

AMERICAN AND CARIBBEAN LAW INITIATIVE 2004 SUMMER CONFERENCE OVERVIEW

*Jane E. Cross**

In Ocho Rios, on July 23-24, 2004, the American and Caribbean Law Initiative (“ACLI”)¹ held a conference entitled “Caribbean Market Forces: Emerging Trends in International and Comparative Law.” The conference theme covered these trends from two overlapping perspectives—the teaching of international and comparative law, and international trade developments. Presenting seven engaging panels, the ACLI conference welcomed eighty-five participants from five Caribbean countries² and the United States. Norman Manley Law School hosted this conference, the first in a series of annual conferences to be sponsored by ACLI.

The conference theme emerged out of the current process of regionalization in the Caribbean with respect to its judicial institutions and its trade regulation. With the impending establishment of the Caribbean Court of Justice (CCJ) and the Caribbean Single Market and Economy (CSME), the conference sought to provide practitioners and academicians within and without the region with information about how these developments will affect legal practice and legal education within the region. As such, the first conference of the ACLI undertook the task of providing a forum for discourse on important and timely topics.³

In opening the conference, John Knechtle, President of the ACLI, remarked that this conference is the first in an anticipated series of conferences on legal

* Associate Professor of Law and Director of the Caribbean Law Program, Nova Southeastern University Shepard Broad Law Center; B.A., 1982, University of California, Davis; J.D., 1985, University of Michigan. The author is also Secretary, Executive Committee Member, and Advisory Board Member of the American and Caribbean Law Initiative.

1. Founded in 2000, the ACLI is a collaborative project of four Caribbean and four American law schools. In the Caribbean, the participating institutions are Norman Manley Law School in Jamaica, Eugene Dupuch Law School in the Bahamas, and Hugh Wooding Law School in Trinidad. In the United States, the participating law schools are Florida Coastal University School of Law in Jacksonville, Florida, Howard University School of Law in Washington, D.C., Nova Southeastern University Shepard Broad Law Center in Fort Lauderdale, Florida, and Texas Southern University Thurgood Marshall Law School in Houston, Texas, and Stetson University College of Law in St. Petersburg, Florida.

2. The participants attended from the Bahamas, Barbados, Jamaica, St. Kitts & Nevis, and Trinidad & Tobago.

3. Petre Williams, *CSME on the Agenda at International Law Conference*, THE JAMAICA OBSERVER, July 24, 2004, available at http://www.jamaicaobserver.com/news/html/20040723t220000-0500_63349_obs_csme_on_the_agenda_at_int_law_conference.asp.

topics relevant to the U.S. and the Caribbean.⁴ His opening remarks preceded two inaugural addresses. First, C. Dennis Morrison, chairman of the Council of Legal Education and a partner at DunnCox law firm in Kingston, delivered the welcoming address. He was followed by A.J. Nicholson, Attorney General and Minister of Justice of Jamaica. In his presentation, Attorney General Nicholson discussed the Anti-Terrorism Bill in Jamaica. He noted that in drafting this legislation the government remained cognizant of potential human rights concerns. In particular, he asserted that the new legislation would not erode the rights of Jamaica under that nation's constitution.⁵

In its first day, the ACLI conference addressed the teaching of international and comparative law with three panel discussions: The Globalisation of Legal Education and Practice; Comparative Law; and International Law. The first panel, Globalisation of Legal Education and Practice, consisted of two presentations moderated by Mr. Ronnie Boodoosingh, Course Director, Hugh Wooding Law School. The first presentation by Professor Harold MacDougall, Director, Caribbean Law Program in Jamaica, Howard University School of Law presented an overview of a law program in Port Antonio, Jamaica. The speaker for the second presentation was Professor Winston Nagan, Fellow, Royal Society of the Arts, Samuel T. Dell Research Scholar Professor of Law, Affiliate Professor of Anthropology, and Founding Director, Institute for Human Rights and Peace Development at the University of Florida.

Professor McDougall provided an overview and discussion of the summer law program that he established in Jamaica. In the June 2003 summer program, Professor McDougall instructed sixteen students from the Howard University School of Law, five other U.S. Law Schools, and Norman Manley Law School. By means of clinical study and research, the students conducted a feasibility study concerning the possibility of declaring Portland Parish, Jamaica, an "Environmental Protection Area" pursuant to the Natural Resources and Conservation Act of 1991. The Caribbean Law Program conducted this study as commissioned by National and Environmental Planning Agency of Jamaica ("NEPA") and the Portland Environmental Protection Association ("PEPA").

The second presentation by Professor Nagan of the University of Florida focused how legal education can engage with the complexities of globalization. His article for this presentation entitled "The Global Challenge to Legal Education: Training Lawyers for a New Paradigm of Economic, Political and Legal-Cultural Expectations In the 21st Century" is published in this volume of

4. *Id.*

5. Reporter, *Nicholson Says Anti-Terror Bill Will Not Erode Human Rights of Jamaicans*, THE JAMAICA OBSERVER, July 31, 2004, available at http://www.jamaicaobserver.com/news/html/20040730t210000-0500_63722_obs_nicholson_says_anti_terror_bill_will_not_erode_human_rights_of_j_cans.asp.

the ILSA Journal of Comparative and International Law. As expressed in this article, Professor Nagan highlighted the ever-expanding role of lawyers to manage conflicts in international society. Ultimately, Professor Nagan advocates for the interdisciplinary training of lawyers in the growing paradigm of global law. He also advocates for the integration and harmonization of private law in the Caribbean region. These efforts would further instill equity and fairness as foundational forces in private law regimes.

The second panel of the first day focused on comparative law from the perspective of the death penalty in the Caribbean. Ms. Carol Aina, Course Director, Norman Manley Law School moderated a panel that included: Dr. David Berry, Lecturer, Faculty of Law, University of the West Indies, Cave Hill Campus; Dr. Stephen Vascianne, Professor of Government, University of the West Indies, Mona Campus; and Professor Jim Wilets, Nova Southeastern University, Shepard Broad Law Center. Dr. David Berry first discussed the recent Privy Council mandatory death penalty trilogy of cases (*Boyce*, *Matthew* and *Watson*).⁶ In particular, he examined the three cases to explore the issues underlying the use of international legal authorities before a domestic tribunal. In these cases, he observed that the Privy Council has returned to a traditional approach regarding the use of international law and has departed from its earlier, more permissive approach.

Professor Stephen Vascianne provided a lively, thoughtful discussion of the impact of the three recent Privy Council Decisions on the death penalty.⁷ In particular, he focused on the split of opinion among the Privy Council justices and the impact of divided panels on the outcome of death penalty cases. He commented on the problems with having a discretionary death. He also criticized the recent Privy Council decision that ruled Jamaica's death penalty to be unconstitutional. Ironically, Jamaica, in response to growing concerns about its mandatory death penalty, made a move in 1992 to distinguish in the sentencing of capital and non-capital murders. That distinction was used by the Privy Council as a basis for finding unconstitutional a mandatory death penalty for certain categories of murder in Jamaica.⁸

6. *Boyce v. The Queen*, [2004] UKPC 32 (P.C. 2004)(appeal taken from Barb.), available at <http://www.privy-council.org.uk/files/other/boyce.jud.rtf>; *Matthews v. The State* [2004] UKPC 33 (P.C. 2004)(appeal taken from Trin. and Tobago), available at <http://www.privy-council.org.uk/files/other/charles%20matthews.jud.rtf>; and *Watson v. The Queen* [2004] UKPC 34 (P.C. 2004)(appeal taken from Jam.), available at <http://www.privy-council.org.uk/files/other/lambert%20watson.jud.rtf>.

7. *Boyce*, [2004] UKPC 32; *Matthews*, [2004] UKPC 33; and *Watson*, [2004] UKPC 34.

8. *Watson*, [2004] UKPC 34; Petre Williams, *No Way to Administer a Criminal Justice System! Vascianne Worried about Recent Privy Council Decisions*, THE JAMAICA OBSERVER, July 25, 2004, available at http://www.jamaicaobserver.com/news/html/20040725t060000-0500_63375_obs_no_way_to_administer_a_justice_system_.asp.

Finally, Professor Jim Wilets explored how comparative law provides additional legal arguments in domestic law. On that basis, he addressed the application of comparative law, including U.S. Supreme Court decisions, to the death penalty. While he observed the parallel use of comparative law in the Caribbean courts, he focused on the comparative law trend against the death penalty in other parts of the world. He examined how this trend has been critical in teaching death penalty domestic law due to the increasing influence of comparative norms.

International law was the topic for the final panel on the first day of the conference. Moderated by Ms. Fara Brown, Attorney-at-Law, Legal Aid Clinic, Norman Manley Law School, this panel provided two diverse presenters. Mr. David S. Willig, Attorney-at-Law, Florida and France, Immediate Past Chair of the International Law Section of the Florida Bar, provided the practitioners approach to the topic of International Law. Professor Leonard Baynes, St. John's University Law School, discussed changes in the stereotyping of Asian-Americans and the resulting racial profiling after the attacks of September 11, 2001.

The topic of the second day of the conference was "International Trade Developments: Free Trade Area of the Americas (FTAA) and Caribbean Single Market and Economy (CSME)." Three separate panels tackled this compelling topic. The first panel, moderated by Professor Tim Canova, Chapman School of Law, addressed the question of whether NAFTA⁹ is a possible blueprint for the FTAA. This panel featured presentations from three law professors: Professor Ari Afilalo, Rutgers School of Law—Camden; Professor Carmen Gonzalez, Seattle University School of Law; and Professor Alan Swan, University of Miami School of Law. Professor Afilalo focused on the investment chapter (Chapter 11) of NAFTA. He asserted that the dispute resolution mechanism in that chapter illegitimately transferred to international panels the authority to resolve potentially sensitive investments issued without instilling the requisite institutional legitimacy enjoyed by national tribunals. Professor Swan made similar observations concerning Chapter 11 and presented a theoretical paradigm for examining its function in NAFTA. Finally Professor Gonzalez discussed how the WTO has perpetuated inequalities between developed and developing countries. In making this observation, she noted that the prohibition on trade distorting subsidies had the result of eliminating those subsidies in developing nations while allowing them to continue in developed nations. She observed that the resulting imbalances have threatened agricultural markets in developing countries such as Haiti, Jamaica and Mexico.¹⁰

9. North American Free Trade Agreement, Dec. 17, 1992, 107 Stat. 2057, 32 I.L.M. 605.

10. Petre Williams, *Jamaica Farm Interest Not Served by WTO, Says US Law Professor*, THE JAMAICA OBSERVER, July 28, 2004, available at <http://www.jamaicaobserver.com/magazines/business/>

The second panel discussed the Legal Framework for the CSME. Keith Sobion, Principal of Norman Manley Law School and Adjunct Professor at Florida Coastal School of Law, moderated the discussion of the three panelists for this topic. Ms. Andrea Ewart, Attorney-at-Law and Consultant on Trade and Regulatory/Legislative Reform in Washington D.C., in her presentation entitled "Caribbean Single Market & Economy: What Is It and Can It Deliver?" addressed the question of whether the CSME can accomplish for the Caribbean what the European Union has achieved for Europe. As discussed at length in her article published herein, Ms. Ewart observed the challenges to the CSME as the first step in a longer process of economic union. To provide a governmental perspective, Ms. Michelle Walker, Head, Legal Unit, Ministry of Foreign Affairs and Foreign Trade, Jamaica, focused on the governmental regulations and initiatives necessary to carry out the CSME. Her paper for this conference is scheduled to be published by Norman Manley Law School in the West Indian Law Journal. The final panelist, Mr. Ezra Alleyne, Attorney-at-Law and Legal Consultant to the Cabinet, Barbados, discussed the topic of "The Developing Framework of the CSME: Two Legal Issues Considered." In his article, Mr. Alleyne discussed the historic development of CSME and the jurisdiction of the Caribbean Court of Justice (CCJ) to resolve CSME disputes. He also outlines the establishment of the CCJ and contemplates the implications of freedom of movement under the CSME.

The final conference panel on "FTAA—Trade and Investment in the Caribbean" was moderated by Dr. Rosalea Hamilton, Chief Executive Officer, Institute of Law and Economics, Jamaica. The panelists included Mr. Vasheist Kokaram, Attorney-at-Law and Trade Law Specialist, M.G. Daly & Partners, Trinidad and Tobago and Mr. Milton Samuda, Attorney-at-Law, Jamaica. Mr. Kokaram delivered a presentation on "The FTAA—Trade and Investment Applying International Trade Remedy Laws in the Caribbean—A Framework for Protection." In the article published in this journal, Mr. Kokaram argued that the utilization of anti-dumping, countervailing duty, and safeguard actions afforded under the WTO system enhance liberalization and competitiveness. He examined the extent to which these actions have been used in the Caribbean and whether these mechanisms provide an adequate framework for international trade protection under the FTAA and the CSME.

This conference required the collaboration of a number of individuals and organizations in the U.S. and the Caribbean. Principal Keith Sobion of Norman Manley Law School and Professor Jane E. Cross, Nova Southeastern University (NSU) Law Center undertook the direction of this first conference with the capable assistance of many dedicated individuals. In his foreword to the

articles, Principal Sobion highlights the purpose and significance of this first ACLI Conference.

As always, the success of a conference, particularly an international one, requires the support and dedication of key persons. At Norman Manley Law School, the outstanding conference secretariat included Maureen Lindo; Mrs. Yvonne Lawrence; Beverley Phillips; Georgette Johnson; and Delroy Pinto. At Nova Southeastern Law Center, Linda Lahey, Michelle Hurley and Jason Rosenberg provided able assistance.

Various members of the ACLI provided additional assistance and support. These individuals included: Dean Bill Adams, NSU Law Center; Carol Aina, Norman Manley Law School; Victoria Dawson, Thurgood Marshall School of Law; John Knechtle, Florida Coastal School of Law; Dean Joseph Harbaugh, NSU Law Center; Harold McDougall, Howard University School of Law; Principal Miriam Samaru, Eugene Dupuch School of Law; and Principal Anestine Sealey, Hugh Wooding Law School. In addition, all of the speakers, moderators and panelists participated at their own expense in this successful conference and deserve recognition for their significant contributions. Finally, the conference participants provided a collegial and energetic environment for discussion and debate on the conference topics.

The conference benefited from the co-sponsorship of the International Section of the Florida Bar, the Teaching International Law Interest Group of the American Society of International Law, the Jamaican Bar Association and the Caribbean Bar Association. Moreover, the following business provided contributions for the conference: Acorn Bookstore; Air Jamaica (1968) Ltd.; Creative Craft Plus; Lascelles Wines & Spirits; Pickapeppa Co. Ltd.; Standard Products Co. Ltd.; Walkerswood Co. Ltd.; and Wentworth Charles & Co.