

IOI Training Module: Law of the Sea and Principled Ocean Governance

Solutions Centre, UWI, Cave Hill

May 17 - 21, 2010

Caribbean Law Institute Centre (CLIC) UWI, Cave Hill
Centre for Resource Management and Environmental
Studies (CERMES) UWI, Cave Hill

International Oceanographic Institute, Canada
Marine Affairs Program, Dalhousie University
Marine Environmental Law Institute, Dalhousie
University

Monday, 17 May 2010

10.15am-12.30pm

***Introduction to the Law of the
Sea:***

***The Caribbean and the Law of
the Sea***

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Objectives

- To introduce participants, in broad outline, to the Caribbean and the region's relationship with the sea
 - The meanings attributable to the “Caribbean”
 - Relationship to the sea
- To explain the sources of the law of the sea
- Preview Caribbean acceptance and implementation * (CLIC REPORT ON ECOSYSTEM APPROACH/ENVIRONMENTAL MANAGEMENT PRINCIPLES IN THE CARIBBEAN)



Meanings of “The Caribbean”

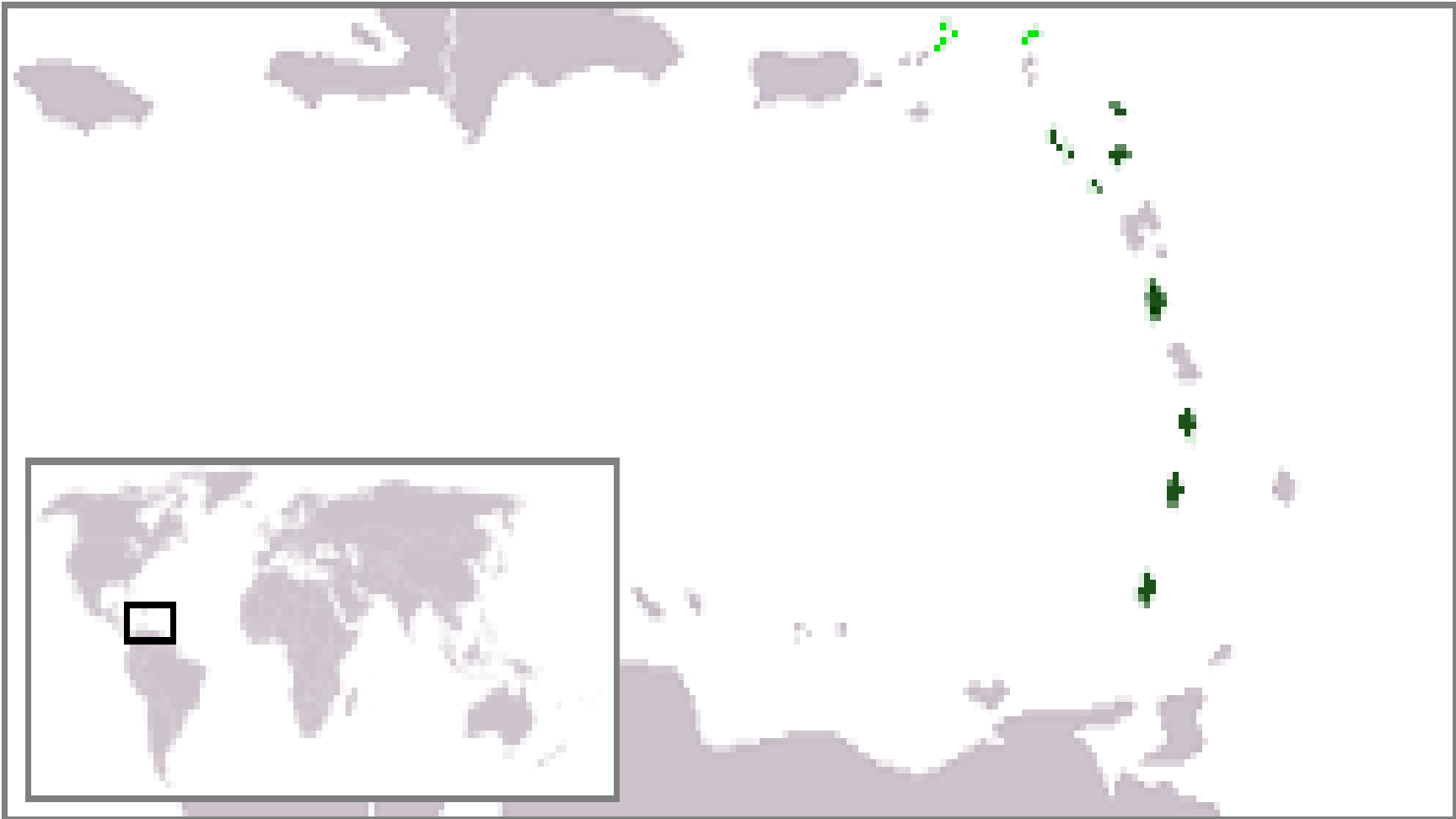
- Definition based on colonial legacy
 - “Commonwealth Caribbean” or “Anglophone Caribbean”
 - “Dutch Caribbean”
 - “French Caribbean”
 - “Latin America”



Caribbean defined by treaty arrangements

- Organization of Eastern Caribbean States (OECS)
- Caribbean Community (CARICOM) and CARICOM Single Market and Economy (CSME)
- Association of Caribbean States (ACS)
- Wider Caribbean Region (WCR)

The Organization of Eastern Caribbean States (OECS)





The OECS

- Organization of Eastern Caribbean States, The Treaty of Basseterre, 18 June 1981
- Treaty of Economic Union, Basseterre, 30 December 2009
- Membership:
 - Antigua and Barbuda, Dominica, Grenada, St. Lucia, St. Vincent and the Grenadines, Montserrat, St. Kitts and Nevis, Anguilla and the British Virgin Islands
- Eastern Caribbean Supreme Court (ECSC)
- OECS Secretariat
- Linkages
 - West Indies Associated States (WISA)
 - Caribbean Community (CARICOM)

The Caribbean Community (CARICOM)





CARICOM

- The West Indian Federation 1958-1962
- The Treaty Establishing the Caribbean Community 1973 (Treaty of Chaguaramas)
- The Revised Treaty of Chaguaramas Establishing the Caribbean Community Including the CARICOM Single Market and Economy (CSME), 2001 (Revised Treaty)
- Membership:
- Antigua and Barbuda, Bahamas, Barbados, Belize, Dominica, Grenada, Guyana, Haiti, Jamaica, St. Lucia, St. Vincent and the Grenadines, Montserrat, St. Kitts and Nevis, Suriname, Trinidad and Tobago

Commonwealth countries of CARICOM

- Antigua and Barbuda
- Bahamas
- Barbados
- Belize
- Dominica
- Grenada
- Guyana
- Jamaica (3,000,000)
- Montserrat
- St. Lucia
- St. Kitts and Nevis
- St. Vincent and the Grenadines
- Trinidad and Tobago (1,500,000)



Civil law countries of CARICOM

- Haiti (8,000,000)
- Suriname



Institutions supporting CARICOM

- CARICOM Institutions and Associate Institutions
 - CARICOM Regional Fisheries Mechanism (CRFM)
 - Caribbean Law Institute Centre (CLIC)
 - University of the West Indies (UWI)
 - > The Centre for Resources Management and Environmental Studies (CERMES)
 - Caribbean Disaster Emergency Response Agency (CDERA)
- Caribbean Court of Justice (CCJ)

Association of Caribbean States (ACS)

- *The Convention Establishing the Association of Caribbean States (ACS) was signed on 24 July 1994 in Cartagena de India, Colombia*
- 25 Member States and three Associate Members.
- Members:
- Antigua and Barbuda, Bahamas, Barbados, Belize, Colombia, Costa Rica, Cuba, Dominica, Dominican Republic, El Salvador, Grenada, Guatemala, Guyana, Haiti, Honduras, Jamaica, Mexico, Nicaragua, Panama, St Kitts and Nevis, St Lucia, St Vincent and the Grenadines, Suriname, Trinidad and Tobago, Venezuela

The ACS





The ACS and the Caribbean Sea

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



Arguments in favor of ACS project

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



Caribbean dependence on the sea

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



Benefits from Caribbean Sea

- Fisheries jobs, income, and fish protein
 - > 504,913 jobs
 - > US\$1 billion in exports
 - > 7⁰% of total protein consumption in the Caribbean
- Tourism
- Insular Caribbean heavily dependent on tourism
 - Linked directly or indirectly to 2.4 million jobs
 - US\$30 billion contribution to GDP (17⁰% of GDP)



Challenges to ACS Project

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



SOURCES OF LAW OF THE SEA

- Article 38 (1), Statute of International Court of Justice
 - International conventions
 - International custom
 - General principles of law
 - Judicial decisions and teachings of publicists



International conventions

- First United Nations Conference on the Law of the Sea, Geneva 1958
 - Convention on the Territorial Sea and the Contiguous Zone, 1958 (EIF 10 Sept 1964)
 - Convention on the High Seas, 1958 (EIF 30 Sept 1962)
 - Convention on Fishing and Conservation of the Living Resources of the High Seas, 1958 (EIF 20 March 1966)
 - Convention on the Continental Shelf, 1958 (EIF 10 June 1964)



International conventions cont'd

- Second United Nations Convention on the Law of the Sea:
 - United Nations Convention on the Law of the Sea 1982, Montego Bay, Jamaica (“LOSC” or “Montego Bay Convention”)
 - EIF: 16 November, 1994

CARICOM Acceptance of LOSC

Country	Date of acceptance
Antigua and Barbuda	20/2/1989
The Bahamas	29/07/1983
Barbados	12/10/1993
Belize	10/08/1983
Dominica	24/10/1991
Guyana	16/11/1993
Haiti	

CARICOM Acceptance of LOSC

cont'd:

Country	Date of acceptance
Jamaica	21/03/1983
Montserrat	
St. Kitts & Nevis	7/01/1993
St. Lucia	23/03/1985
St. Vincent and the Grenadines	1/10/1993
Suriname	
Trinidad and Tobago	25/04/1986



International conventions cont'd:

- Other conventions
 - E.g.,
 - MARPOL
 - Civil liability conventions, 1992
 - Straddling stocks convention
 - Convention on Biological Diversity 1992

Relationship between LOSC and other conventions

- Vienna Convention on the Law of Treaties, 1969
 - Article 30
 - *Biotech case* (WTO), 2006
- LOSC and 1958 Geneva Conventions
 - LOSC, Article 311
- LOSC and MARPOL & Civil Liability Conventions
 - LOSC, Part XII
- LOSC and Convention on Biological Diversity
 - CBD, Article 22



International custom on the sea

- State practice and *opinio juris*: “evidence of a practice generally accepted as law”
 - Right of innocent passage of foreign vessels
 - Freedom of navigation
 - Freedom of the high seas
- *Bering Sea Arbitration*, Moore’s International Arbitration (1893) 755
- *Anglo-Norwegian Fisheries case* [1951] ICJ Rep. 116
- *North Sea Continental Shelf cases* [1969] ICJ Rep. 3

General principles of the Law of the Sea

- Residual category
- E.g.
- Exclusivity of flag state jurisdiction
 - *The Lotus case* (France/Turkey) PCIJ Series A, No. 10 (1927)
 - 1958 Geneva High Seas Convention, Article 11
 - LOSC, Article 97

UNEP Regional Seas Programme





Regional conventions

- UNEP Regional Seas Programme
- *Convention for Protection and Development of the Marine Environment in the Wider Caribbean, 1983*
 - *Protocol Concerning Combating Oil Spills in the Wider Caribbean Region, 1983 (EIF 11 October 1986)*
 - *Protocol Concerning Specially Protected Areas and Wildlife (SPA) in the Wider Caribbean Region, 1990 (EIF 18 June 2000)*
 - *Protocol Concerning Pollution from Land-Based Sources and Activities, 1999*
- Caribbean Environment Programme (CEP)
- Regional Coordinating Unit (RCU)

Some Caribbean cases on the law of the sea

- *Pianka v The Queen* [1979] AC 107
- *Perez v The Bahamas* [1982] AMC 2148-2151
- *Acting Chief of Police v Bryan* (1985) 36 WIR 207
- *Military and Paramilitary Activities Case (Nicaragua v United States) (Merits)* [1986] ICJ Rep 14, 76 ILR 349
- *M/V Saiga (St. Vincent and the Grenadines v Guinea)*
Judgment 1 July 1999 (Int'l Tribunal on Law of the sea)
- *Barbados/Trinidad and Tobago Maritime Delimitation* April 11, 2006 (LOSC Arbitral Tribunal)
- *Guyana/Suriname Arbitration* , September 17, 2007 (LOSC Arbitral Tribunal)



Some concluding observations

- Caribbean states in the law of sea
 - Definition of the state
 - Regime of Islands, Part VIII
 - Maritime zones
 - Archipelagic status
- Delimitation (generally & “Bird Rock” in particular)
- Resource utilization and management
- Environmental protection
- Dispute settlement
- Basis for regional/sub-regional co-operation (Part IX)



Concluding observations (cont'd)

- Issues in Caribbean ocean governance
 - Diversity of stakeholder interests
 - Interests of extra-regional states
 - Multiplicity of regional arrangements
 - Overlap of treaty commitments
- Acceptance and implementation of rules on regional and global governance* (*CLIC REPORT*)
- Institutional, human, and financial resource deficits
- Support of international community *(*ACS project*)



The End