Introduction

In recent years the issue of the slow pace of decision implementation has come to the fore. After two decades of creativity and innovation reflected in the creation of a wide range of regional institutions, the integration process is perceived to be coming to a standstill. A typical statement at the popular level is “CARICOM, CARI-GONE”. At the diplomatic level, another way of expressing disenchantment is the statement “decision implementation is the Achilles heel of the integration movement”. No project has been more lamented than the CSME, whose original date of decision was 1989. ¹ In more recent times, the fishing dispute between Barbados and Trinidad and Tobago, and the maritime boundary dispute between Guyana and Suriname have questioned the existence of processes of dispute settlement in the Community as well as enforcement generally.

Enforcement Authority of Key CARICOM Organs, Institutions

The Revised CARICOM Treaty² provides for the establishment of a range of organs and institutions, among them being the Community Council, the Council for Finance and Planning (COFAP), the Council for Trade and Economic Development (COTED), the Council for Foreign

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and Community Relations (COFCOR) and the Council for Human and Social Development (COHSOD). The scope of their mandates differs in terms of capacity for enforcement. A brief review will reveal some of the key features of their mandates.

The Community Council is empowered to consider allegations of breaches of Treaty obligations. In its collective consideration of such allegations, the Council may issue directives\textsuperscript{3} to organs of the Community and to the Secretariat. It is not empowered to issue directives to Member States. In its responsibility for the orderly development of the Community, it approves the Annual Work Programme and budget of the Secretariat, coordinates proposals from other Councils and may request those Councils to develop programmes to further the objectives of the Community. The Community Council has a primary role in the strategic orientation of Community programmes as described in Article 13 of the Revised Treaty.

COFAP, under Article 43, has a principal role in disciplining the application of balance-of-payments safeguards by Member States. This role is important because it controls the extent to which the safeguard mechanism can be used as a diplomatic tool and a means of pressure to settle differences with other Member States other than those genuinely arising out of economic hardships. COFAP must be notified within three (3) working days of the adopted or intended restrictive State measures. To this effect the State must immediately consult with the competent Community organ (COFAP and COTED) if and when requested.

\textsuperscript{3} The term "directives" is used after the pattern in the European Union to mean decisions binding in every respect and directly applicable to Member States.
COFAP must, under Article 43, seek to ensure that restrictions for balance-of-payment purposes:

(a) do not discriminate among Member States or against Member States in favour of third States;

(b) at all times seek to minimize damage to commercial, economic or financial interests of any other Member State;

(c) do not exceed those necessary to deal with the serious balance-of-payments and external financial difficulties or threat thereof;

(d) are temporary but, in any event, not longer than a period of eighteen (18) months, and are phased out progressively as the situation improves.

COFAP has a critical role to play in the fiscal management of regional economies. It seeks to promote economic policy convergence but has no power to enforce decisions. COFAP recommends fiscal disciplinary measures and may recommend measures and set criteria to facilitate free convertibility of currency. Although it operates within the Treaty’s long-term objective of monetary union, it has set itself a graduated approach to this objective. Indeed, it has taken a position that monetary union is a long-term objective. COFAP does not appear to possess any power to enforce decisions.

COTED has a central role in managing the trade regime of CARICOM. One of the primary areas of concern is the removal of restrictions to trade in goods and services. Under Article 34, COTED appears to have unique powers of enforcement for the over-arching trade
liberalization programme. The Programme builds obligations of self-restraint into governmental policy and provides for a lock-in of State policy and practice in relation to specific restrictions. But its powers go further, because COTED can require the removal of administrative practices, and the removal of restrictions to the movement of management/technical and supervisory staff. COTED can also require Member States to ensure that nationals of other Member States have access to land, buildings and property to give effect to their rights.

Under Article 47, COTED has the power to enforce a special discipline in the event a State claims serious hardships or the threat of serious injury arising in trade. COTED can enforce a two-step approach. This includes:

(i) Notification of a State’s intention to impose restrictions and the nature of the restrictions (Article 47(2)(a)); alternatively, notification immediately after application of the restrictions.

(ii) Establishment by COTED of a programme for the alleviation of the hardships experienced.

It is COTED (and COFAP, where necessary) that makes a determination of the appropriateness and adequacy of the measures, and the period of continuation. Under Article 48 (5)(a) and (b), COTED can review the extent to which State action is in accord with the principle of proportionality, and whether State actions were confined to measures necessary to resolve difficulties in affected sectors. The ‘economic’ hardship envisaged must be related to a particular sector.
COTED has the power to ensure that a Member State avoids “unreasonable exercise” of its right to mitigate economic hardships and that any damage to the commercial interest of any other Member State is minimized. COTED can apply the test of whether the action would impair the development of the CSME.

Under its mandate, a bilateral dispute is discharged by a multilateral procedure. Under Article 48(7), a State may not take the type of action that deliberately selects and discriminates against another Member State. Also, the State is obliged to “progressively relax” its restrictions and be subject to a programme of monitoring. Restrictions may be maintained only to the extent they are justified. And a case must be made to the satisfaction of COTED and COFAP. The bodies may recommend alternative arrangements to the same end. Thus, COTED/COFAP possess the right of review as a multilateral body.

It appears, however, that State justification for introducing restrictions as part of the strategy to respond to a bilateral problem is disciplined by a procedure that takes it out of the purely arbitrary and political. A Member State must seek a waiver of obligation and the waiver must be sought prior to the establishment of any programme. The request for a waiver cannot be general; it must be specific as to the obligation to be waived, specific as to the circumstances justifying the request for the grant of a waiver, and be indicative of the period required.

If the Council is satisfied that the request is properly made, it may grant a waiver for a period not exceeding five (5) years and subject to such terms and conditions as the Council may determine. A State enjoying a waiver of its obligations cannot at the same time insist on those rights for its nationals in another State.
The Council for Foreign and Community Relations (COFCOR) is responsible generally for determining the relations between the Community and international organizations and Third States.

COFCOR’s mandate includes the following:

- promotion of the development of friendly and mutually beneficial relations among Member States;

- establishment of measures to coordinate foreign policies of Member States as well as their positions in inter-governmental organizations;

- collaboration with COTED in promoting and developing coordinated policies for the enhancement of external economic and trade relations of the Community;

- coordination of Community policy on international issues with the policies of the States in the wider Caribbean.

The Revised Treaty is silent on any role for COFCOR in intrastate controversies. This quite likely has its roots in the general practice in international law, up to quite recently, to provide for the traditional exception of matters “essentially within the jurisdiction of States”. In recent times, of course, there is much advocacy of a qualification of that principle in respect of internal situations, which involve the gross abuse of human rights or violations of “the right to democracy”.
The question that legitimately arises, then, is whether there is an inherent or implied right in COFCOR’s authority to deal with such matters and to raise with the Conference of Heads of Government, or the Bureau of Conference, any urgent issue likely to disturb the peace and security of the Community or undermine fundamental objectives that have been set for the Community. This is yet to be clarified in terms of law. But the evidence of COFCOR’s Communiqués and its diplomatic demarches in practice show an evolution of its acceptable role. Yet this role seems somewhat underdeveloped. It had been observed that regional diplomacy had been more concerned with global issues which attracted diplomatic prestige than with regional and national interests of the Community itself.

Consider the role of Foreign Ministers in the OAS. Following reform of its Charter in 1985, the Foreign Ministers of Member States, acting as the Consultative Organ, can deal with urgent issues of common interest to Member States. This mechanism is now regarded as the cornerstone of the system for settlement of political issues, not simply between States but within States. The Foreign Ministers can also convene as a Meeting of Consultation to address the request of an aggrieved State on issues of the violation of its sovereignty, independence and territorial integrity. In this other mode, they can decide on measures to put pressure (diplomatic, economic etc.) against the aggressor State.

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4 It may be noted that the Foreign Ministers met as a Standing Committee with an advisory role under the 1973 Treaty of Chaguaramas. In 1998 they noted in their Press Release No.40/1998 that the body was being upgraded under the Revised Treaty from an advisory one to a decision-making one. In 2003 COFCOR approved a strategy emphasizing promotion of democracy, respect for human rights and strengthening of coordination in respect of the foreign policies of Member States. The issues addressed by COFCOR prominently include candidacies for high level posts in international organizations; coordination of meetings with high-level representatives of States with international and regional, political and economic influence (e.g. Japan, USA, Canada); coordination of meetings with heads of international organizations; issues related to peace and development and reform of the UN System. Within the Community increasing attention has been paid in recent years to the internal situation in Haiti and how CARICOM can assist both in political stabilization and in releasing development assistance from donors and international financial institutions. COFCOR appears to have played a relatively active role in respect of Haiti, especially in coordination with the OAS. It has also been playing an increasingly important role in terms of support of electoral monitoring missions in other Member States.
In CARICOM, The Council for Foreign and Community Relations (COFCOR) has been increasingly used (since the late 1990s) as a mechanism for promoting peaceful settlement of intrastate political disputes. This practice, however, is an ad hoc one and so far relates to promotion of electoral democracy through two forms of action: brokering of inter-party political accommodation and electoral observation missions. The function is not reflected in any specific and dedicated Unit in the Directorate of Foreign and Community Relations. COFCOR has been used as the body to promote the brokering of inter-party accommodation and to oversee and support fact-finding missions in cases of political disputes between Government and Opposition Parties, notably in Haiti. It has also mounted electoral observer missions in the case of St. Vincent and the Grenadines (2001), Turks and Caicos Islands and Antigua and Barbuda (2004). Its role is clearly evolving, but at this juncture it does not appear central to peaceful settlement of intrastate disputes.  

COHSOD is responsible for promotion of human and social development including: efficient and affordable health services; organization of educational and training facilities including elementary and advanced vocational training and technical facilities; coordinated policies and programmes to improve the living and working conditions of workers; policies and

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5 In addition to its role in orchestrating the mounting of electoral observer missions, COFCOR, as the main external voice of the Community, has deliberately put in the public domain the Community’s official support for the territorial integrity of Belize and Guyana in disputes with their neighbours, relying on Resolutions expressing ‘unwavering’ or ‘unequivocal’ support to its members in dispute, while appealing for respect of UN principles of non-use of force etc., in the resolution of border-related issues. On the statements of the Foreign Ministers functioning as COFCOR, see the following Press Releases: No.40/1998 on First COFCOR Meeting dated 12-14 May 1998; No.38/1999 on 2nd COFCOR Meeting dated 13-14 May 1999; No.54/2000 on 3rd COFCOR Meeting dated 9 May 2000; No.78/2001 on 4th COFCOR Meeting dated 22 May 2001; No.61/2002 on 5th COFCOR Meeting dated 8 May 2002, Saint Lucia; No.69/2003 on 6th COFCOR Meeting dated 8 May 2003 in St. Vincent and the Grenadines. The pronouncements of the Conference of Heads of Government of the Caribbean Community itself in respect of border disputes appear on pp.113-115 of Re-inventing CARICOM.
programmes to promote participation of youth and women in social, cultural, political and economic activities; promotion of culture and sports in the Community.

The Treaty is silent on how COHSOD should operate to effect its decisions and recommendations, but in practice much weight is given to peer reviews if progress at periodic meetings of officials followed by ministerial deliberations.

In reviewing the roles and mandates of organs and bodies of the Community, we have just considered the mandates of the Ministerial bodies in terms of relevance to compliance and enforcement. This review will not be complete without reference to the Conference of Heads of Government, which is the principal organ of the Community.

Under Article 10(1), the Conference is the highest organ of the Community with the Community Council being the second highest organ. The other bodies whose mandates are described in preceding paragraphs are organs designed to assist the principal organs – Conference and Community Council.

A review of the architecture of the Community for enforcement must examine the role of the Conference of Heads of Government beyond the setting of policy guidelines for the Community. Accordingly, it should be noted that under Article 12 of the Revised Treaty, the Conference determines and provides policy direction for the Community and is the final authority for the conclusion of treaties on behalf of the Community. The Conference can issue policy directives of a general or specific nature to organs and bodies of the Community concerning the achievement of Community objectives. However, under Article 12(8), the Conference is also empowered to “consider and resolve disputes between Member States, notwithstanding specific arrangements for dispute settlement provided in the Treaty”.

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The Bureau of the Conference is empowered to initiate proposals and update consensus and otherwise facilitate decision implementation.

**Role of the Secretary-General's Office**

The Secretary-General’s office operates in a context where the Community is presented as a unitary personality to the world, but as an association of sovereign States to its Member States and stakeholders.\(^6\)

Powers of overall direction of the Community reside in the Conference of Heads of Government, but regional decisions must become law through the operation of national parliamentary incorporation. Community decisions, unlike in the European Union (EU), do not immediately have binding effect at the national level.

The Secretary-General, as the Community’s chief executive officer, has general responsibility as the custodian of the Community to do all in his power to prevent the rupturing of the Community, but has no authority to impose sanctions on governments for non-compliance. He may report to appropriate bodies on the state of implementation of decisions for peer review, and offer technical assistance for decision implementation, but cannot directly call a national body to account.

Recognising the difficulty, the CARICOM Treaty enjoins governments to set up inter-ministerial committees and promote inter-sectoral consultations to advance implementation of decisions. It is urged that governments endow a specific Ministry with responsibility for CARICOM affairs. But, in addition, it locates the Secretary-General at the centre of a system for

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notification of the existence of a dispute and for the provision of his good offices for dispute settlement (Article 191). He must supervise the system to ensure that disputes are settled by recourse to modes prescribed in Article 188. These modes of settlement are: good offices, mediation, consultations, conciliation, arbitration and adjudication.

The Office of the Secretary-General provides six (6) supporting roles:

1) advocacy and suasion in the advancement of decisions
2) monitoring and review
3) technical assistance
4) mobilization of resources from donors
5) facilitation of the constitution of dispute settlement tribunals by drawing up a list of arbitrators to be drawn on in the event of regional disputes
6) alerting of the Community to the existence of a dispute.

Many observers have argued that there is an obvious advantage in regional arrangements being made more robust and explicit on the enforcement dimensions of the executive functions of the Office of the Secretary-General. While this may be so to some extent, it should be noted that Treaty compliance and implementation are broader issues than merely vesting sanctioning authority in an office or even attaching the power to such an office to propose directly binding Community ‘directives’. Treaty compliance has much to do with local understanding of the costs and benefits of courses of action, respect for reciprocity of obligations, prompt introduction of technical and institutional support to strengthen capacity to

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See Report on Restructuring the CARICOM Secretariat, CARICOM Secretariat, Georgetown, Guyana, 2002. The Report was prepared by a team of consultants led by Dr. P. I. Gomes and including Ambassador Leonard Archer of The Bahamas et al. Among other things, the Report advocates strengthened authority for the Secretary-General and the Assistant Secretaries-General (ASGs) through establishment of a Secretariat Executive Council.
comply, perceived reality of the right of retaliation, and agreed notification and reporting requirements to ministerial oversight bodies.

Reviews of the issue of implementation and enforcement\(^8\) have identified a number of contributory factors at national level: weak institutional capacity; limited capacity for legislative drafting at national level; the low priority attached to regional issues in the national agenda; and the need for technical assistance for clarification of costs and benefits, as well as action implementation.

In such a context, implementation capacity may possibly be strengthened through a three-pronged approach, which (i) strengthens the role of the Secretary-General and his ‘cabinet’ of Assistant Secretaries-General (ASGs) to work with governments on implementation issues, and (ii) strengthens the intersessional roles of Ministerial Committees\(^9\) of the various Councils to monitor progress on outstanding action, and (iii) improves the effectiveness of the Bureau and the Quasi-Cabinet System (in which portfolios are assigned to Heads of Government). If action were taken to pursue these approaches as complementary, it could improve the general ambiance and receptivity to the exercise of executive authority by regional institutions as well as the Conference. In respect of (ii), this would however involve endowing intersessional Ministerial Committees (which are modelled on the Troika formula)\(^10\) with

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8. One fundamental study on the causes of non-implementation of decisions was conducted by Caribbean Engineering and Management Consultants Ltd. (CEMCO). The study was completed in May 1994, two years after *Time for Action*, the Report of the Independent West Indian Commission. The Study was undertaken "to determine the Technical Assistance Needs for Implementation of Caribbean Community Decisions". Since then, studies such as the Archer/Gomes Report (2002) on Restructuring the CARICOM Secretariat and the Brewster Report on Implementation of the Single Market – Assessment of the Region’s Support Needs (2003), have highlighted the causes and problems of implementation.

9. In 1999, at the Heads of Government Meeting in Saramacca, Suriname, the Secretariat circulated a Paper for consideration entitled “Strengthening of Regional Institutions”, in which it proposed greater use of intersessional ministerial committees of the various Councils to strengthen provision for action, review and compliance monitoring.

10. Troika is a reference to the three-person composition of bodies such as the Bureau of Heads of Government. In Caribbean practice it provides for the outgoing Chairman, the current Chairman and incoming Chairman to form a follow-up and management body in the period between regular meetings.
competence to take decisions in select areas without prior approval (but subject to post-action review and modifications as necessary).

In its sphere of operation, the Office of the Secretary-General could have a larger role to play if it were endowed with authority to initiate an infringement procedure, involving the right to request a Member State to put its house in order relative to compliance with specific Treaty obligations. The State could be given adequate time to do so and the right to respond and submit observations on such a request. But a subsequent stage could involve the right of the Secretariat to take the issue to the Caribbean Court of Justice (CCJ) following exhaustion of agreed steps. Sanctions and fines could be imposed by an appropriate dispute settlement body or the CCJ rather than the Secretariat. In the interim, however, such a position for the Secretariat in enforcement is yet to be achieved. Observers have also noted that it would be appropriate if the Secretariat’s capacity could be strengthened to offer both services as well as opinions that could pre-empt premature or burdensome litigation.

**Beyond Trade to Sustainable Development**

The Revised CARICOM Treaty introduces the broad concept of sustainable development and sound natural resources management as a regional entitlement. The Treaty establishes a special dimension of regional interest, in terms of ‘regional public goods’ emanating from the effective management and exploitation of marine resources. Underlying this approach is the concept of the Caribbean Sea and its resources as a common heritage of the people.

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Thus, under Article 58, the Community is required to adopt ("shall adopt") measures for the effective management of the EEZ and all areas under the national jurisdictions of Member States, including the soil, air and water resources.

Under Article 60, the Treaty enshrines a Community right and obligation. At the Community level, it requires that the Community be in collaboration with national, regional and international organizations, to promote development, management and conservation of the fisheries resources in and among the Member States on a sustainable basis. The Community is empowered to establish management and resource assessment systems as well as mechanisms to discharge its obligations under Articles 62, 63, 64 of UNCLOS ¹². What are these obligations?

In respect of fishery resources regarded as a regional resource under Article 60 the Community shall collaborate with Member States on:

(a) movement of straddling and highly-migratory fish stocks;
(b) ongoing surveillance of their exclusive economic zone (EEZ);
(c) safeguarding their marine environment from pollutants and hazardous waste

COFCOR is singled out for special mention in this regard. COFCOR has responsibility for promoting the establishment of a regional regime for the effective management, conservation and utilization of the living resources of the EEZs of the Member States. In addition, Member States have undertaken under Article 41 to cooperate to secure recognition of

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the Caribbean Sea as a Special Area. In February 2000, the UN General Assembly passed a Resolution 54/225 recognising the Caribbean Sea as a Special Area\textsuperscript{13} in the context of Sustainable Development, encouraging the development of an integrated management approach to the Caribbean Sea.

The Revised Treaty does not specifically mention the delimitation of maritime boundaries. In practice, however, the Conference of Heads of Government gave consideration in 2000 to mediating an interim arrangement between Guyana and Suriname in respect of exploration in the area of overlap of their declared EEZ. The Conference recognized that areas of overlap are likely to exist wherever States have contiguous borders, thereby creating a joint interest in the area of overlap.\textsuperscript{14}

**CARICOM and Modes of Dispute Settlement**

In terms of specific dispute settlement arrangements, the Treaty includes extended provisions as set out in Articles 187-206. They cover allegations of actual or proposed measures inconsistent with Community objectives. These measures may cause (or may be likely to inflict) injury or serious prejudice, or they may result in the nullification or impairment of benefits expected. The dispute settlement mechanism may be activated also where the purpose, or the object of the Treaty, is being frustrated or prejudiced. Moreover, the dispute settlement mechanism may be engaged in cases of allegation that the action of a Community body or organ is *ultra vires*.

\textsuperscript{13} In 2000, the 21\textsuperscript{st} Heads of Government Conference adopted a decision in respect of the issue of the area of overlap in the Exclusive Economic Zones (EEZs) of Guyana and Suriname, setting up a mechanism led by Prime Minister Patterson to help broker a resolution between Guyana and Suriname. This Resolution is recorded on pp.115/116 of *Reinventing CARICOM*.

\textsuperscript{14} The full text of General Assembly Resolution 54/225 on the Caribbean Sea calls for the support of the international community in terms of technical assistance to achieve its objectives.
The Revised CARICOM Treaty devotes Chapter 9 to the issue of Disputes Settlement. Article 188, as previously noted recognises international experience and identifies six (6) modes of settlement as legitimate, namely: good offices, mediation, consultations, conciliation, arbitration and adjudication. The parties may have recourse to good offices, mediation or conciliation in order to arrive at an interim arrangement pending a settlement by arbitration or adjudication. It is recognised that dispute settlement is facilitated by two (2) steps:

- the expeditious exchange of views to agree on a mode of settlement, and
- a mutually satisfactory method of implementation of a settlement.

The regional mechanism, which takes the issue beyond the parties, provides in effect for the Secretary-General to hold up to the parties a regional frame of reference for the settlement of their differences. Under Article 190, the following steps are set out:

- notification of the Secretary-General of the existence, nature and mode of settlement agreed upon or initiated;

- where a settlement is reached, notification of the Secretary-General of the settlement reached and the mode of settlement used in arriving at the settlement;

- notification of the Secretary-General, as soon as practicable, who must notify Member States of the information received.

The CARICOM system requires a timeframe of up to 45 days from the request to settle a dispute before a State can resort to a mode of settlement such as arbitration and adjudication.
The Secretary-General must be brought into the picture to properly activate the consultation mode. He must be notified of the request for bilateral consultations by an aggrieved party, which must be in writing and which must state the reasons for the proposed consultations, identify the measure at issue and the legal basis of the aggrieved party’s complaint.

In the case of perishable goods, the timeframe for consultation is three (3) days from the receipt of the request. Where the dispute fails to be settled in seven (7) days of the receipt of the request for consultation, the State may resort to arbitration and adjudication (presumably reference to the intra-regional arbitration tribunal envisaged in Article 205).

The Treaty provides that any Member State with a legitimate interest in a dispute between two other States may notify the Community States and the Secretary-General, within ten (10) days after the circulation of the request for consultations, of its desire to be joined in the consultations.

Under Article 205 of the Revised Treaty, the Secretary-General is required to establish and maintain a list of Arbitrators comprising persons chosen strictly on the basis of impartiality, reliability and sound judgment. These persons must have expertise in law, international trade law, or other matters covered by the Treaty, or the settlement of disputes arising under international trade agreements.

In the area of Competition Policy, the Revised Treaty provides for the establishment of a specific Commission to manage interstate controversies (Article 172) among Member States, in particular those that allegedly involve anti-competitive cross-border difficulties. The Commission possesses authority to investigate and arbitrate cross-border disputes (Article 173) and promote
harmonized competition laws. It appears to be the only body vested with sanctioning authority in the Community structures. While enforcement appears to be essentially voluntary in other areas, in this case the Conciliation Commission can order payment in compensation of injury, and impose fines for breaches of the rules of competition.

Articles 195-197 treat with the required establishment of a list of arbitrators from which a panel could be drawn to advise on measures to facilitate amicable settlement.

On the issue of trade liberalization, the role of the Office of the Secretary-General seems to have the common features of settlement steps and timeframes with that of a Commission under the 1994 Free Trade Agreement between the Group of Three, that is: Mexico, Venezuela and Colombia. Under the Group of Three Treaty, as in the Revised Treaty, a number of steps are set out for the solution of disputes and timeframes established to advance resolution of a dispute. The Group of Three Treaty appears, more explicitly in its listing of the modes of settlement, to require consultation and direct negotiation as the first step.

It is envisaged that parties would first exhaust the step of direct negotiation/consultation. Forty-five (45) days after the engagement of such a step, if no settlement is reached, then the parties can move to the second stage of mediation or good offices. In the event that this stage is unsuccessful, by specific request the matter can engage the arbitral mode, in which case a panel of arbitrators would be drawn from an agreed list to form a Commission. Such a Commission must be guided by timeframes set to expedite the search for solutions. The Commission must meet within ten (10) days after it has been established, and within ninety (90) days of its establishment it must give a preliminary decision regarding the facts and its own

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determination. It might be noted that arbitral processes in the Region can now include the possibility of going beyond strict law to take into account the procedure of “ex aequo et bono”, that is, considerations of equity and justice.

The provision for arbitration in the Revised CARICOM Treaty is a carryover of provisions of Article 12 of the 1973 Treaty of Chaguaramas in respect of ad hoc tribunals. Each Member State was required to nominate two persons to the list. Each Member party to a dispute was entitled to appoint one arbitrator from the List of Arbitrators, failing which the Secretary-General is empowered to appoint one arbitrator on that State’s behalf in ten (10) days. There is no available record showing that the list, then or now, was drawn up, or that the mechanism was ever used.

It would be recalled that under structural adjustment programmes in the 1980s, certain countries took action to restrict imports from other Members – generating sharp concern and criticisms as well as severe economic hardships. The CARICOM machinery dealt with these tensions through the normal machinery of meetings of the Ministers of Trade (i.e. the Council of Ministers under the Treaty of Chaguaramas). Also, trade disputes were largely managed outside provisions for arbitration (the intra-regional mechanism envisaged in the Treaty). Anecdotal evidence suggests that rather than pursue the strict provisions of the CARICOM Treaty, officials would call each other in the event of difficulties to find understanding and

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16 Over the years trade disputes in CARICOM have been highlighted by newspaper reporters and Sunday columnists. In recent times such newspaper items include articles and letters in Stabroek News, e.g: “Trade with Trinidad lopsided”, Stabroek News, 3 February 2004; “CARICOM Member States could do much more to help the suffering rice industry”, letter in Stabroek News, 24 October 2003, by Beni Sankar. Also Guyana Chronicle, e.g. p.8, "Fish, rice, gas disputes for CARICOM Summit". In a series of articles appearing in Sunday Stabroek, Prof. Clive Thomas refers to the potential of recent disputes in the fisheries/EEZ area and extends the discussion to the proposed Caribbean Court of Justice. See Articles by C. Thomas alluding to disputes in CARICOM: “The Maritime Boundary Disputes : Guyana Enters the Fray” in Sunday Stabroek, 2 May 2004, p.13; “CARICOM’s Nemesis : Hostile Action and Angry Exchanges” in Sunday Stabroek, 25 April 2004; “At Odds with Itself : The Scramble for Territory in CARICOM”, Sunday Stabroek, 18 April 2004. See also C. Thomas on the CCJ: “CARICOM Squaring the Circle : Reconciling Sovereign Equality, the Unanimity Rule and Creating a Single Economic Space”, Sunday Stabroek, 6 May 2004.
accommodations based on a perception of the greater Community interest. In addition to trade issues, the operations of the Multilateral Clearing Facility\textsuperscript{17} were largely dealt with in this manner.

**The Maritime Areas and Disputes Settlement**

Unlike the original Treaty of Chaguaramas (1973), the Revised Treaty especially provides for a common approach to the Maritime Zone, particularly the EEZs of Member States.

Taking account of the Law of the Sea Convention which entered into force in 1994, CARICOM has a multilateral framework as reference point for the treatment of difficult issues in the Caribbean Sea, particularly, rights in the EEZ. For instance, one of the principles of relevance derives from Article 12 (3) of the Convention, which declares that:

"Rocks which cannot sustain human habitation or economic life of their own shall have no exclusive economic zone or continental shelf."

This principle is especially critical for the OECS membership, i.e. eight (8) members of CARICOM in their engagement with Venezuela over the uninhabited ‘rock’ known as Aves (Bird) Island. If it is treated as a point from which the baseline of Venezuela’s EEZ is drawn, its effect would be to severely distort the EEZ of the OECS States.

The CARICOM Treaty especially refers to Articles 62, 63 and 64, as a source of principles to be used in the treatment of issues and disputes among Member States in the maritime zone. In so doing, CARICOM recognizes the determining role of a coastal State in setting the “allowable catch of living resources” and in ensuring that proper conservation and

\textsuperscript{17} The Heads of Government agreed in 1982 to set up a CARICOM Multilateral Clearing Facility. The CMCF was an intra-regional foreign exchange payments settlement mechanism. Barbados and Trinidad and Tobago played key roles in the maintenance of the facility until it collapsed under the weight of delayed payments by deficit countries.
management measures for the maintenance of the living resources in the EEZ is not endangered by over-exploitation. But the coastal State has an obligation (UNCLOS Art.62) to promote the objective of “optimum utilization” of the living resources as well, and where it does not possess capacity to harvest the “entire allowable catch”, it must arrange, through agreements, to “give other States access to the surplus of the allowable catch”. These arrangements must recognize the rights of land-locked States (Art.69 of the Law of the Sea Convention) to participate on an equitable basis, in the exploitation of an appropriate part of the surplus; and the right of geographically disadvantaged States (e.g., States bordering enclosed, semi-enclosed seas, Art.70), which have no EEZ of their own.

It places an obligation on coastal States and other States whose nationals fish for highly migratory species to ensure optimum utilization and conservation.

This Article urges States to deal directly, or through appropriate sub-regional or regional organizations, in order to agree on the measures necessary to coordinate and ensure the conservation and development of such resources (Art.63).

The right to the use of part of the surplus is recognized for:

(i) other developing States in the sub-region or region;

(ii) States whose nationals have habitually fished in the Zone (to minimize economic dislocation).
The emergence of a Caribbean Fisheries Mechanism (the CRFM Agreement was signed in February 2002 and entered into force in March 2003) is evidence of an agreed need between CARICOM Member States to discipline the approach to marine and aquatic resources through regional institution-building\textsuperscript{18}. The mechanism deals with management of biodiversity; management of fishing capacity and fishing methods; and responsible fisheries exploitation. It is planned to develop a regional fisheries policy including a maritime authority to deal, among other things, with research and issuing of licences; and the determination of “allowable yearly sustainable catch”.

**Beyond Fisheries Management**

In treating the maritime dimension of intra-Community relations, it is clear that as a treaty issue it derives from the broader Community concern with sustainable development, and the role that fishery resource management can play in promoting improved livelihoods for the population of Member States. This concern has lent focus to an approach, which called upon Member States to subscribe to a regional discipline, based on UNCLOS, in respect of exploitation and management of the living resources within the jurisdiction of Member States, especially in the Exclusive Economic Zone (EEZ).

It remains to be emphasized that because of both the peculiar features of Caribbean seascape and the perceived potential in terms of non-living resources, i.e. oil, natural gas, minerals, the area bordered by Member States (jointly with other Caribbean Basin States) makes it a fertile source for the generation of interstate disputes. CARICOM countries, both

\textsuperscript{18} **CRFM**: The mechanism was signed in February 2002 and launched on 26 March 2003. The mechanism specifies the following objectives in Article 4:

(1) The efficient management and sustainable development of marine and other aquatic resources within the jurisdictions of Member States.

(2) The promotion and establishment of cooperative arrangements among interested States for the efficient management of shared, straddling or highly migratory marine and other aquatic resources.

(3) The provision of technical advisory and consultative services to fisheries divisions of Member States in the development, management and conservation of their marine and aquatic resources.
those considered highly services-oriented (tourism) and those more resource-based (oil) are heavily dependent on their coastal and marine areas for much of their livelihood. Oil and natural gas are increasingly marine-based. And it must be noted that because Member States are among the two (2) dozen States bordering the Caribbean Sea, which is a semi-enclosed sea, this in a significant way ensures that the maximum entitlement under the Law of the Sea\textsuperscript{19} Convention (1982) of a 200-mile exclusive economic zone will result in many areas of overlap.

In the first place, many clusters of islands are legally perceived as archipelago States, which leads to certain presumptions about the outermost island as the baseline for delimitation of EEZ for such a State. Secondly, the EEZ would offer a marine space several times the size of their limited coastline and territorial space in the case of small islands. Thirdly, oil and gas provoke competitive interests in the Zone, whether the interests are common or divergent regarding exploitation.

Despite the adoption of the General Assembly Resolution 54/225 in 1999, giving encouragement to the development of an integrated approach to the Caribbean Sea as a Special Area, little is provided for in terms of a rational approach to its management except in environment-related issues.\textsuperscript{20} The urgent resolution of issues of maritime boundaries and areas

\textsuperscript{19} Carl W. Dundas, former Legal Counsel of the CARICOM Secretariat, was one of the first persons to highlight the potential problem of interlocking EEZ in the Caribbean Sea, especially among CARICOM countries, in a Paper prepared in 1984. See also Carl Dundas, \textit{“Caribbean Community States and Boundary Delimitation"}, which is reprinted in \textit{The Integrationist}, Vol.1, No.3, July 2002. It might be noted that in respect of Bird Island, Prime Minister Eric Williams had raised concern in his speeches about the aspirations of Venezuela in the Caribbean Sea. However, Bird Island appears to have been treated for the first time collectively by the Heads of Government at an emergency meeting in The Bahamas in 2000 because of the implications for the OECS and in view of increasing Venezuelan activity. COFCOR agreed at its 6\textsuperscript{th} COFCOR Meeting held on 8-9 May 2003 held in St. Vincent and the Grenadines that it should be an item on their Agenda.

\textsuperscript{20} The Protocol of Port-of-Spain was brokered by Prime Minister Eric Williams of Trinidad and Tobago in 1970 to freeze claim and counterclaim between he parties for a twelve (12) year period but was not renewed in 1982 by Venezuela. In the same year, the Prime Minister brokered an Agreement between Guyana and Suriname involving the establishment of a Border Commission to help resolve issues related to the border dispute.
of overlap are not to date included in the concept of the Caribbean Sea as a Special Area. The concept has a strong environmental thrust and is not yet fully defined even in that area.

Thus, disputatious issues of delimitation have been the subject of select bilateral agreements or treaties (e.g. Trinidad and Tobago with its neighbour Venezuela in 1990 and 2004; Barbados recently with Guyana, 2004) either in an approach of preventive diplomacy or following the emergence of conflicting interests. It so happens that Trinidad and Tobago's efforts to avoid disputes in the Gulf of Paria and the Caribbean Sea with its neighbour Venezuela, because of the nature of the Delimitation Treaty of 1990, has itself generated issues of concern for its CARICOM partners – Barbados and Guyana. The Treaty also creates an issue in which OECS countries have a keen interest, in that it treats Aves (Bird) Island as a piece of territory rather than as an uninhabited ‘rock’, which is not entitled to serve as the baseline for an EEZ under the Law of the Sea Convention.

**CARICOM and Land-Based Boundary Disputes**

CARICOM has had a longstanding interest in land-based boundary disputes. At the Ocho Rios Conference of Heads of Government in 1982, CARICOM was formally presented with the implications for its territorial space if the claims to Guyana and Belize’s territory were to be successful. President Burnham pointed out that CARICOM stood to lose about 67 per cent of its territorial space.
The Conference accordingly passed a Resolution:

- recalling its “concern for the sanctity of treaties and for defined and demarcated boundaries” –

- called upon Venezuela “to eschew the use of force as a means of settling the controversy and to desist from further action or threats likely to affect the economic development of Guyana”

- urged the parties “to continue their pursuit of peaceful settlement of the controversy in accordance with the terms of the Geneva Agreement of 1966 so as to arrive at a final decision as promptly as possible”.

The Guyana/Venezuela issue appears to have been first raised in 1969 at the Fifth Conference of Heads of Government in Port-of-Spain. The Belize issue was first raised in 1967 at the Fourth Conference of Heads of Government (Barbados). In 1973 the Eighth Conference of Heads of Government adopted a Resolution on Mutual Assistance against External Aggression, recognizing territorial integrity as an essential prerequisite of the achievement of economic objectives of the Community. The Committee of Foreign Ministers was charged with designing a Scheme of Mutual Assistance (1973) for use on the diplomatic front.

Over the years, in the case of the Guyana/Venezuela controversy, arising out of Venezuela’s rejection of the Arbitral Award of 1899, CARICOM continued to support diplomatically the freezing of claim and counterclaim through the twelve-year Protocol of Port-of-Spain (1970-82) or its extension. The Prime Minister of Trinidad and Tobago had used his good
offices to help in reaching this accommodation. The Protocol was not renewed after 1982, but CARICOM at the highest level has continued to support a peaceful resolution of the controversy through UN-appointed good officers.

Unlike the Organisation of African Unity (OAU), which made the inviolability of inherited borders a key principle of interstate relations, the CARICOM Treaty has no specific reference to the sanctity of inherited international borders. Nor does it provide for a formal and specific multilateral standing mechanism designed to treat such border controversies. Yet time after time the Conference of Heads of Government has passed resolutions regarding respect for the sovereignty and territorial integrity of Guyana, in its controversy with Venezuela, and Belize, in its dispute with Guatemala. These Resolutions invoked United Nations principles, including the non-use of force to settle disputes. 21

CARICOM Heads of Government have also welcomed the UN mechanism of good offices under which former Secretary-General of CARICOM, Sir Alister McIntyre, and former Barbados Ambassador, Oliver Jackman, have served as Good Officers in a low profile role in the Guyana / Venezuela controversy. It might be noted that the Conference receives reports on

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21 In addition to Heads of Government Resolutions on this issue appearing on pp.113/115 of Reinventing CARICOM, CARICOM has used diplomatic pressure through the Foreign Ministers’ Meetings. The following may be noted. COFCOR Releases on Belize: 1998 “unwavering support” and support for resolution of the dispute on the basis of principles of good neighbourliness, mutual respect for sovereignty “and the acceptance of Belize’s constitutionally established and internationally recognized borders”; 1999 – reference to three principles and reaffirmation of “full support” for territorial integrity and sovereignty; 2001: notes the role of the OAS Secretary-General as Witness of Honour to talks between the parties and reaffirms “unequivocal support” of Belize; 2002 - reaffirmation of support for the territorial integrity of Belize. In respect of Guyana, COFCOR took the following decisions: 2001 – expressed concern over continuous attempts by Venezuela to deter foreign investment in the Essequibo; also expressed concern over the reported Venezuelan intention to execute an exploration programme for hydrocarbons on an offshore area that comprises part of Guyana’s maritime zone, noting that any such action would constitute a violation of Guyana’s sovereignty and territorial integrity and would be a breach of accepted norms of international law; reiterated their “unswerving support”; 2002 – recognition of Guyana’s sovereign right to develop all its territory; 2003 – noted “renewed impetus” given to the UN Good Officer role.
developments in territorial disputes at its regular sessions because of their potential impact on the integrity and stability of both governments as well as the Community. 22

Suriname’s accession to CARICOM does not appear to have included any specific protocol, instrument or understanding about the laying to rest of its claim against another Member State. For many years, it used to be thought that a CARICOM forum could not treat any such concern as being within its purview, since issues related to a border dispute were treated as essentially bilateral matters. The silence of its accession arrangement may appear to an observer to have provided space for Suriname to indirectly raise the dispute at the level of the Secretariat through its action to contest the display of maps used by the Secretariat in its official publications showing Guyana, the host country of the Headquarters of the Community, as was the custom from the days of CARIFTA.

CARICOM at the highest level, has not until recently collectively entered this dispute or passed a resolution on the subject. Indeed Guyana and Suriname, until 2000, have dealt with their dispute over the then border and ownership of the New River Triangle at bilateral level through Memoranda of Understanding, a draft Treaty (that was never finalised) and a Joint Standing Border Commission. The incident of Suriname’s expulsion in 2000 of the CGX exploration rig from the area of overlap of the EEZ of the two countries gave impetus to the referral of this dispute to the Conference of Heads of Government Meeting in Canouan, St. Vincent and the Grenadines. 23 The Conference underlined the importance of arriving at a bilateral accommodation in the area of overlap of the declared EEZ of both States and offered


23 The Resolution of the Heads of Government on this matter is reproduced on pp.15/116 of Reinventing CARICOM.
the good offices of its Chairman, Prime Minister Patterson of Jamaica to broker an interim solution to the dispute, taking into account a number of proposals including joint superintendence of activities in the area, data and information-sharing, equitable distribution of the proceeds of exploitative activities and a joint commission to issue licenses in the area. This matter remained at impasse until it was referred in February 2004 (SN) by the Government of Guyana to the Law of the Sea Tribunal for arbitration.

In recent years CARICOM has welcomed the role of the OAS-supported mediators in the facilitation of discussions between Belize and Guatemala and the design and presentation of proposals resolving their dispute.

A unique feature of the recent proposal for resolution of the dispute is the way it transfers a dispute over land territory into a solution in the maritime zone. It leaves intact Belize’s internationally recognized territory of 8800 square miles but it creates a special Guatemalan Maritime Area of 2000 square miles by making available 1000 square miles of maritime area from both Belize and Honduras. It also proposes a win-win arrangement in which Belize and Honduras would have fishing rights in the area, and Belize up to 50 per cent of any mineral resources that may be located in the seabed of that area. The proposal also envisages the establishment of a Tripartite Regional Fisheries Management Committee in the Gulf of Honduras by the three countries. Finally, it provides for the establishment of an Ecological Marine Park comprising some of Belize’s cays and part of the coastal areas of Guatemala and Honduras.

At their 25th Regular Meeting held in Grenada in July 2004, the Heads of Government in their Press Release *“expressed grave concern at the fact that the new Guatemalan Government has rejected the proposals of the facilitators regarded by the hemisphere and the international*
community at large as the best way forward to a final settlement of this age-old territorial claim”. They recorded the position that their numbers remained “fully supportive of the OAS process and reaffirmed their conviction hat the September 2002 OAS Proposals are a fair and just solution to the long-standing claim”. They also “reaffirmed their total and unwavering support for the sovereignty, security and territorial integrity of Belize and urged both parties to agree to Confidence Building Measures that will maintain peace and enhance cooperation between the parties”.

**Disputes Originating in Political Divergence**

One has to go back to the period 1980-1982 for the treatment of another type of dispute. This involved determination of whether or not a Community could be built on divergent ideological / philosophical orientations of government policy. Grenada was at the centre of this debate and the issue was resolved by a Resolution of the Heads of Government agreeing on the necessity of ideological pluralism in the Community (when hemispheric institutions advocated a single ideology). In the end, a sub-group of countries (the OECS countries, Jamaica and Barbados) worked closely with the US Government to ensure the return to ideological uniformity in the sub-Region through the 1983 invasion of Grenada, after the murder of Prime Minister Maurice Bishop by his colleagues, and contrary to what appears to be the solution approach being contemplated by other Member States. It was perhaps the greatest test of CARICOM in terms of dispute settlement in which the initial solution forum was the Conference of Heads of Government.

24 In the early 1980s, Grenada emerged, alongside Guyana and Jamaica, as a country pursuing socialist policies. Within the sub-region, however, it appeared not to conform with the political trend and prevailing liberal democratic philosophy, and there was fear of contagion by example. The issue of political conformity in an integration movement was treated by a Resolution of Heads of Government on ideological pluralism in Ocho Rios in 1982 based on the recommendations of a Group of Experts (1981). Nevertheless, the controversy never went away and the compromise situation was no longer needed after the invasion of Grenada in 1983.
Since 1997 CARICOM has been increasingly involved in intra-state dispute settlement of a political nature. Perhaps the most outstanding example is that of the CARICOM-brokered Herdmanston Accord, in which the signatories agreed to the conduct a forensic Audit of Guyana’s elections, to promote a process of inter-party political dialogue between the ruling PPP and the main Opposition Party, to undertake constitutional reform and to organize fresh elections in eighteen months. CARICOM’s action has been perceived, on the negative side, has been perceived as allowing for the shortening of the term of office of a legitimate government. The process at some point was open to the challenge of intervention. However, precisely because it was dependent on the invitation of the Party Leaders concerned and their endorsement, the work of the CARICOM appointed Facilitator appeared to have achieved less than originally contemplated.  

In 2000, CARICOM was faced with political instability in St. Vincent and the Grenadines. CARICOM did not have a key role in brokering the Grand Beach Accord or in setting the timetable for new elections in St. Vincent and the Grenadines, but monitored the arrangement leading to new elections. These elections led to the ouster of one founding member leader of CARICOM from office in 2001.

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25. The Herdmanston Accord was signed between party leaders of the PPP and the PNC in 1997. Brokered by a three-man team of Sir Alister McIntyre, Sir Shridath Ramphal and Sir Henry Forde, the Accord provided for pursuit of constitutional reform by a broad-based participatory process; political dialogue; elections in eighteen months, thereby in effect shortening the term of office of an incumbent Government in its proposal for political stabilization. The Heads of Government reviewed developments under the Accord in July 1998, passing a Resolution, which appears at pp.117/119 of *Re-inventing CARICOM*.

26. With UNDP financing, CARICOM appointed former Attorney-General of Barbados, Maurice King as Special Facilitator of the dialogue process between the PPP and the PNC. The project lasted several months with doubtful results. The Special Facilitator was also used to provide the Heads of Government with a legal opinion on the constitutional crisis in St. Vincent and the Grenadines in 2000 which led to the Grand Beach Accord of 4 May 2000, brokered by the Christian Council.

27. In 2000, three years after CARICOM’s role in helping Guyana return to post-election political stability, the Government of Sir James Mitchell in St. Vincent and the Grenadines, faced with increasing political demonstrations and disturbances, was forced to call early elections. The arrangement was brokered by civil society forces, with CARICOM playing a role in monitoring the elections. Sir James Mitchell’s Government lost power. Prior to the elections, he expressed the view that CARICOM’s intervention in Guyana, shortening the term of office of a Government, had been an unwise precedent.
In 2000, CARICOM also sought, though unsuccessfully, to broker an understanding between the two main political parties in Trinidad and Tobago.\textsuperscript{28} In 2004 it monitored the elections in Antigua and Barbuda, which were won by the Opposition.

It should also be recalled that CARICOM played a key role in mounting a Constitutional Commission in 1997 when challenged by the issue of secession of Nevis from the Federal State of St. Kitts and Nevis. The Commission recommended constitutional changes that might help improve the federal system in respect of the grievances tabled by Nevis as a basis for seceding. CARICOM's public diplomacy in respect of clarification in the regional media of the option of secession in an already fragmented Region may have contributed to the failure of the referendum on secession of Nevis.\textsuperscript{29}

Haiti is a more recent case of Community efforts at dispute settlement.\textsuperscript{30} In addition to its high profile role in the OAS, CARICOM has used the Quasi-Cabinet System, i.e. the

\textsuperscript{28} In Trinidad and Tobago in 2000, growing difficulties in the Panday-led Government resulted in pressure for the holding of new elections amidst fears of electoral boundary manipulation and voter padding. CARICOM initially sent a team led by the Prime Minister of The Bahamas to help the sides come to an understanding. The elections that followed resulted in the tied 18-18 seat situation. The leader of Government was decided by President A.N.R. Robinson in favour of Mr. Patrick Manning, leader of the PNM, after the two party leaders had agreed to leave the decision to him.

\textsuperscript{29} The Government of St. Kitts and Nevis was the first CARICOM country forced to have early elections owing to the rejection of the Government's legitimacy by the Opposition, which claimed that overall in the Federal State the 1996 popular vote for the Opposition was greater than the Government's. Following political disturbances, church groups brokered a solution involving new elections, which were won by the Opposition Labour Party. The situation eventually led to revival of Nevis' claim to secession. Fearing further regional fragmentation, CARICOM supported the establishment of a commission of the Federation, led by Sir Fred Philips, to review the constitutional arrangements. The Commission, which was appointed on 15 December 1997, included Dr. the Hon. Kenneth Rattray and J.R.P. Dumas, completed its submission in four (4) volumes in July 1998.

\textsuperscript{30} \textbf{HAITI:} CARICOM, played a key role in the American effort to use military and diplomatic pressure to return President Aristide to power in 1994. With the growing standoff between the convergence representing the Opposition and the Lavalas Ruling Party over the outcome of the elections of 2000, CARICOM sent a Mission to Haiti to report on the political situation as well as progress in fulfilling the undertakings assumed by President Aristide with the OAS. The impasse continued until early 2004. In January 2004, CARICOM Prime Ministers, following meetings with both sides separately, offered a three-point compromise. Soon after, the spread of the rebel revolt from Gonaives and the threat of violence in the Capital provided the US and France with the opportunity to arrange for Aristide to leave Haiti for exile. CARICOM called for an investigation of the circumstances of Aristide’s removal from office and withheld recognition. In July 2004 the Heads of Government approved the sending of another mission to Haiti to report on the situation.
governance portfolio, to have an entry point into the Opposition / Government standoff in Haiti between 2003 and 2004. After several missions, CARICOM proposed a three-point formula based on: interim shared governance; unacceptability of a government coming to power in an illegal interruption of the constitutional order; and fresh elections. Its efforts were undercut by the United States and France, who are widely perceived to have arranged for the removal from power of President Aristide, contrary to the CARICOM proposal of early February 2004.

In respect of the resolution of the Haitian situation, the Caribbean Community maintained (up to July 2004) that adherence to democracy, constitutional government and the rule of law were key principles to be observed consistent with the Inter-American Democratic Charter. The arranged departure of Aristide into exile was seen as an unconstitutional interruption of the democratic order in Haiti. In July 2004 some Prime Ministers dissented from the Calvigny Statement on Haiti in which it was stated that the Heads “decided to create a channel for engagement with the Interim Administration”. They feared this position and the follow-up mission would give a semblance of recognition to the Interim Administration of Prime Minister Géraud Latortue.

The foregoing indicate that intra-State conflict, though a sensitive area for regional involvement, remains an important concern on account of its potentially adverse impact on the objectives of growth and development set at national as well as regional level. Dr. Compton Bourne, President of the Caribbean Development Bank (CDB), recently identified seven (7) broad areas of impact, viz:

(i) loss of human resources through death, incapacitation, alienation and emigration;
(ii) consequential under-utilisation of human resources through unemployment and discriminatory employment practices;

(iii) production losses caused by “forced” allocation of time, including that of the political directorate and public officials, to security and safety instead of directly productive activities;

(iv) diversion of scarce economic resources to activities which improve safety and security;

(v) loss of physical capital through acts of criminal destruction;

(vi) deterrence to foreign investment and diversion of aid flows;

(vii) adverse impact on the formation of social capital defined as “those features of social organization, such as norms, and networks that can improve the efficiency of a society by facilitation of coordinated actions”;

For this reason he considered it imperative that attention be paid to conflict management and peaceful resolution, the causes and dynamics of conflict. 31

Disputes of More Recent Origin in the Maritime Zone

Early in 2004, Barbados referred its dispute with Trinidad and Tobago (reportedly existing since 1990) to the Law of the Sea Tribunal for arbitration. At the same time, one aspect

31 See the Address of the President of the CDB, Dr. Compton Bourne, University of Guyana / Clark Atlanta University International Conference on Governance, Conflict Analysis and Conflict Resolution, delivered at the University of Guyana, Turkeyen, on 4 February 2004.
of its actions to force a resolution of the dispute involved its declared decision to monitor certain ‘sensitive’ imports from Trinidad and Tobago. However, the matter was referred to the COTED for decision on its consistency with the trade provisions of the Treaty. That body decided to call on Barbados to rescind the measures against Trinidad and Tobago’s exports to Barbados.\(^{32}\)

Guyana and Barbados have however decided on a pre-emptive model for settlement of their potential dispute in the EEZ. The Guyana/Barbados Treaty (signed in London on 2 December 2004) on Exclusive Economic Zone (EEZ) Cooperation establishes a Cooperation Zone in the area of bilateral overlap of the EEZ of both countries subject to joint management and exploitation “within the spirit of the Caribbean Community and the Organisation of American States”.\(^{33}\)

Within the Cooperation Zone, they agree on a Joint Fisheries Licensing Agreement (Article 4) for the living resources of the Zone. They also establish a Joint Non-Living Resources Commission (Article 6) for the non-living resources of the Zone. In the latter, they agree to treat as a unit the area of geological structure straddling the outer limit of their EEZ, to equitably apportion benefits and to share the results of scientific research. They also agree on a third dimension of cooperation, namely, security, and specifically mention terrorism; illicit trafficking in narcotics; trafficking in firearms, ammunition, explosives and related materials; smuggling, piracy and trafficking in persons; marine policing; search and rescue (Article 7(2)).

In terms of dispute settlement (Article 10), they provide for direct diplomatic negotiation as a first step and, subsequently, after a reasonable period of time, recourse to dispute

\(^{32}\) In February 2004, the Barbados Government, frustrated in its attempts to reach a settlement through direct consultations with the Government of Trinidad and Tobago, referred its ‘fisheries’ dispute to the International Law of the Sea Tribunal. At the same time, it decided to institute a monitoring mechanism on sensitive imports from Trinidad and Tobago.

\(^{33}\) The Guyana/Barbados Treaty was reproduced in Sunday Stabroek Supplement in March 2004.
resolution mechanisms under the Law of the Sea Convention. The question that arises is whether, in the spirit of the Caribbean Community, as invoked in the Preamble of the Treaty, there is any space for a role for the Community in the settlement of any dispute under such a Treaty. Should recourse to dispute resolution mechanisms under the Law of the Sea Convention be a purely bilateral matter?

In terms of maritime boundary delimitation of potential interest to States, C. Dundas has pointed out that UNCLOS attaches great importance to negotiations between States to reach equitable boundary settlements. In respect of the EEZ, he has drawn attention to the use of international legal principles in conjunction with judgments of the International Court of Justice. Principles and tests include: adjacency or proximity; concave/convex coastline; general direction of the coast; distance between coasts; ecology; geography; geology; geomorphology; length of coastline; proportionality. He suggests that economic considerations and historic rights do not carry much might as equitable factors. Dundas’ indicative costing suggests preparation and conduct of direct negotiations could be considerably cheaper than an extended multi-year process of third party settlement, which may cost about US$10 million per party (as against under £300,000 for a direct negotiation). This invites consideration of a regional approach to settling the many remaining maritime borders.  

**Brief Comparison of Office of Secretary-General in OAS and CARICOM**

Consider in general the role of the Office of Secretary-General in the foregoing with that of the Secretary-General of the current OAS. 

34 See C. Dundas’ most recent Paper on “The Price of Failure to Negotiate Maritime Boundary Delimitation Agreements in CARICOM, 2004”.

35 Deputy Secretary-General of the OAS, Fernando Jaramillo, described the evolution of the role of Secretary-General in a paper reproduced in *Cursos de derecho international en el sistema interamericano*, 2003.
The OAS has been the foremost hemispheric organization in terms of the international political dimension of some thirty-four (34) States, including all CARICOM Members. Belize and Guyana were accepted as full members in 1990. The organization appeared doomed to irrelevancy or lack of credibility in the 1980s. Its role in the Central American crisis, the Malvinas or Falklands War (1982), and the invasion of Grenada (1983), contributed to this perception. Yet during the 1980s, through the Summit of the Americas process and the expansion of the concept of threat, it underwent significant reform to broaden its mandate. It has been given a more robust role in the democratization of political life in the hemisphere, interstate conflict settlement, elimination of critical poverty, promotion of sustainable development as well as matters affecting peace and security.

New rules and mandates were approved in the Summit of Americas process (Miami, 1994; Chile, 1998; Quebec, 2001). Thus, in addition to consolidating “representative democracy”, it can arrange for solutions to political, legal and economic problems that might arise between Member States. Under Resolution 1080 of 1991 the organization was already strengthened to have the right of initiative, not only in intrastate difficulties and the promotion of democracy, but also to discourage and prevent military coups against legitimately elected governments (the case of Paraguay, for example).

The Office of the OAS Secretary-General has the power to immediately convene a meeting of the Permanent Council of the OAS in the event of an illegal interruption of the constitutional order of a Member State affecting the legitimate exercise of power by a democratically elected government. The Office has the right of initiative to examine internal situations and can convene an Ad Hoc Meeting of the Ministers of Foreign Affairs to collectively analyse the facts and take appropriate decisions.
The Permanent Council of the OAS has also been strengthened to allow for a more active role in all controversies, whether political, juridical or economic. It is authorized to set up Committees of experts to ascertain the facts and make recommendations for peaceful settlement. The Secretary-General of the OAS is empowered to bring to its attention any matter, which in his opinion can affect the peace and security of the countries or the development of Member States.

In respect of border disputes, the role of the Office of Secretary-General of the OAS has also been strengthened. After several border incidents in 2000, Belize and Guatemala requested the use of the seat of the OAS (Washington) for discussions and requested the Secretary-General to be witness of their discussions towards resolving their border dispute. They subsequently agreed on a system of co-facilitators and requested the Secretary-General to remain as a witness of honour in the discussions.\textsuperscript{36} He was authorized to convene meetings of the co-facilitators on the request of either party, to participate in their meetings, or to convene meetings of representatives of the parties, when it appeared that the meetings were getting nowhere, and to suggest ways forward.

The closest the role of the CARICOM Secretariat has come to this in practice has been in relation to an inter-party dispute in Guyana, perceived to be affecting prospects for stability and development in the Community, when the Community was called upon to appoint a Facilitator to galvanise and structure inter-party talks between the ruling PPP/C and the then PNC after the 1997 Elections.

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36 Fernando Jaramillo described the role of the OAS Secretary-General as a witness of honour in the Belize / Guatemala discussions. The co-facilitators were Sir Shridath Ramphal and Mr. Paul Riechter (American Lawyer). Guatemala decided to reject the proposals of the facilitators, which were supported generally by the OAS, CARICOM countries, and Britain. UK had offered a grant of £200 million as part of the package solution.
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Treaty Application

The greatest challenge, perhaps, to capability for dispute settlement in the area of trade has to do with Treaty interpretation. Member States have recently agreed to set up a new dimension and institution of Community governance, i.e. the Caribbean Court of Justice with original jurisdiction in terms of uniform interpretation of the Revised Treaty and, for some countries, appellate jurisdiction to hear other issues referred from national level.  

Conclusion

Compliance, enforcement and dispute settlement processes are important to the cohesion of a Community of States intending to deepen relations among themselves. The formal arbitral mechanism for dispute settlement in the trade area appears to have been inactive since 1973 in the sense that it appears that preference was given to the accommodation of trade differences by ministerial processes, or by informal communication between officials, rather than strictly arbitral processes. There do still exist other modes of settlement, including mediation that is designed to revolve around the role of good offices of the Secretary-General as custodian of the integration ‘acquis’. Bodies such as COTED also play a role in preventing as well as settling disputes by their authority to impose discipline in State actions likely to generate adverse impacts on the trade regime. However in the final analysis, the formal mechanisms of arbitration are so little used that observers may think there are no dispute settlement mechanisms at all.

CCJ: While this paper essentially speaks to the mechanisms available to State actors for the settlement of disputes, it is important to point out that non-State entities and private individuals will have access to judicial settlement processes of the CCJ under Article 222 of the Revised Treaty. Persons, whether natural or juridical, can have access to the CCJ by “special leave” or permission of the Court itself; with the agreement of the State entitled to espouse the claim before the Court; where such a State omits or declines to espouse the claim; or if the Court has found that the interest of justice requires the persons to be allowed to espouse the claim; if the Court determines that the Treaty intended a right or benefit to ensure directly to the advantage of legal persons; where the persons concerned have established that they would have been prejudiced in respect of the enjoyment of a right intended.
Outside of the trade area we have seen the importation of principles of the UNCLOS and the UN to discipline the search for solutions to disputes in the fisheries area and in respect of land-based border disputes. The former are reflected in the Revised Treaty. It appears, however, that a major area of potential dispute, the interlocking EEZ in the Caribbean Sea, could be given considerably more attention as an area, on the one hand, of potential instability and, on the other, an avenue for releasing potential marine-based wealth which would otherwise be locked away to the disadvantage of the peoples of the Community.

Conference, in 2000, took a first step in recognizing, in the case of Suriname and Guyana, the reality of areas of overlap in the EEZ of countries bordering the Caribbean Sea, and employed the then Chairman of Conference, who was also the lead Prime Minister on External Negotiations, to help mediate a solution. The reality is, however, that the underlying issues of wealth generation are so compelling that the lack of a clear, competent and independent authority to propose legal solutions may have played a part in the impasse on this issue between 2000 and 2004, and the decision of one party to use the extra-regional mechanism of the Law of the Sea Tribunal as a path to a peaceful solution. It may be, however, that this issue is too important in the context of a Single Market not to have a mechanism that holds the regional frame of reference up to the parties as a viable path to the solution of maritime boundary differences.

Among the primary capabilities of a sub-Region like CARICOM, it might be thought desirable to have: negotiations capability; capability for trade policy development and implementation; capability for intelligence-gathering on emerging international trends; and capability for facilitating maritime boundary delimitations and accommodation. Except for negotiations through the establishment of the CRNM, the integration process would appear to have fallen short, to date, in the development of the other three capabilities. What a difference it
might make if the Region managed to bring about a significant enhancement in these areas, particularly in the area of delimitation.

The issues in the maritime area alone include historic fishing rights, baselines for delimitation of EEZs, determination of allowable catch, regimes for possible joint exploration and exploitation in areas of overlap in the EEZ. In terms of peaceful settlement of intra-State political disputes, the Community has shown a will to field a presence and mediate solutions in five cases (Guyana, St. Kitts and Nevis, St. Vincent and the Grenadines, Trinidad and Tobago, and Haiti). The Secretariat covers the relevant issues through the Directorate of Foreign and Community Relations. These arrangements, however, when one considers the future, may call for a review of their adequacy for the tasks ahead if not appropriately resourced.

It should not be forgotten that the Charter of Civil Society (1999) exists as a building block for the type of State / Civil Society relations that would moderate disputes that could spill over into instability in Community relations and programmes. The time has perhaps come for this to involve mandatory obligations including those of reporting on performance. Could the arrangements not include provision for an Ombudsman’s role as recently suggested by the Secretary-General?

As more and more attention is focused on the problem of implementation and related issues of compliance, enforcement and dispute settlement, concerns are being expressed that the elaborate institutional structures of the CARICOM Single Market and Economy (CSME), the legal and administrative work to be undertaken at national level with limited capacity, and the financial implications of supporting this ‘superstructure’, will prove to be major hindrances to progress when added to the reassertion of sovereignty of the individual States. The suggestion is that unless some different strategy, perhaps one focusing on advancement of select areas, is
applied to the project of a Single Market and Economy, the 'implementation deficit' would be a
dVERSE phenomenon very hard to overcome. The Single Economy aspect of integration is
almost 100 per cent unimplemented (sectoral policies, monetary and macro-policy convergence,
harmonization of laws), while a significant deficit of 65 per cent of the required actions exists in
the vital area of trade and services liberalization in the CSME. This is fertile ground for the
fostering of divergences, disputes and non-compliance if not managed.

Indeed, it has been suggested that ‘economic differentiation’ and divergence among the
countries (some of which are services-based and others more resource-based) are likely to
entrench non-implementation, since high dependence on customs duties, as a source of
revenue in service-based States such as the OECS, would discourage early dismantling of
tariffs. Moreover, the burden of institutional and legislative enactment is so great that few
States would want to take another through the legal machinery (a costly process), knowing that
they themselves are as vulnerable to delays.

As happened under the Treaty of Chaguaramas, then, modes of settlement other than
arbitral, which has a compulsory and binding outcome to such a process, are likely to be given
preference. In other words, outstanding issues such as intraregional imports of sugar and rice
will continue to be pursued by suasion, public rhetoric and deliberations in the forum of COTED,
with little likelihood of them being taken to the arbitral tribunal leading to compulsory
implementation.

On the other hand, if there were renewed emphasis on, and pursuit of, the dimension of
resource and production integration in a single economic space, the mechanisms of dispute
settlement are likely to become more useful as this form of integration would require a more
rigorous legal framework than for market integration. Resource and production integration would
involve clarity and enforcement as to rights of national treatment in different areas of the economic space and the right to resource access and use as Community citizens. It is quite likely that more and more of such disputes could come to the fore, including disputes in the maritime area, and therefore the Community needs to prepare itself for the strengthening of capabilities to deal with such issues.

It is also quite likely that intrastate issues of government/opposition accommodation to promote good governance, constitutional reform, modernization of the State, internal stability and external negotiation could become areas of major concern. Certainly, if Haiti is anything to go by, the Community is heading for long-term engagement in issues formerly considered to be within the national jurisdiction of States.

While this examination has mentioned the Office of the Secretary-General and that of the Directorate of Foreign and Community Relations, it would be a serious oversight if attention were not drawn also to the role of the Office of the General Counsel (OGC). This is an important source of legal advice to the organs or bodies of CARICOM as well as to Member States engaging in international agreements, which have implications for conflict with regional obligations. Given its responsibilities - discharged in cooperation with the Legal Affairs Committee comprising representatives of Member States in the Caribbean Community - the OGC would be better positioned to play a role in compliance and peaceful settlement with strengthened capability, enabling the drafting of legislation to facilitate national enactment consistent with Treaty obligations and enhancement of compliance. It may also be given specific responsibility for promoting compliance with the obligations under the Charter of Civil Society to encourage adherence to democracy, good governance and the rule of law – areas in which citizen concerns are likely to lead to disputes over the legitimacy of the action of the State.
with potential for social instability and therefore the generation of fresh constraints to economic and social development.

JF:ys

27 September 2004
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