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CBI v. Caricom: The Interplay Between Two International Law Instruments

*Mark B. Baker**
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I. Introduction

In 1982-83, during the formulation of President Reagan's Caribbean Basin Initiative ("CBI"), the economies and political structures of the Caribbean and Central America were under intense scrutiny. As a result of the CBI, two regional international law instruments presently exist—CBI and "Caricom," the Caribbean community—that espouse the same goals: to improve living conditions in the area, foster economic development, and obtain political and social stability. Caricom, however, received very little attention and in the resulting Caribbean Basin Economic Recovery Act (CBERA), plays no role, either as a party or as an element in the state of affairs the Act presumes. Possible consequences of the omission of the most important regional association in the Caribbean and the interplay of these two instruments, if both are to subsist, are of considerable interest and constitute the focus of this article.

The CBI may be characterized as an economic reconstruction and enhancement plan directed to overcome the limitations of many small, poor island-nations and Central American nations by means of interregional integration and harmonization of international trade policies. The plan is articulated in the form of a series of agreements between the United States and some individual countries of the region. This approach may hamper the plan's success. This article first examines the structure, goals, and history of Caricom to evaluate this international agreement in terms of the premises that underlie it and its success. Then the article examines some aspects of the CBI as an international legal instrument and discusses its goals and means. The interplay of these overlapping organs as seen in recent

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developments in the area's trade is the subject of the last part of this article.

II. Caricom

A. History and Organization

Regional multi-nation agreements, one of the major strategies used by underdeveloped countries to improve their socio-economic conditions, have met varied results. In the English-speaking Caribbean, after several short-lived attempts at regional organization,¹ Caricom was formed in 1973 and after a halting start has survived and has been expanding in the mid-1980s.²

Caricom's goals addressed the long-standing problems of the region: several small-sized countries, many of which have only recently achieved political independence, seek to improve their economic performance and standards of living through economic integration by the creation of a Common Market (in effect creating organs to coordinate their foreign policies and trade strategies) and by promoting functional cooperation among the member states.³ Caricom goals are designed to be met "by accelerated, coordinated and sustained economic development, particularly through the exercise of permanent sovereignty over their natural resources, . . . and by presenting a common front to the external world."⁴

Caricom's predecessor was far less adventurous. Carifta, or the Caribbean Free Trade Association, was basically a trade agreement and had some limited success. Caricom responded to the need for a supranational entity that would coordinate and rationalize the region's trade and economic planning.⁵ Perhaps the major exigence of such a union is for member nations to forego pressing local needs in order to fulfill the long-term goals of the region. Early in Caricom's existence, commentators pointed out the possibility of fragmentation, stating that "it will be many years before nationalism would have eroded to the point where there would be enough internal consensus and purpose to permit more than what Caricom proposes to

¹ The West Indian Federation lasted from 1958 to 1962, and the Eastern Caribbean Federation, from 1962 to 1965. The Caribbean Free Trade Association (Carifta) began in 1965 as a trade agreement between Antigua, Barbados, and Guyana, and was expanded in 1968 to include all the countries that would form Caricom in 1973: Trinidad and Tobago, Dominica, Grenada, Saint Kitts-Nevis-Anguilla, Saint Lucia, Saint Vincent, Jamaica, Montserrat, and Belize. H. GEISER, P. ALLEYNE & C. GAJRAJ, *LEGAL PROBLEMS OF CARIBBEAN INTEGRATION: A STUDY ON THE LEGAL ASPECTS OF CARICOM 9* (1976) [hereinafter cited as *LEGAL PROBLEMS*].

² See *infra* notes 47-48 and accompanying text.

³ See Treaty Establishing the Caribbean Community, July 4, 1973, 946 U.N.T.S. 17 [hereinafter cited as *Caricom Treaty*]; see also *LEGAL PROBLEMS*, *supra* note 1, at 34-35.

⁴ *LEGAL PROBLEMS*, *supra* note 1, at 35.

⁵ Mann, *Una evaluación de la Comunidad del Caribe: perspectivas y problemas en 1983*, 92 *INTEGRACIÓN LATINOAMERICANA* 23, 24-25 (1984) [hereinafter cited as Mann, *Una evaluación*].

accomplish."⁶

Another identified obstacle to regional integration was the high level of dependence on former colonial powers or on the neighboring developed countries. In a World Bank report on the Caribbean integration movement, S.E. Chernick stated:

[T]he integration movement among the Commonwealth Caribbean states can be viewed as an attempt to overcome the handicaps of small size, economic fragmentation, and extensive dependence on extraregional markets and suppliers of resources of all kinds. The principal idea behind integration is that pooling of local resources and markets will yield a higher level of economic and social benefits than could be attained by 'going it alone.' On the expectation that mechanisms can be designed which will lead to this end, or will at least give them a stronger bargaining position in relation to the outside world, most of the Commonwealth Caribbean states consider the integration option worthwhile. Since each of the alternatives available to them involves some degree of dependence, it is understandable that they would want to choose that course which provides the best combination of economic viability and political autonomy. The integration movement represents the closest approximation to that ideal.⁷

Thus, to enhance both economic viability and political autonomy, the regional integration "gamble" exchanged a measure of autonomy, by agreeing to support and follow a supra-national entity, for increased economic welfare resulting from pooled resources and a better bargaining position.

The internal structure created by the Caricom treaty is comprised of two organs: the Community and the Common Market. The first is articulated in the body of the 1973 Treaty, the latter in the Annex to the Treaty.⁸ The Community and Common Market involve several policy-creating organisms, and quasi-executive agencies⁹ that purport to harmonize the legal and trade mechanisms, the trade policies, and the fiscal incentives programs of the region.¹⁰ In-

⁶ O'Connell, *The Caribbean Community: Economic Integration in the Commonwealth Caribbean*, 11 J. INT'L L. & ECON. 35, 45 (1976).

⁷ S.E. CHERNICK, *THE COMMONWEALTH CARIBBEAN: THE INTEGRATION EXPERIENCE* 5 (1978).

⁸ Brief comments will suffice to describe the structure of Caricom and the Common Market because the legal aspects of both organisms have been thoroughly discussed by several authors. By far the best analysis of the structure and character of both agreements appears in *LEGAL PROBLEMS*, *supra* note 1. Other useful references are S.E. CHERNICK, *supra* note 7; W.A. AXLINE, *CARIBBEAN INTEGRATION: THE POLITICS OF REGIONALISM* (1979); W. DEMAS, *ESSAYS ON CARIBBEAN INTEGRATION AND DEVELOPMENT* (1976).

⁹ The principal organs are a Conference of Heads of Government for the Community, and a Council for the Common Market. Caricom Treaty, *supra* note 3, art. 6. Other organisms cover areas such as health, education, labor, and foreign affairs, basically as consultants, although each country is represented. *See id.* art. 10; Annex to the Caricom Treaty, art. 5, 946 U.N.T.S. at 28 [hereinafter cited as Annex].

¹⁰ *See* Caricom Treaty, *supra* note 3, arts. 6, 10; Annex, *supra* note 9, arts. 3, 30, 40, 42. On harmonization, see Liverpool, *La ley como instrumento armonizador en el proceso de integración en el Caribe*, 92 INTEGRACIÓN LATINOAMERICANA 38, 39-40 (1984).

deed, the two most important areas of activity are harmonization of local legislation in accord with the regional goals, a duty placed on the signatories by the treaty itself,¹¹ and creation and maintenance of favorable trade provisions among the members.¹²

Caricom is the result of a multilateral treaty. Signatory states are bound by the treaty to the extent that general international law and the law of treaties impose duties upon member states.¹³ It has been observed that "these instruments, once they are adopted, bring into existence a new entity which has its own dynamics and develops its own practices and rules."¹⁴ However, the extent of the Community's power to enter into binding international agreements is unclear from the text. Article 8 of the Community instrument states:

4. Subject to the relevant provisions of this Treaty, the Conference [heads of government of member states] shall be the final authority for the conclusion of treaties on behalf of the Community and for entering into relationships between the Community and International Organizations and States.

The Community, through articles 20.1 and 20.3, has "full juridical personality" and "may enter into agreements with Member States, non-Member States and International Organizations."¹⁵ Thus far, however, the Community's power as a separate international entity has not been tested. The text is ambiguous on the power relationship between the Community and member states. In the view of one observer:

It is true that according to the Community Instrument as well as the Common Market Annex, the new Community has been invested with important powers in the field of external relations. Both the Community *stricto sensu* and the Common Market possess the capacity to conclude treaties with non-Member States and other International Organizations in order to promote the objectives of the Community and Common Market. However, nothing in these provisions indicates that the treaty-making power of CARICOM has an exclusive character, exclusive in the sense that the Community alone, or the Common Market alone, can exercise it.¹⁶

Member states reserve the power to enter into agreements as long as

¹¹ Caricom Treaty, *supra* note 3, art. 5 provides:

General Undertaking as to Implementation: Member states shall take all appropriate measures, whether general or particular, to ensure the carrying out of obligations arising out of this Treaty or resulting from decisions taken by Organs of the Community. They shall facilitate the achievement of the objectives of the Community. They shall abstain from any measures which could jeopardise the attainment of the objectives of the Treaty.

¹² See Annex, *supra* note 9, arts. 39-40.

¹³ See LEGAL PROBLEMS, *supra* note 1, at 81; Caricom Treaty, *supra* note 3, art. 20.1; Annex, *supra* note 9, art. 63.1.

¹⁴ LEGAL PROBLEMS, *supra* note 1, at 81.

¹⁵ The analogous provisions for the Common Market appear in Annex, *supra* note 9, art. 63.1. Agreements negotiated on behalf of the Common Market, however, must be ratified by the Community's Conference. *Id.* art. 70.2.

¹⁶ LEGAL PROBLEMS, *supra* note 1, at 74.

those agreements are not incompatible with the obligations of member states.¹⁷

The arrangement distinguishes between more developed and less developed countries.¹⁸ The meaning of "developed" in this context is different from that which distinguishes between the "developed world" and the "underdeveloped world." Compared to the industrialized world, even the "developed" countries of Caricom are underdeveloped. Some, however, have natural resources or comparatively higher levels of industrialization than their sister nations. The importance of this distinction lies in the recognition that even among countries with so many commonalities, disparity among them can be, and has been, a major disintegrating influence.¹⁹ Below are some comments on the major problems and characteristic traits of the region and of the development strategy Caricom reflects.

1. *Infrastructure needs*

One of the major disparities among the Caricom nations is the level of infrastructure needs. Airports, roads, electricity, and the other utilities are far below the standards required for most industries—especially in the smaller nations. Investment by international development agencies has focused on improving the attractiveness of all member countries, but basic services, as well as skilled workers and administrative and technical personnel remain insufficient or absent.²⁰ As will be seen later, one of the major criticisms of the CBI is that it ignores this disparity in establishing a regional policy—thus encouraging the disparities to become more acute as the more developed countries grow to their infrastructure's capacity.²¹

¹⁷ Annex, *supra* note 9, art. 68. No similar provision appears in the Treaty, which is not surprising, for member states would never accept such a great limitation on their treaty-making power.

¹⁸ See Caricom Treaty, *supra* note 3, arts. 1, 2. The more developed countries are Barbados, Guyana, Jamaica, and Trinidad and Tobago; less developed countries are Antigua, Bahamas, Belize, Dominica, Grenada, Montserrat, St. Kitts-Nevis-Anguilla, St. Lucia, and St. Vincent. In Barbados, the Gross Domestic Product (GDP) in 1982 at current prices was B\$1,995 million (US\$1 = B\$2.01, Sept. 1984); in Guyana, the Gross National Product (GNP) in 1982 at current prices was G\$1,296 million (US\$1 = G\$3.75, Sept. 1984); in Jamaica, the GNP in 1982 at current prices was J\$5,392.2 million (US\$1 = J\$3.87, Sept. 1984); in Trinidad and Tobago, the GDP in 1982 at current prices was TT\$17,831.8 million (US\$1 = TT\$2.40, Sept. 1984). All of the following figures refer to GDP at market prices, in EC dollars (US\$1 = EC\$2.70, Sept. 1984); Antigua, \$91 million; St. Kitts-Nevis-Anguilla, \$50 million; Montserrat, \$20.2 million; Grenada, \$107.6 million; St. Lucia, \$119.2 million; St. Vincent, \$78 million; Dominica, \$66 million. See 1984 Q, ECON. REV. W. INDIES, BELIZE, BAHAMAS, BERMUDA, GUYANA 12, 21, 29, 36, 49 (Ann. Supp.).

¹⁹ See *infra* notes 24-26 and accompanying text.

²⁰ Many suggest that the key difference between the members should not be called "development," but "capacity." So long as the productive capacity disparity remains unresolved, remedial measures will not be successful. See Mann, *Una evaluación*, *supra* note 5, at 36.

²¹ Mann, *La Iniciativa de la Cuenca del Caribe: perspectivas y problemas de la integración*

2. Scales

Given the small size of the individual countries and the small level of productive capacity, both as markets and as productive units, the Caribbean nations must overcome the economics of scale. "Modern technology requires productive and administrative units which are simply too large for the domestic markets of most of the Caribbean Commonwealth states. Since the capacity to adapt this technology is limited, the choice has usually been confined to the costly extremes of either doing without or creating excess capacity."²² This two-pronged problem is a major disincentive for foreign capital to invest in the region.²³ The regional approach is by definition an attempt to overcome the liabilities of scale by joining efforts as a larger whole.

3. Intra-regional disparities

As mentioned above, the disparities in the Caribbean region present a formidable obstacle to development and growth and to the effort to harmonize development in the various nations. Existing disparities in population, size, and financial and mineral resources are exacerbated by the fact that the area is divided by water and by insufficient means of communication.²⁴ Dealing with the conflicts these disparities create has been one of Caricom's major difficulties. Closely related to this problem lies the notion that free trade, unfettered, will polarize existing and potential disparities, although free trade is understood to be the only way the region's poor economies will receive infusions of needed capital.²⁵

caribeña (CARICOM), 82 INTEGRACIÓN LATINOAMERICANA 30, 36-37 (1983) [hereinafter cited as Mann, *La Iniciativa*].

²² S.E. CHERNICK, *supra* note 7, at 4.

²³ See *Caribbean Basin Economic Recovery Act: Hearings on S. 544 Before the Senate Comm. on Finance*, 98th Cong., 1st Sess. 159-60 (1983) (statement of Prof. Joseph Pelzman, George Washington University) [hereinafter cited as *Hearings*].

Despite all these attractive incentives [referring to investment incentives and tax holidays], the Caribbean countries suffer from all the major difficulties and constraints associated with small size. These include the undiversified nature of their economies, the high import content of all goods and services and the lack of capital formation to undertake major public investment programs. They also lack adequate internal or regional markets to absorb domestic production. At the same time, the lack of adequate infrastructure provides the proper disincentive for the formation of an active export sector.

Id.

²⁴ Mann, *Una evaluación*, *supra* note 5, at 23. Belize and Guyana own more than 90% of the land, but have less than 20% of the population; Guyana, Trinidad and Tobago, and Jamaica have approximately 98% of the Community's mineral resources. Production in the more industrialized countries—Trinidad and Tobago, Jamaica, Barbados, and Guyana—represents 91% of the area's GNP and 94% of the Community's manufacturing production. *Id.*

²⁵ W.A. AXLINE, *supra* note 8, at 23.

[F]ree trade, with or without a regional protective policy should not be the

This regional approach places a high strain on the more developed countries which, in order to allow less developed countries to grow, may have to sacrifice individual welfare for the sake of regional well-being.²⁶ Indeed, the Treaty in article 4 (ii) states as one of its goals "the sustained expansion and continuing integration of economic activities, the benefits of which shall be equitably shared taking into account the need to provide special opportunities for the Less Developed Countries."

4. Policies: Controlled investment

Another of the main objectives of the Caricom treaty is "the achievement of a greater measure of economic independence and effectiveness of its member states in dealing with states, groups of states and entities of whatever description."²⁷ As former colonies, both political and economic autonomy is highly valued by these countries. Programs attracting investment have the dual goals of hosting foreign capital and retaining the power to control national affairs.

Industrialization, on the other hand, is needed almost unconditionally. Increasing the level of industrialization will serve the goals of increasing employment opportunities, increasing local production, and raising "foreign exchange earnings."²⁸ "[I]t has been strongly believed in the region that industrialization of the right kind plays an important and dynamic role in economic development. Industrialization which creates sectoral linkages—national or regional—will, it is believed, bring new resources into use and reduce dependence on the outside world."²⁹ The "right kind" of industrialization fosters the goals of development without extracting too great a price.

Indeed, the "wrong kind" of industrialization has been described as the "Puerto Rico model."³⁰ Based on tariff-free treatment and tax incentives—the original approach the CBI was designed to

principal goal or even a major goal of Third World integration schemes. Although elimination of intra-regional barriers to trade may lead to significant increases in trade in some cases this is not likely to contribute in a major way to the development of the region.

Id. Axline's conclusion is that free trade must be coordinated with, and monitored by, regional planning.

²⁶ See O'Connell, *supra* note 6, at 46. Some developed countries have made sacrifices, and the effects of unilateral actions by the developed countries to protect their own economies have been very consequential in the rest of the Caribbean. See *infra* notes 41-43 and accompanying text.

²⁷ Caricom Treaty, *supra* note 3, art. 4(a)(iii).

²⁸ S.E. CHERNICK, *supra* note 7, at 190.

²⁹ *Id.*

³⁰ See *Hearings*, *supra* note 23, at 197 (statement of Robert A. Pastor, University of Maryland); Pastor, *Sinking in the Caribbean Basin*, 60 FOREIGN AFF. 1038, 1050-51 (1982) [hereinafter cited as Pastor, *Sinking*]; Weintraub, *A Flawed Model*, 47 FOREIGN POL'Y 128, 132 (1982).

take—this model has been criticized because “those measures distort the relative prices of labor and capital. Even during Puerto Rico’s high growth of the 1950s and 1960s employment lagged, and the safety valve of emigration to the mainland was necessary.”³¹ This approach results in growth without development, a “gap between gross domestic product and gross national product—that is, a growing proportion of production in Puerto Rico is not available to commonwealth residents because profits and interests are remitted to the mainland.”³² In the long run, such a program increases dependence instead of self-sufficiency. Dependence takes the form of “‘enclave’ industries, which import most or all of their raw materials and export their entire products.”³³

To avoid the “Puerto Rico model,” several of the more developed countries in the Commonwealth Caribbean have established policies such as investment-sharing or local ownership requirements,³⁴ and limitations on access of domestic credit.³⁵

B. *Caricom in 1985*

After thirteen years in existence, Caricom’s continued existence is a great achievement, but the results thus far are difficult to assess and telling of the work remaining before the community achieves its stated goals.

Intra-regional trade remains poor and it is not clear whether it is improving. In 1983 trade within Caricom fell 13.3% to \$481 million from the previous year’s level of \$555 million, partially resulting from a chain reaction of protectionism that started with Jamaica, followed by Trinidad and Tobago, and later by Barbados.³⁶ The absolute level of internal Caricom trade constitutes only 8% of total trade and is overshadowed by that with Europe, the United States, and Canada.³⁷ This indicates that the developmental strategy objective of internal regional trade has not yet been met.

Local producers, furthermore, are under the constant pressure

³¹ Weintraub, *supra* note 30, at 132.

³² *Id.*

³³ *Hearings, supra* note 23, at 197 (statement of Robert A. Pastor); see Pastor, *Sinking, supra* note 30, at 1051.

³⁴ See Cherol & Zalduendo, *Legal Framework for Foreign Investment in the Caribbean and Central America*, 18 INT’L LAW., 957, 964 (1984), translated and reprinted in *El marco legal de la inversión extranjera en el Caribe y Centroamérica*, 97 INTEGRACIÓN LATINOAMERICANA 32 (1984), covering Barbados, Jamaica, and Trinidad and Tobago.

³⁵ *Id.* at 979.

³⁶ [The drop] was the result of economic difficulties in individual member countries which had prompted them to take measures which set a chain reaction among the others. The introduction of import restrictions by Trinidad and Tobago was itself a response to Jamaica’s multiple exchange rate system which discriminated against Caricom trade and to the measures adopted by Barbados to protect itself from the consequences of the Jamaican measure. 1984 Q, ECON. REV. W. INDIES, BELIZE, BAHAMAS, BERMUDA, GUYANA, Sept. 12, 1984, at 12.

³⁷ Mann, *Una evaluación, supra* note 5, at 23.

of competing with foreign enterprises. Promoting the internal market only achieves the end sought if the producers are regional or mostly regional. "Empirical evidence suggests that small manufacturers are forced to protect themselves in their local markets through quantitative restrictions, thus being unable to expand their marketing within Caricom given the enormous commercial prowess of their competitors."³⁸

Even in its weakened state, however, "Caricom trade is fundamental to the welfare of the regional economy."³⁹ As we will see below, whenever a serious threat has arisen, members unanimously have upheld the validity of the organization and the desire and committal to keep the Community working.⁴⁰

The interplay between local policies and regional goals is subject to the realities of politics. When the former supersedes the relevance of the latter the regional scheme unavoidably tends toward fragmentation. In July 1984 heads of all Caricom member countries met in Bahamas and highlighted the main problems regarding the trend to fragmentalism: Jamaica devalued its currency in order to increase exports and increase the costs of imports; Trinidad and Tobago, the other major manufacturer in the region, responded by also taking steps to reduce imports.⁴¹ These measures were understood to be the main causes of a decline in intra-regional trade.

On another level, political needs have forced member nations to decide whether support for a member country should be subordinated to needs of the regional organization. In the case of Guyana, which has had a long border dispute with Venezuela, a major contributor to the region, Caricom has taken a neutral position, offending member and patron alike.⁴²

Undoubtedly, any such regional organization will have such conflicts, and an essential issue remains how far governments can deal with the pressure of national demands and still conform their policies to the regional demands. "To the degree that governments must heed the national demands for visible short-term benefits from integration, democratic political systems are likely to pose an obstacle to the integration process."⁴³

A regional approach, however, is still clearly favored to "going it alone." Some have suggested that Caricom's single most outstand-

³⁸ *Id.* at 29.

³⁹ 1983 Q. ECON. REV. W. INDIES, BELIZE, BAHAMAS, BERMUDA, GUYANA, Dec. 19, 1983, at 6.

⁴⁰ See *infra* notes 44-46 and accompanying text.

⁴¹ *Quarreling Caribbean Nations Meet*, N.Y. Times, July 5, 1984, at A3, col. 2.

⁴² See Gonzales, *The Future of CARICOM: Collective Self-Reliance in Decline?*, 13 CARIBBEAN REV. 8 (Fall 1984). The consequence of such conflicts, according to this author, is the declining economic significance of the organization, even if the political and cultural goals of the treaty are still considered desirable.

⁴³ W.A. AXLINE, *supra* note 8, at 202.

ing achievement has been its capacity to survive and remain viable.⁴⁴ Heads of Caricom states concluded their July 1984 meeting with an expression of their determination "to undertake an immediate and urgent program aimed at visibly restoring and increasing intraregional trade."⁴⁵ Caricom, with the understanding of its members, has represented the region in trade missions and in manufacturing fairs.⁴⁶

The expansion of Caricom membership may signal a renewed interest in the regional organization. In 1983 Bahamas, which had been eligible to join the Community since its inception, became a member. In 1984 heads of state expressed their desire to open Caricom to other countries in the area, a first step to which was "granting observer status to three non English-speaking countries: Haiti, the Dominican Republic and Suriname."⁴⁷ More concrete steps toward making the Dominican Republic a full member took place later in 1984, and part of the express goals of such a move was to establish common strategies to improve the region's position with the United States.⁴⁸

Thus, Caricom remains a desired, yet still incomplete arrangement to join resources for the improvement of the region by reaping the benefits of concerted activity. Problems such as lack of basic infrastructure, limitations inherent to the small size of the countries, and internal disparities between member states remain as obstacles, though the organization's prolonged existence and recent expansion signal the willingness of members of the region to uphold the principles the institution represents.

⁴⁴ "Its flexible and permeable structure, capable of absorbing the shocks which are sources of major disruption or complete breakdown in similar integration movements among developing countries, seemed more appropriate to the circumstances of the late seventies and early eighties." Gonzales, *supra* note 42, at 9.

⁴⁵ *Goals Are Set for Caribbean*, N.Y. Times, July 9, 1984, at D10, col. 4. "One concrete measure to support intra-community trade was a decision to raise Caricom's common external tariff (CET) by 15 percent on 14 categories of goods from January 1, 1985." 1984 Q, ECON. REV. W. INDIES, BELIZE, BAHAMAS, BERMUDA, GUYANA, Sept. 12, 1984, at 12. The other major issue in the Conference was public debt. Heads of state requested the IMF to extend the period of adjustment under the Extended Fund Facility and requested the World Bank to make more funds available to allow developing countries "to support their relevant financial institutions to enable increased trade credits to be extended and to increase the resources of multilateral institutions such as the Caribbean Development Bank (CDB) and the CMCF [Caribbean Multilateral Clearing Facility]." *Id.* at 13.

⁴⁶ Wagenheim, *Caricom Organizes Promotions for Manufacturers*, Caribbean Bus., Jan. 30, 1985, at 10, col. 1 (Caribbean Basin ed.).

⁴⁷ *Caribbean Group Eases Feuds at Talks*, N.Y. Times, July 8, 1984, at L10, col. 4. Attracting other countries into Caricom was considered the most important long-term development agenda in the meeting, because it meant the "tacit acceptance by members of the need to extend the community's membership and include the much larger economy of the Dominican Republic if it is to become a viable economic entity. Whether the inclusion of Haiti will contribute much, either politically or economically, is rather more dubious." 1984 Q, ECON. REV. W. INDIES, BELIZE, BAHAMAS, BERMUDA, GUYANA, Sept. 12, 1984, at 13.

⁴⁸ *See Editorial*, Caribbean Bus., Oct. 31, 1984, at 5, col. 1 (Caribbean Basin ed.).

III. The Caribbean Basin Initiative

In 1982 President Reagan announced a program to revitalize the economy of the Caribbean "Basin," an area which includes the Caribbean and Central America. The plan focused on economic growth, although military aid to some countries also was included. Shortly thereafter, Caricom heads of state expressed their acceptance of the CBI plan, "but . . . they also expressed the hope that it wouldn't undermine regional integration."⁴⁹ The plan, passed after a year of congressional debates, featured duty-free access to the United States market for various goods. In the words of a special congressional committee:

By providing the Caribbean special access to the U.S. market under a concessionary trade regime, we will add a new dimension to the investment analyst's view of the Caribbean as a target for new venture capital. New capital will soon generate new export income in non-traditional as well as traditional export products.⁵⁰

The Caribbean Basin Economic Recovery Act⁵¹ is structured to allow duty-free access to "eligible countries:"⁵² countries meeting specific economic, ideological, and policy criteria,⁵³ or other countries designated by the President.

Critics quickly pointed out that the program's approach ignored the differences between the various geographic regions of the "Basin," as defined in the Act. Central America, which has a fairly well-developed economic infrastructure (relative to other parts of the region), is politically unstable; the Caribbean islands, on the other hand, are fairly stable politically, but lack very basic infrastructure.⁵⁴

⁴⁹ Pastor, *Sinking*, *supra* note 30, at 1052.

⁵⁰ STAFF OF HOUSE COMM. ON WAYS AND MEANS, 98TH CONG., 1ST SESS., REPORT ON COMM. DELEGATION VISIT TO THE CARIBBEAN BASIN 7 (Comm. Print 1984) [hereinafter cited as REPORT ON CBI].

⁵¹ Caribbean Basin Economic Recovery Act, Pub. L. No. 98-67, 97 Stat. 384 (1983) (codified at 19 U.S.C. §§ 2701-2706 (Supp. I 1983)).

⁵² 19 U.S.C. § 2702 (Supp. I 1983).

⁵³ Section 2702(b) includes as "beneficiary countries" those chosen from the following group: Anguilla, Antigua and Barbuda, The Bahamas, Barbados, Belize, Costa Rica, Dominica, Dominican Republic, El Salvador, Grenada, Guatemala, Guyana, Haiti, Honduras, Jamaica, Nicaragua, Panama, Saint Lucia, Saint Vincent and the Grenadines, Suriname, Trinidad and Tobago, Cayman Islands, Montserrat, Netherland Antilles, Saint Christopher-Nevis, Turks and Caicos Islands, and Virgin Islands (British). Criteria for designation include not being Communist (19 U.S.C. § 2702(b)(1) (Supp. I 1983)), not having nationalized property without compensation (*id.* § 2702(b)(2)(A)), having always followed arbitration in good faith (*id.* § 2702(b)(3)), not giving preferential treatment to another country such that U.S. commerce is adversely affected (*id.* § 2702(b)(4)), and other provisions related to drug control, copyright protection, extradition of citizens, and other criteria. Furthermore, countries must be in agreement with the GATT provisions (*id.* § 2702(c)(4)), assure equitable access to the markets and basic commodity resources (*id.* § 2702(c)(3)), and enforce trade policies that contribute to the revitalization of the region and other policies that result in self help (*id.* § 2702(c)(6)-(7)).

⁵⁴ *Hearings*, *supra* note 23, at 144 (statement of Prof. Joseph Pelzman).

Another criticism focused on the effect of the free trade approach of the program:

Combined with the bilateral investment treaties and increased insurance from the Overseas Private Investment Corporation, the Administration is trying to reduce the political risk and increase the economic incentive to U.S. business to invest in the region. The investment program, however, might create as many problems if it succeeds as if it fails. Almost all of the nations are quite small. Large or numerous foreign investments could translate into disproportionate economic and political power, which in turn could lead to strident nationalistic reactions several years down the road.⁵⁵

Another general problem concerns the difficulties posed by the objectives of the Initiative: countries must both strive for development in accordance with the Act and agree with other U.S. policies in the region. One of the dangers inherent in the policy is illustrated by the invasion of Grenada, over which Caricom nations were divided in their support of the U.S. action. Shortly after the invasion, the United States punished Trinidad and Tobago, the most outspoken critic of the action, by cancelling several trade agreements. Within months Trinidad struck the same deal with Cuba. This affected the program's goals in two ways: it fostered trade with Cuba, which is against the interest of the United States in the Administration's view, and it limited trade in the region. Trinidad and Tobago is one of the main manufacturing centers in the region, and difficulties suffered by it affect smaller nations as well.⁵⁶

The limited impact of an approach based on tariff reductions was recognized as soon as the Act was articulated, for tariffs were not a major hindrance to trade between the Caribbean and the United States.⁵⁷ An alternative argument proposed that the attention given to the area as a result of the plan would highlight other benefits to potential investors, such as low wages.⁵⁸ Recent developments indicate that this also did not make the program effective, for without an investment incentive, such as preferred tax treatment, the region's manufacturing capacity is substantially in the same condition as it

⁵⁵ Pastor, *Sinking*, *supra* note 30, at 1047.

⁵⁶ See 1984 Q, *ECON. REV. W. INDIES, BELIZE, BAHAMAS, BERMUDA, GUYANA*, Mar. 14, 1984, at 9.

⁵⁷ *Hearings*, *supra* note 23, at 151 (statement of Prof. Joseph Pelzman).

⁵⁸ *Caribbean Initiative Attracts Investment*, *N.Y. Times*, Feb. 20, 1984, at D1, col. 2 [hereinafter cited as *Caribbean Initiative*].

If you're thinking about a big turnaround, this will not solve the problem, especially since a lot of the products already come duty free, [Rep. Thomas J. Downey] said, referring to the Generalized System of Preferences, an older program in which 2,900 products from developing countries in all regions of the world may enter the United States duty-free. But what the new program does do, Mr. Downey said, "is focus attention on places with low wage rates, such as Haiti and the Dominican Republic, and if they get more manufacturing, that's good."

Id. at D5, col. 1.

was before the Initiative.⁵⁹

Development programs commonly combine aid, investment incentives, and trade measures. The CBI focused on opening free trade, a rather futile measure, because most of the products were already covered by other programs:

As the president noted, however, 87 per cent of the region's exports already enter the United States duty-free, either through the Generalized System of Preferences or because the exports do not compete with U.S. products. Of the remaining 13 per cent, nearly one-half are textiles and sugar, products excluded from the Free Trade Area, leaving about 7 per cent of the region's current trade affected by the removal of the tariffs.⁶⁰

In sum, although reports on the early results of the plan indicated an increase in new investment projects,⁶¹ by the second quarter of 1984, it was apparent that the high expectations held for the plan "had quickly evaporated."⁶²

CBI is both a regional program and a group of bilateral agreements. Unlike other trade programs the United States has undertaken, the CBI is a regional plan: "[T]he measure reflects a departure from the policy of non-discrimination—where the same rules of trade and investment apply to all countries—to one of regionalism, where a group of countries are given preferential treatment."⁶³ The plan is implemented as a series of bilateral agreements executed between each individual country and the United States, which enters into each agreement upon a showing by the country that it fulfills the criteria established in the Act. The Act does not consider regional organizations (such as Caricom) to be

⁵⁹ One reason for the doubts cast on the early promises of the CBI is that it was originally intended that duty free access should be accompanied by a provision extending the 10 per cent tax credits to US companies investing in the region. This provision, which fell by the wayside on the CBI's passage through Congress, would have encouraged US manufacturing companies to set up in the region and import the goods produced by those subsidiaries. Without this investment in new manufacturing capacity, the countries of the region do not have the means of producing the goods for the US market.

Q. ECON. REV. W. INDIES, BELIZE, BAHAMAS, BERMUDA, GUYANA, June 6, 1984, at 10. One result of this shortcoming is that Caribbean countries have been looking for investments in other areas, such as Hong Kong. *Id.*

⁶⁰ See *Caribbean Initiative*, *supra* note 58, at D1, col. 1.

⁶¹ "If the intended beneficiaries of President Reagan's Caribbean Basin Initiative (CBI) had high hopes of the plan, these have quickly evaporated. Claims that duty free access to the US market would increase the region's exports thereby by 50 per cent in three years have soon proved empty." 1984 Q. ECON. REV. W. INDIES, BELIZE, BAHAMAS, BERMUDA, GUYANA, June 6, 1984, at 10. Reasons for the "failure" are the few products that were not already covered by the GSP, the 25% value added requirement to qualify for duty free treatment, and the mistrust generated by the EPA's decision to ban products fumigated by ethylene dibromide after many countries had invested in crops using that product. *Id.*

⁶² Feinberg & Newfarmer, *A Bilateral Gamble*, 47 FOREIGN POL. 133, 137 (1982). See also Clasen, *The Caribbean Basin Economic Recovery Act and Its Implications for Foreign Private Investment*, 16 N.Y.U. J. INT'L L. & POL. 715, 716 (1984).

⁶³ Clasen, *supra* note 62, at 745.

parties, though these organizations have longstanding commitments to the same goals of economic improvement and development.⁶⁴ It is anomalous that this omission was allowed.

The formal requirements of the CBERA, establishing conditions for designated countries, discourage international organizations from being integral parties. Though nothing in the Act's language prevents a group of countries from seeking the special treatment as a group, each country would be treated individually anyway and forming such a group would only impose an additional requirement to participation in the Act's benefits. Furthermore, concerted action is discouraged because the free trade, open door policy of the Act almost inevitably pits each country against the others.

The distinction between a multilateral and a bilateral approach has very serious potential implications. Commentators have noted: "A genuinely multinational framework would allow for a more efficient coordination for scarce resources as well as encourage donor countries to share the aid burden more widely. Moreover, multilateralism provides mechanisms for the transfer of aid resources without the political tensions and resentments that accompany bilateral programs."⁶⁵ Multilateralism here is used in two senses: CBI is a one-party approach by the United States selected over an approach that would have included Canada, Venezuela, and other regional U.S. allies.⁶⁶ Multilateralism in the other sense refers to concertedly coordinating U.S. policy with the efforts of the region's organizations to adopt a common policy plan. This second usage of multilateralism is of great concern and speaks directly to the relationship between Caricom and the CBI.

Consensus among the parties establishing an economic recovery plan requires a policy that reflects the concerns of all those affected. This is especially relevant when institutions seeking to establish a developmental strategy based on the agreement of all the parties involved already exist.⁶⁷

Caricom's efforts to minimize the internal disparities of the re-

⁶⁴ Mann, *La Iniciativa*, *supra* note 21, at 35.

⁶⁵ Feinberg & Newfarmer, *supra* note 62, at 136.

⁶⁶ In a July, 1981 meeting in Nassau, the foreign ministers from the United States, Canada, Venezuela and Mexico met to discuss proposals for the region. In the months that followed, however, the "Nassau Four" began to differ in their conceptions of the plan. Mexico refused to attend a meeting in Santo Domingo with representatives for the participating countries because Cuba had not been included as a participant. By the end of that year, it had become clear that there would be little cooperation among the Nassau Four. This was largely due to Mexican and Canadian complaints that the U.S. initiative had failed to include any serious consultation with the governments of the region and was being used as an ideological tool directed against particular countries.

Clasen, *supra* note 62, at 718-19.

⁶⁷ See Pastor, *Sinking*, *supra* note 30, at 1057.

gion through the concerted effort of more developed and less developed countries can and have been seriously undermined by the CBI's unilateral approach, which will foster development in those countries already on the development curve, and will accentuate the weak economies and infrastructures of the other countries.⁶⁸ Furthermore, the overwhelming disparity between the U.S. economy and the Caribbean economies provides little basis to believe that the agreements will reflect common interests in both parts of each agreement.⁶⁹

Insofar as the CBI seeks stability and well-being in the Caribbean, it does not conflict with the goals of Caricom. Indeed, the CBI requires a showing that the countries' trade policies contribute to the revitalization of the region.⁷⁰ In requesting inclusion as a beneficiary country, Jamaica stated that "[o]f particular importance is the objective of fostering economic integration with the Caribbean Community and Common Market while also seeking to expand intra-regional trade within the Caribbean Basin with a view to revitalization of the region."⁷¹ Whether these CBI goals are consistent with the methodology of the Initiative is questionable.

In formulating the role of the private sector, "[t]he Reagan administration has mistakenly emphasized the private sector as the single key to development. Its role can be crucial, but private investors are unlikely to deal with critical infrastructure problems that severely hamper Caribbean development."⁷² Although it is highly debatable whether assistance directed to the public sector should be the focus

⁶⁸ See Wagenheim, *U.S. Secretary of State Exhorts Private Investors*, Caribbean Bus., Dec. 12, 1984, at 2, col. 1 [hereinafter cited as *Secretary Exhorts*] (Barbados, Belize, Grenada, and Jamaica experience "spectacular growth" in the amount of exports to the United States. Based on the levels of development of the countries involved, growth in the Jamaican economy, which already has an extant exchange with the United States, means something enormously different than the impact on Grenada).

⁶⁹ The CBI reflects the administration's interest in military security, political loyalty, and advantages for United States firms, rather than United States concern for the region's long-term development. Because most Caribbean countries are dependent on the United States, they will speak the language the administration wants to hear, but they are disenchanted by Washington's emphasis and rhetoric.

Lowenthal, *Misplaced Emphasis*, 47 FOREIGN POL. 114, 115 (1982).

⁷⁰ 19 U.S.C. § 2702(c)(3) (Supp. I 1983).

⁷¹ *Report on CBI*, *supra* note 50, at 29 (letter of H.L. Shearer, Deputy Prime Minister and Minister of Foreign Affairs, Jamaica, to William Brock, U.S. Ambassador and Special Trade Rep.). See also *id.* at 37, 53.

⁷² Lowenthal, *supra* note 69, at 116. But see Clasen, *supra* note 62, at 746-47.

This willingness of the United States to involve itself in the Caribbean, even militarily, goes to the heart of what the business community has viewed as the fundamental obstacle to relocation or expansion in the region: the Caribbean's political instability The overall commitment evidenced by the CBI is unquestionably of much greater significance than any particular provision of the Act.

of a development program,⁷³ a program based solely or substantially on the private sector will be advantageous only where the basic infrastructure, both physical and human, is available. The result of a plan geared only toward the workings of the private sector will almost unavoidably result in enhancing levels of disparity between more developed and less developed countries.

CBI beneficiary countries are chosen from the list of eligible countries provided in the Act according to criteria mentioned above. The President can decide to exclude participation for "subjective reasons not intended to be considered."⁷⁴ The President has enormous discretion, which may lead to a feeling of insecurity by potential investors and affected countries alike. The bilateral approach is further cast in shadow by the executive's power: "[n]othing in the Act would prevent these [trade] delegations from negotiating with the countries to obtain economic concessions designed to foster U.S. trade and investment at the expense of the local economy."⁷⁵ Further heightening insecurity, the President has the power to terminate participation upon sixty days' notice.

IV. Results and Interplay

To Caribbean integration and to Caricom, the main manifestation of that yet unrealized goal, the CBI may be harmful and even annihilating. Both international instruments collide in their means, even if the overall goals are theoretically in harmony. The possible effect of accentuating the region's disintegrating factors is even more worrisome in the long run, for the failure of the smaller countries to grow at a pace with the larger ones will create pressures in the region counterproductive to the CBI goals. Among other consequences of further accentuated disparity, population and resources may flow from the less developed to the more developed countries.

Recent events suggest that focus on the private sector alone presents serious obstacles to the goals sought, despite very high expectations fomented by the initiation of the program. The incomplete success of the CBI has been noted by Secretary of State George Schultz: "[t]he private sector . . . is the crucial link, . . . as we are all uncomfortably aware, private resources, domestic or foreign, have

⁷³ The emphasis of the Administration's aid program is to assist the private sector. Most foreign aid programs are unintentionally biased toward the public sector since the private sector is weak or nonexistent in most developing countries and only the governments can meet the nation's development needs. In small countries, the public sector grows so much faster than the private sector that public financing becomes tenuous, and governments have to rely increasingly on external support even for routine services.

Pastor, *Sinking*, *supra* note 30, at 1048-49.

⁷⁴ Clasen, *supra* note 62, at 726.

⁷⁵ *Id.* at 727.

not been sufficiently forthcoming. This is the heart of the matter."⁷⁶ Even a recent increase in trade between CBI countries and the United States might continue to indicate failure, for the increase was low in proportion to the expansion of the U.S. economy.⁷⁷

Events in 1985 are indicative of the interplay between the regional apparatus and the new plan: private investment has not significantly grown and progress has been concentrated in the more developed countries, creating resentment among the less developed countries.⁷⁸

V. Conclusion

The interplay between these two international arrangements, one a regional organization, the other a plan that grants special treatment to segments of a region, seems to result in a defeat of the goals common to both instruments. Caricom seeks to gather resources to level out the differences in infrastructure that otherwise will cause the smaller countries to remain stagnant; the CBI, in ignoring infrastructure needs, disrupts harmony by accentuating the differences already present. The economics of scale sought by Caricom in the coordination of policies to achieve a regional production unit is defeated by CBI's absolute reliance on the private sector, which seldom gathers the foresight, resources, or interest to approach investment and production on a regional, long-term basis. Caricom seeks to minimize the disparities between its member countries by granting special treatment to less developed member countries, and by placing a special burden on the more developed countries. The CBI, on the other hand, again by relying solely on the private sector, will continue accentuating the existing disparities by concentrating investment in the countries that already have the means to start production.

⁷⁶ *Secretary Exhorts*, *supra* note 68, at 2, col. 1.

⁷⁷ The U.S. Department of Commerce announced in May 1984 that compared to the prior year, imports from CBI beneficiaries between January and May had grown 17.6%, to \$3.5 billion.

It would be wrong, however, to attribute this increase solely to the CBI as the strong performance of the US economy and the strong dollar have combined to suck in imported goods. . . . Exporters in the region share the view that the increased shipments to the USA would have come about without the CBI, citing the example of fruit, food and electronic components. The CBI has added only marginally to the categories of Caribbean exports given privileged access to the USA, and excludes items such as textiles and clothing, footwear and leather goods, which constitute the backbone of the region's light industry. In those areas where there is scope for significant increases in shipments, the countries of the region lack the industrial infrastructure necessary to take advantage of the opportunities.

1984 Q, *ECON. REV. W. INDIES, BELIZE, BAHAMAS, BERMUDA, GUYANA*, Dec. 4, 1984, at 13-14.

⁷⁸ *Some Hard Going Ahead*, *Caribbean Bus.*, Jan. 30, 1985, at 6, col. 1 (*Caribbean Basin ed.*).

Whether it is possible for Caricom to be a party to any multilateral agreement depends on whether it is an entity with the power to negotiate or sign treaties. One of the main objectives of the Caricom Treaty is to create a common front before the external world.⁷⁹ The "primary responsibility" [of the Conference, the main executive body,] is to "determine the policy of the Community,"⁸⁰ and "subject to the relevant provisions of this Treaty, the Conference shall be the final authority for the conclusion of treaties on behalf of the Community and International Organizations and States."⁸¹ A Committee of Ministers for Foreign Affairs is created to help member states coordinate their foreign policies as much as possible.⁸² Caricom can and was intended to be the representative of the region in precisely the issues addressed by the CBI. Caricom, like the Common Market, has the power to enter into treaties,⁸³ and member states have agreed to accord their policies with those of Caricom, so an agreement with Caricom could have a regional impact far beyond that attainable through individual negotiations and agreements.

As for the CBERA, the mode of choosing and designating beneficiary countries would have to be amended to enable an entity such as Caricom to be a party to the Act. As long as the substantive requirements are retained, nothing in the stated policies prevents this approach. In fact, such an approach would enhance the policy of demanding from each country a commitment to the revitalization of the region. Whether, in reality, such a change could ever be enacted is indeterminate, but in the opinion of the authors any integrated approach using both of these powerful legal instruments is preferable to the present situation.

⁷⁹ Caricom Treaty, *supra* note 3, preamble.

⁸⁰ *Id.* art. 8(1).

⁸¹ *Id.* art. 8(4).

⁸² *Id.* art. 17(1).

⁸³ *Id.* arts. 20(1), 20(3); Annex, *supra* note 9, art. 63.