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A New Dawn: Sunrise of Caribbean Arbitration as ITA Launches Initiative to Support its Development

Hon. Barry Leon (Caribbean Arbitrators, Arbitration Place, 33 Bedford Row Chambers), Calvin Hamilton (Arbitra International), and Theominique Nottage (Government of The Bahamas) · Friday, December 8th, 2023

In August 2023, the Institute for Transnational Arbitration (“ITA”) published the “Final Report and Recommendations of the ITA Caribbean Task Force” (“Report”). The Task Force, when the Report was published, consisted of Calvin Hamilton and Hon. Barry Leon (Co-Chairs) and Theominique D. Nottage (Deputy Chair), who are the authors of this post.

The Task Force is part of the ITA’s [Americas Initiative](#), which over the past two decades has played an important role in the development of arbitration in Latin America. Recognising the growing importance of other large parts of the Americas, the Americas Initiative has now expanded its focus to the Caribbean and Canada. We explain below the Report’s main conclusions and recommendations.

ITA Consultation

As outlined in the Report, there was broad consultation in ‘focus group meetings’ with a wide range of stakeholders throughout the Caribbean, including arbitrators, arbitration counsel (of different seniorities), Attorneys General and other national government ministers, academics, and educators, civil society and arbitration and other organizations and institutions.

As the Report explains:

“... ITA desires to team up with Caribbean practitioners and organizations to support their initiatives, create opportunities and identify synergies. As we said to many of the people with whom we met, ITA is not looking to come to the Caribbean to tell people what to do or how to do it, but rather to support existing and new initiatives, and undertake initiatives (perhaps together with others) that practitioners and others in the Caribbean would like to pursue. Finally, we worked to build an understanding of and support for the roles that the America’s Initiative may be able to play in the development of arbitration in the Caribbean.”

Conclusions and Recommendation

The Task Force's conclusions and its recommendations on how the ITA can assist the development of arbitration in the Caribbean are set out in the Report.

The Report recommends the following five "Initial ITA Priorities in and for the Caribbean":

- Model Law implementation;
- Capacity building among legal practitioners;
- Judicial education and training in arbitration;
- Assisting legal educators in the Caribbean; and
- Raising the profile of Caribbean arbitration in the Americas.

The Report outlines the current state of arbitration in the diverse Caribbean region and what is happening in arbitration there. Additionally, the Report outlines the opportunities that exist in the region as arbitration becomes more prominent, and Caribbean arbitration practitioners become more knowledgeable and eminent on the world stage.

The Caribbean Region

From the outside looking in, one unfamiliar with the Caribbean would not readily recognise its diversity as a region. However, the Caribbean region is diverse because it comprises the Commonwealth Caribbean (independent English-speaking countries Antigua & Barbuda, Jamaica, Trinidad & Tobago, Barbados, The Bahamas, Grenada, Dominica, St. Lucia, St. Vincent & The Grenadines, St. Kitts and Nevis and territories: Anguilla, Bermuda, BVI, Cayman Islands, Monserrat, Turks & Caicos Islands), in addition to other sovereign states located in the Caribbean Sea, Central America and South America which are geographically, culturally and/or politically aligned with the Commonwealth Caribbean. Further, the Caribbean Region encompasses both the common law and civil law legal traditions, in addition to socialist and religious legal traditions. This diversity is also reflected in the languages spoken in the region, which includes six official languages – English, Spanish, French, Dutch, Haitian Kreyòl and Papiamentu. The legal traditions inform the legal systems in the respective countries of the Region. The legal systems comprise of the common law system (the dominant system of law in the majority of the English-speaking countries), and the civil law system (the dominant system of law in the Spanish-speaking, French-speaking and Dutch-speaking countries), together with the "hybrid" systems in St. Lucia (a mixed system of common law and civil law), and Guyana (a mixed system of common law and Roman-Dutch Law). There is also the influence of the socialist legal tradition on the legal system in Cuba. Religious legal traditions can be found to inform the legal systems in countries with significant Muslim and Hindu populations, such as Guyana and Trinidad & Tobago. Familiarity with the judicial court system in the Caribbean Region is critical to understanding how the law develops in the Region. Most of the countries of the English-speaking Caribbean share the [Judicial Committee of the Privy Council](#) ("Privy Council") as their court of final appellate authority, except for Guyana, Barbados, Belize and Dominica which share the [Caribbean Court of Justice](#), established early in this century, as their court of final appellate authority. Suriname, the Dominican Republic, and Haiti each have their own court of final appellate authority within their respective judicial court systems. The Privy Council is also the highest court of appeal for the Crown dependencies and the British Overseas Territories. The French Departments in the Caribbean share the French judicial court system, while the Dutch Antilles share the Joint Court of Justice responsible for the administration of justice in first and appellate instances, for matters related to civil, criminal, and

administrative law cases.

The Caribbean Economy

The Caribbean region is a net importer of foreign investment. The prominent economic sectors in the region include, oil and gas, tourism, minerals, agriculture, fishing, offshore banking, financial and insurance services, and maritime. The region's major trading partners include the US, China, Canada, UK, and Brazil. There are efforts to increase trade with Latin American and African countries. Individual countries like Guyana and Trinidad have maintained strong trade relations with India essentially due to the strong ethno-Indian population in both countries.

Arbitration Laws and Institutions in the Caribbean

The British Virgin Islands, Jamaica, Barbados, Dominican Republic, the Cayman Islands, the Bahamas, and Bermuda have enacted modern arbitration legislation modelled on the [UNCITRAL International Commercial Arbitration Model Law](#) ("Model Law"). Trinidad & Tobago recently passed legislation based on the Impact Justice Bill, which is modelled on the Model Law. The legislation is awaiting proclamation by the President of the Republic to bring it into force.

All other jurisdictions in the Region have outdated arbitration legislation influenced by now-repealed old English Arbitration Acts.

The Region has witnessed the creation of several arbitration institutions, the most prominent of which is the [BVI International Arbitration Centre](#), created in 2013. The Dominican Republic, Cuba and Haiti also have arbitration centres which have been operating for several years, such as the Centre for Alternative Dispute Resolution of the [Chamber of Commerce and Production of Santo Domingo](#) and the [Haiti Chamber of Conciliation and Arbitration](#), the [Cuban Court of International Commercial Arbitration](#), respectively. Recently, arbitration centres have been created in the Cayman Islands, Jamaica, Barbados, Trinidad and Tobago, and Guadeloupe, such as: the [Cayman International Mediation and Arbitration Centre \(CI-MAC\)](#), [Jamaica International Arbitration Centre](#), [Arbitration and Mediation Court of the Caribbean](#), [Dialogue Solutions Limited](#), [Dispute Resolution Foundation](#), [OHADAC Regional Arbitration Centre](#), respectively.

Arbitration Initiatives Underway

Many different initiatives are underway in the region to build capacity and to promote good international arbitration practice. Legal education and training programs are now more present throughout the region. Institutions such as the [Chartered Institute of Arbitrators](#) and the [Caribbean ADR Initiative](#) have been offering courses and training to increase arbitration knowledge and expertise among business, judiciary, and the members of the law societies.

The [University of the West Indies](#) has also, for several years, been teaching courses on Alternative Dispute Resolution. Recently, it has introduced specific arbitration courses and related programs geared towards both students and professionals. Further, ADR has also become a course

requirement of the law schools to be able to practice law in the Commonwealth Caribbean jurisdictions.

Use of Arbitration in the Caribbean

While it cannot yet be said that arbitration has become the preferred method for resolving disputes, it can be appreciated that those sectors that conduct international commercial business have been using arbitration to resolve disputes. The construction industry, international financial, maritime and shipping, and tourism sectors have all been using arbitration to resolve disputes. The parties in these transactions have submitted their disputes to the arbitration institutions such as the **ICC**, **LCIA** and to a lesser extent the **ICDR**.

The international financial agencies, such as the **World Bank**, the **Inter-American Development Bank** and the **Caribbean Development Bank** now require in their financing contracts that the beneficiaries of their financing appoint Dispute Adjudication Boards to assist the parties to resolve disputes arising during the progress of the public projects to facilitate the project's timely competition.

It is expected that with more jurisdictions adopting modern arbitration legislation, together with the increased training and legal education, arbitration will become more mainstream for those matters that can be resolved appropriately by arbitration. We welcome your thoughts on the Final Report and Recommendations, and on priorities and ideas for implementation.

Final Report and Recommendations. The Final Report and Recommendations of the ITA Caribbean Task Force are available [here](#) (in English).

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