

THE CARIBBEAN COURT OF JUSTICE: INSTITUTIONAL CENTRE-PIECE OF THE CARICOM SINGLE MARKET AND ECONOMY

By

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I INTRODUCTION

From the title of my address, it would be reasonable to assume that my focus will be on the Original Jurisdiction of the Caribbean Court of Justice (CCJ) since it is in the exercise of this jurisdiction that the Court will impact most importantly on the CARICOM Single Market and Economy (CSME). However, by way of prefacing my address, I shall invite you to examine the structure of this Institution called the Caribbean Court of Justice with a view to determining whether it is capable of discharging the functions envisaged for it.

2. Let me begin by asseverating that the CCJ is probably the most innovative international judicial institution in the world today both in terms of personal and institutional independence and autonomy of decision in financial affairs. The CCJ is the only international judicial institution in the world whose judges are not elected or appointed by political surrogates of states parties. Consider in this context the International Court of Justice, the International Criminal Court, the European Court of Justice, the Andean Court of Justice, the Mercusor Court of Justice, the Court of Justice of the Economic Community of West African States, the Central American Court of Justice and the Court of Justice of COMESA. The judges of all these international courts are either elected or

appointed by Ministers of Government - hence their vulnerability to the machinations of the political directorate.

3. Compare in this context the method of appointment of the judges of the CCJ. The criteria for appointment are set out in Article IV of the Agreement Establishing the CCJ. Thus, Article IV(11) requires judges to be of high moral character, intellectual and analytical ability, sound judgment, integrity and understanding of people and society. Article IV(10) requires candidates, in addition, to have at least five years experience as a judge of a court of unlimited jurisdiction in civil and criminal matters in the territory of a Contracting State or some part of the Commonwealth or a State exercising civil law jurisprudence common to Contracting Parties, or a court having jurisdiction in appeals from any such court, and who in the opinion of the Regional Judicial and Legal Services Commission (RJLSC), has distinguished himself or herself in that office; or secondly, has been engaged in the practice or teaching of law for a period amounting to not less than fifteen (15) years in a Member State of the Caribbean Community or in a Contracting Party or in some part of the Commonwealth or in a State exercising civil law jurisprudence common to Contracting Parties and has distinguished himself or herself in the legal profession.

4. Any such person mentioned above may apply for a vacant position of judge on the Court and, after a successful interview with the RJLSC, may be appointed a judge of the Court. It is only in the case of the President of the Court that a three-quarters majority vote of the Contracting Parties is required for appointment to the post. Judges of the Court enjoy security of tenure similar to that enjoyed by constitutional judges of CARICOM States.

5. In financial matters, the CCJ enjoys greater autonomy of decision than any superior court in the world, national or international. Member States parties to the Agreement Establishing the CCJ authorized the Caribbean Development Bank (CDB) to raise US\$100,000,000 on international capital markets to be on-lent to such States in proportion to their projected contributions to the budget of the Court. The capital so raised was placed in the CCJ Trust Fund to be administered to defray the expenses of the Court by trustees selected from the private sector by the CARICOM Secretariat. In effect, the CCJ is completely independent, financially, from the regional political directorate which is unable to exert influence on the judges of the Court through the exercise of financial pressure. No other court in the world is known to enjoy such financial independence. The ECOWAS Court of Justice is considering a similar funding arrangement and even the European Court of Justice had apparently expressed interest in this arrangement. Provision is made in the Trust Fund Agreement for topping up of the Fund by Member States in the unlikely event of an unexpected shortfall in the capital of the Fund.

6. Turning now to the role of the CCJ in the CSME, a convenient point of departure is the status of CARICOM as a community of sovereign states, the dualistic jurisdiction of the overwhelming majority of those states and the inordinate dependence of CARICOM States on foreign direct investment for sustainable economic development. In this context, it is extremely important to bear in mind the provisions of Article 240(1) of the constituent instrument of the Caribbean Community which provides as follows: *“Decisions of competent organs taken under this Treaty shall be subject to the relevant constitutional procedures of Member States before creating legally binding rights and obligations for nationals of such states.”* This provision states in the boldest terms the dualistic jurisdictional status of CARICOM Member States and poses a formidable impediment to the accelerated development of the CSME along desired lines. This problem may be solved, however, in the way the United Kingdom addressed the problem created by dualism on her entry into the European Community as set out in Section (2) of the European Communities Act 1972. This provision accorded the force of law to both current and future determinations of Community Organs without the prior enacting intervention of the British Parliament. Whether CARICOM States are prepared to take a similar step will operate to provide an acid test of the seriousness of their commitment to regional economic integration.

7. Given the immediately foregoing, the CSME is likely to be severely disadvantaged in terms of attracting adequate amounts of foreign direct investments for regional economic development unless appropriate measures are taken. In this context, it is important to bear in mind the heavy dependence of CARICOM States on foreign direct investments and the desire of the foreign investor for a suitable investment climate possessing, among other things, stability of expectations issuing from certainty in the relevant law, stability in the political environment and predictability of outcomes in respect of investment decisions. In a community of sovereign states subscribing to dualism and constrained by the provisions of Article 240(1), of CARICOM's constituent instrument, there is no guarantee, in the first place, that the incorporation of the Revised Treaty in the national laws of such states would be uniform or that Member States would implement in good faith determinations issuing from Community Organs. Or, more importantly, that such determinations would be implemented at all! The Ramphal Commission in its seminal report entitled 'Time for Action' determined that implementation, or rather the lack thereof, constituted the Achilles heel of the regional economic integration movement.

II STRUCTURE OF THE CARICOM SINGLE MARKET AND ECONOMY (CSME)

8. The CARICOM Single Market and Economy (CSME) is an attempt at far-reaching, regional social and economic engineering among a group of political

entities sharing similar perspectives of identification in terms of insisting on retaining their autonomy of decision as independent states. In effect, it may be perceived as an attempt to superimpose a seamless economic space on a collectivity of states which maintain discrete political frontiers acting as barriers to the movement of goods, people, services and capital. The conclusion and entry into force of the Revised Treaty of Chaguaramas establishing the Caribbean Community including the CARICOM Single Market and Economy in 2001 was not a terminal political event undertaken by CARICOM States. On the contrary, it must be seen as the initiation of what is likely to be a protracted and intractable process of economic and social transformation among an association of sovereign states. As such, the CSME as a regional economic integration process is not unlike the European Union whose beginnings go as far back as 1957 with the conclusion of the Treaty of Rome.

9. The Treaty of Rome (1957) which created the European Economic Community (the EEC) was the culmination of a movement in Europe towards international cooperation which was considerably accelerated by that unprecedented devastation of human, private and social capital euphemistically referred to by historians as the Second World War (1939-45). The membership of the EEC which originally consisted of six States, Germany, France, Italy, Belgium, the Netherlands and Luxemburg, was enlarged in 1972 with the accession of Britain, Ireland and Denmark, in 1979 Greece, in 1986 Spain and Portugal and in 1995 Austria, Finland and Sweden. Today, following admission

to membership of many former states of the Eastern European Bloc, the membership of this experiment in economic integration is twenty-seven states.

10. In 1986 the members of the EEC concluded the Single European Act designed to facilitate the establishment of a single internal market among their membership by removing barriers to the movement of goods, services, persons and capital. By this measure, a massive harmonization of standards in the EEC was undertaken by Directives issuing from the European Commission. Directives were legal instruments having the force of law in member states without the intervention of national assemblies but which allowed the membership to which they were addressed the choice of means employed to achieve stated objectives. This was followed in 1992 by the Treaty of European Union (TEU) signed at Maastricht which extended the scope of Community competence and strengthened its institutional machinery, particularly the European Parliament. The TEU was designed to achieve economic and monetary union in what was now to be called the European Union and to introduce the status of European citizenship. Britain and Denmark opted out of the economic and monetary union. Appropriately, the Treaty of Amsterdam which was signed afterwards and entered into force in 1999 allowed for a Europe of concentric circles whereby, as in the Benelux countries, two or more states of the full membership may opt to have closer economic, social and political arrangements among themselves than with the rest of the participating states. The Treaty of Nice introduced further institutional changes in the

European Union including augmentation of the jurisdiction of the European Court of First Instance (CFI) by allowing it to hear and determine some preliminary ruling issues.

11. Viewed against this background of regional economic integration in Europe, it will be appreciated that the achievement of a single market and economy among the CARICOM States appears to be a dim light on a distant horizon. Unlike the European Union, the Caribbean Community, as mentioned above, is an association of sovereign states with no central organs or institutions enjoying supranational competence and in a position to devise and issue instruments having immediate legal effect in the national jurisdictions of member states without the intervention of their national assemblies whose representatives are ever mindful of popular sentiment, which is not always appropriately informed, and their tenure of political representation. In this context it is important to bear in mind that the Caribbean Court of Justice, which, in the exercise of its original jurisdiction as an international tribunal, is considered in some quarters as the institutional centre piece of the CSME. Unlike the European Court of Justice and the European Court of First Instance, it has no supranational competence, and is not integrated as an organ in the institutional arrangements of the Caribbean Community. This was due in large measure to the dual status of the CCJ as a municipal court of last resort for most but not all members of the Community, and as an international tribunal for all members of the Caribbean Community. There were also legitimate

apprehensions on the part of detractors that the political directorate of the Region would attempt to secure policy direction and control of this important regional institution.

12. The challenge posed the competent decision-makers of the Caribbean Community in terms of achieving the objectives of the CSME may readily be appreciated by their jurisdictional deficit compared to the competence of their opposites in the European Union. By its decision in *Costa v ENEL* which the states of the EEC eventually accepted with considerable misgiving and reluctance, the European Court of Justice determined that (a) the member states of the EEC had created a unique institution of unlimited duration having its own juridical personality; (b) the member states of the EEC, as an attribute of sovereignty, had voluntarily limited their own sovereign competence by transferring attributes of their sovereignty to the central decision-making institutions of the Community, in particular, the Council and Commission; (c) the European states had created a special corpus of rules, namely, Community law which equally bound their nationals and themselves and (d) the transfer of sovereign powers by the member states to the central organs of the Community constituted a permanent limitation of their sovereign rights over which a subsequent unilateral act incompatible with Community law could not prevail.

13. This last determination of the European Court of Justice does not appear to accord, in my opinion, with the applicable rules of international law which, in

effect, posits that the essence of sovereignty is the faculty to compromise it in the manner and to the extent and for the duration determined by the sovereign entity. Having been invested with the power to legislate directly for Member States and nationals of the Community, (Article 189 of the Rome Treaty), the central organs of the Community, unlike those of CARICOM, are in a position to secure the stated objectives set out in the various constituent instruments of the Community.

14.. Compare in this context the decision-making competence of the principal organs of the Community, set out in Chapter Two of the Revised Treaty of Chaguaramas and which intentionally and demonstrably do not include the Caribbean Court of Justice. Since Article 12(1) of the Revised Treaty of Chaguaramas designates the Conference the supreme organ of the Community, the CCJ if accorded the status of an organ would have been subjected to the direction and control of the Conference. Article 28 of the Revised Treaty of Chaguaramas requires decisions of the Conference, the most important decision-making body, to be made by qualified unanimity vote. And although other decision-making organs like the six Councils may reach determinations by qualified majority vote, in exceptional circumstances the determinations of these bodies are required to be reached by unanimity (Article 29(3) and (4)). These organs are the Community Council; the Council for Finance and Planning (COFAP); the Council for Trade and Economic Development (COTED); the

Council for Foreign and Community Relations (COFCOR), the Council for Human and Social Development (COHSOD) and the Council for National Security and Law Enforcement (CONSLE).

15. More importantly, however, the determinations of competent Community Organs, in accordance with the applicable rules of international law, do not have legal incidence in the municipal jurisdictions of Member States subscribing to the dualist doctrine; they ordinarily create rights and obligations for states parties only at the international plane. The intervention of national assemblies is required to give them effect in the domestic law of Member States. This circumstance, coupled with inadequate capabilities of Member States, explain in large measure the current implementation deficit in the Caribbean Community and which motivated the West Indian Commission to characterize “implementation” as the Achilles heel of the regional economic integration movement. In order to resolve the intractable problem of deficiency in executive competence by Community Organs, Conference has appointed a Technical Working Group on Governance (TWG) to consider the issue and make appropriate recommendations. The recommendations of the Working Group were accepted by Conference at their 18th Inter-sessional Meeting in St. Vincent and the Grenadines from 12th -14th February, 2007.

16. In this context “The Conference agreed that Member States should consider the policy issues and recommendations contained in the report of the

TWG and that wide-ranging consultations should be held with other stakeholders including the Parliamentary Oppositions and members of Civil Society, before the submission of their positions to the Secretary-General. The Conference also agreed to resuscitate the Inter-Governmental Task Force

(IGTF) to work in collaboration with the Legal Affairs Committee and a sub-Committee of the TWG towards the elaboration of a Draft Protocol, with a view to recommending the requisite amendments to the Revised Treaty.”

17. Against this comparative background of institutional arrangements in the European Union and CARICOM, it is proposed to examine the nature and extent of the work remaining to be accomplished in order to achieve the objectives of the CSME. On the basis of this examination it may be possible to evaluate the prospects for success of the current initiative at regional economic integration. In the characterization of Prime Minister Owen Arthur of Barbados, *“(t)he creation of a Caribbean Single Market and Economy will unquestionably be the most complex, the most ambitious and the most difficult enterprise ever contemplated in our region. And in a region, which, as Philip Sherlock has observed, division is the heritage, contrast is the keynote and competition is the dominant theme, economic integration requiring cooperation on the scale of the depth envisioned by the CSME will be substantially more difficult to attain than integration on the political plane ... The CSME as just*

described now exists essentially as a legal entity embodied in the Revised Treaty of Chaguaramas. The task ahead is that of transforming it into a lived reality.”

18. The foregoing observations speak volumes about the insightfulness of Prime Minister Owen Arthur compared to the myopia of other strong

protagonists of regional economic integration who, paradoxically, still entertain a generous measure of skepticism about regional political integration. This lack of appreciation for the enormity of the challenge involved in the establishment of the CSME appears to have been shared by competent decision-makers meeting in Grand Anse Grenada in 1989. Having determined then to establish the CSME, a completion date was set for 1993! As the interlocutor quoted above observed, *“(t)he task of transforming a number of economies which had hitherto existed as separate economies (more integrated in the economies of the British and American metropolises than among themselves) each with its own distinctive economic policies, laws, separate and different institutions, different sectoral compositions, and wide diversity in levels of performance in a Single Market and Economy is really (a) massive undertaking which simply cannot be accomplished in a short period”* – words in parentheses supplied.

19. As a prelude to embarking upon an examination of the task remaining to be accomplished in establishing the CSME, it will be useful to bear in mind, that a single market is an economic space in which goods, people, services,

technology and capital are free to migrate to any part of this space where they can be efficiently and productively employed. It is also important to appreciate that this economic space is intended to be superimposed, as it were, on a collectivity of political entities enjoying autonomy of decision in every aspect of national life, having determined not to surrender any attributes of sovereignty to central institutions charged with implementation of the relevant provisions of the Revised Treaty. Consequently, determinations of Community organs in this regard have to be enacted into municipal law by all states parties except those from the monist jurisdictions like Suriname and Haiti. But even this appears to be a requirement under Article 240(1) of the Revised Treaty of Chaguaramas. In the premises, political barriers to the movement of factors have to be removed and the pace of realization of the objectives of the Revised Treaty of Chaguaramas will be inevitably determined by that of the slowest participant of the dualist Member States of the Community, an encumbrance which the competent policy-makers of the European Union were spared.

20. Assuming that the establishment of the Single Market and Economy involves the creation of a single currency following the path adopted by the European Union, then competent decision-makers of the Community will have to create a single internal market, followed by the establishment and satisfaction of agreed criteria for macroeconomic policy and monetary convergence and culminating in monetary union and a single currency. In terms of a common market in goods, this has been largely achieved and a Common External Tariff

(CET) has been finally agreed. Furthermore, the establishment of the Regional Negotiating Machinery has facilitated the formulation of a common external trade policy towards third states. However, there are still some important measures to be taken in terms of dismantling in some Member States various barriers to the movement of goods through the unauthorized employment of licences, discriminatory internal taxes and fiscal charges. Chapter Three of the Revised Treaty of Chaguaramas addresses the movement of factors of production and in particular the movement of persons and capital as well as the provision of services and the right of establishment. Removal of restrictions in this area is generally regarded as critical for the creation of a seamless economic space. Compare in this context the Single European Act of 1986 which created at one fell swoop the single internal market.

21. As concerns the movement of persons which must be considered the *bete noir* of the regional economic integration movement, Article 45 of the Revised Treaty records the commitment of Member States to the goal of free movement of their nationals. In effect, there is to be no free movement of labour but only the free movement of skills, media workers, sportspersons, artists and musicians. At their 18th Inter-Sessional Meeting in St. Vincent and the Grenadines on 12th -14th February, 2007 the Heads of Government approved a system for streamlining arrangements to facilitate the movement of artisans in the regional labour market. The system scheduled to be in place by July 2007, provides for the award of Caribbean Vocational Qualifications (CVQ) based on

occupational standards set by industry. Conference also accepted a proposal to implement the free movement of CARICOM nationals by the end of 2009.

22. Despite these steps, the intractable problem of the contingent rights of persons entitled to move remains unresolved. Such contingent rights relate principally to access to social infrastructure of host states by persons entitled to move as well as their spouses and other legitimate members of their households. Member States still have not enacted legislation addressing the free movement of service providers like self-employed persons, entrepreneurs, managerial and technical staff and such like together with their families. Finally, in terms of the movement of factors many restrictions are still in place in most CARICOM countries on the movement of capital. Unlike the Single European Act which sought to establish an internal market and institute a massive harmonization of standards, relevant policies so far adopted by CARICOM decision-makers in this context appear to be piecemeal and hesitant. But this must be seen as an inevitable consequence of establishing a single market and economy among a collectivity of sovereign states which are extremely reluctant to surrender attributes of sovereignty to central institutions of the Community in order to expedite the implementation of required measures.

23. In terms of securing a monetary union coupled with a single currency, these objectives do not appear to be possible of achievement in the short term. In this context, one has to question the wisdom of giving this responsibility to the regional central bankers who apparently have a vested interest in a dilatory

approach. Paradoxically, it appears that whenever the CARICOM Committee of Central Bank Governors convenes for the purpose, the object of a single currency seems to drift further on the economic horizon. Consistently with this position, the Committee recently recommended to COFAP that monetary union was not possible at this time. The convergence criteria employed to promote a single currency depends on voluntary compliance and remains unmonitored to detect and correct delinquencies. In the result, it is questionable whether any significant progress will be made towards achieving the objective of a single currency in the absence of enforceable treaty arrangements to establish and monitor compliance with relevant convergence criteria coupled with credible sanctions for non-compliance.

24. In this connexion, it is important to point out that COFAP which has responsibility for macro-economic and monetary convergence includes among its membership several prime ministers whose responsibilities militate against regular meetings of this organ. This constrains the organ from effectively undertaking many of the important tasks identified for it in the areas of macro-economic and monetary convergence, in the absence of which a single economy including a single currency will continue to be an elusive goal! Consequently, CARICOM States continue to have several currencies with different exchange rates – few fixed and the majority floating. Similarly, no significant progress appears to have been made in the area of macroeconomic convergence. This is due to the absence of appropriate executive machinery to compel compliance

with prescriptions. For even though the Revised Treaty of Chaguaramas which has been ratified by most Member States and enacted into law by relevant

legislation expressly provides for the employment of measures to secure macro-economic convergence, the language of commitment is elaborated in treaty terms requiring more specificity to make those enactments operable in the domestic law of the states concerned. Consequently, there is need for the enactment of much more relevant legislation to effect the measures identified in the Revised Treaty of Chaguaramas.

25. Chapter Four of the Revised Treaty of Chaguaramas which addresses sectoral policies of the Community and in particular the establishment of internationally competitive industrial and agricultural sectors imposes on Community organs and Member States a wide range of responsibilities which axiomatically assume the availability of relevant institutions and management capabilities for their accomplishment. In terms of regional industrial development, the ambitious goal of the Community is “market-led, internationally competitive and sustainable production of goods and services for the promotion of the Region’s economic and social development” Article 51(1). Similarly, in the area of agricultural policy the most ambitious goal of the Community is “the fundamental transformation of the agricultural sector

towards market-oriented, internationally competitive and environmentally sound production of agricultural products” Article 56(1)(a). The enormity of this goal may be evaluated against an historical background of centuries of inefficient agricultural production, aided by prohibitively high subsidies and immunized from international competition by formidable protective barriers. Similarly, the goal set for industrial production has to be evaluated against a background of low indigenous capital formation, low labour productivity, virtually non-existent research and development, poor export market development, inadequate technology transfers and the relatively high cost of capital. These are some of the harsh realities on the ground which inordinately magnify the challenge confronting competent decision-makers and restore a measure of moderation and sobriety to vaunting expectations for the establishment of the CSME in the shortest possible time.

26. In terms of employing cross-border natural and human resources, capital technology and management capabilities to accelerate the achievement of the CSME , it is important to bear in mind, especially where initiatives in the area of production integration are being contemplated, the geographical spread of the Caribbean Community and the dearth of regional initiatives in air and maritime transport. The foregoing notwithstanding many provisions on sectoral development have identified various areas in which Member States, the Community or its organs should direct their meagre resources. For example, the Community in collaboration with competent national regional and international

organizations is required to promote development, management and conservation of fisheries resources (Article 60) forestry resources (Article 61) as well as the “development of effective agricultural marketing systems in order to respond to, influence general market demand for agricultural products of the Member States” (Article 59). With a view to providing common support for regional industrial and agricultural policies, the Council for Trade and Economic Development (COTED) is required to promote and develop human resources (Article 63), research and development (Article 64) environmental protection (Article 65) intellectual property rights (Article 66) as well as standards and technical regulations (Article 67).

27. The Council for Finance and Planning (COFAP) in collaboration with COTED is mandated to establish sound macro-economic policies, a harmonized system of investment-incentives and appropriate financial arrangements to promote a sound macro-economic environment including stable industrial relations, fiscal discipline, favourable balance of payments regimes and stable currencies (Article 68) and (Article 70). COFAP is also required to adopt proposals to establish financial infrastructure supportive of investments in the Community, including assistance to Member States in establishing capital markets, financial institutions and appropriate financial instruments to facilitate capital investments on a sustainable basis (Article 71).

28. Chapter Five of the Revised Treaty of Chaguaramas addresses Trade Policy which focuses on the removal of obstacles to the intra-regional trade in goods qualifying for Community area treatment, the establishment of a common external policy to treat with trade of third countries. Subsidies and dumping also assume considerable significance in this Chapter given the disposition of advanced economies to subsidize agricultural products competing with regional agricultural production and first world entrepreneurs to engage in indiscriminate dumping in developing countries. Chapter Six of the Revised Treaty of Chaguaramas corrects an important omission in the original Treaty Establishing the Caribbean Community, Chaguaramas, 4 July 1973, by addressing transport policy, both air and maritime, which is critical for intra-regional trade in a Community which is separated by the Caribbean Sea stretching from Belize in Central America to Suriname in South America. Chapter Seven deals with disadvantaged countries, regions and sectors and addresses the important principle of special and differential treatment. Chapter Eight addresses the important issue of competition policy in an international economy dominated by globalization and liberalization while Chapter Nine addresses disputes settlement in which the Caribbean Court of Justice is accorded a central place.

29. Even the most casual examination of the mandate given Member States, the Community and its organs operates to confirm the intensification of effort and significant augmentation of resources, both human and financial, required by these entities to accomplish the tasks expected of them. Much of this effort

is expected to be made by the Community and its professional staff, despite the exiguousness of relevant capabilities in Member States and legion demands on their national resources. To date, competent decision-makers of CARICOM have not been able to achieve consensus on the recommendation of the West Indian Commission to provide the Community with its own resources or an independent source of funding. At present, the Secretariat's budget is a miserly **US \$10,000,000**, four million of which consists of grant aid. Inadequate funding impairs the ability of the Community to discharge its various responsibilities which tend to be enlarged with every meeting of Community organs. This deficit in financial resources is also likely to impair, irretrievably, the ability of the Community's manufacturers and producers to compete on equal terms with international entrepreneurs benefiting from unauthorized subsidies and known to engage indiscriminately in dumping activities. Monitoring and enforcing relevant legislation, both national and international, against dumping and subsidies to detect incidents of non-compliance and to apply appropriate sanctions in this context require human and material resources well beyond the capacity of the Community as resourced at present.

30. This thumb sketch of measures identified and remaining largely dormant in order to complete the operationalising of the CSME omitted to address some institutional arrangements to be put in place as a matter of urgency. These include regional machinery for the administration and protection of intellectual property rights, an effective regional fisheries mechanism for the management,

exploitation and conservation of the living resources of national exclusive economic zones on an equitable basis; a regional capital market, enhancement of the capabilities of the CARICOM Regional Organization for Standards and Quality (CROSQ); a regional central bank; and, most importantly, devising and putting in place executive machinery of the Community in order to expedite relevant determinations of Community organs. Finally, an examination of the built-in agenda set out in Article 239 is an indication of the miscellany of Protocols remaining to be drafted to assist the completion of the legal infrastructure of the CSME. These relate to electronic commerce; government procurement; treatment of goods produced in free zones and similar jurisdictions; free circulation of goods in the CSME and rights contingent on establishment, provision of services and movement of capital in the Community.

III THE ROLE OF THE CCJ IN THE CSME

31. Given the troubling implementation deficit in the CSME, the dualistic jurisdiction of the significant majority of CARICOM States, coupled with their heavy reliance on foreign direct investment for capital works, it is not difficult to appreciate the seminal role of the CCJ in the economic development and sustainability of the CSME. In this context, it is important to bear in mind that apart from ensuring that Member States of the Community discharge their obligations assumed under the Revised Treaty of Chaguaramas, the CCJ is responsible for ensuring uniformity, transparency, certainty and consistency in the

applicable norms governing the operation of the CSME. Consequently, the Articles of the Revised Treaty of Chaguaramas addressing its original jurisdiction are geared, by ineluctable inference, towards the achievement of this objective.

32. Consistently with the immediately foregoing, Article 211 confers on the CCJ compulsory and exclusive jurisdiction to hear and determine disputes concerning the interpretation and application of the Revised Treaty of Chaguaramas. Consequently, there is very little likelihood of other judicial institutions, national or international, exercising a jurisdiction concurrent with that of the CCJ leading to conflicting interpretations of the Revised Treaty of Chaguaramas. Equally important are the provisions of Article 216 by virtue of which the Member States of CARICOM subject themselves to the jurisdiction of the CCJ, thereby facilitating actions by parties aggrieved for breaches of provisions of the Revised Treaty of Chaguaramas. Consider in this context the actions brought by Trinidad Cement Ltd. (TCL) against the Community and the State of the Republic of Guyana and the obligation of States Parties to comply with the judgments of the CCJ (Article 215).

33. Consistently with the purpose of securing uniformity, certainty and predictability in the applicable norms governing the CSME, Article 214 of the

Revised Treaty of Chaguaramas provides that “*where a national court or tribunal of a Member State is seised of an issue whose resolution involves a question concerning the interpretation or application of this Treaty, the court or tribunal concerned shall, if it considers that a decision on the question is necessary to enable it to deliver judgment, refer the question to the Court for determination before delivering judgment.*” The compelling inference to be

drawn from this provision is that the national court or tribunal will act on the determination of the CCJ.

34. To make assurance doubly sure, the competent decision-makers specified that the CCJ in exercising its original jurisdiction shall employ applicable rules of international law except where the parties concerned agreed to the employment of appropriate equitable principles, ex aequo et bono. In this context, it is important to note that the equitable principles within the contemplation of this article are the same as those referred to in Article 38(2) of the Statute of the International Court of Justice (ICJ) and may be different from those equitable principles encapsulated in the general principles of law referred to in Article 38 (1)(c) of the Statute.

35. Finally, Article 221 of the Revised Treaty of Chaguaramas stipulates that judgments of the CCJ “*shall constitute legally binding precedents for parties in proceedings before the Court unless such judgments have been revised ...*”. The provisions of this Article are qualitatively different from the provisions of Article

59 of the Statute of the ICJ which provide that judgments of the CCJ shall be legally binding only for the parties to a dispute and in respect of the issue to be determined. Consequently, unlike the provisions of Article 221 of the Revised Treaty of Chaguaramas, Article 59 does not create law for third states and in respect of similar issues before the ICJ. By introducing the notion of precedent into disputes settlement among the Member States of CARICOM, competent decision-makers, in the search for consistency and certainty in the relevant norms, have indulged a considerable amount of innovation in law-making among themselves thereby constituting what is likely to be a new species of regional international law in the spirit of community law obtaining in the European Union. Only the future will confirm if those essays in legal engineering will bear fruit. What is clear, however, is that the role envisaged for the CCJ in the development of the CSME is perceived to be critical for the success of this regional economic integration initiative in the Caribbean.

