform the scope and direction of CARICOM.

B. OECS MODEL

The Organisation of Eastern Caribbean States (OECS), a sub-regional integration initiative within CARICOM, provides an invaluable reference model for CARICOM. Although CARICOM was established before the OECS, and it involves a potentially more viable integration initiative, the OECS is more accomplished. Indeed, the OECS model is an invaluable reference model not only for CARICOM but also for other regional integration initiatives.

The OECS was established in 1981 under the Treaty of Basseterre. It developed out of the West Indies States Council of Ministers (WISA), which was established in 1966 to administer common services among participating territories and the Eastern Caribbean Common Market (ECCM), which was established in 1968 to promote harmonious and eq-

82. See Historical Background to the Financial Sector Adjustment Company (FIN-SAC), *Annual Report 1998*, available at http://www.finsac.com/AboutFinsac_HistBackground.htm (last visited Sept. 2003).

uitable development of the Eastern Caribbean sub-region. The Treaty of Basseterre provides for the cooperation among Member States at the regional and international level, for the economic integration of Member States, and for the harmonisation of foreign policy.⁸³

The OECS is administered by a Central Secretariat and its institutions include the Eastern Caribbean Telecommunications Authority (ECTEL), the Directorate of Civil Aviation (DCA), the Eastern Caribbean Central Bank (ECCB), and the Eastern Caribbean Supreme Court (ECSC). The OECS framework also includes a legal unit, which provides support to OECS members, the Secretariat, and subsidiary institutions. The legal unit focuses on questions of law reform and legislative harmonisation, coordination of judicial reform, trade negotiations, and the provision of routine legal services.⁸⁴

The various institutions within the OECS have been developed and maintained in a manner that would facilitate the establishment of the OECS Single Market (OSM). The question of monetary policy, for example, is more or less settled; the ECCB serves as the monetary authority for the sub-region and there is a unified currency in the Eastern Caribbean (EC) Dollar. The OECS also maintains joint diplomatic representation in Brussels and Ottawa and it is an associate member of CARICOM. Notwithstanding the CARICOM integration initiative, the OECS has sought to deepen its own integration, and in 1991, the OECS Heads of Government agreed upon the creation of the OSM.⁸⁵

CARICOM should carefully analyse the OECS model and take from it those aspects which are beneficial. In particular, CARICOM could hasten to implement a regional central bank similar to the ECCB as well as a unified currency. The logistics of implementing a CARICOM central bank and a unified currency pose different and perhaps greater difficulties than would have been encountered by the OECS when those measures were implemented. Notwithstanding the implementation difficulties that could arise, those measures, which have been considered by CARICOM, could have a significant beneficial effect and every effort should be made to implement them.

C. LEGISLATIVE AND REGULATORY HARMONISATION

Legislative and regulatory harmonisation involves a complex matrix of legislative, regulatory, and policy considerations. Insofar as trade and investments are concerned, the objective of harmonisation is the creation of an enabling and non-discriminatory environment for market participants. Ultimately, legislative and regulatory harmonisation in a common market should involve a systemic consideration and possibly an overhaul of the broad spectrum of legislation and regulations.

83. See *The O.E.C.S.*, available at <http://www.caribisles.org/caribbean/count-09.htm> (last visited Sept. 2003).

84. See OECS Web page, at <http://www.oecs.org>.

85. *Id.*

A systemic consideration and overhaul of the legislative and regulatory regimes in CARICOM would be intrusive and it could offend the political sensitivities of individual jurisdictions. However, trade and investments legislation and regulations do not exist in a vacuum; they require the overall existence of a favourable constitutional and legislative environment.⁸⁶ Although the nature and extent of harmonisation can only be determined after a complete analysis of the local circumstances, without more, the establishment and maintenance of an enabling trade and investments environment should involve a consideration and possible overhaul of the monetary and fiscal regimes.

Monetary harmonisation infers a commitment to agree upon and implement a legislative and regulatory regime for the maintenance of a stable and predictable financial services sector. Insofar as fiscal harmonisation is concerned CARICOM requires the establishment and maintenance of a common taxation and customs regime. Although the countries of the commonwealth Caribbean have shared socio-historical realities, monetary and fiscal policy in each country is usually within the protectionist domain of the political directorate; thus, harmonisation is difficult to achieve.⁸⁷

An analysis of the monetary and fiscal regimes in CARICOM indicates significant, though not insurmountable, policy and implementation distinctions. Those distinctions mean that trans-national CARICOM entities have to contend with what are effectively non-tariff trade barriers within the CSME. Those distinctions have had a negative impact on intra-regional business and are a hindrance to economic integration within the CSME.⁸⁸

D. TRAINING AND COLLABORATION PROGRAMMES

Economic integration involves an evolving matrix of domestic, regional, and global considerations. In the absence of a political federation, policy and implementation is within the political domain of individual countries. Notwithstanding this limitation within a common economic area, it is imperative that the technical and other intellectual considerations that guide policy and implementation, are developed through collaborative programmes by individuals who are adequately trained.

1. *Regional Expertise*

Adequate training is a pre-requisite for expertise. In the area of financial services, for example, effective regulation and supervision of the fi-

86. See Jeswald Salacuse, *Direct Foreign Investment and the Law in Developing Countries*, 15 *ICSID Review*, FOREIGN INVESTMENT L.J. 382-416 (2000).

87. The situation in CARICOM is not unique; indeed, within the Euro zone the question of monetary and fiscal harmonisation has been one of the most controversial areas and the UK and Sweden, for example, have demonstrated an unpreparedness to concede authority to the EC on that question.

88. Mohammed, *supra* note 57.

financial sector requires adequately trained supervisors who understand the risks inherent in financial activities. It also requires the existence of a cadre of technocrats who can formulate and advise on the establishment and maintenance of an adequate framework of regulation and supervision.⁸⁹ Clearly, the financial sector is but one, albeit a critical, component in a regional economic area. As with the financial sector, every other component requires expertise.

Collaboration between academia and government could be the most cost effective method for the development of policy initiatives and regional expertise in the area of international trade and investments. Collaboration can involve academia at all levels; however, it is likely to produce the best results if it includes postgraduate research at the highest level. The principal academic institution in the commonwealth Caribbean is the University of the West Indies (UWI). It has a commendable record in academic training and it is party to an initiative with CARICOM that examines the impact of Caribbean integration.⁹⁰ Notwithstanding the existence of the CARICOM / UWI initiative, the level of collaboration between academia and CARICOM is inadequate.

International trade and investments involve myriad economic, political and socio-historical considerations; however, the framework within which they are conducted is law based. Consequently, the establishment and maintenance of an enabling environment for international trade and investments require a sound understanding of the legal principles that direct them. The UWI was established as a regional institution and its mandate, express or implied, requires it to prepare the region for the challenges of international trade and investments. Consequently, given the importance of law in the areas of international trade and investments, it is imperative that it develops and maintains an appropriate postgraduate law programme in those areas.

Although the role of the UWI is critical, in the absence of increased support for and reliance on its academic research by regional governments and institutions, it will be unable to fulfil its mandate. Regional governments should commission and support the establishment of a CARICOM Education Unit (CEU), within the UWI, which would be dedicated to postgraduate research in the areas of trade, investments, integration, and diplomacy. They should also commit themselves to a programme of reliance on those initiatives, developed through it, which can withstand the rigors of academic and practical evaluation.

2. *Trade and Investment Collaboration*

Although the FTAA represents a hemispheric trade and investments initiative, the countries of CARICOM still require a Caribbean commit-

89. See Bank for International Settlements Web page, at <http://www.bis.org/fsi/about/fsi.htm> (last visited Sept. 2003).

90. See *Background to the Project*, available at <http://www.caricom.org> (last visited Sept. 2003).

ment on questions of trade, investments, integration, and diplomacy. Within the FTAA, CARICOM will represent a minority interest; thus, unless CARICOM is represented as a united force within it the interest of individual commonwealth Caribbean countries could be under-represented. Without the FTAA, CARICOM or its individual members will enter into trade and investments relationships that could be incompatible with, though not objectionable to, the objectives of the FTAA; in those circumstances, CARICOM would not benefit from the FTAA machinery. In any event, the FTAA is not a political union and it is not established, *per se*, to serve the interest of integration within CARICOM; consequently, the sustainable economic development of CARICOM cannot rely on it.⁹¹

In sum, the sustainable economic development of CARICOM requires unequivocal political support and a common purpose. This would be furthered by the establishment of joint diplomatic missions, the promotion of regional integration through cultural expression, the deepening involvement of the RNM in external and internal negotiations, and the establishment of a CARICOM Development and Integration Forum (CDIF). Joint diplomatic and trade representation would enable economies of scope and scale in external relations. Although joint representation would involve a concession of political authority, this is imperative to the interest of CARICOM and the sustainable economic development of individual countries in the commonwealth Caribbean.

3. *The CDIF*

The CDIF would involve the propagation of intellectual thought; notwithstanding the apparent overlap with the proposed CEU, it would perform a distinct, though ancillary, role. It would include a cadre of interdisciplinary professionals who are dedicated to the growth and development of CARICOM from a practitioner's perspective. They would be required to assess the practical impact of regional initiatives and the benefit of academic research; consequently, they would provide an integral link between government, academia, and the private sector. Ideally the CDIF would be sponsored and regulated by CARICOM.

Regulation infers the maintenance of appropriate minimum standards and a transparent and reliable system of accreditation. Through the CDIF, CARICOM could emphasise trade and investments consultancy as a specialist discipline; thus, accredited members would be required to satisfy CARICOM that they are of the requisite standard to serve as consultants. Although accreditation, without more, would not enable a more viable trade and investments environment, it could enhance the quality of representation available to the private and public sectors in those areas.

91. On the question of banana, for example, CARICOM trade with the UK is significant. Unfortunately, banana is not a major concern for the US; thus, in the absence of vigorous representation by CARICOM its interest in the banana trade may receive inadequate representation under an FTAA regime.

The private sector, in particular, should welcome an accreditation mechanism as it would enable entrepreneurs to repose greater confidence in the advice received from trade and investments consultants.

The mandate of the RNM could be broadened to incorporate the objectives of the CDIF; however, it is imperative that the CDIF maintains a broad, private sector driven mandate. At present, the RNM is a permanent institution within CARICOM. The CDIF, on the other hand, should be no more than a corollary to CARICOM and its membership, though regulated by CARICOM, should not be subject to its political dictates; thus, the CDIF would be incompatible with the RNM and it would require an independent operational structure.

IV. CONCLUSION

CARICOM is a quazi-political, economic integration initiative. It represents and has been shaped by the socio-historical, political, and economic realities of the Caribbean. It is an ongoing initiative and in recent years the realities of globalisation, international standardisation, and international trade and investments arrangements have had a significant impact on it. There are several challenges to Caribbean integration within the CARICOM framework; however, integration also presents several opportunities for the Caribbean region.

The principal challenge to CARICOM is the un-preparedness of the political directorate to recognise it as a political / quazi-political union. CARICOM is a very significant initiative for the sustainable economic development of the Caribbean region; however, the lingering and important questions of legislative and regulatory harmonisation, the establishment and maintenance of a monetary union and a single currency, the establishment and maintenance of joint diplomatic missions, the free movement of labour, and coordination of fiscal policy require unequivocal political commitment and support. CARICOM must resolve those questions apace and resolution requires an unequivocal concession of political authority by regional governments.

Insofar as the CSME is concerned, it requires a predictable trade and investments environment and disputes settlement mechanism. The several protocols that developed in furtherance of the CSME should result in an enabling trade and investments environment. Further, the CCJ in its original jurisdiction should provide an appropriate mechanism for the settlement of CSME disputes. It appears, however, that the concept of a single economy has either been misunderstood or there is a deliberate effort to mislead when it is argued that CARICOM will not involve a political union.

A single market, as distinct from a common market, infers the absence of trade and investments barriers, and within it participants have free and unlimited access. Consequently, fiscal and monetary policy, common citizenship, and a supra-regional legislative and regulatory regime would be required. The CHG has the capacity to serve as a supra-regional political

authority and it is possible that as CARICOM develops it will eventually assume that role. However, unless that supra-regional political role is performed the idea of a single economy would be stillborn.

Although there is no global market, in the sense of a single institutional arrangement, the realities of international trade and investments require CARICOM to participate in an environment that is increasingly influenced by the challenges of globalisation and international standardisation. Within this global arrangement small developing states, such as the countries of the commonwealth Caribbean, are particularly vulnerable. Alone they have little impact on the process of globalisation and international standardisation; hence, their best interest is served through representative regional frameworks.

CARICOM has been established for the benefit of the Caribbean region, especially in the area of external trade and investments negotiations. The RNM, for example, has been developed as a permanent institution within CARICOM, and it advises the region and negotiates on its behalf with external entities. The opportunity exists within CARICOM for the deepening involvement of the RNM in internal and external affairs and for the establishment of a regional forum (CDIF), which would enhance the value of regional trade and investments consultants.

Although CARICOM is a Caribbean initiative, it should not be insular or inward looking because the experiences of other regional initiatives can be instructive. Within CARICOM, however, a sub-regional initiative – the OECS – exists and it represents a substantial integration model from which the CARICOM framework could benefit. In it lies an opportunity for academic and practical Caribbean evaluation and the model should be relied upon in instances where its benefits are undeniable.

In sum, the CARICOM framework is a regional integration initiative which has been developed in response to the socio-historical, economic, and political realities of the Caribbean. Those realities include the legacy of colonialism, the impact of globalisation and international standardisation, and the increasing significance of extra-regional integration initiatives. CARICOM represents several opportunities for the benefit of the region; however, there are several challenges and its growth and development require the unequivocal commitment and support of the political directorate.

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