



**CARIBBEAN COURT OF JUSTICE**

**Toward the Caribbean Single Market  
and Economy and Beyond**

**The Right Honourable Mr. Justice Michael de la Bastide  
President of the Caribbean Court of Justice**

**Central Bank of Barbados**

**One-day Conference on the  
CARICOM Single Market and Economy:  
Toward CSME and Beyond**

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## **THE ROLE OF THE CCJ IN THE CSME**

The CCJ has been described as the institutional centre-piece of the CSME. Be that as it may, the role of the CCJ is crucial to the success, and indeed the very existence, of the CSME. That role on analysis involves the performance of three functions. Firstly, the CCJ alone has responsibility for determining how the provisions of the Revised Treaty of Chaguaramas are to be interpreted and applied. The CCJ is the interpreter of the rules of the CSME. Secondly, the CCJ alone provides the means by which the rights and freedoms conferred, and the corresponding obligations imposed, by the Revised Treaty will be vindicated and enforced. The CCJ is the guarantor of those rights and the enforcer of those obligations. Thirdly, the CCJ alone will provide a compulsory method of resolving with finality disputes between participants in the CSME.

These are the three functions that the CCJ will perform in the exercise of its original jurisdiction. The appellate jurisdiction of the Court has nothing whatever to do with the CSME. Even if the CCJ had no appellate jurisdiction or its appellate jurisdiction was not accepted by any Caricom country, the CCJ would still fill an essential need. It is hardly necessary to explain the importance to the CSME of the three functions which I have identified. Firstly, it goes without saying that a document as complex as the Revised Treaty will require a great deal of interpreting. A Treaty like a Constitution may be interpreted in a variety of ways, austerely or liberally, literally or purposively, and the way in which it is interpreted will often determine whether the objectives of those responsible for bringing the document into being and giving it legal force are achieved. What is crucial, however, is that there should be a single uniform interpretation emanating from a single source. If the national courts of the Participating Countries were free to put their own differing interpretations on the Revised Treaty, this would be a recipe for chaos.

Secondly, if there was no effective means of enforcing the rights and obligations created by the Revised Treaty, the CSME would soon lose all credibility and respect and would fall apart. Thirdly, given a regime such as the CSME's, so full of what may broadly be described as give and take, disputes between Participants are inevitable. Such disputes cannot be

allowed to fester without risk to the integrity of the Community and so some compulsory means of settling them, when all else fails, is essential.

These functions of the CCJ are provided for in both the Revised Treaty (Articles 211 to 224) and in the Agreement Establishing the Caribbean Court of Justice (Articles XI to XXIV, and Article XXVI).

It is perhaps worth pointing out that the establishment of the Court does not depend on the passage of legislation by the Parliament of any Participating Country. The Court is established under international law by virtue of the power which the Participating Countries as sovereign states have to bind themselves by agreement to constitute and recognise a regional Court with a specified jurisdiction. The Court was constituted for those twelve countries who signed the Agreement Establishing the Court when they ratified the Agreement. The passage of legislation by individual States does not 'establish' the Court but is necessary to enable the Participating Countries to fulfill their commitment to the Court under the Agreement. Legislation is necessary, for example, to provide for the enforcement of the orders and judgments of the Court. It is needed also to prevent local courts from deciding questions of interpretation and application of the Revised Treaty which are reserved for decision by the CCJ. Legislation is also necessary in order to enable each Participating Country to meet its financial obligations to the Court.

The original jurisdiction of the Court has some notable characteristics. One is that it is compulsory. In the words of Article XVI of the Agreement, the Contracting Parties agree to recognise the original jurisdiction of the Court "as compulsory ipso facto and without special agreement." Another feature of its original jurisdiction is that it is exclusive. That means that there is no other Court or tribunal that is authorised to interpret and apply the provisions of the Revised Treaty (see Article XII of the Agreement). Under Article XIV whenever a national court or tribunal of a Contracting Party finds itself in a position where in order to deliver judgment in a matter, it has to find the answer to a question concerning the interpretation or application of the Revised Treaty, it must refrain from answering that question itself, but must refer it to the Court for the Court to answer.

Another feature of the Court's jurisdiction is that it is final. That applies to the decisions of the Court both in its appellate and its original jurisdictions (see Article III.2 of the Agreement). There is no appeal from the Court in

either jurisdiction. This is subject only to the power given to the Court in exercise of its original jurisdiction to revise its judgments in cases where some crucial fact is discovered after judgment has been given (see Article XX of the Agreement).

Judgments of the Court are binding. That is expressed by Article XV of the Agreement in this way:

“Member States, Organs, Bodies of the Community or persons to whom a judgment of the Court applies, shall comply with that judgment.”

The means of enforcing judgments are those used in Participating Countries for the enforcement of the judgments of their own domestic courts. In order to provide those who wish to enforce judgments of the CCJ with access to those methods of enforcement, legislation by individual States is necessary. The obligation to pass such legislation has been assumed by parties to the Agreement in Article XXVI. This provides *inter alia* that “the Contracting Parties agree to take all the necessary steps, including the enactment of legislation to ensure that:

- (a) all authorities of a Contracting Party act in aid of the Court and that any judgment, decree, order or sentence of the Court given in exercise of its jurisdiction shall be enforced by all Courts and authorities in any territory of the Contracting Parties as if it were a judgment, decree, order or sentence of a superior court of that Contracting Party.”

This Article applies to both jurisdictions of the Court. The Article goes on to provide for the equipping of the CCJ by individual States with the power to require the attendance of persons and the disclosure and production of documents and to punish for contempt of court. The coercive machinery available to domestic courts for the purpose of backing up their orders is thus made available to the Court and to those who benefit from its rulings, in order to secure obedience to the Court’s orders and judgments. The draftsmen of some CCJ legislation, however, have unfortunately failed to notice that what is required here is an express provision saying that judgments of the CCJ are enforceable in the same way as local judgments, and not merely the incorporation into domestic law of the Article of the Agreement which creates the obligation to enact such a provision. One must

also bear in mind that judgments of the Court will normally be against States and therefore the enforcement machinery available will be that provided for the enforcement of domestic judgments against the State.

What then is the scope of the Court's original jurisdiction? What sort of cases will come before the Court and how will they reach the Court? Who will be the parties? Who can bring a case before the Court?

The Court will deal with disputes concerning the interpretation and application of the Revised Treaty that arise firstly between Contracting Parties or between any Contracting Party and the Community. The Court will also have jurisdiction in certain circumstances to deal with a dispute when the matter is brought before it by a national of a Contracting Party. A national may be either a natural person or a legal person, such as a company. An individual may be allowed to institute proceedings before the Court if he can satisfy four conditions set out in Article XXIV of the Agreement.

The first is that the Court must have determined that the Treaty intended that a right though conferred by or under the Treaty on a Contracting Party should enure to the benefit of the individual directly. Secondly, the persons concerned must establish that they have been prejudiced in respect of the enjoyment of the benefit which they were intended to have from the right conferred. Thirdly, the Contracting Party entitled to pursue the claim in proceedings before the Court has either omitted or declined to do so or has expressly agreed that the persons concerned may pursue the claim instead of the Contracting Party. Lastly, the Court must be satisfied that the interest of justice requires that the persons be allowed to pursue or 'espouse' the claim. Clearly, in relation to this particular provision there is a good deal of scope for interpretation and application.

In relation to the possibility of persons, human or juristic, as opposed to States, invoking the jurisdiction of the Court, reference may be made to Article XVIII of the Agreement in which provision is made for an entity which is not an original party to proceedings before the Court to apply for leave to intervene. Such an application may be made if the intervener considers that it has "a substantial interest of a legal nature which may be affected by a decision of the Court in the exercise of its original jurisdiction." What is of interest is that the entity which may apply to

intervene includes not only a Member State and the Community itself but also “a person”, presumably either human or legal.

There are two other ways in which a question of interpretation or application may be brought before the Court. The first which has already been mentioned, is as a result of the referral of such an issue by a national court.

The other way of approaching the Court is provided by Article XIII of the Agreement. This gives the Court exclusive jurisdiction to deliver advisory opinions concerning the interpretation and application of the Treaty. Such opinions may be requested only by Contracting Parties or the Community.

The Court is expressly given by Article XIX the power “to prescribe if it considers the circumstances so require, any interim measure that ought to be taken to preserve the rights of a party.” This enables the Court to make a wide variety of orders that in the context of a national court would be classified as “interlocutory relief”.

It would serve little purpose to try and anticipate the subject-matter of the disputes which are likely to come before the Court but from the terms of the Treaty and the Agreement and from the experience of other regional courts, one can identify some broad issues which will inevitably arise. One undoubtedly is the question of the circumstances in which an individual person or company will be allowed to “espouse a claim” under the Treaty. As indicated above this will depend inter alia on the Court’s view as to whether a particular right was intended to enure for the benefit of the complainant and whether the complainant has been prejudiced in respect of the enjoyment of that benefit. This is ground that has been trodden before by regional courts. Another important area in which the Court will have to chart its own course but will have the benefit of decisions of other comparable courts, has to do with the extent to which effect should be given to provisions in the Revised Treaty which are not expressly incorporated in domestic law or are inconsistent with the local law. How, for instance, is the freedom of movement of capital to be reconciled with exchange control restrictions that have not been modified to accommodate it?

It is clear from all I have said that the Agreement and the Revised Treaty go to great lengths to ensure that the Court has all that it needs to perform effectively its triple role as enforcer of rights and obligations, as interpreter and applier of the provisions of the Treaty and as settler of disputes arising

under the Treaty. The Court has the potential to make a powerful contribution to the fulfilment of the regional aspirations which are embodied in the Revised Treaty. The extent to which it is allowed to realize that potential will depend on the use which those with a right of access to the Court, choose to make of it.

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President

Caribbean Court of Justice

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