



# Pathways to Peace: Evolving Trends in Dispute Resolution Arbitration, Mediation and Courts Roundtable Discussion

The Honourable Mme Justice Maureen  
Rajnauth-Lee, Judge of the Caribbean  
Court of Justice

## **Chartered Institute of Arbitrators (Caribbean Branch) Fifth Triennial Conference**

Trinidad and Tobago  
15 October 2024

**Chartered Institute of Arbitrators (Ciarb)** is a global professional body. Its inclusive membership spans diverse geographies, backgrounds and professional disciplines. All with one thing in common – a desire to advance effective dispute resolution.

**Pathways to Peace: Evolving Trends in Dispute Resolution**

**Arbitration, Mediation and Courts**

**Round Table Discussion**

by

**The Hon Mme Justice Maureen Rajnauth-Lee, Judge, Caribbean Court of Justice**

**on the occasion of the**

**Chartered Institute of Arbitrators (Caribbean Branch)**

**Fifth Triennial Conference**

**15 October 2024**

**The Caribbean Court of Justice and the Revised Treaty of Chaguaramas**

Under Article 216 of the Revised Treaty of Chaguaramas Establishing the Caribbean Community Including the CARICOM Single Market and Economy ('RTC')<sup>1</sup> (See Article XVI of the CCJ Agreement) Member States agree to recognise as compulsory, ipso facto and without special agreement, the Original Jurisdiction of the Caribbean Court of Justice. In *Trinidad Cement Ltd v The Caribbean Community* [2009] CCJ 2 (OJ), the Court commented that:

by signing and ratifying the Revised Treaty and thereby conferring on this Court ipso facto a compulsory and exclusive jurisdiction to hear and determine disputes concerning the interpretation and application of the Revised Treaty, the Member States transformed the erstwhile voluntary arrangements in CARICOM into a rule-based system, thus creating and accepting a regional system under the rule of law.<sup>2</sup>

---

<sup>1</sup> (Adopted 5 July 2001, entered into force 4 February 2002) 2259 UNTS 293.

<sup>2</sup> *ibid* at [32].

In its Original Jurisdiction, the Court applies such rules of international law as may be applicable – Article 217 of the RTC (Article XVII of the CCJ Agreement).

It is to be noted that the CCJ also has an appellate jurisdiction, where it functions as an apex court. Five jurisdictions have acceded to its appellate jurisdiction. These are – Barbados, Belize, Dominica, Guyana and Saint Lucia.

### **The Revised Treaty of Chaguaramas – ADR Mechanisms**

Justice Desiree Bernard, former Judge of the CCJ, noted in her paper presented on the *Revised Treaty of Chaguaramas and the Caribbean Court of Justice – compatibility or controversy?*<sup>3</sup> that State parties to the RTC committed themselves to deepening regional economic integration through the establishment of the CARICOM Single Market and Economy in order to achieve sustained economic development. Mindful that disputes among member states could adversely affect their desired goals, they affirmed in the Preamble to the RTC that ‘the employment of internationally accepted modes of dispute settlement in the Community will facilitate the achievement of the objectives of the Treaty.’<sup>4</sup>

The RTC advocates recourse to several internationally accepted modes of dispute settlement:

- (1) Good offices: Member States parties to a dispute may agree to employ the good offices of a third party, including those of the Secretary-General, to settle the dispute.<sup>5</sup> Good offices may continue during the course of arbitration or adjudication.

---

<sup>3</sup> (2013) 96 Amicus Curiae 2. (This paper was originally presented at the 2013 Inns of Court Fellow, Institute of Advanced Legal Studies).

<sup>4</sup> See RTC (n 1), ch 9 (Disputes Settlement).

<sup>5</sup> RTC (n 1), Article 191.

- (2) Mediation: Member States parties to a dispute may agree on a mediator or may request the Secretary-General to appoint a mediator from the List of Conciliators maintained by the Secretary-General. Mediation may begin or be terminated at any time and may continue during the course of arbitration or adjudication.<sup>6</sup> Of course, positions taken by the parties during the mediation shall be confidential and without prejudice to the rights of the parties in any further proceedings.
- (3) Consultations: A Member State shall enter into consultations upon the request of another Member State, where the requesting Member State alleges that an action taken by the requested Member State constitutes a breach of obligations under the Revised Treaty. The parties are brought together for direct discussions, which may involve a third party or a designated body. The requested Member State shall enter into consultations within 14 days of receiving the request or a mutually agreed-upon period. If consultations fail to settle the dispute within 45 days of the receipt of the request for consultations or the mutually agreed-upon dates, the requesting Member State may resort to any mode of dispute settlement, including binding third-party settlement.<sup>7</sup>
- (4) Conciliation: A Conciliation Commission, an independent body agreed on by the disputing parties, examines the claims of the parties and makes non-binding recommendations with a view to reaching an amicable solution. To facilitate this process, the Secretary-General maintains a List of Conciliators from which a Conciliation Commission of three can be constituted. This Commission shall determine its own procedure. Basically, this organ hears the Member States parties to the dispute, examines their claims and objections, and makes proposals to the parties with a view to reaching an amicable settlement. The report, recommendations, and decisions of the Commission regarding procedural matters shall be made by a majority vote of its members. The Conciliation Commission

---

<sup>6</sup> RTC (n 1), Article 192.

<sup>7</sup> RTC (n 1), Article 193.

shall report within three months of its constitution. The conclusions or recommendations of a Conciliation Commission shall not be binding upon the parties. The conciliation proceedings shall be deemed to be terminated when a settlement has been reached, when the parties have accepted or one party has rejected the recommendations of the report by notification addressed to the Secretary-General, or when a period of one month has expired from the date of transmission of the report to the parties.<sup>8</sup>

- (5) Arbitration: In arbitration, the Member States parties to a dispute agree to take their dispute to an arbitral tribunal. To facilitate this process, the Secretary-General is required to maintain a List of Arbitrators from which an arbitral tribunal of three can be constituted. This tribunal shall establish its own rules of procedure. The procedures shall assure a right to a least one hearing as well as the opportunity to provide initial and rebuttal written submissions, which are confidential. Decisions of the arbitral tribunal shall be taken by a majority vote of its members and shall be final and binding on the Member States parties to the dispute. Where the parties cannot agree on the interpretation or implementation of the award, either party may apply to the arbitral tribunal for a ruling within thirty days of the award. The term of the arbitral tribunal shall come to an end unless an application for a ruling has been received, in which case it shall continue for such reasonable time, not exceeding thirty days, as may be required to make the ruling. A Member State which is not a party to a dispute, on delivery of a notification to the parties to a dispute and to the Secretary-General, shall be entitled to attend all hearings and to receive written submissions of the parties to a dispute and may be permitted to make oral or written submissions to the arbitral.<sup>9</sup>

---

<sup>8</sup> RTC (n 1), Articles 196-202.

<sup>9</sup> RTC (n 1), Articles 204-208

- (6) Adjudication: In the adjudication process, the Caribbean Court of Justice has exclusive and compulsory jurisdiction to interpret and apply the provisions of the Revised Treaty.<sup>10</sup>

### **Some Aspects of International Arbitrations: A Brief Look at Three CCJ Cases**

(1) In *Attorney General of Guyana v NH International Ltd*<sup>11</sup>: the Court noted the duty of courts to promote and support arbitration. The issue in this case was whether the Attorney General of Guyana had a direct or unfettered right to appeal to the Court of Appeal the order of the High Court Judge giving leave to enforce the Award of the Arbitrator. Several technical objections and submissions were made. The Court expressed disappointment that the matter had been the subject of undue delay in the lower courts. The Court said -

Before closing, the Court cannot but note that the question for determination in this case was a straightforward one, and we are extremely disappointed that it has taken such a long time for the matter to be resolved. We have previously drawn attention to the direct correlation between efficiency and expedition in the delivery of justice on the one hand and a country's economic development on the other. There was no good reason for this case to have meandered its way to this court some 8 years after it was heard by Justice Singh. This was a case involving the enforcement of an arbitral Award. Arbitration is a mode of dispute settlement that litigants often consciously choose in preference to litigation through the courts because of the convenience, finality and expedition of the arbitral route. Sadly, the treatment of this matter conflicted with the court's duty to promote and support arbitration.<sup>12</sup>

---

<sup>10</sup> RTC (n 1), Article 211

<sup>11</sup> [2015] CCJ 5 (AJ) (GY).

<sup>12</sup> *ibid* at [11].

(2) In *British Caribbean Bank Ltd v Attorney General of Belize*<sup>13</sup> (in addition to the Bank's claims in the domestic courts of Belize, challenging the constitutionality of the actions of GOB, the Bank also initiated international arbitration proceedings), the Court considered the important question of law: What are the principles governing the jurisdiction to issue an injunction restraining international arbitration proceedings commenced in accordance with an arbitration clause agreed to by the parties to the court proceedings? The Court expressed the view –

The right to commence the arbitral proceedings that BCB sought to exercise arose from a legally binding agreement by the state of Belize to submit to arbitration. It was unconditional, apart from the procedural requirement of three months' notice, in the sense that the BIT did not require the fulfilment of any precondition or the exhaustion of any domestic remedies. It gave rise to an autonomous procedure through which BCB might vindicate rights under international law, which were distinct and separate from rights vested as a matter of domestic law.

The courts of Belize had and retained the jurisdiction to restrain international or foreign arbitral proceedings which were oppressive, vexatious, inequitable, or would constitute an abuse of the legal process, and in that sense, there was no unqualified or indefeasible right to arbitrate. However, there was no requirement to exhaust local remedies before exercising the right to arbitration. Whether the arbitrators chose to stay the arbitral proceedings properly brought before them whilst related domestic proceedings were in train was entirely a matter for them under the doctrine *kompetenz-kompetenz* and the circumstance that arbitrators might do so could not form an appropriate basis for the domestic court to restrain the arbitration.<sup>14</sup>

(3) I turn next to the *BCB Holdings Ltd v Government of Belize* cases<sup>15</sup>. Justice Winston Anderson, CCJ Judge, has written on these cases in his article, *Foreign Sovereign Immunity in the Caribbean: A Case For Legislative Intervention*.<sup>16</sup> The CCJ refused to enforce an arbitration award

---

<sup>13</sup> [2013] CCJ 4 (AJ) (BZ), (2013) 82 WIR 63.

<sup>14</sup> *ibid* at [21] – [23].

<sup>15</sup> [2013] CCJ 5 (AJ) (BZ), (2013) 82 WIR 167.

<sup>16</sup> (2021) 53 Geo J Int'l L 57.

in Belize on the grounds that enforcement of the award would be contrary to the public policy of Belize. The CCJ made the point that where enforcement of a foreign or Convention award was being considered, courts should apply the public policy exception in a more restrictive manner than in instances where public policy was being considered in a purely domestic scenario because, as a matter of international comity, the courts of one State should lean in favour of demonstrating faith in and respect for the judgments of foreign tribunals. The CCJ observed that the public policy threshold was a very high one. While it was public policy that arbitral awards, and in particular foreign awards, should be enforced, it was also public policy that awards which were in conflict with fundamental principles of justice or the rule of law ought not to be enforced.

BCB petitioned the US District Court for the District of Columbia for enforcement. Belize opposed it on numerous grounds, including that the CCJ's final judgment refusing to enforce the award was *res judicata* and that international comity barred enforcement. The US District Court rejected this argument, explaining that only the country in which an award was made, in this case, England, the primary jurisdiction, may set it aside.<sup>17</sup> All other member countries of the New York Convention were designated as secondary jurisdictions. The refusal of one secondary jurisdiction to enforce an award did not preclude other secondary jurisdictions from enforcing it. Belize appealed to the Court of Appeals for the DC Circuit, which upheld the decision of the court below. The United States Supreme Court denied Belize's petition for certiorari.

I encourage you to read how this all ends as recounted by the Honourable Mr Justice Winston Anderson and to be here tomorrow when the Honourable Mr Justice Adrian Saunders, President of the Caribbean Court of Justice, will do a deep dive into this case.

I thank you most sincerely for your kind attention.

---

<sup>17</sup> *BCB Holdings Ltd v Government of Belize* 232 F Supp 3d 28.