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FIFTH SUMMIT OF HEADS OF STATE AND/OR GOVERNMENT OF THE STATES,
COUNTRIES AND TERRITORIES OF THE ASSOCIATION OF CARIBBEAN STATES

DRAFT STRATEGIC DOCUMENT – Annex VI

INPUT
OFFICE OF THE LEGAL ADVISER

**Input of the Office of the Legal Advisor
to the Strategic Document for the
5th Summit of Heads of State and/Governments of the
Association of Caribbean States (ACS)**

1. Status of Legal Instruments of the Association of Caribbean States

Introduction

The Association of Caribbean States was established based on the desire of states of the Greater Caribbean region to engage in the collective and collaborative pursuit of policies and programmes. This initiative was brought to fruition and articulated via the *Convention Establishing the Association of Caribbean States* (the Convention) in 1994. In order to facilitate their communal activities member states identified areas of focus upon which to work and endeavoured to develop a legal framework in the form of treaties, to aid in the attainment of those goals. To date the implementation of the legal instruments of the ACS has been slow resulting in a situation where these instruments that form the legal framework for the programmatic areas of the institution have failed to come into effect. It is imperative that these instruments as the legal foundation of the programmatic areas of the ACS be given full effect and in so doing provide the institutional strength required to proceed.

Background

At the **Inaugural Summit of Heads of State and Government and Representatives of the States, Countries and Territories of the Association of Caribbean States (ACS)** 17-18 August 1995 Port of Spain, Trinidad and Tobago, the Declaration of Principles and Plan of Action on Tourism, Trade and Transportation was developed. The Declaration gave recognition to the entry into force of the *Convention Establishing the Association of Caribbean States* and placed emphasis on the establishment of a collective process within the region that would facilitate the pursuit of initiatives that would lead to "the strengthening of integration, concerted action and consultation in order to ensure greater cultural, economic, political, scientific, social and technological cooperation among [the] peoples, governments and countries". The Convention therefore represents the legal framework for the operationalisation of the Association within a regional/inter-governmental environment.

This Declaration acknowledged the intent to achieve these goals bearing in mind the "sovereignty and territorial integrity" of member states and the right "of our peoples to self-determination, the rule of law, the adherence to democratic principles, the observance of human rights and the peaceful resolution of disputes;"

Within that context cooperation and concerted action in the areas of tourism, trade and transportation were identified as priority areas in order to meet the "prime objective" of

"improving the standard of living" of the people of the region and "effectively combating the critical state of poverty in which a large" proportion of the populations live.

The Caribbean Sea was acknowledged as an important areas based on "the role that it has played in" the history and development of the priority areas and the potential that it holds in contributing to the development of the "peoples and states, countries and territories". A decision was made declaring that member states are therefore "determined to ensure" the "protection and conservation" of the Caribbean Sea "on an environmentally sound and sustainable basis, as the common patrimony of all the peoples of the Caribbean."

Subsequent to the 1995 meeting the member states engaged in the establishment of legal instruments in the identified priority areas in order to facilitate the aims and objectives of The Association of Caribbean States as mandated by the Convention. These instruments together with the Convention represent the legal and institutional framework for the execution of the initiatives targeted by the Association.

These agreements include:

- *Agreement among the Member States of The Association of Caribbean States for Regional Co-operation in the area of Natural Disasters*, done in Santo Domingo de Guzmán, Dominican Republic, April 17, 1999;
- *Convention Establishing the Sustainable tourism Zone of the Caribbean* done in Margarita Island, Bolivarian Republic of Venezuela, December 12, 2001;
- *Protocol to the Convention Establishing the Sustainable Tourism Zone of the Caribbean* done in Panama City, Republic of Panama, February 12, 2004
- *Air Transport Agreement among the Member States and Associate Members of the Association of Caribbean States* done in Panama City, Republic of Panama, February 12, 2004.

Endorsement for the work of the Association in these priority areas was given within the fora of subsequent summits of heads of state and/or government of the Association via various declarations as follows:

- **Declaration of Santo Domingo**, Second Summit Santo Domingo de Guzmán, Dominican Republic, 16-17 April 1999;
- **Declaration of Margarita: The Consolidation of the Greater Caribbean**, Third Summit of Heads of State and/ Government, Margarita Island, Venezuela, December 11-12, 2001; and
- **Declaration of Panama**, Fourth Summit of Heads of State and/or Government, Panama City, Panama, July 29, 2009.

Also to be included within the category of outstanding agreements to enter into force is the Protocol on Privileges and Immunities done in Panama City, Republic of Panama, December 13, 1999. While this agreement does not focus on a programmatic area it concerns the rights and obligations that are tied to the operations of the ACS.

In spite of the support that was declared for the identified priority areas and the move to develop treaty arrangements for the execution of work in these areas, full effect has not been given to several of the instruments since they lack the required number of ratifications. To

that extent it is only the *Air Transport Agreement among the Member States and Associate Members of The Association of Caribbean States done in Panama City, Republic of Panama, February 12, 2004*, that has entered into force as of September 19th 2009.

Concern

Consequently the other legal instruments which underpin the projects of the Association remain without effect. The lack of finality of these arrangements has effectively weakened the integrity of the initiatives of the Association, given the fact that internationally, funding agencies are encouraged to provide assistance to institutions with a settled legal regime. The existence of such a legal framework provides credibility to an organisation's purpose and is evidence of the political will and commitment of its members. The fact that the very states who constitute the Association have failed to complete the legal institutional process does not auger well for the credibility of the organization.

In 2006 the Association recognized the lack of finality of the legal instruments as a fundamental problem and sought to treat with it via the development of a strategy to bring them into force. Consequently at the Eleventh Meeting of the Ministerial Council, March 28th 2006, approval was given to Agreement 7/06 entitled *Agreement Establishing a Follow-up Group to keep under Constant Review the Status of the Legal Instruments of the Association of Caribbean States* (Annex 1). In 2007 at the Twelfth Ordinary Meeting of the Ministerial Council Agreement 13/07 was adopted *Declaring the year 2007 as the Year for the Entry into Force of the ACS Legal Instruments* (Annex 2). This agreement endorsed the acceptance of the Plan of Work prepared by the Secretariat.

At the time of the development of the strategy for implementation the status of the said agreements was as follows:

- *Agreement among the Member States of the Association of Caribbean States for Regional Co-operation in the area of Natural Disasters*, **ratified by 10 countries with 7 more required.**
- *Protocol on Privileges and Immunities*, **ratified by 8 countries with 7 more required.**
- *Convention Establishing the Sustainable Tourism Zone of the Caribbean* **ratified by 6 with 9 more required.**
- *Protocol to the Convention Establishing the Sustainable Tourism Zone of the Caribbean* **ratified by 1 state.**
- *Air Transport Agreement among the Member States and Associate Members of the Association of Caribbean States* **ratified by 4 countries with 5 more required.**

As of today's date the *Air Transport Agreement among the Member States and Associate Members of the Association of the Caribbean States* is the only instrument of those listed above to have entered into force on September 19th 2008.

Status of Agreements 2007 versus 2012

The status of the outstanding agreements to date versus the status in 2007 is as follows:

Agreement	Status of ratifications in 2007	Status of ratifications 2012
Agreement among the Member States of The Association of Caribbean States for Regional Co-operation in the area of Natural Disasters	Ratified by 10 countries with 7 more required	Ratified by 13 countries with 4 more required
Convention Establishing the Sustainable Tourism Zone of the Caribbean	Ratified by 6 with 9 more required	Ratified by 12 with 3 more required
Protocol to the Convention Establishing the Sustainable Tourism Zone of the Caribbean	Ratified by 1 state	Ratified by 9 signatories to the Convention.
Protocol on Privileges and Immunities	Ratified by 8 countries with 7 more required	Ratified by 11 countries with 4 more required

It therefore remains necessary that an initiative be undertaken to ensure that the key programme instruments of the ACS become effective. To this end Member states who have not fulfilled the requirements attached to the entry into force provisions of the relevant instruments need to be advised of such. This action has to be followed by action by states to execute.

2. Caribbean Sea Commission

Background

The Caribbean Sea Commission (CSC) was established by the Ministerial council of The Association of Caribbean States (ACS) in 2006 by virtue of Agreement 6/06 entitled *Creation of the Follow –up Commission for the Caribbean Sea Initiative*. The aim of the Commission was to function as the mechanism through which initiatives could be undertaken to obtain international recognition for the Caribbean Sea as a special area in the context of sustainable development. Since its establishment in 2006, the CSC has undertaken to position itself as an ocean governance mechanism within the Greater Caribbean region.

Summit Mandates re the CSC

At the *Inaugural Summit of Heads of State and Government and Representatives of the States, Countries and Territories of the Association of Caribbean States (ACS)* 17-18 August 1995 Port of Spain, Trinidad and Tobago, that was developed identified the Caribbean Sea as an important component of the areas of tourism, trade and transport in the following terms:

"12. We reaffirm the importance attached to the Caribbean Sea, the role it has played in our history and the development of tourism, trade and transport as well as its potential for contributing to the development of our peoples and states, countries and territories. We are therefore determined to ensure its protection and conservation, on an environmentally sound and sustainable basis, as the common patrimony of all the peoples of the Caribbean."

The *Second Summit of State and/or Government of the States, Countries and Territories of the Association of Caribbean States*, 1999 produced the *Declaration of Santo Domingo*, within which support was express for "the effort of CARICOM to have the Caribbean Sea declared a Special area in the context of Sustainable Development" and the instruction was given to have the subject included in the Caribbean Environmental Strategy. Mandate was given for the convening of a high level meeting of experts to study the topic. Disapproval was declared for the ecological degradation of the Caribbean Sea and "its continuous use for the transport of nuclear and toxic waste". (paragraphs 5 and 6).

At the *Third Summit of State and/or Government of the States, countries and Territories of the Association of Caribbean States*, 2001, the topic of the Caribbean Sea was noted within the *Declaration of Margarita*. In that regard Resolution (A/RES/55/203) approved at the 55th Session of the UN General Assembly "Promoting an Integrated Management Approach to the Caribbean Sea Area in the Context of Sustainable Development" was highlighted. It was determined that steps should be taken "for the Caribbean Sea to be recognized by the international community as a special Area in the context of Sustainable Development". Within this forum states were urged to sign and ratify international treaties that address the impacts of climate change such as the United Nations Framework Convention on Climate Change and the Kyoto Protocol. Member States and Associate Member States were also encouraged to sign and/or ratify the Convention for the Protection of the Marine Environment of the Wider Caribbean Region (Cartagena Convention). Similar to the position expressed at the previous

Summit, the Member States also indicated their "strenuous and total rejection of the continued use of the Caribbean Sea for the shipment and trans-shipment of nuclear materials and toxic waste, given the threat that accidental or deliberately induced spill of these materials would represent to the life an ecosystems of the region." (paragraph 29)

At the 4th Summit of Heads of State and/or Government 2005, the Caribbean Sea was addressed within the *Declaration of Panama*. Within this document states reiterated the "decision to continue taking the steps necessary to ensure its recognition as a special area in the context of sustainable development by the United Nations General Assembly". To that extent the states instructed the Ministerial Council "to permanently include this topic on its agenda, with a view to ensuring the formulation and coordination of a negotiating strategy to be analysed and approved by the Ministers of Foreign Affairs." Resolution (A/RES/59/302) entitled "Promoting an Integrated Management Approach to the Caribbean Sea Area in the Context of Sustainable Development" as approved by the 59th Session of the United Nations General Assembly was acknowledged, noting the importance of taking into account the elements of that document in the approach taken with regard to the Caribbean Sea. (paragraph 19)

Progress Regarding the CSC

In this regard a governance structure has been created for the Commission by virtues of its Operating Statute and Rules of Procedure. This structure includes a Bureau comprising a Chair and two Vice Chairs; a Budget Committee; and three Sub-Commissions which include: a Legal Sub-Commission; a Scientific and Technical Sub-Commission; and a Governance and Public Outreach Sub-Commission. The structure of the Commission also envisions the establishment of a Secretariat that would drive its work and to this extent the Commission is in the process of garnering the necessary resources to give life to the Secretariat.

The Caribbean Sea Initiative has been endorsed via various United Nations Resolutions as follows:

- A/RES/59/230 February 16th, 2005: "Promoting an integrated management approach to the Caribbean Sea area in the context of sustainable development."
- A/RES/61/197 February 9th, 2007: "Towards the sustainable development of the Caribbean Sea for present and future generations."
- A/RES/63/214 December 19th, 2008: "Towards the sustainable development of the Caribbean Sea for present and future generations."

The most recent in February 2011 is entitled "Towards the sustainable development of the Caribbean Sea for present and future generations."

In October 2011 the University of the West Indies established a cross-campus network to facilitate the implementation of commitments within the context of the ACS-UWI Memorandum of Understanding signed between the two organizations in April of 2011. The network is geared towards:

- Provide a way of informing interested UWI staff about the needs and activities of the Association of Caribbean States and Caribbean Sea Commission so that they can more effectively become more involved in these activities and serve the needs of the bodies;
- Provide a way of bringing together UWI staff with the expertise needed to address particular issues raised by these two organizations;
- Provide the ACS and CSC with a means of finding out what expertise, research, projects and teaching programmes are available at UWI that might serve their needs;
- Promote information-sharing and cooperation among UWI staff with an interest in oceans governance and related matters.

Challenges and Concerns

In spite of its achievements the Commission has encountered various obstacles in attempting to execute its objectives. One of these has been the elaboration of the concept of a "special area" that includes the legal and financial implications that are prescribed thereto.

Another challenge for the Commission has been the operationalisation of its sub-commissions. The complement of participants on the commissions has not been satisfied and this too has impeded the successful execution of Commission activities since these organs are intended to form and satisfy integral aspects of the overall mandate.

Relative to this lacuna has been the failure to implement the Budget Committee, which is intended to manage the financial resources of the Commission. The management of the funds of the CSC is key particularly in light of the fact that said resources are currently sourced from extra-budgetary sources. To this extent it has become necessary to ensure the sustainability of the fund through the implementation of a work programme and mobilisation strategy.

Proposals for the way forward

In its report to the 17th Meeting of the Ministerial Council, the Chair of the Commission highlighted the following as necessary for the progress of the work of its work:

- Action towards the adoption on an enhanced UN Resolution that outlines clearly for the attention of the international community, not only the importance, threats and vulnerabilities of the Caribbean Sea, but also the nature of the comprehensive management approach required for its good governance and the contours of the special area concept, with the relevant financial and legal implications, required to preserve and protect the fragile ecosystem;
- Commitment to an OAS resolution, which facilitates work on and ultimately, implementation of the CSI at the hemispheric level for input into the wider UN resolution;

- Consideration of the utility of tasking the CSC with the formulation of an ocean governance policy for the Wider Caribbean Region (WCR);
- Full operationalisation of the CSC, including through the full activation of all Organs and sub-structures of the Commission;
- Full activation of the UWI-CSC Network to facilitate the work of the CSC, including through greater access to the financial, human and technical resources of the region;
- Enhanced participation by key regional institutions in the work of the CSC;
- The provision of dedicated resources for the work of the CSC;
- Follow-up to the ACS-CSC Mission to New York and Washington D.C. to identify opportunities and solidify various relationships made;
- Consideration of various regional and multilateral processes in which the CSC could participate, with a view to identifying possible areas of cooperation and strategic partnerships, feasible modes of engagement and the required human and financial resources;
- Drafting of a focused Work Programme for the CSC, to be complemented by a Plan of Action and a Resource Mobilisation Strategy;
- A clear outline of a feasible mechanism for the Commission's reporting to the General Assemblies of the UN and the OAS;
- Information-gathering and sharing and also networking to promote the CSI and the work of the CSC at all levels;
- Establishment of a Secretariat for the CSC, staffed, with at minimum, one technical person to spearhead the body's work.