The Rise of International Arbitration in the Caribbean: A Jurisdictional Analysis

I. Introduction

Twenty years ago, very few jurisdictions had the necessary infrastructure to cater to international arbitration. International arbitration was reserved for the metropolitan hub of North America and Western Europe, where the thriving business environment, and the transboundary nature of many transactions, demanded such a dispute settlement mechanism. Therefore, most international arbitrations were split between the Permanent Court of Arbitration, International Chamber of Commerce in Paris and the London Court of International Arbitration in London. The American Arbitration Association established in the 1920s and had administered domestic arbitrations until then,[1] established the International Centre for Dispute Resolution in 1996,[2] which mostly catered to international arbitration in the U.S.

In the developing world, Hong Kong, which established the Hong Kong International Arbitration Centre in 1985[3] and Singapore, which established the Singapore International Arbitration Centre in 1991,[4] both of which have become key international arbitration centres, had not yet establish themselves as major venues for settling international commercial disputes. The situation in other developing countries was no better. For instance, while Mauritius has now become a sophisticated international arbitration jurisdiction with the establishment of the Mauritius International Arbitration Centre, which is associated with the London Court of International Arbitration, until 1992 its Arbitration Law was modelled after a 19th Century English Legislation as did many other former English colonies in Africa at the time. Latin American Countries influenced by the 19th Century ideals of Carlos Calvo, enunciated in the Calvo Doctrine, generally shied away from international arbitration. Notwithstanding, the establishment of major international arbitration centres in Dubai and Bahrain in the last two decades, generally Middle Eastern States, too, have historically been impervious to international arbitration.

With the advent of globalization, the tides turned. The impact of the global economy and the continuing trend of increasing volume, size and complexity of cross-border transactions fuelled the demand for international arbitration as a means for resolving trans-national disputes.[5] International arbitration is now the accepted mechanism for dispute resolution between parties to international commercial contracts and allows companies to avoid national courts in favour of a demonstrably neutral predetermined decision-maker that the parties have the opportunity to choose. In particular, international arbitration allows the parties to a contract to agree in advance how matters will be addressed in the event of an unresolved dispute: the choice of arbitral organisation of which there are many, the place of arbitration, the language to be used, the number and selection of arbitrators, the prevailing law and procedures to be followed.[6] The ever evolving nature of global commerce has seen the rise of arbitration in jurisdictions that were not traditionally arbitration jurisdictions. Yet, even with international commerce's continued growth, and the increasing demand for international arbitration as an alternative to traditional litigation, large swaths of the world continued to lack the infrastructure to offer this dispute resolution mechanism.

At the turn of the Century, many countries had not ratified the New York Convention 1958, neither did they have modern arbitration legislation for which the UNCITRAL Model Law had been created in 1985 to serve as a guide. The Caribbean region countries were one such group of countries.

Nevertheless, the tides have turned and the importance of international commercial arbitration as a dispute settlement mechanism is quickly becoming recognized in quarters where this has been previously disregarded. This is particularly true in relation to the Caribbean region. The Caribbean is a very attractive venue to host arbitrations due to its neutral geography, at the crossroads of the Americas. It serves as the venue for the resolutions of disputes arising from business dealings between parties in the Americas. Moreover with the ramp up of domestic legislation to facilitate the creation of international business companies, increasingly the region is becoming home to an impressive number of offshore corporate entities. This has made jurisdictions such as the British Virgin Islands, Cayman Islands and Bermuda very attractive offshore financial centres. With the intensification of commerce, the region's countries have come to appreciate the need for a geographically neutral dispute settlement mechanism Thus, in the last decade, the region has experienced a shift towards the promotion of international arbitration. Numerous jurisdictions are following the paths that many countries in the metropolitan world had traversed many years ago. As greater globalisation forces companies to contemplate legislative regimes that can better facilitate their disputes, the amendments to the region's suite of arbitration legislations aim to improve the legal frameworks supporting the conduct of international arbitrations in the different jurisdictions. This has seen jurisdictions in the region begin to enhance their legal systems to accommodate the growing need for an international arbitration centre to service the region's needs. The Bahamas, Barbados, Bermuda, British Virgin Islands, Dominican Republic, Jamaica and Trinidad and Tobago all seek to establish the infrastructure that would enable them to capitalize on the increasing demand for a major international arbitration institution in the Caribbean. Notably, the British Virgin Islands, which established the BVI International Arbitration Centre (BVI IAC) and Jamaica, which established the Mona International Centre for Arbitration and Mediation (MICAM) are jurisdictions that disputants may want to consider. Therefore, whereas jurisdictions in this region historically did not make a particularly big fuss over international arbitration, in the last decade, especially, some have been quite keen on carving out for themselves a chunk of the market for international arbitration services.

This article examines the development of international arbitration in the Caribbean over the last two decades. Part II examines the extent to which jurisdictions in the region have established the necessary infrastructure to capitalize on the demand for an international arbitration centre in this part of the world. This entails the extent to which these legal systems' arbitration laws are up-to-date and the extent to which they mirror international best practise as reflected in the United Nations Commission on International Trade Law (UNCITRAL) Model Law on International Commercial Arbitration (1985). It also examines the extent to which Caribbean jurisdictions have ratified the New York Convention 1958, under which successful parties can enforce awards in this treaty's 150 plus contracting states. Part III examines the different

jurisdictions individually, in their various phases of development as international arbitration centres. This includes jurisdictions such as Bahamas, Barbados, Bermuda, British Virgin Islands, Dominican Republic, Jamaica and Trinidad and Tobago, who all aim to become key players in the market for dispute resolution services. Part IV offers suggestions that will further enhance the attractiveness of the region as a destination for international arbitration. While such suggestions include recommendations for jurisdictions who do not have modern arbitration legislation to enact such legislation and those who have not ratified the New York Convention to do so; it also considers more mundane characteristics such as maintaining and enhancing political stability, respecting the rule of law and ensuring impartial judiciaries, which is a key asset to the arbitration process.

II. Arbitration Infrastructure in the Caribbean Region

For a long time, not much could be said about international arbitration in the Caribbean as there was not much to be said, given the undeveloped nature of this dispute settlement mechanism in the region. For instance, in 1994, Robert Lubic surveyed seventeen territories in "The Present Status of International Commercial Arbitration in the English Speaking Caribbean".[7] Then, very few of these jurisdictions were parties to the 1958 New York Convention and even fewer had considered adopting the UNCITRAL Model Law 1985. However, an arbitration project had been started under the auspices of the Caribbean Law Institute, and the advisory committee on the subject met for the first time in December 1988, to consider harmonization of arbitral laws across the region. Several additional meetings were held, supported by reports prepared by Wendy Straker, through to 1991. Two draft model laws, for domestic and international commercial arbitration, respectively, were prepared and approved. But, consideration of the matter came to a standstill, notably due to perceptions that arbitration was too slow, that there would be judicial interference in the arbitral process, that the initial focus should be on domestic arbitration, and that there were higher governmental priorities to be dealt with other than arbitration.[8] Therefore, Lubic concluded that "the reason for the apparent failure of the project was that it was too ambitious."[9]

Fast-forward to two decades later, these jurisdictions have begun recognizing the central role of a neutral, efficient and speedy dispute settlement mechanism capable of resolving disputes arising out of international commercial transactions, in enhancing their business climates. International arbitration is now the primary mechanism for resolving disputes between parties to international commercial contracts. International arbitration allows contracting parties to agree in advance how matters will be addressed in the event of an unresolved dispute: the choice of arbitral organisation of which there are many, the place of arbitration, the language to be used, the number and selection of arbitrators, the prevailing law and procedures to be followed.

Yet, to take advantage of all the benefits attached to this dispute settlement mechanism, it is pertinent that these jurisdictions ensure that their arbitration regimes are current and reflect international best practice. It is especially essential that jurisdictions vying to become key venues for the conduct of international arbitration make the necessary policy upgrades to their legal systems to facilitate this endeavour. Two key policy attributes of all the major international

arbitration centres globally are their enactment of modern legislation, many of which are based on the UNCITRAL Model Law, and their ratification of the New York Convention 1958.

A. UNCITRAL Model Law 1985

Notwithstanding the prominence attached to party autonomy, since arbitration takes place pursuant to a contractual agreement between the parties in dispute; the desire to protect the arbitral process from arbitrariness makes it necessary for jurisdictions hosting arbitrations (*lex arbitri*) to have effective legislation that will guide the conduct of arbitrations. The UNCITRAL created a Model Law in 1985 that countries could use as a roadmap in establishing their own domestic legislation.

The Model Law is designed to assist States in reforming and modernizing their laws on arbitral procedure so as to take into account the particular features and needs of international commercial arbitration. It covers all stages of the arbitral process from the arbitration agreement, the composition and jurisdiction of the arbitral tribunal and the extent of court intervention through to the recognition and enforcement of the arbitral award. It reflects worldwide consensus on key aspects of international arbitration practice having been accepted by States of all regions and the different legal or economic systems of the world. Amendments to articles 1 (2), 7, and 35 (2), a new chapter IV A to replace article 17 and a new article 2 A were adopted by UNCITRAL on 7 July 2006. The revised version of article 7 is intended to modernise the form requirement of an arbitration agreement to better conform to international contract practices. The newly introduced chapter IV A establishes a more comprehensive legal regime dealing with interim measures in support of arbitration. As of 2006, the standard version of the Model Law is the amended version.[10]

Examination of the countries that have enacted legislation based on the UNCITRAL's model law reveals that the vast majority of jurisdictions in the Caribbean have not enacted modern legislation based on the UNCITRAL Model Law 1985. To date the only jurisdictions in the region that have enacted modern legislation based on the UNCITRAL Model Law are Bermuda (1993), Dominican Republic (2008) and British Virgin Islands (2013).[11] A fourth prospect is Jamaica, which is currently debating an arbitration bill in Parliament. Jamaica seeks to update its century old arbitration legislation using the UNCITRAL Model Law as a prototype, as the current law does not provide for arbitration of international trade disputes or disputes related to cross-border commercial contracts.[12] While only three jurisdictions, out of the numerous Civil Law and Common Law jurisdictions that make up the Caribbean legal landscape, have enacted modern arbitration legislation; the enactment of modern legislation by the British Virgin Islands and Jamaica may serve as a stimulus for other jurisdictions to do the same as they increasingly come to appreciate the benefits of such policies on their ability to attract business opportunities to their borders.

B. Convention on the Recognition and Enforcement of Foreign Arbitral Awards 1958

The Convention on the Recognition and Enforcement of Foreign Arbitral Awards, also known as the "New York Arbitration Convention" or the "New York Convention", is a key instrument in international arbitration.[13] This Convention was adopted by a United Nations diplomatic

conference on 10 June 1958 and entered into force on 7 June 1959. Recognizing the growing importance of international arbitration as a means of settling international commercial disputes, the New York Convention sought to provide common legislative standards for the recognition of arbitration agreements and court recognition and enforcement of foreign and non-domestic arbitral awards. The term "non-domestic" embraces awards which, although made in the state of enforcement, are treated as "foreign" under its law because of some foreign element in the proceedings, e.g. another State's procedural laws are applied.

Widely considered the foundational instrument for international arbitration, the Convention's principal aim is that foreign and non-domestic arbitral awards will not be discriminated against and it obliges parties to ensure such awards are recognized and generally capable of enforcement in their jurisdiction in the same way as domestic awards. An ancillary aim of the Convention is to require Member States' domestic courts to give full effect to arbitration agreements by requiring these courts to deny the parties access to court in contravention of their agreement to refer the matter to an arbitral tribunal.

Jurisdictions in the Caribbean, who were late in ratifying the New York Convention which was adopted while most were still colonies to one European country or another, have increasingly come to appreciate the importance of ratifying this treaty. For instance, ratification of the New York Convention has the potential of enhancing their ability to attract foreign investment as investors have proven more willing to invest in business climates that offer protection to their investment. Even overseas territories, such as Bermuda, British Virgin Islands and the Caymans do not want to be left out. Thus, out of the circa 156 parties to the New York Convention, 16 are from the Caribbean region. These countries are: Suriname (1964), Trinidad and Tobago (1966), Cuba (1974), Bermuda (1979), Belize (1980), Cayman Islands (1980), Haiti (1983), Dominica (1988), Antigua and Barbuda (1989), Barbados (1993), St. Vincent and the Grenadines (2000), Jamaica (2002), Dominican Republic (2002), Bahamas (2006), British Virgin Islands (2014) and Guyana (2014).[14] As the above reveals, in the intervening forty-two years between 1958, when this treaty was adopted and the year 2000, there were only 10 ratifications from the Caribbean region. However, between 2000 and 2014 there have been 6 ratifications. This suggests an increasing awareness of the importance of ratification of the New York Convention, which serves as stimulus for other jurisdictions in the region to ratify this Convention. Moreover, as these jurisdictions recognize the importance of the ability of the business community to enforce awards within their legal systems to their attractiveness as investment hosts, the more likely they will be to ratifying the New York Convention.

C. Inter-American Convention on International Commercial Arbitration

The Inter-American Convention on International Commercial Arbitration (Panama Convention) adopted in 1975 and which came into force in 1976 is another worthwhile international accord that Caribbean territories should endeavour to adopt in improving their international arbitration infrastructures. Currently, the Dominican Republic is the only Caribbean Island-State party to the Panama Convention. Considering that that numerous Caribbean territories have aspirations of

becoming hubs for not only regional but also international arbitration, whereby they wish to become attractive to the rest of the hemisphere; in modernizing their arbitration rules, these territories should consider joining the Panama Convention, lodging a reservation similar to that of the U.S. That reservation limits the Panama Convention to arbitration agreements in which the majority of the parties are citizens of states members of the Panama Convention and the OAS, unless the parties agree otherwise; and for other arbitration agreements, the New York Convention would apply.[15] Adoption of this convention is likely to see an influx of disputes to the region from Latin America as these countries are more likely to trust arbitration under this treaty. Thus, especially for jurisdictions aiming to position themselves as international arbitration centres, whose key market will be Latin America, it has been suggested that that it was the Panama Convention which shifted the traditional hostility away from international arbitration in Latin America.[16]

III. The Intensification of International Arbitration in the Caribbean: A Jurisdictional Analysis

The forgoing provides a brief insight into the intensification of arbitration in the Caribbean region as illustrated by these countries attempts to institute the necessary framework to establish themselves as international arbitration centres. It examined the extent to which territories have modernized their legal systems to make them conducive to international arbitration by modernizing their arbitration legislation, ratifying the New York Convention 1958. However, this does not adequately describe the intensification process that has occurred over the last few years, with several jurisdiction viewing their arbitration product as ripe enough to establish themselves as international arbitration centres and address the regions demand for such an institution. This section will examine the different initiatives currently being undertaken by different jurisdictions in the region.

A. Bahamas

Arbitration legislation has been part of The Bahamas' suite of legislation for a very long time. In the late 1800s, arbitration came to be governed by colonial statute. The old Bahamas Arbitration Act was passed at the end of the 19th century. The Arbitration Clause (Protocol) Act 1931 gave effect to the Protocol signed at the League of Nations in 1923 (staying of proceedings to be referred to arbitration), while the Arbitration (Foreign Awards) Act 1931 gave effect to the Geneva Convention (for the enforcement for arbitral awards).[17] In recent years, The Bahamas like several other Caribbean territories have received significant *ad hoc* international commercial cases. For instance, several arbitrations in The Bahamas have involved parties from countries where Sharia Law is practiced and the U.S. who choose The Bahamas as a neutral and convenient venue. It is apparent that The arbitration infrastructure of legislation, facilities and skilled personnel is already attracting major cases to the Bahamas. The strategic location of the islands just off the U.S.

mainland, has made it an ideal location for U.S. parties seeking a neutral venue to resolve their disputes.

Driven by this, the Bahamas is one regional jurisdiction with aspirations of establishing itself as a regional and international hub for international arbitration. It ratified the New York Convention in 2006, and incorporated it into domestic law through the Arbitration (Foreign Arbitral Awards) Act, 2009.[18] For The Bahamas, the impetus to sign the New York Convention came originally from the maritime sector. As arbitration is a preferred method of resolving maritime disputes and as The Bahamas has the third largest ship registry (after Liberia and Panama), ratifying the New York Convention was imperative in order to allow awards to be automatically enforceable in member countries.[19] Early in 2013, the Bahamas government formed the Arbitration Council which is charged with providing an action plan for establishing The Bahamas as a major arbitration hub. The Arbitration Council is looking at how The Bahamas can be more competitive in this field. The Council, consisting of members from government and private sector including the Bahamas Maritime Authority, Grand Bahama Port Authority and Bahamas Financial Services Board, is mandated to consider how to generate more activity in this area, to position The Bahamas as a leading arbitration hub and gateway to investment in the region, to establish commercial and maritime arbitration centres, and to prepare the appropriate strategic or business plans. As part of this initiative, the Arbitration Committee of The Bahamas Financial Services Board has encouraged a complete revamping of the arbitration legislation. While this has not yet come to fruition, it is hoped that policy makers will use the UNCITRAL Model Law 1985 as a guide in drafting this new piece of legislation. The Bahamas' intensification of its pursuits to establish itself as major international arbitration hub in the region is a testament to the fact that that the demand for international arbitration is on the rise in the Caribbean.

B. **Barbados**

Arbitration in Barbados revolves around the following main pieces of legislation, the Arbitration Act 1958, cap. 110; the Arbitration (Foreign Arbitral Awards Act) 1980, cap. 110A; and International Commercial Arbitration Act 2007.[20] The Arbitration Act applies to domestic arbitration and international arbitration that is not of a commercial nature. The New York Convention, to which Barbados is a party, is given effect in Barbados under the Arbitration (Foreign Arbitral Awards) Act. The International Commercial Arbitration Act applies to international commercial arbitration. A potential arbitration powerhouse in the region, Barbados has aims of establishing itself as an arbitration hub in the region, with the ability to compete with Miami and New York. Barbados' ambition to establish itself as a regional hub for international arbitration is explicitly advocated in its legislation. According to section 4 of the International Commercial Arbitration Act, its objectives are to establish in Barbados a comprehensive, modern and internationally recognized framework for international commercial arbitration by adopting the UNCITRAL Model Law; and to provide the foundation for the establishment in Barbados of an internationally recognized centre for international commercial arbitration.

This jurisdiction has even engaged in discussions with the LCIA to establish an office on the island.[21] In 2007, the government announced the signing of a letter of intent with the LCIA so that it could establish in Barbados its first regional office and contribute to making Barbados a more desirable venue for international arbitration. This letter of intent was to be followed by a Memorandum of Understanding by the end of 2007. It was hoped that a relationship with one of the most reputable arbitral institutions in the world would provide a significant platform for Barbados to develop its international arbitration product. Practitioners who were already engaged in domestic arbitration could switch to international arbitration. Arbitration was going to be Barbados' new niche where it could, from this location, service arbitrations for Latin America and the Caribbean. Policy makers were of the opinion that enhancing the countries' arbitration product would benefit the international financial services sector, tourism, law, accounting and the business development. Invest Barbados would work closely with the Barbados Tourism Authority to promote Barbados as the region's centre of choice. Cases would be managed through the regional LCIA office and hearings would also take place there.[22]

However, such conversations have not materialised and the local attention seems to have shifted to a more indigenous effort. Yet, as indicated by its suite of arbitration legislation and its attempts at cooperation with one of the most respected institutions in the industry, Barbados has shown its commitment to one day becoming a major arbitration hub and contributing the growth of international arbitration in the region.

C. Bermuda

Bermuda is another regional jurisdiction with aspirations of establishing itself as a regional arbitration hub.[23] Bermuda is one of the few jurisdictions in the region which has ratified the New York Convention and has a modern arbitration law based on the UNCITRAL Model Law, having enacted this legislation only 8 years after the Model Law's establishment.

In Bermuda, there are two different arbitration regimes. The Arbitration Act 1986 governs the arbitration of domestic disputes, while the Bermuda International Conciliation and Arbitration Act 1993, which incorporates into Bermuda legislation the UNCITRAL Model Law, applies to international commercial arbitrations. This suite of arbitration legislation illustrates that Bermuda is no stranger to arbitration. Arbitration is the typical form of dispute resolution used in the insurance and reinsurance industry in Bermuda. Liability insurance policies written on the 'Bermuda form' provide for either London or Bermuda as the seat of the arbitration. Arbitration is also occasionally used to resolve disputes between investors in mutual funds and shareholders of joint venture companies incorporated in Bermuda. Arbitration clauses used in insurance and reinsurance contracts typically do not provide for any arbitral institution to administer arbitrations with a Bermuda seat.

Apart from Bermuda's modern legislation and it growing influence in arbitrating insurance disputes, policy makers have sought to enhance this jurisdiction's attractiveness as a centre for international arbitration by modifying it immigration policy to make it international arbitration friendly. Under Bermudian immigration policy, arbitrators sitting in an international commercial

arbitration in Bermuda do not require work permits. Like many international arbitration centres, there is no requirement to be a Bermudian national or be licensed to practise in Bermuda in order to serve as an arbitrator in Bermuda.[24] Therefore, it can be said that Bermuda is another one of the region's jurisdictions striving to become a major arbitration hub.

D. British Virgin Islands

Traditionally known for its financial services industry, the BVI aspires to become a nerve centre for the resolution of international commercial disputes and to become the go-to institution for international arbitration and all other forms of dispute resolution in the Caribbean, Latin America and beyond. Arbitration legislation could be found in the British Virgin Islands (BVI) from the 1970s, with the introduction of the BVI Arbitration Ordinance (Cap. 6) in 1976.[25]

As the territory's policy makers came to recognize its potential as a major arbitration hub in the region, a key focal point became the need to modernize the territory's arbitration regime, with new arbitration legislation as an initial step. This new legislation has its genesis in the focus group established by the BVI Financial Services Commission. The Focus Group was chaired by late veteran lawyer, Dr. Joseph S. Archibald QC, a local BVI lawyer, who in the later years of his practise, championed the cause for establishing of a modern arbitration institution in the BVI. These efforts came to fruition in 2013 when the Arbitration Act was enacted. This legislation is modelled after the UNCITRAL Model Law 1985, s. 93 of which establishes the BVI International Arbitration Centre (BVI IAC).[26] In May 2014, the BVI Government lobbied the Government of the United Kingdom for permission to ratify the New York Convention 1958. In 2015, Cabinet appointed the inaugural board of directors on a two-year to three-year basis. The board is chaired by world-renowned veteran arbitrator and former President of the Court of Arbitration at ICC, John Beechey OBE. The BVI IAC opened its doors on November 16th 2016, the first jurisdiction in the Caribbean region to have established an institution of its kind. Upon opening, the institution adopted a brand new set of rules based on the UNCITRAL Arbitration Rules.[27] Additionally, BVI IAC aims to administer arbitrations under the UNCITRAL rules.[28]

With the advent of this new institution, the BVI has been tipped to become a very serious player in the global market for dispute resolution services. In a few short years this jurisdiction has not only enacted modern legislation based on the UNCITRAL Model Law 1985 and acceded the New York Convention 1958, it has also established the BVI IAC. Taking into consideration the level of commitment that has gone into the establishment of this institution, its facilities and the amount of attention that it is beginning to attract globally, the BVI appears to be way ahead of other jurisdictions in the region in terms of its offerings. Thus, being "the new kid on the block" does not automatically disqualify the BVI IAC from having the prestige and know-how that is to be expected from *inter alia* the ICC or the LCIA. Assisted by its modern arbitration legislation and the ability of parties to have awards enforced in over 150 countries due to its accession to the New York Convention, the BVI boasts a very modern international arbitration institution. A well-run and well-equipped 'state of the art' centre, together with the acknowledged quality of the BVI legal framework and the stable political environment offered by a British Overseas Territory,

should enable the BVI to rapidly become the leading arbitration hub in Latin America and the Caribbean.

E. Dominican Republic

The Dominican Republic has been quite active in the arbitration world for some time now.[29] In a region where most of the economic power houses are Spanish-speaking, the Dominican Republic's vision of establishing itself as a hub for international arbitration does not seem so far-fetched. Like Bermuda and the British Virgin Islands, the Dominican Republic has enacted modern arbitration legislation based on the UNCITRAL Model Law and is a party to the New York Convention.

Law 489-08 on Commercial Arbitration of 19 December 2008 applies to arbitral agreements, proceedings and enforcement of commercial arbitration awards in the Dominican Republic. Law 50-87 on Chambers of Commerce and Production, as amended by Law 181-09 of 6 July 2009, makes provision for international arbitration cases to be administered by the Alternative Dispute Resolution Centres. Law 489-08 is based on the UNCITRAL Model Law with slight variations, including: a narrower definition of international arbitration because it does not have an "opt-in" provision by which parties agree that the subject of arbitration can relate to more than one country; and the freedom of the parties to determine the number of arbitrators, as long as they are an odd number, and, if no such determination is made, a sole arbitrator shall be appointed instead of three (article 14).[30] Where parties have not agreed otherwise, the notification by the claimant of the name of the proposed arbitrator and a claim for arbitration, and within the specified time limit, the respondent shall notify the claimant of its defence and proposed arbitrator (article 27). The Law diverges from the UNCITRAL Model Law where the claimant serves a request for arbitration, and the statements of claim and then defence is submitted within agreed time limits or set by the tribunal. Also, recognition and enforcement of an award can be refused if the court, on its own initiative, holds there was a disregard of due process amounting to violation of rights of a party, in addition to the grounds set forth in article 36(b) on the Model Law (article 46).

The Dominican Republic-Central America Free Trade Agreement (CAFTA-DR), calls for arbitration as the key mechanism for dispute resolution.[31] Moreover, the Dominican Republic has entered into about fifteen bilateral investment treaties (BITs) with Argentina, Chile, Cuba, Ecuador, Finland, France, Haiti, Italy, Republic of Korea, Morocco, Netherlands, Panama, Spain, Switzerland and Taiwan Province of China, which submit disputes to international arbitration.[32] Considering that Latin American countries have fiercely opposed international arbitration for most of their history, the Dominican Republic is a perfect illustration of the rise of international arbitration in the region, given its commitment in promoting international arbitration in the Dominican Republic.

F. Jamaica

Like other common law jurisdictions in the Caribbean, Jamaica's legal system is modelled after the English legal system. Likewise, its arbitration regime has historically been influenced by this legal regime. Although considered by most countries to be archaic, portions of the 1889 and 1950 English Arbitration Acts are still present within arbitration laws in Jamaica. International commercial arbitration in Jamaica is governed primarily by the Arbitration Act 1900 (Jamaican Act of 1900) and the Arbitration (Recognition and Enforcement of Foreign Awards) Act, 2001 which makes provision for the application of the New York Convention. Not unexpectedly, Jamaica has been actively involved in arbitral decisions in the mineral sector, especially bauxite as well as in other commercial sectors. International arbitral proceedings usually involve the rules of a major institution such as the ICC, LCIA or UNCITRAL. Although outdated, the Jamaican Act of 1900 was designed to facilitate arbitration. Under this piece of legislation, the Court will generally stay proceedings where a valid arbitration agreement is in place (s.5), and may remove an arbitrator engaged in misconduct (s. 12(1) and (2)). Thus, in recent years much attention has been centred on modernising the Century-old Arbitration Act so as to bring it in line with the UNCITRAL Model Law.[33] At the time of writing, an Arbitration Bill, based on the UNCITRAL Model Law is being debated in Parliament.

In November 2016, Jamaica launched the Mona International Centre for arbitration and Mediation (MICAM) with institutional support from The University of the West Indies (Mona Campus). This institution aims to serve the growing need within the Caribbean for Arbitration and other ADR options for the settlement of commercial, investment, treaty, and other disputes. According to this institution, the fundamentals required for economic growth and proper administration of justice require that the infrastructure for dispute management in general and arbitration in particular is optimal and as such it has been established as a regional centre, supported by capacity to deliver at a global standard in service to local, regional, and international disputants.[34] MICAM aims to administer arbitrations both under its fast track arbitration rules and the UNCITRAL arbitration rules. With the introduction of MICAM and the enactment of Jamaica's new arbitration legislation in the near future, Jamaica is on track to become another hub for international arbitration and thereby further enhance the region's offerings in terms of international arbitration services.

A party to the New York Convention, on the verge of enacting arbitration legislation based on the UNCITRAL Model Law and having just established its own international arbitration centre, Jamaica seeks to position itself as a regional hub for international arbitration services.

G. Trinidad and Tobago

Trinidad and Tobago has been engaged in international commercial arbitration cases, particularly in the Petroleum sector, for a very long time. Arbitration in Trinidad and Tobago is governed by the Arbitration Act Chap 5:01,[35] which is also based on early English legislation and as such has provisions similar to those under the Jamaican Act of 1900. The New York Convention 1958 was given effect in Trinidad & Tobago by the Arbitration (Foreign Arbitral Awards) Act Chap 5:30.

In 1996, Trinidad and Tobago established the Dispute Resolution Centre of Trinidad and Tobago as part of the Trinidad and Tobago Chamber of Industry and Commerce by the then Chief Justice, Michael de la Bastide.[36] The goal of the Dispute Resolution Centre is to become the premier institution for the promotion and operation of an alternative dispute resolution training and referral system within Trinidad and Tobago and the wider Caribbean. This institution seeks to deliver creative, out-of-court dispute resolution approaches in an independent, ethical, timely, confidential and cost effective manner. Moreover, it seeks to provide a trusted cadre of dedicated and experienced mediators, arbitrators and other neutral professionals, facilitators and support resources, committed to delivering high quality innovative approaches to mediation, arbitration and other modes of dispute resolution, complemented by advanced training and outreach programs.

So although an upgrade of Trinidad and Tobago's arbitration law is desirable to enable it to compete in the rapidly expanding world of international commercial disputes, this jurisdiction has demonstrated its commitment to addressing the region's need for international arbitration facilities.

IV. International Arbitration in the Caribbean: Looking Towards the Future

Promotion of international arbitration in the Caribbean may have had a slow start, but the trend that started a few years ago to intensify the use of this dispute settlement mechanism, suggests that jurisdictions in the region are on track to satisfying the demand for international arbitration facilities in this part of the world. As seen above, as territories have come to appreciate the importance of international arbitration as the ideal dispute settlement mechanism in the rapidly evolving world of international commerce and trans-border transactions, they have begun to upgrade their legal systems to cater to this forum. Numerous jurisdictions in the region are party to the New York Convention and the upgrading of domestic laws to cater to international arbitration is gaining momentum. Moreover, seven jurisdictions in the region are currently aspiring to establish themselves as international arbitration centres. This is a significant level of progress for a region where the use of international arbitration has not been traditionally promoted.

One of the first shortcomings that presents itself from the above statistics is the fact that many jurisdictions in the region still continue to lack modern international arbitration infrastructure. Their laws continue to be archaic models, better suited for the commercial transactions of their time, rather than the modern transboundary transactions that characterise global commerce these days. For instance, although the UNCITRAL Model Law 1985 is designed to assist States in reforming and modernizing their laws on arbitral procedure so as to take into account the particular features and needs of international commercial arbitration in contemporary times, there are still quite a few jurisdictions who have not yet adopted any modern arbitration legislation. The arbitration laws of Antigua and Barbuda, Dominica, Grenada, St. Kitts and Nevis, St. Lucia and St. Vincent and the Grenadines, for instance, are all based on the English Arbitration Act of 1950.[37] So, while the English Arbitration regime is governed by the Arbitration Act 1996,

former English colonies in the region have not upgraded their arbitration regimes decades after their independence. The New York Convention 1958 has better representation in the region, but compared to the number of jurisdictions in the region, this is still a small representation. A review of the list of countries who are yet to ratify the New York Convention indicates that Belize, Grenada, St. Kitts and Nevis, St. Lucia and Suriname have not ratified the New York Convention. This suggests that these jurisdictions have not yet come to appreciate the importance of this instrument in enhancing their attractiveness as investment hosts. In determining whether a particular jurisdiction is ideal for investment, potential investors look favourably on their ability to protect their investment by being able to enforce awards from disputes arising from such investments. Thus, to improve their domestic international arbitration regimes it is suggested that these countries which have not updated their domestic arbitration legislation do so as the benefits of upgrading their arbitration regimes can be significant. It is advised that Belize, Grenada, St. Kitts and Nevis, St. Lucia and Suriname ratify the New York Convention. Additionally the countries whose domestic arbitration legislation is modelled after some archaic model, should aspire to look towards the UNCITRAL Model Law for guidance in upgrading their arbitration laws.

Apart from instituting the necessary policy infrastructure, it is necessary, for instance, for these jurisdiction to continue along the path of political stability; respecting the rule of law; and ensuring supportive and impartial judiciaries. These features are vital to the success of international arbitration in these jurisdictions. While these notions are all interlinked, to enhance clarity, they will be dealt with separately.

Political stability should be high on the priority list of policy makers in jurisdictions aspiring to improve their business climates by providing facilities for the conduct of international arbitration. It has been highlighted that political instability can have a significant impact on business and it may make them reluctant to invest in new capital or enter new markets. It may even encourage relocation of activities to a more stable and predictable area as businesses try to avert risk as far as possible. Political instability in an area where a firm operates will mean that the firm has to be very flexible and adaptable; ready to change their operations at very short notice to reflect changes in the political environment. Even in countries perceived as politically stable, as most jurisdictions in the region are, political change can have a significant impact on business. This may simply be because governments make wide-ranging changes to the legal framework, but it could also be that a change of government changes the political attitudes towards business. This may result in less 'business-friendly' policies, changes in business taxation and regulations or, perhaps, political changes that affect the firm's strategy. Thus, political stability is a highly desirable feature of jurisdictions seeking to present themselves as ideal locations for conducting high level business transactions and a place for resolving dispute that occur pursuant to such transactions.[38]

Respect for the rule of law is paramount in this industry. Despite the fact that parties agree to submit a dispute to arbitration, not under the constant gaze of the Court and as such arbitrariness can easily ensue, it is important that these jurisdictions' legal systems are founded on the respect for the rule of law. From ancient Greece through the Middle Ages and through the 20th century,

businesses and states have relied on arbitration to resolve disputes, and arbitration has created and enforced a rule of law. Arbitration has created certainty that commercial transactions could be upheld; it has provided a mechanism for private persons to bring claims against governments; and it has even avoided war between states. Today, the success of the system has caused some stresses, and some have even said that the system itself is threatened as the legitimacy of the process is constantly being questioned. Thus, it is incumbent on those who practice in the field of international arbitration to preserve the system to enforce the rule of law.[39]

Although some may say that the arbitral process is the consequence of an agreement between the parties and such should be devoid of external influences; the arbitration process is dependent on support from the judiciary, for instance, where the court is mandated to stay proceedings pending arbitration or where enforcement is to take place in the same jurisdiction as the seat of arbitration. The judiciary's much-needed support towards this dispute settlement mechanism means that the local court system is an important ally. As mundane as this may seem at first glance, considering the fact that parties pursue arbitration to get away from the Courts, support from the judiciary is a very important facet of the arbitral process. The importance of the judiciary's role in the arbitration process can be summed up in the words of England and Wales House of Lords Judge, the late Lord Mustill who is quoted as having said:

> "*Ideally, the handling of arbitrable disputes should resemble a relay-race. In the initial stages… the baton is in the grasp of the court… When the arbitrators take charge they take over the baton and retain it until they have made an award. At this point, having no longer a function to fulfil, the arbitrators hand back the baton so that the court can in case of need lend its coercive powers to the enforcement of the award.*"

Therefore, it is clear that the arbitral process needs the partnership of local courts to ensure its effectiveness. Lord Mustill confirms: "The old and sterile confrontation between the 'minimalists' and the 'maximalists' regarding the part to be played by the domestic courts has now given way to a recognition that the courts must recognize the essential role of arbitration in international commerce, and give it the maximum permissible support; and a converse recognition that arbitration cannot flourish without that support." Cooperation in all phases of an arbitration proceeding will contribute to the growing awareness that arbitration yields efficient conclusions, with the extra benefit that accountability may be demanded much sooner than litigation, which has been the traditional method of resolving commercial disputes. Moreover, judicial cooperation with arbitral tribunals is connected with, and a function of, modern arbitration statutes.

V. Conclusion

This paper examined the rise of international arbitration in the Caribbean Basin, a region where this dispute settlement mechanism has not been traditionally promoted, as seen in the archaic nature of domestic arbitration laws in many jurisdictions. It revealed that to a large extent, historically, jurisdictions in the region have not paid particular attention to the promotion of international arbitration. For instance, the New York Convention which was adopted in 1958 and came into force in 1959 has still not been adopted in several jurisdictions in the region. Likewise,

the region as a whole has not paid much attention to the UNCITRAL Model Law 1985, which was developed to assist States in reforming and modernizing their laws on arbitral procedure so as to take into account the particular features and needs of international commercial arbitration in contemporary times. Nevertheless, over the last few years there has been an intensification in the promotion international arbitration with various jurisdictions upgrading their domestic arbitration legislations, the adoption of the New York Convention for the countries who had not previously adopted it and the emergence of several aspiring international arbitration centres in the region. Although Bahamas, Barbados, Bermuda, BVI, Dominican Republic, Jamaica and Trinidad and Tobago are all aspiring to establish international arbitration centres in the region, many jurisdictions in the region remain impervious to this dispute settlement mechanism and its many benefits. Yet as aforementioned, maintaining and enhancing political stability, respecting the rule of law and ensuring impartial judiciaries are also all essential elements in enhancing these jurisdictions attractiveness as places for the resolution of commercial disputes. All the same, this intensification in the promotion of international arbitration in the region suggests that the Caribbean is no longer just a place to sit on a beach sipping on a cocktail made from some of the region's finest rums, but increasingly a place to do business as well.

Notes

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