



ISA Sensitization Seminar  
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Caribbean Court of Justice

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\* Any views expressed herein are personal and preliminary and do not reflect my judicial position.



Wednesday, 30 March 2011

***SESSION 3:***  
***The Caribbean and the Convention***



# Definitional issues

- “The Convention”
- United Nations Convention on the Law of the Sea, adopted on 10 December 1982; entered into force 16 November 1994 (“the Convention” or the “Montego Bay Convention” or “LOSC”)



# LOSC and other conventions

- Vienna Convention on the Law of Treaties, (VCLT) 1969
  - Article 34
  - Protocol on Bio-safety 2000 (*Biotech case*)
- LOSC, Article 311
  - 1958 Geneva Conventions
- LOSC & supplementary agreements
  - Part XI (“the Area”)
  - Straddling Stocks
- LOSC, Part XII
  - MARPOL & Civil Liability Conventions



# LOSC and “Caribbean”

- Part IX, LOSC:

“...means a gulf, basin or sea surrounded by two or more States and connected to another sea or the ocean by a narrow outlet or consisting entirely or primarily of the territorial seas and exclusive economic zones of two or more coastal States...”

# The Wider Caribbean





## Other meanings “Caribbean”

- Definition based on colonial legacy
  - “Commonwealth Caribbean” or “Anglophone Caribbean”
  - “Dutch Caribbean”
  - “French Caribbean”
  - “Latin America” / & Caribbean



# Caribbean Defined by Integration

## Treaty Arrangements

- Organization of Eastern Caribbean States (OECS), Treaty of Basseterre, 1981, 2009
- Caribbean Community (CARICOM) and CARICOM Single Market and Economy (CSME), Treaty of Chaguaramas 1973, Revised Treaty of Chaguaramas 2001
- CARICOM and Dominican Republic (CARIFORUM)
- Association of Caribbean States (ACS) 1994



The logo features a blue gradient background with white and light blue wavy lines. The word "CARICOM" is centered in a bold, blue, sans-serif font.

# CARICOM

- CARICOM Single Market and Economy
- Caribbean Court of Justice (CCJ)
- Revised Treaty and Caribbean Sea
- Membership

Antigua and Barbuda, Bahamas, Barbados, Belize, Dominica, Grenada, Guyana, Haiti, Jamaica, St. Lucia, St. Vincent and the Grenadines, Montserrat, St. Kitts and Nevis, Suriname, Trinidad and Tobago

# The Caribbean Community (CARICOM)



# CARICOM and the Convention: Symbiotic relationship

- Participation in negotiation, evolution, and crafting of text (Group of 77)
- Place of adoption of Convention and location of a critical institution of the Convention (ISA)
- Entry into force
- Definition of CARICOM States; maritime entitlements and responsibilities
- Strengthening the rule of the Convention

# 1. Acceptance of Convention

Country	LOSC	1994 Part XI	Straddling stocks
Antigua and Barbuda	20/2/1989		
The Bahamas	29/07/1983	28/07/1995	16/07/1997
Barbados	12/10/1993	28/07/1995	22/09/2000
Belize	10/08/1983	21/10/1994	14/07/2005
Dominica	24/10/1991		
Guyana	16/11/1993	25/09/2008	
Haiti	31/07/1996	31/07/1996	

# Acceptance of Convention

Country	LOSC	1994 Part XI	Straddling stocks
Jamaica	20/2/1989	28/07/1995 (s)	
Montserrat ( <i>vide</i> United Kingdom)	29/07/1983	28/07/1995	16/07/1997
St. Kitts & Nevis	12/10/1993	25/07/1997	
St. Lucia	10/08/1983	21/10/1994	9/8/1996
St. Vincent and the Grenadines	24/10/1991		29/10/2010
Suriname	16/11/1993	9/07/1998	
Trinidad and Tobago	31/07/1996	28/07/1997	13/09/2006



# Issues arising from acceptance

- CARICOM not a party
- Declarations and statements: Articles 309, 310
- Position of other Caribbean States (esp., United States, Venezuela)
- Customary law and the convention
- *Nicaragua v United States* [1986] ICJ Rep. 14
- *North Sea Continental Shelf* [1969] ICJ Rep. 3
- VCLT, Article 34
- *Libya v Malta* [1985] ICJ Rep. 13



## 2. Maritime jurisdiction

- Extended maritime zones
  - Enormous potential for economic development
  - Tourism, fisheries, bio-chemicals, energy
- Archipelagic status
  - Antigua & Barbuda; The Bahamas; Jamaica; St. Vincent and the Grenadines; Trinidad and Tobago
- 12-mile territorial sea
- 200-mile exclusive economic zone (EEZ) or exclusive fisheries zone (EFZ)
- 200-mile continental shelf



# Legislation on maritime areas

- UK Territorial Waters Act 1878
- Antigua and Barbuda: Maritime Areas Act 1982 (18/1982)
- The Bahamas: The Archipelagic Waters and Maritime Jurisdiction Act 1993 (No. 37 of 1993)
- Barbados: Barbados Territorial Waters Act 1977 (cap. 386), Marine Boundaries and Jurisdiction Act (cap. 387)
- Belize: Maritime Areas Act 1992 (cap. 11)
- Dominica: The Territorial Sea, Contiguous Zone, Exclusive Economic Zone and Fisheries 1981 (Act No. 26 of 1981)

# Legislation cont'd

- Grenada: Territorial Sea and Maritime Boundaries Act 1990 (cap. 318)
- Guyana: Maritime Boundaries Act 1977 (Act No. 10 of 1977)
- Jamaica: Exclusive Economic Zone Act 1991 (Act 33 of 1991)
- St. Kitts and Nevis: Maritime Areas Act 1984 (3/1984)
- St. Lucia: Maritime Areas Act 1984 (cap. 116)
- St. Vincent and Grenadines: Maritime Areas Act (cap. 333)
- Trinidad and Tobago: Archipelagic Waters & Exclusive Economic Zone Act (chap 51:06)



# Issues in maritime jurisdiction legislation

- Rights to exploitation of natural resources (NIEO)
- Responsibility of foreign states to respect sovereignty and sovereign rights

# Nicaragua v United States :

- “The duty of every State to respect the territorial sovereignty of others is to be considered for the appraisal to be made of the facts relating to the mining which occurred along Nicaragua’s coasts... The laying of the mines within the ports of another State is governed by the law relating to internal waters, which are subject to the sovereignty of the coastal state. The position is similar as regards mines placed in the territorial sea. It is therefore the sovereignty of the coastal state which is affected in such cases.”



# 'Cruising'

- US\$ 50b
- 70% of all cruises take place in the North American region where the Caribbean Islands are the most popular destinations
- [http://en.wikipedia.org/wiki/Cruise\\_ship](http://en.wikipedia.org/wiki/Cruise_ship)

# MS Majesty of the Seas



# Thousands turn out for Oasis of the Seas, Falmouth, Jamaica

- Gleaner, Friday, March 25, 2011







# Cruising and maritime zones

- EEZ:
  - Rights of coastal states: living & non-living resources; and “other activities for economic exploitation...”
  - Rights of other states: navigation; over-flight; laying of sub-marine cables and pipelines
- Territorial sea:
  - Sovereignty subject to right of innocent passage



# Extended continental shelves

- Natural prolongation beyond 200 m
- Legislation claims up to edge of continental margin: Antigua and Barbuda, Guyana, Jamaica, St. Kitts Nevis, St. Lucia, St. Vincent and the Grenadines, and Trinidad and Tobago
- 2006 CARICOM LAC Meeting in St Lucia
- Commission on the Limits of the Continental Shelf: Barbados, Suriname, Trinidad and Tobago
- *Notes verbales*: Suriname, T&T, Venezuela
- CARICOM/CARIFORUM collaboration?



## 3. Fisheries

- Fisheries: jobs, income, food (protein), tourism
- ACS/UWI Study
  - > 504,913 jobs
  - > US\$1 billion in exports
  - > 7<sup>0</sup>% of total protein consumption in the Caribbean



# Fisheries cont'd

- 1995 Straddling Stocks Agreement: (6) (St. Lucia (1996), Bahamas (1997), Barbados (2000), Belize (2005), Trinidad and Tobago (2006), and St. Vincent and the Grenadines (2010))
- International Commission for the Conservation of Atlantic Tuna (ICCAT): (5) Montserrat (1995), Trinidad and Tobago (1999), Barbados (2000), Belize (2005), and St. Vincent and the Grenadines (2006)
- International Convention on International Trade in Endangered Species (CITES)



# Common Fisheries Policy

- CARICOM Heads of Government Conference 2003
- Caribbean Regional Fisheries Mechanism (CRFM)
  - The Montego Bay Convention
  - The Revised Treaty
  - Reserved areas for nationals
  - Non-CARICOM Caribbean states



## 4. Navigation

- Caribbean legislation and navigational rights
- Warships
- Nuclear waste



## 5. Pollution

- Article 56
- Part XII: apply “generally accepted rules and standards established by competent international organizations”
  - MARPOL 73/78
  - OPRRC 1990
- Merchant Shipping (Oil Pollution) Act (Chapter 275), (The Bahamas)
- Shipping (Oil Pollution) Act (Cap. 296A), (Barbados)





# Pollution and wider Caribbean

- Part IX: semi-enclosed sea
- The Caribbean Environment Programme (CEP)/(RCU)
  - The Cartagena Convention, 1983
  - The Oil Spill Protocol 1983
  - Specially Protected Areas and Wildlife Protocol 1990
  - Land-Based Pollution Protocol 1999



# MARPOL special area status

- L Davidson and K Gjerde, “Special Area Status for the Wider Caribbean Region ...”
- Annex I (oil)
- Annex II (noxious liquid substances)
- Annex V (garbage), May 1, 2011



## Annex V Regulation 5 (2)

- *(a) disposal into the sea of the following is prohibited:*
- *(i) all plastics, including but not limited to synthetic ropes, synthetic fishing nets, plastic garbage bags and incinerator ashes from plastic products which may contain toxic or heavy metal residues; and*
- *(ii) all other garbage, including paper products, rags, glass, metal, bottles, crockery, dunnage, lining and packing materials;*



## Annex V Regulation 5 (2) cont'd

- *(b) except as provided in subparagraph (c) of this paragraph, disposal into the sea of food wastes shall be made as far as practicable from land, but in any case not less than 12 nautical miles from the nearest land;*
- *(c) disposal into the Wider Caribbean Region of food wastes which have been passed through a comminuter or grinder shall be made as far as practicable from land, but in any case not less than 3 nautical miles from the nearest land. Such comminuted or ground food wastes shall be capable of passing through a screen with openings no greater than 25mm*



## 6. Dispute settlement

- Part XV, UNCLOS
  - International Tribunal on Law of the Sea (“ITLOS”)
  - International Court of Justice (ICJ)
  - Arbitral Tribunal under Annex VII
  - Special Tribunal under Annex VIII



## (a) Boundary delimitation

- *Barbados / Trinidad and Tobago Maritime Delimitation* (Annex VII Tribunal), April 11, 2006
- Circumstances of a dispute
- Unilateral invocation of settlement regime
- Equidistance and special circumstances
- Agreements with third states
- Limits to jurisdiction



# Boundary delimitation cont'd

- *Guyana/Suriname Arbitration* (Annex VII Tribunal), September 17, 2007
  - *Jurisdiction and land boundary*
  - *Use of force*





## (b) Prompt release/prescribed measures

- *M/V Saiga*; Max Planck Yearbook of United Nations Law, 459 (1998)
- Annex VII/ITLOS
- Promptness of release had a value in itself independent of the question of the bond
- Prescribed measures
- Judge Eddie Lang



# 7. Deep Sea Bed mining (ISA)

- Institutions:
  - Council
  - LTC
- Activities in the area
  - Advisory Opinion, Seabed Chamber, ITLOS, Feb. 2011
  - National under effective control
  - “Due diligence”
- Endowment Fund
- Equitable distribution of benefits



## 8. Special area for sustainable development

- Association of Caribbean States Initiative, 1999
  - UNCLOS, Articles 56, Part XII
  - Cartagena Convention and Protocols
  - MARPOL special area status



# Revised Treaty

## **ARTICLE 141**

### ***Special Status of the Caribbean Sea***

*The Member States shall co-operate in achieving international recognition for the Caribbean Sea as a Special Area requiring protection from the potentially harmful effects of the transit of nuclear and other hazardous wastes, dumping, pollution by oil or by any other substance carried by sea or wastes generated through the conduct of ship operations.*



# The ACS and the Caribbean Sea

- Address management of the wider Caribbean sea as a single large marine ecosystem (LME)
- Objective are to:
- develop a holistic governance framework that enables all stakeholders to contribute to managing the Caribbean sea in a manner that maintains its goods and services that are essential to human well-being
- contribute to the implementation of Resolution 57/261 of the General Assembly of the United Nations adopted on 20 December 2003 “Promoting an Integrated Management Approach to the Caribbean sea in the context of sustainable development”



# Objectives of the ACS project

- To advance the case for recognition of the Caribbean sea by the international community as a **“Special Area in the Context of Sustainable Development”** which is on the Agenda which was on the Agenda of the UN General Assembly in 2010
- The ACS’ Caribbean Sea Commission



# Arguments in favor of ACS project

- The Caribbean sea is special because it has:
- the most geopolitical components of complexity of any large marine ecosystem (LME) in the world
- the highest number of maritime boundaries of any LME in the world
- the largest number of small island developing states (SIDS) in the world



# Caribbean dependence on the sea

- Tourism
- Goods produced or provided by ecosystems
  - Food e.g., fish
  - Freshwater
  - Bio-chemicals
- Non-material benefits obtained by ecosystems
  - Recreational
  - Aesthetic
  - Inspirational
  - Educational





# Challenges to ACS Project

- Impact of a complex mixture of stakeholders from within and outside the region
  - Geopolitical make-up of Caribbean
  - Caribbean as shipping route
  - Foreign fishers



# Concluding remarks

- Mr. Chairman, I hope that I have said enough in this brief excursus to support my starting premise that there is a special, even symbiotic relationship between the Convention and the Caribbean, particularly the small states of the CARICOM region. The Convention has strengthened the maritime profile of these countries and enhanced their potential for economic advancement and these States have provided opportunities for clarification and authoritative assertion of the rules of the Convention. I am sure that the opportunities for further collaboration with the ISA will open up even more promising vistas.

# Thank you!



- Mr. Justice Winston Anderson, JCCJ©