

Theorizing Regional Integration in the Caribbean: Neofunctionalism and the Caribbean Community (CARICOM)

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Maps

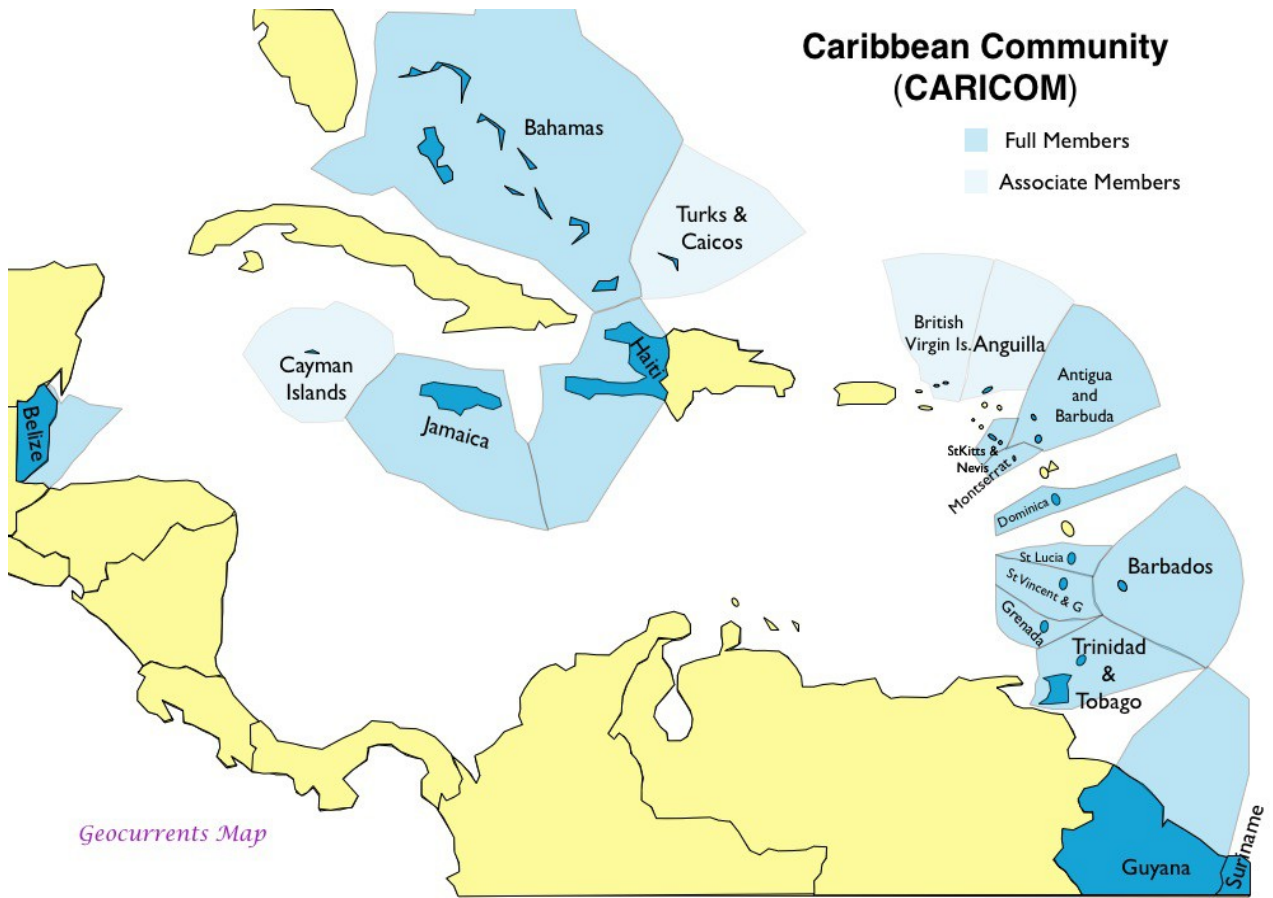
Map of the Caribbean¹

CENTRAL AMERICA AND THE CARIBBEAN



1 Source Mapsoftheworld.com

Map of the Caribbean Highlighting CARICOM Countries²



² Lewis (2011)

List of Acronyms and Abbreviations

ACCP	Assembly of Caribbean Community Parliamentarians
ACP	Africa, Caribbean and Pacific Countries
CAHFSA	Caribbean Agricultural Health and Food Safety Agency
CARDI	Caribbean Agriculture Research and Development Institute
CARICAD	Caribbean Center for Development Administration
CARICOM	Caribbean Community
CARIFORUM	Forum of Caribbean Group of African Caribbean and Pacific States
CARIFTA	Caribbean Free Trade Area
CARIPASS	CARICOM Travel Pass
CARPHA	Caribbean Public Health Agency
CASSOS	Caribbean Aviation Safety and Security Oversight System
CCBG	Committee of Central Bank Governors of CARICOM
CCC	CARICOM Competition Commission
CCJ	Caribbean Court of Justice
CDB	Caribbean Development Bank
CDEMA	Caribbean Disaster Emergency Management Agency
CFNI	Caribbean Food and Nutrition Institute
COFCOR	Council for Foreign and Community Relations
COTED	Council for Trade and Economic Development
CRFM	Caribbean Regional Fisheries Mechanism
CROSQ	CARICOM Regional Organization for Standards and Quality
CSME	CARICOM Single Market and Economy
CTU	Caribbean Telecommunications Union
CXC	Caribbean Examination Council
IMPACS	CARICOM Implementation Agency for Crime and Security
RJLSC	Regional Judicial and Legal Services Commission
USTIC	United States International Trade Commission
UWI	University of the West Indies
WTO	World Trade Organization

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Chapter 1: Neofunctionalism and CARICOM

1.1 Introduction

This chapter establishes the scope and objectives of the thesis. It offers a short introduction to the Caribbean Community (CARICOM),³ the phenomenon of regional integration, and theorizing regional integration. It also outlines the modus operandi, and presents a general outline of the dissertation.

1.2 The Phenomenon of Regional Political and Economic Integration

Regional political and economic integration is not a new phenomenon. In fact, it has been on the rise since the end of the Second World War (Haggard and Kaufmann 1997; Mattli 1999). Currently, there is a dramatic increase in the global tendency to create trans-national regimes, as an answer to both exogenous and endogenous problems. It is currently the 'new normal' for states with similar political ideals and shared political/economic interests to engage in some form of cooperation. Regional integration has therefore become more than an ideology; it is an instrumental, substantial and prominent means of achieving economic and political development. As a result, it has been proposed that the traditional nation-state or even the “established nation state is in full retreat”.⁴

Acknowledging these factors, how can this process of dis/integration⁵ be studied and better understood? How do we understand and analyze the process and impact of adopting trans-national practices, organizations, regimes and unions by nation-states that are in decline?

A theoretical analysis of regional integration provides the possibility to understand not only the phenomenon of globalization, but also the decline (and other issues) of power and sovereignty of the traditional nation states; aligned with the rise of trans-national coalescence.

The aforementioned rise in regional economic and political integration has undoubtedly attracted economists, sociologists and political scientists to the field of International Relations (IR). This had led to a plethora of literature on theorizing the process of regional integration; including description along with the analysis of the integration process, along with complex explanations for

3 A more extensive introduction and presentation of CARICOM can be found in Chapter 2.

4 Haas (1968:297).

5 This is especially important for any political or social study of regime politics, particularly in the Caribbean.

1.2 The Phenomenon of Regional Political and Economic Integration

the motives for integration, and projections for the future of these arrangements.

In actuality, especially in the Caribbean, regional integration is widely criticized, with a prevailing tendency to view the phenomenon as a means by which newly gained sovereignty is ceded (see for example Mordecai 1968) at one nation's expense for a new form of colonization.

1.3 Introducing the Caribbean Community (CARICOM)

With regards to peaceful economic integration, “the experience of the European Union (EU) is the most significant and far-reaching among all attempts at regional integration”.⁶ Theorists such as Malamud and Schmitter (2011:135) propose that “the Common Market of the South (MERCOSUR) and the Andean Community (AC) are regional integration projects that have reached the greatest level of formal accomplishment after the EU”.⁷

At the same time, an examination of the institutional structures and functional aspects of CARICOM reveals that, second to the EU, it is one of the most developed systems of regional trade in the world.

It is easy however to see why CARICOM is often underestimated, overlooked and/or neglected. It is relatively small, possesses limited natural resources, and a purported minuscule significance with respect to global economic and political affairs. Compared to other regions, macro economic indicators reveal limited purchasing parity and domestic output in CARICOM. With a combined population of approximately 15⁸ million⁹ inhabitants and a combined GDP of 34 billion¹⁰ Euros; the regional economic output is significantly less than its trading partners. To make a comparison with other unions, the combined population and GDP of the Free Trade Area of the Americas (FTAA)¹¹ is approximately 760 million inhabitants, and approximately 13 trillion Euros¹² respectively. In Europe, the population of the EU¹³ is approximately 500 million¹⁴, and its GDP is approximately 13 trillion Euros. In Asia, the Association of Southeast Asian Nations has an

6 Malamud and Schmitter (2011:135).

7 Malamud and Schmitter (2011:25).

8 Without Haiti, less than 7 million people.

9 Unless otherwise stated, all statistics are from 2013. CARICOM statistics are sourced from CARICOM National Accounts Digest, August 2013. EU statistics are sourced from eurostats.org August 2013; USA statistics are sourced from worldbank.org August 2013; and ASEAN statistics from ustr.gov August 2013 and Hansakul & Keng (2014).

10 All GDP statistics are current rates and long scale calculated i.e. 10¹².

11 Free Trade Area of the Americas.

12 Statistics from World bank indicators.

13 With reference to the EU 28.

14 Statistics are sourced from europa.eu/about-eu/facts-figures/living/index_en.htm last visited June 2015.

1.3 Introducing the Caribbean Community (CARICOM)

estimated population of 620 million¹⁵ and a GDP of approximately 3 trillion¹⁶ Euros. In South America, The Andean Community has 120 million inhabitants and a GDP of 800¹⁷ billion Euros. Mercosur has a combined population of 280 million inhabitants, and recorded a combined GDP of 2.9¹⁸ trillion Euros. These statistics explain the tendency to overlook CARICOM, as it is a small union both in terms of population and purchasing parity. However, recent examinations of CARICOM¹⁹ reveal noteworthy and intriguing details pertaining to the:

Functional aspects of CARICOM: since the West Indies Federation, integration in the Caribbean has evolved to an established single market and economy;²⁰ which includes the deep integration of the Organization of Eastern Caribbean States (OECS) and the Caribbean Single Market and Economy (CSME).

The OECS includes a monetary union (and a single currency); a common judiciary system; harmonized provisions for health, education, information and technology; and the free movement of goods, capital and persons.

The single market in CARICOM incorporates both harmonization of regional customs regulations and liberalization of trade and economic barriers. It embodies an area of border-less travel and establishment in the Caribbean, with guaranteed regional safety standards and the possibility to transfer social securities.²¹

Institutional structures: the Community has established supranational institutions such as a regional trade and a final appellate court, the Caribbean Court of Justice (CCJ). The CCJ is composed of independently elected judges who preside over community matters in interpreting the Revised Treaty of Chaguaramas, which established CARICOM and the Single Market and

15 Statistics sourced from the Office of US Trade Representative Asia www.ustr.gov/countries.../southeast-asia.../association-southeast-asian-nat. Accessed June 30, 2015.

16 Statistics are long scale represented i.e. 10¹². They are taken from Hansakul and Keng.

17 Figures exclude values from Venezuela. Statistics taken from Group Latin America http://www.grouplamerica.com/andean_pact.htm. Accessed June 30, 2015. GDP was converted from US dollars to EU using the Frankfurt Stock Exchange Rates at the end December 2014 <http://www.boerse-frankfurt.de/en/currencies/usd+eur+us+dollar+euro+cur+XC0009666410>. Accessed June 30, 2015.

18 Statistics are taken from IADB Moody's Analytic, and can be found at <https://www.economy.com/dismal/analysis/free/248931>. Accessed June 30, 2015. GDP was converted from US dollars to Euro, using the Frankfurt Stock Exchange Rates at the end of December 2014 <http://www.boerse-frankfurt.de/en/currencies/usd+eur+us+dollar+euro+cur+XC0009666410>. Accessed June 30, 2015.

19 See for example Onnis 2013.

20 Integration in CARICOM comprises two streams, the deeper commitments of the Organization of Eastern Caribbean States (OECS) which includes a single market and economy, a single currency and a court of appeals; and the commitments of all CARICOM members to the CSME which includes a single market and a court of first instance and final appeal. Further information on the OECS and the CSME is provided in the sections in Chapter Two titled 'History of Regional Integration in the Caribbean' and 'Overview of Regional Integration in the Caribbean'.

21 For more information of the Single Market and Economy in CARICOM see Chapter 4 which offers an expansive overview and analysis.

1.3 Introducing the Caribbean Community (CARICOM)

Economy (CSME); and additionally rule on final appellate cases. The CCJ is the sole court which possesses the characteristics of both a court of first instance and a court of final appeal. It has passed judgments on cases under both jurisdictions and extends a level of *de jure* and *de facto* competence over CARICOM member-states.

Geographical alignments: the expansive and profound level of market liberalization and harmonization in CARICOM redefined both the internal and external trade processes of the union. Not only have CARICOM member-states expanded their regional commitments to include new members, but they have also negotiated extensive trade agreements with external unions on a regional platform. For example, CARICOM is the first regional grouping of its kind to negotiate and sign an open trade agreement with the EU²² that forms both an economic and social alliance.²³

Democracy: macro indicators such as input legitimacy, participation, control, power limitation and human rights reveal a high level of democratic stability in CARICOM which is especially notable in comparison with other African, Caribbean and Pacific (ACP) groupings²⁴. In 2006, in characterizing democracy in the Caribbean, the then Deputy Managing Director of the International Monetary Fund noted that “since independence, Caribbean countries have exemplified transparent institutions and governance in the Western Hemisphere. Pluralism and democracy have flourished, and racial and gender equality have long underpinned the political process”.²⁵ He went further to add that “CARICOM countries have healthy competitive political processes, decades of experience with regular national elections, and entrenched respect for civil and economic liberties”.²⁶ These healthy processes have also had a positive impact on regional institution building and regional integration in general.

Economic impact: despite their small size, both statistics and World Trade Organization (WTO) dispute cases reveal the high level of economic impact on the global economic partners of the CARICOM member-states. For example, Jamaica is ranked as the sixth global supplier of Bauxite.²⁷ Furthermore, Trinidad and Tobago is not only the largest oil²⁸ and natural gas producer in

22 EU Partnership Agreement,(EPA) December 2007.

23 For more information on the CARICOM-EU EPA please see Chapter 6, which offers an extensive overview and analysis.

24 See Onnis (2014).

25 Carstens (2006).

26 Carstens (2006).

27 Bauxite is an Aluminum ore the main source of Aluminum. Some of the uses of Aluminum are: transportation: air-craft, automobiles, marine vessels etc; packaging: cans etc; electrical transmissions: cables etc; and construction: windows, doors, electronic appliances etc.

Statistics taken from the Jamaica Bauxite Institute. <http://www.jbi.org.jm/pages/industry> Accessed June 30, 2015.

28 Proven crude oil reserves in 2013 were estimated at approximately 728 million barrels according to the country's ministry of energy. <http://www.energy.gov.tt/our-business/oil-and-gas-industry/> Accessed June 30, 2015.

1.3 Introducing the Caribbean Community (CARICOM)

the Caribbean, but is also the largest exporter²⁹ of Liquefied Natural Gas (LNG) to the United States (U.S.) accounting for approximately 74% of U.S. LNG imports in 2013. The impact of agricultural trade on its regional competitors can also be observed with recent WTO disputes. The so called WTO 'Banana row' revealed the impact of the Caribbean Banana³⁰ trade with the EU on both the U.S. and Latin American economies. CARICOM countries are also niches for 'Offshore Financial Centers' and Internet Gambling. These have become so successful that they have been met with hostility by regional competitors. For example, Antigua and Barbuda have created a niche in the Internet gambling industry that resulted in the U.S. taking measures to remove cross border supply and the soliciting of customers from within the U.S..³¹ These cases are some examples of the economic influence of the CARICOM member-states on other global actors.

Essentially, CARICOM is an established regional community with defined legal, functional and institutional structures; a border-less regional market and economy; and a platform for negotiating with the rest of the world. It therefore offers an ideal laboratory within which to examine theories of regional integration. It provides the possibility to observe and analyze the general process of regional integration outside of the EU setting, and to test EU integration theories.³² The recent advances highlighted above also necessitate an increased focus and scrutiny in CARICOM, both for the purposes of understanding integration in CARICOM, and with regards to theoretical analysis and theory building.

1.4 Aims of the Thesis

Since the beginning of the integration process in Europe in the early 1950s, quite a number of integration theories have been applied to the process. Many of these theories are beneficial and suitable for understanding the union in question, and moreover, to postulate about the future.

Authors including Axline (1979); and Langhammer & Heimenz (1990); use regional political integration as a prescriptive measure for developing countries to achieve 'collective self reliance',

29 It also houses one of the largest natural gas processing facilities in the Western Hemisphere along with the world's largest exporter of ammonia and the second-largest exporter of methanol. Statistics taken from the United States Energy Information Administration at <http://www.eia.gov/countries/country-data.cfm?fips=td> Accessed June 30, 2015.

30 CARICOM agricultural products, including banana, coffee, rice and sugar dominate markets in the western Hemisphere. For an expansive overview including trade statistics please see the Caribbean Export Development Agency website at <http://www.carib-export.com/> Accessed June 30, 2015.

31 For an expansive overview of the WTO case, between Antigua and the United States of America please see the Dispute Settlement Case at the WTO's website at https://www.wto.org/english/tratop_e/dispu_e/cases_e/ds285_e.htm Accessed June 30, 2015.

32 In applying EU theories outside of the EU, issues such as proposed *sui generis* nature of the theories can be resolved.

1.4 Aims of the Thesis

economic development and political power. This thesis constitutes an additional aspect: it employs the theory of Neofunctionalism to examine the motivations and process of regional integration in developing countries in the Caribbean, specifically CARICOM.

The principal objective is to assess the benefits of applying the theory of Neofunctionalism to CARICOM.³³ That is to say, to primarily examine the process of integration in CARICOM; and to secondarily learn more about the theory of Neofunctionalism from its application to a non-EU case.

The specific aim of this thesis is therefore to examine and understand the process of regional political and economic integration in the Caribbean, focusing on CARICOM. Questions³⁴ that will be addressed in this thesis are:

- why is integration in CARICOM progressing as it is?
- which are the critical support factors and impediments of this process?
- what is the role of institutions in the process of regional political and economic integration in CARICOM?
- where and how far has the process of integration in CARICOM developed?
- what are some external effects on the process of integration in CARICOM?

In order to answer these questions, the thesis rests on the premise that since its inauguration, decisive changes have occurred in CARICOM on a functional level, leading to a deepening in integration through structural and institutional development. These include³⁵ the evolution of the common market in CSME; and the introduction of a regional trade and final appellate court, the Caribbean Court of Justice (CCJ); and the negotiation and signing of an EPA with the EU.

Laursen (1995:7) suggests that in “the classical literature on European integration, three dimensions were considered especially important: functional scope, institutional capacity and geographical domain”. This research is shaped around all three dimensions. It focuses on the functional scope through studying the issues related to general cooperation in CARICOM, the evolution of its aims, and general functional changes. The institutional capacity in CARICOM, in that it focuses on structural changes in CARICOM's institutional landscape and issues such as decision-making of the said institutes, as well as their competences and provisions for the implementation and enforcement of decisions. The geographical domain, by analyzing the effect of CARICOM's relationship with other unions on its process of internal regional integration. These

33 To primarily deduce information on CARICOM and secondarily on the theory of Neofunctionalism.

34 The questions will provide a succinct account of the process of integration in CARICOM.

35 Also that membership in CARICOM has increased exponentially, from the initial creation of CARIFTA with three members to fifteen in the CSME.

1.4 Aims of the Thesis

three modus operandi are the pillars of this research.

The thesis additionally inspects three crucial concepts in the process of regional political integration to see the influence of applying the theory of Neofunctionalism to CARICOM. These are: functional spill-over, political spill-over and the virtual alignment of common interest. Neofunctionalism argues that political élite and institutions control both the level and speed of integration, and that it is up to them to increase power at the trans-national level. Therefore, the validity of the influence of political élite and institutions will be explored.

It should be noted that the thesis neither defends the process of integration in the Caribbean, nor does it suggest alternative routes. Instead, it proposes that, it is this very skepticism of regional integration which should lead us to study regional economic and political integration in the Caribbean. Although there has been debate over the benefits of integration in the Caribbean³⁶, it is more pragmatic to first examine why “integration is still in the process of deepening and widening, which are the critical 'engines' and 'brakes' of this process and what could be seen as the ultimate goal of the endeavor”.³⁷

1.5 Justifications for Applying European Theories of Regional Political Integration to CARICOM

1.5.1 Why Theorize Regional Integration?

Theories have long been employed in the natural sciences to make sense of an improbable world, or rather to prove just how probable the natural world actually is. However, in the social sciences, the proposal to extrapolate information, understand and/or analyze a particular phenomenon by using theories, is still greeted to some extent with dismay or disdain³⁸. Theories have however, proven to be instrumental in the social sciences for their power to guide, characterize, explain, understand, analyze, and predict processes. The fields of international relations (IR) and is no exception. Theories provide researchers in IR with the ability to analyze, understand and characterize world politics. In undertaking a theoretical analysis, one is able to test a

36 We are obliged to accept that there is both structural and existential criticism of regional political and economic integration in the Caribbean.

37 Wolf (2002:29).

38 Despite the possibilities of a theoretical application, scholars have warned against a tendency to approach the application of theories of integration in unions using a zero sum notion. According to Axline (1979:33) such a path has traditionally given rise to “confusion and disagreement about the kinds of normative and analytical knowledge that theoretically informed empirical research should offer: about the desirability of integration; its economic and political costs and benefits; the likelihood of success of integration; and about the relevant economic and political processes through which integration occurs”.

1.5 Justifications for Applying European Theories of Regional Political Integration to CARICOM

particular theory which leads to impartiality, consistence and non contradiction in observation and analysis. One is also able to observe and understand a particular processes; make comparisons between processes; and predict future occurrences, and make postulations based on initial observations.

In theorizing regional integration, either of two routes can be taken: a set of theories can be utilized as a guide to examine a particular phenomenon, such as regional economic and political integration; or theories can be used as the result/outcome of research. That is to say, theories are created once the research is completed. The theory is then a logical explanation of a particular phenomenon, such as the Great Recession³⁹, globalization or regional integration.

This undertaking uses the former route. It employs theories as a set of lenses through which to observe and analyze the interactions of CARICOM and the particular phenomenon of regional economic and political integration therein. In doing so, the theories have been utilized based on their power to explain the process of regional political integration.

1.5.2 Why Theorize Regional Integration in CARICOM?

In the Caribbean, the creation of CARICOM and the deepening of integration have been greeted with increasing interest from numerous scholars. This has led to a considerable amount of research centered on specific areas of the process of integration in CARICOM. Some of the most extensive researched areas⁴⁰ in CARICOM include investigations accounting for the inefficiency and malaise in CARICOM, including the CSME⁴¹; and problems relating to the structure of CARICOM and its government⁴². There are also notable studies available on the future of CARICOM⁴³; particularly in light of developments such as the EPA, and its likely effect on CARICOM member-states or particular sectors.⁴⁴ There are moreover analyses of the CCJ and its structures⁴⁵; and studies⁴⁶ and commentaries on specific cases of the CCJ, such as Shanique Myrie versus the states of Barbados⁴⁷ and their impact on CARICOM and the member-states.

However, an area that is widely neglected in CARICOM scholarship is theorizing the process

39 The term 'Great Recession' applies to the global economic crisis that occurred between 2007 and 2009. For more information see for example (Grusky, Western and Wimer 2011).

40 Ian Boxill (1993) offers an overview of the approaches of Caribbean integration and additionally gives a concise summary of the review of the literature.

41 See for example Hall and Chuck-A-Sang (2012).

42 See for example Hall and Chuck-A-Sang (2012) Hall (2003).

43 See for example Payne (1981).

44 See for example Girvan (2008).

45 See for example Jordan (2004).

46 See for example Fuchs and Straubhaar (2003).

47 This case was heard in 2013 before the CCJ and summarized in this thesis.

1.5 Justifications for Applying European Theories of Regional Political Integration to CARICOM

of regional integration. Although theorizing is an otherwise vital part of studying/analyzing any field, it has been lacking in CARICOM regarding the subject of regional integration. Considering that there have been significant recent developments in the field of integration in CARICOM, it is necessary to initiate a dialog on theorizing CARICOM. This is because, and as mentioned earlier, before one can comment on the future of this phenomenon in the Caribbean, much less prescribe the form or scale of integration, it is first necessary to examine, analyze and characterize the process of integration in CARICOM, including the actors, motives, level and scope. Moreover, it is necessary for any region undergoing economic or political integration to amass a field of research that specifically uses theories for the analysis of that region.⁴⁸ Additionally, as mentioned earlier, theories provide a set of tools with the ability to focus on specific instances of integration, and to better understand these processes; such as the structure of a union, the process of integration, or the effects of integration.

1.5.3 European Theories of Regional Integration

Much of the theorizing of regional political integration concentrates on the EU, and has risen from research carried out on this region. In the field of regional integration theory, the EU is often held as the exemplary union and the yardstick against which all other processes of regional integration are measured⁴⁹. The EU has long been the focal point for analysis of regional integration, whether economic or political. It is therefore no surprise that theories of regional integration have been created specifically for the study of the EU. Initially, popular IR theories, such as customs union theory, federalism and rationalism, were utilized to analyze the EU. Soon after its creation, however, scholars created new paradigms and theories specifically with the aim of analyzing this unique process. These theories have since been successfully utilized to study numerous aspects of the process of integration in the EU, including attempts to understand, examine, and predict integration in the EU. The theories include, Neofunctionalism, Supranationalism and Liberal-Intergovernmentalism.

Modern scholars of regional political integration such as Haas, are proponents of a revised form of Functionalism: namely, Neofunctionalism⁵⁰. This theory seeks to explain “how and why

48 This research therefore serves as a starting point in applying theories of regional integration to CARICOM, and will hopefully set the pace and inspire similar research in CARICOM.

49 Laursen (2013 and 1995) for example assert that the EU is the best example of a genuinely successful integration scheme.

50 There are notable theoretical analyses of the Caribbean and Latin America incorporating the theory of Neofunctionalism. These include Etzioni (1965) and Schmitter (1969). For an overview of other previous approaches to the study of regional integration in the Caribbean see Boxhill et al (1997) However, the two attempts cited above serve as a starting point for the application of theories of regional integration to the Caribbean. Since these attempts have

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nation-states cease to be wholly sovereign and how and why they voluntarily mingle, merge and mix with their neighbors".⁵¹ It accepts the role of member-states in regional integration, while also emphasizing the role of non-state actors in the process. It advances that, whilst member-states determine the content, context, and provisions of the initial regional agreement, it is the non-state actors such as institutions and political élite who determine the direction, depth and the process of regional integration. It further proposes that economic integration will 'spill-over' to political integration; and that in carrying out the functions delineated by states, there is an exploitation of:

the inevitable 'spill-overs' and 'unintended consequences' that occur when states agree to assign some degree of supra-national responsibility for accomplishing a limited task and then discover that satisfying that function has external effects upon other of their interdependent activities. (Schmitter 2002:4)

The concept of supranationalism was introduced in Europe by Robert Schumann.⁵² It is based on the notion that a supranational union which fits somewhere between confederate and federal unions. It implies a certain type of governance which functions above the nation state, which is more integrated than a confederate union and less integrated than a federal union.

In 1981, Weiler in 'The Dual Character of Supranationalism', proposed that there are two main facets to European supranationalism, that it was legally supranational, simultaneously, it was politically intergovernmental. He reasoned that the judiciary and legislature introduced, implemented, and executed supranational provisions; and at the same time there are dominant national political structures and intergovernmental sentiments. A rise in the supranational aspects of integration signaled a decline in the intergovernmental aspect.

Rainer Schmalz-Bruns (1999) and Joerges (2002) proposed additional aspects of Supranationalism, focusing on legitimate governance beyond the constitutional/national state; therefore the theory of supranationalism advances the notion that integration is driven at a supranational level instead of or more than a national one.

The theory of Intergovernmentalism places a strong emphasis on the role of the nation-state in the process of regional integration. It maintains that nation states are the primary actors in the

been made, the Caribbean has undergone fundamental changes. These changes are evident in three main areas: the functional scope, institutional capacity, and the geographical domain. It is therefore necessary to re-theorize integration in the current CARICOM.

51 Haas (1970:610).

52 See for example Ruzkowski (2009).

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process of integration, and that they only create institutions to delegate tasks and mandates, while retaining their sovereignty over these institutions. They can therefore revoke this leeway, that they have afforded the institutions at any time. It also specifies the motivation of social actors, states and leaders, and makes predictions of their behavior and of the effects from their interactions. It “is a theory that stresses the role of the varied social interests and values of states, and their relevance for world politics”.⁵³

Theories of European integration are ideal for studying regional integration, especially since, unlike other theories of International Relations, they were developed specifically for the study and analysis of the subject of regional integration. However, if these theories were only applicable to the EU they would be *sui generis*. For the purposes of theory building, testing and analysis, it is important and undoubtedly necessary to apply European integration theories to other case studies, irrespective of their location.

Theories of European integration offer an ideal setting in which to analyze CARICOM. European Integration has proven to be a peaceful ideal, exerting democracy and free trade. Unlike previous notable political and economic integration attempts, such as the Ancient Greek or Roman Empire, the political integration in the EU was by choice and based on objectively negotiated terms which excluded the use of military power. Hodges (1972:9) for example proposes that:

the greatest achievement of European regional organizations has been to establish patterns of peaceful cooperation in various fields, as a preliminary step to build a community at the international level by negotiation rather than coercion ... (its appeal lies in the provision of an) ideal opportunity to test theories of peaceful community building. (Hodges 1972:9)

Additionally, the terms used in EU integration are both normative and general; therefore, they can be applied to developing unions such as CARICOM, which have been established by peaceful efforts at political cooperation and economic liberalization.

European theories of integration are inundated with explanations regarding the commencement and process of integration, the underlying factors of integration, and the role of institutions in the process of regional integration. There is an expansive body of discourse available on EU theories. These theories have been applied to numerous aspects of the EU and address

53 Moravcsik (2010:1).

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functional criticisms.

As with many broad topics, it is quite typical to find both proponents (Andic, Andic and Dosser (2011); Payne and Sutton (1984); Nye (1968a); Garrett (1992)); and critics (Girvan (2008); Mordecai (1968); Webb (1983); Mattli and Slaughter (1998⁵⁴) and Cram (1996)) of the process and the theories, who build a body of analysis around the topic.

The sizable research on theories of European Integration therefore provides an ideal set of lenses for examining the process of integration in the Caribbean. An application of these theories to a non-EU union is also important for understanding the union, for the development of said theories, and for political practice in the field of International Relations.

At the same time, Axline suggests that “while studies in other areas of the world have constituted real attempts to understand the processes of integration under differing conditions, few attempts have been made to use this understanding to modify the basic precepts of the Europe-centered theory”(1979:33). He then continues with the point that:

outside of Europe the conditions under which integration schemes have been established are fundamentally different from the conditions in post-war Europe- in terms of the size of the countries involved, their level of economic development, and the nature of their political processes...etc... Yet, in face of these widely divergent situations the adjustments made to the theoretical framework to account for these differences have consisted mainly of arbitrarily suggesting alternative variables or functional equivalents to compensate for the absence of variables important in European integration. (Axline 1979:33)

That is to say, although efforts have been made to make the theories more adaptable to non-EU unions, the nexus of the theories has not been modified: only the variables have been changed, depending on the application of the theories. Whether an oversight or a structural problem, this error has generally impeded the application of European integration theories to other unions. With the present state of the Caribbean and CARICOM, it is possible to re-evaluate the application and the ‘fundamental nexus’ of European integration theories, as will be analyzed and justified in

54 For example, Mattli and Slaughter (1998:1) propose that “both Neofunctionalism and Intergovernmentalism neglect the range of specific motives and constraints shaping the behavior of individual litigants and national courts”.

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Chapter 3.

Instead of focusing on functional equivalents of the European experience, we can examine the effects of factors such as the political environment, size, and specific type of leadership and nationalistic values on integration in CARICOM. It is, moreover, possible to concentrate on specific cycles of integration, such as the CSME. Furthermore:

the likelihood of establishing a viable integration scheme will depend on the political conditions within the countries involved. Factors such as nationalism, the nature of leadership, and the role of interest groups and labor unions will directly affect the cooperation of governments on a regional level. Axline (1979:38)

These are universal factors and can form empirical variables for an analysis. In examining the factors of integration, we are further able to isolate instances and the general process of integration for studying regional integration.

Furthermore, regional political and economic cooperation in the Caribbean, mimics some qualities found in the EU, such as peaceful community building, democratic consent, and a spill-over from economic to political integration. CARICOM is similar to the EU, in that, it was created for political purposes, one of them being to enable the islands in the Caribbean to exert more political influence internationally.⁵⁵ As with the EU, CARICOM was built on economic terms and then grew into an economic and political union, entailing a single market and economy, in addition to an overarching court of justice.

The possibility of applying European integration theories to ACP and Latin American regions has also been proposed numerous times⁵⁶. The fact that regional political integration is prevalent not just in Europe but is also increasing globally, suggests that the study of this process on one continent could inform endeavors on others. CARICOM provides an ideal setting for empirical analysis, since the dependent variables in such a case offer information about the process and the outcome of integration itself. This suggests that European integration theories can be a viable choice for analyzing other unions apart from the EU.

⁵⁵ Please refer to the Preamble of the Original Treaty of Chaguaramas.

⁵⁶ For more information on suggestions and attempts at using EU theories in other regions, see for example Malamud and Schmitter (2007); Dorrucchi, et al (2002); and Schelhase(2008:27).

1.6 Justifications for Applying the Theory of Neofunctionalism to CARICOM

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As established in the previous section, theories of European integration can be used to examine the variables cited in this study of CARICOM. All three classical theories of European integration, i.e. Neofunctionalism, Supranationalism, and Intergovernmentalism, can provide valuable insights into the process of integration and disintegration in CARICOM. They are also able to dissect the empirical variables in this thesis.

However, the theory of Neofunctionalism is the sole theory that can singularly achieve the task outlined above; and can best assist in explaining the process of institution building, economic integration and external trade negotiations in the Caribbean. Reasons for the suitability of Neofunctionalism vis-à-vis the other theories of European integration include factors such as:

A comprehensive and contextual in approach: Neofunctionalism rests on four analytic attributes of regional integration: the actors, the motives, the process, and the context of the integration process. In concentrating on the actors and their motives for integration, it is possible to analyze the incremental stages of integration. Conversely, the emphasis on the process and the context, provide the opportunity to observe the interaction of these actors and the effects that their interactions have on integration. Neofunctionalism is additionally able to focus on non-state actions and their effects on integration. The employment of the theory of Neofunctionalism to this scenario generates the contingency to focus on the institutional structure, functional capacities, together with the geographical domain of theoretical analysis in CARICOM. Rather than limiting the parameters of the analysis, the theory offers insights into notable aspects of CARICOM and the process of integration for the proposed investigation. It further provides the possibility to better understand the process of both political and economic integration. The analytic attributes of Neofunctionalism also enable us to observe the national, regional and inter-regional dynamics of integration which are also requirements for this analysis. The theories of Supranationalism and Intergovernmentalism would not be able to offer such a broad analysis when applied individually. Since both of these theories start their analysis by specifically approaching the actions of states in integration, and concentrate on either the role of supranational institutions or nation states in the process of integration. Both theories⁵⁷ would have to be employed to achieve the results of an application of the theory of Neofunctionalism.

Targets the 'Structure' as well as the 'Actions': by employing the theory of Neofunctionalism,

⁵⁷ The use of the two theories would also offer contradictory points especially relating to the theories and therefore such an application would not be empirically sound. As argued before, it is imperative at this early stage of theorizing CARICOM that the focus is primarily on the process of integration in CARICOM, and secondarily on the theories.

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not only is it possible to examine the structure of CARICOM, but also to place due emphasis on the actions of the political élite, the institutions and other actors related to the integration process. This ability to examine the structure and the actions, provides a decisive view of the process of integration, in that we can also analyze the actions of non-state actors in addition to concentrating on their competencies. The analysis of the empirical variables of this thesis requires an examination of both the structure of the CSME, CCJ and EPA, as well as, the competencies of the institutions and actors in the said variables. It is also necessary to examine the actions of the actors within the scope of their competencies. The theory of Neofunctionalism also holds that an increase in the level and scope of competencies positively corresponds with an increase in the depth of integration. Therefore, through the theory of Neofunctionalism, we are able to appraise the depth of integration in CARICOM by concentrating on the level and scope of integration.

Utilitarian outlook: Neofunctionalism offers a utilitarian approach to implementation and non-compliance, which is a looming issue in Caribbean regional studies. The implementation of provisions and regional agreements, and compliance with these agreements, have been problematic in the past, especially concerning the CSME, one of the empirical examples in this thesis. A utilitarian approach helps to explain the cause of compliance or lack thereof in CARICOM, particularly with regards to the CCJ rulings and the implementation of the CSME. Additionally, this utilitarian approach can be coupled with the level and scope of integration and other factors such as competencies. In doing so, one is able to observe, understand and explain compliance issues in CARICOM. The same is not possible with the other theories of European Integration.

'Spill-over' effect: Neofunctionalism proposes that regional economic integration spills over to regional political integration. This idea supports observations of the process of economic and political integration in the Caribbean. The theory of Neofunctionalism can be utilized to analyze all the empirical examples in the thesis and to observe how the provisions of the CSME, which has a purely economic character, spill-over into legal and political spheres; or how the rulings of the CCJ on the economic provisions of the Revised Treaty impact political integration. Moreover, it is possible to observe the effects of external factors on the process of regional integration in CARICOM; for example, how the WTO ruling on CARICOM-EU trade influences the EPA, and how this economic agreement, in turn, affects political integration in CARICOM. Thus, the theory of Neofunctionalism enables us to have an economic approach with which to observe regional political, and to some extent, social integration in the Caribbean.

Progression cycle: Schmitter (1969) Offers a descriptive analysis of the so-called 'cycles'

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through which a union progresses throughout the process of its integration. As per the theory of Neofunctionalism, the process of integration follows a progressive pattern from the initiation of integration to its priming and subsequent transformation. In examining the empirical examples through Neofunctionalism, we are able to observe integration with the perspective of these cycles.

Wider application: in reading Barrera and Haas (1969); Haas (1961 and 1968); and Haas and Schmitter (1964); Rosamund (2005) suggests that:

the Neofunctionalist project was from the outset a comparative exercise in regional integration theory. The explicit purpose of the Neofunctionalists was to utilize the pioneering European experience of integration to generate hypotheses for testing in other contexts. In short, the plan was to develop not a theory of European integration, but to arrive at a more generic portfolio of propositions about the dynamics of integration in any context. Rosamund (2005:10)

This is especially important because, “without this capacity for application beyond the European case, Neofunctionalism would become nothing more than (at best) an exercise in dense description”.⁵⁸ Unlike other theories of European Studies, the theory of Neofunctionalism, at its core, can be aptly used and applied to other cases outside of the EU, independent of the supranationality or intergovernmental characteristic of the union. This is of paramount importance, not just for theory building but also for cross analysis.

Exclusive focus on relevant factors: the theory of Neofunctionalism specifically explores “how and why nation-states cease to be wholly sovereign and how and why they voluntarily mingle, merge and mix with their neighbors”.⁵⁹ In doing so, it inherently advocates that nation states voluntarily grant some form of sovereignty to regional institutions. This is especially important for the present analysis, as it enables the direct focus on the stated objectives without initially tackling other peripheral issues, which are not applicable for the present case study of CARICOM since the intention of this analysis is to study 'how' and 'why' states integrate. The theory of Neofunctionalism enables the achievement of exactly this possibility. It avoids empirical flaws such as ongoing issues related to the loss or gain of member-state sovereignty. Additionally, in presupposing that there is some form of supranationality in CARICOM through the creation of institutions, even if these are soft forms, we are better able to concentrate on the specific aims delineated above.

58 Rosamond (2013:247).

59 Haas (1970:610).

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Reflexive and expansive: the theory of Neofunctionalism provides the possibility to carry out an investigation of CARICOM based on our 'specific' requirements and parameters. Due to a reflexive nature, we are not required to 'fit' our variables and examples to a specific theory; rather, Neofunctionalism offers the possibility of fitting a theory to specific demands. For the present venture, it is necessary that a singular theory provides the possibility to investigate the critical questions raised in this thesis. The theory of Neofunctionalism is able to analyze and answer these requirements. It can therefore be applied to CARICOM without needing to change the aims of the thesis or to amend its variables. This, however, cannot be said for the other theories, which concentrate on intergovernmental bargaining or 'supranationality'.

Reviving previous studies: lastly, and on a much smaller note, the theory of Neofunctionalism has a special link and relationship with CARICOM. CARICOM and Neofunctionalism have had past notable relationships. As mentioned above, the theory of Neofunctionalism, or even its precursor - functionalism, has been introduced to the Caribbean region. Etzioni (1965), for example, used some form of Functionalism to comment the West Indies Federation. Subsequently the theory of functionalism has undergone major reshaping and has morphed into the theory of Neofunctionalism. Simultaneously, integration in the Caribbean has also transformed over time. The West Indies Federation has evolved into the present CARICOM, with a single market and economy, a court of justice, and a regional platform for bargaining. Therefore, it seems promising, to say the very least, to again apply the theory of Neofunctionalism to CARICOM in a contemporary light, to see what new insights about CARICOM can be inferred from these revived studies.

This is not to say that other European theories of integration might not also be relevant for analyzing CARICOM. The other two classical European theories of integration, Supranationalism and Intergovernmentalism, and new theories, such multi-level governance, could in fact be applied to CARICOM and would yield interesting results. Both Intergovernmentalism and Supranationalism have merit in analyzing institutional structures and government in the EU. Although they are relevant for an analysis of government structures and institutional settings, they are not singularly able to be effective in the present undertaking. This initial analysis of CARICOM,⁶⁰ based on the empirical variables available, necessitates a theory that is able to look beyond government structures, and additionally offer the possibility for examining geographical dimensions, such as external trade; and functional dimensions, such as the spill-over of legal rulings

⁶⁰ This research represents a first attempt (of what is hoped to be a school of literature) of employing European theories of regional integration (specifically the theory of Neofunctionalism) for an analysis and application to CARICOM.

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on trade, the free movement of people, or investments and property and so on. The theory of Neofunctionalism has been proven by authors such as Schmitter (2002) to be a versatile theory for starting a process of analysis. It is multifaceted and offers the possibility to start a field of research around examining the process of integration in CARICOM. One can utilize Neofunctionalism to examine the institutional structure in CARICOM, and new competencies created by the Revised Treaty and their implementation. Additionally, Neofunctionalism allows the concentration on notable factors such as rule and government, spill-over and even the spill-back of integration.

The success of this theoretical application would create the environment for new empirical research in CARICOM. New avenues would be possible, such as combining theories, comparative analysis, and a dialog between/among theories and discipline. It is the hope, therefore, that this endeavor acts as a foundation for future theoretical investigations of CARICOM⁶¹.

1.7 The Approach

1.7.1 *The Empirical Examples*

As mentioned earlier, and as the following chapter on CARICOM will further discuss, three significant accomplishments can be highlighted since the Original Treaty of Chaguaramas⁶². These accomplishments mark not only a concerted effort at deepening integration, but also a move away from intergovernmental cooperation to the clear embrace of open regionalism; and highlight specific cycles of deepening and/or widening of integration in the entire CARICOM area. They moreover provide a specific time frame in which to analyze the process of regional economic and political integration in CARICOM⁶³. The empirical examples are: the creation of the CSME; the

61 This idea will be examined further in the final chapter of this thesis.

62 Regional integration in the OECS marks a considerable deepening of commitments within CARICOM since it reflects extensive commitments at regional integration, including a monetary union, a single currency, a central bank, and harmonized foreign and security policy. However, due to the fact that this thesis represents the first attempt at theorizing regional integration in the entire CARICOM region, an attempt at analyzing regional integration in the OECS as compared to the CSME was not undertaken due to empirical issues. Namely, the thesis focuses on the incremental changes that have occurred in the entire CARICOM area since the Original Treaty of Chaguaramas. All three empirical chapters reflect extensive changes that have affected the entire CARICOM region. Given that the changes in the OECS represent development among only a particular grouping in CARICOM, the OECS was not included as an empirical chapter in the dissertation. That is to say, whilst the three empirical examples include commitments among all CARICOM member-states; the OECS represents integration among a group of states within CARICOM. This is not to say that the deep integration of the OECS, is not notable. On the contrary, the thesis, highlights the importance of this phenomenon, (segmentation in CARICOM) and the usefulness for analyzing it. Therefore, future research on economic integration, foreign policy and comparative analyses in CARICOM should take this phenomenon into account.

63 These are: from the initial discussions of the CSME and EPA until their implementation; and judgments of the CCJ from its inauguration until this thesis was drafted in 2013. These periods create the possibility to clearly analyze re-

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creation of the Caribbean Court of Justice (CCJ); and the initiation, negotiation and signing of the European Partnership Agreement (EPA) with the EU.

The Creation of the Caribbean Single Market and Economy (CSME): the CSME marks the fourth in a series of events towards deepening economic integration in the Caribbean.⁶⁴ It also exemplifies a significant change in the functional scope of CARICOM through the creation of regional institutions and the extension of regional competencies; which replace the initial conservative structures in the organization. Furthermore, it creates clear structural changes through the ratification of the Revised Treaty of Chaguaramas, and the creation and provision of extensive regional competencies, through the nine protocols in the treaty. It is therefore possible to examine non-compliance and breaches of these provisions, and to isolate and analyze various factors of integration. For example, to examine the degree which member-states relinquish sovereignty, the role that institutions and other political élite play in integration, and the process of spill-over of economic provisions to legal and political integration.

The Caribbean Court of Justice (CCJ): the establishment of the CCJ marks the creation of one of the first and the most powerful supranational institutions in CARICOM. The CCJ not only possesses the sole power to interpret the Revised Treaty of Chaguaramas, (Revised Treaty) which restructured CARICOM and established the CSME, but it is also empowered with final appellate powers, which accredit the court as the highest tribunal in the region.⁶⁵ This is no small feat for a region that has notably embraced intergovernmental cooperation and strongly rejected open regionalism, institution building and supranationalism in its past. The CCJ therefore represents a major change in the institutional structure of CARICOM. Moreover, the CCJ provides the possibility for analyzing institution building; the deepening of integration and the general process of integration; and identifying soft form of supranationalism in CARICOM.

An initial overview revealed that public material, such as court rulings, treaties and trade statistics make up the bulk of the reliable data on CARICOM⁶⁶. An analysis of the CCJ offers the possibility for circumventing this lack of information, and to focus on the available empirical data. Furthermore, an examination of the competencies of the CCJ helps in analyzing the power of the CCJ as a supranational institution in CARICOM and the scope of commitments and provisions for regional integration in CARICOM.

gional competencies, including the actions of political élite and institutions in the process of regional integration in CARICOM.

64 The first step was the West Indies Federation; the second, the Caribbean Free Trade Association; and the third the Caribbean Common Market.

65 For countries in CARICOM who subscribe to its rule.

66 See for example Onnis (2013).

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An examination of the complete rulings of the CCJ⁶⁷ aids to observe: patterns in the rulings of the CCJ⁶⁸; the implementation process of rulings and the extent to which member-states abide by the rulings of the CCJ, including any breaches by member-states; and the spill-over and implications of legal decisions in the sectors of CARICOM.

This approach provides a consequential analysis of the CCJ as it delineates the route of analysis for the following two empirical examples.

The Economic Partnership Agreement (EPA) between CARICOM and the EU: chapter 2 advances the notion that integration in the Caribbean is based on external impacts, forces, and controls. It further argues that integration in CARICOM largely reflects efforts to cope with externalities such as global pressures; the EPA is proof of such an argument. The EPA, an EU construct for trade, was imposed on CARICOM by a ruling of the WTO. This is because, due to WTO disputes, CARICOM was given the choice to either negotiate an agreement to replace existing preferential agreements with the EU, or to bilaterally trade with the EU as independent countries, the latter being a direct contradiction of the provisions of the CSME. As such, the EPA represents a change in the geographic scope of integration in CARICOM. The examination of such a construct additionally isolates a specific time in the integration process of CARICOM from other dependent variables of integration. An analysis of the EPA therefore offers the opportunity to observe a specific case in point and an isolated event in CARICOM. In doing so, notions of spill-over, spill-around and other impacts proposed by the theory of Neofunctionalism are easily traced and examined. Moreover, the EPA offers the ability to: observe the actions of CARICOM; assess how the individual member-states, and non-state actors, including regional institutions cope with and negotiate and expansive trade agreement under external pressures; and examine how the provisions and terms of the EPA affect the process of integration in CARICOM.

The EPA offers the ability to achieve four possibilities. Specifically to observe CARICOM's reaction to external pressure, that is to say it answers questions such as what happens to the process of integration when there are clear external pressures; to observe the negotiation process of the EPA, it addresses queries such as how do member-states cope with the negotiation processes; and who/what is important in the process of negotiation; to analyze the provisions of the EPA and its implementation process in CARICOM; and moreover to analyze an isolated occurrence in

67 An examination of the rulings of the CCJ under its final appellate and its original jurisdiction. Some cases are found in the Annex.

68 If the CCJ sets precedent in its judgments, rules independent of the member-states, and for the 'common good' of the Community; or if the CCJ is bound to the member-states and rules to appease them. When the CCJ does the former then there is some form of supranationalism in CARICOM, which also reflects the deepening of integration.

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CARICOM that affects every member.

All three empirical examples offer the possibility for examining the provisions of a treaty; examining the implementation process of said provisions; and assessing any breaches and the compliance to these provisions. Furthermore, the EPA offers the additional opportunity to analyze bargaining procedures in CARICOM. Therefore, although there are compound differences between the empirical examples, they all possess some similarity regarding observation and analysis; and accordingly offer a high degree of structural continuity for this thesis.

1.7.2 General Outline

This research is organized into seven chapters, which are briefly described below: Chapter 1: the current chapter's objective is threefold; namely: to provide the background to the scope of this research and present the 'aims' of this study; to substantiate the approach or the *modus operandi* adopted; and present a general overview of the research.

The chapter additionally highlights the need to study the process of regional political and economic integration in the Caribbean, particularly CARICOM, and presents the idea of a theoretical analysis of CARICOM as a pragmatic and empirically sound method for such a study.

It moreover outlines the main aims of this research that are investigated in this study; list the pertinent questions related to the critical issues responsible for the deepening, widening, and the evolution of integration in CARICOM; establishes the 'modus operandi' of this research - investigating the regional political and economic integration in CARICOM via the application of European theories of integration; and introduces the theory of Neofunctionalism as an ideal theory for such this undertaking.

Chapter 2: introduces CARICOM and provides a short geographic, economic and social overview of the union, along with its structure, institutions, and their competences; and offers a historical background to the process of regional integration in the Caribbean. It advances that integration in the Caribbean was initiated by external bodies and factors, and that this integration is a reaction to external events and pressures. That integration in the Caribbean started in the pre-colonization era with a purely political character, and it was only during the post colonization era that the focus changed from political to economic.

Moreover, it establishes that the small size of the Caribbean countries was a primary factor that compelled them to pool resources and to integrate economically, in order to coordinate foreign policy and to cooperate functionally in bilateral negotiations and inter-community trade.

Chapter 3: provides an in-depth overview and analysis of the theory of Neofunctionalism, the

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theory employed in this thesis. It examines the birth, death and rebirth of Neofunctionalism. It moreover relies on the new structural development in the theory to explain the advances in regional integration in CARICOM; and offers a 'recycled' view of the theory of Neofunctionalism as an angle from which to examine regional integration in CARICOM. This recycled version includes new hypotheses regarding the notion of spill-over, such as 'spill-around', 'spill-back' and 'muddle-about'.

Chapter 4: employs the theory of Neofunctionalism to analyze the CSME. The chapter examines the provisions of the CSME and its implementation, which includes compliance and the role and impact of regional institutions in the process of integration. Moreover, through the focus on the provisions of the CSME, this chapter additionally concentrates on institutional characteristics while analyzing the economic aspects of integration.

Chapter 5: utilizes the theory of Neofunctionalism to analyze the Caribbean Court of Justice. It looks at the structure of the CCJ and discerns its competencies. It additionally examines all the rulings made by the CCJ until December 2013⁶⁹, thereby providing the possibility to observe the establishment of regional institutions, their competencies and compliance mechanisms. The chapter argues that Neofunctionalism offers insights into the process of integration through its ability to examine the functions, competencies, and impact of institutions in CARICOM, such as the CCJ, on integration. In asserting that élite create institutions through which their functions cause integration to spill-over, the theory of Neofunctionalism addresses the process of institution building⁷⁰ in CARICOM. Based on the structure of CARICOM, the CCJ is the most isolated institution in CARICOM, spill-over is thus easily identifiable in analyzing the CCJ.

Moreover, the chapter takes the additional approach of encompassing a national and regional spectrum by examining the legal competences of the Caribbean Court of Justice⁷¹. Such an approach enables us to examine a very specific part of regional integration in detail. The isolation of a single variable helps us to specifically concentrate on the unique process of integration and to analyze the ideas of the theory of Neofunctionalism in detail. As such, this section of the thesis carries a specifically legal quality.

Chapter 6: utilizes the theory of Neofunctionalism to analyze the Economic Partnership Agreement between CARICOM and the EU. It takes the negotiations of the Economic Partnership Agreement as a prime example of the embedded change in both the internal and external relations in

69 When this chapter was drafted.

70 And spill-over mechanisms.

71 In doing this, the spill-over effect is isolated and examined in detail.

1.7 The Approach

CARICOM. Although it starts from a local level and moves to an inter-regional level, like the previous two empirical chapters, this chapter also possesses a CARICOM/institution centrist approach. It emphasizes bargaining, and in so doing highlights the political dynamics in CARICOM and relationships among member-states. This approach complements the previous two approaches that specifically examined sub regional forces and impacts on the process of integration.

Chapter 7: reflects on the previous chapters, and mainly discussing the analysis of chapters four, five and six. It also provides concluding remarks and recommendations for future theoretical applications.

When isolated, each chapter provides a specific approach to the process of integration in CARICOM. The combination of all three empirical examples in the thesis provides the unique ability to observe very specific processes of integration from a holistic angle. The fourth chapter offers an economic approach to the process of regional integration in CARICOM, whilst the fifth chapter offers a legal/social analysis of the process of integration; and the sixth chapter observes an interplay between internal and external forces on the process of integration. The combination of the three empirical chapters therefore addresses significant points within the process of integration while maintaining a general overarching approach towards integration. By examining the functionality of institutions, cross border spill-over and the process of negotiations in and among CARICOM and between CARICOM and other unions, this thesis provides the possibility to observe CARICOM from various perspectives.

Notably, the theory of Neofunctionalism compliments the approach of the three empirical variables. It offers an insight into the role and function of institutions in CARICOM, the effects of institutional choice on the process of integration, and the effects of local, national and international events likewise the preferences of member-states and national élite on the process of integration.

Chapter 2: Regional Integration in CARICOM

2.1 Introduction

The purpose of this chapter is to offer an introduction to the Caribbean and the Caribbean Community (CARICOM). It focuses on the geographical composition of the Caribbean; and the economic, cultural and social characteristics of the region. The chapter further presents an account of the history and study of regional political integration in CARICOM, including member-state relationships; institutions and structures.

2.2 Examination of the Caribbean

2.2.1 Geography

The region of the Caribbean includes the Caribbean Sea and the Caribbean Basin. It comprises islands located north of South America, south-east of the Gulf of Mexico, and east of Central America and Mexico.⁷² This area comprises approximately 115 discovered islands, inlets, reefs and cays. The Caribbean region⁷³ is further divided into jurisdictions⁷⁴ consisting of 15 Caribbean Community (CARICOM) member-states⁷⁵; two sovereign non-CARICOM countries⁷⁶; six British Overseas Territories⁷⁷; two Netherlands Antilles Territories⁷⁸; three French Departments⁷⁹; and two USA Commonwealth States⁸⁰.

72 Refer to Appendices for a map of the Caribbean showing CARICOM countries.

73 Geographical groupings typically referred to in researches include the British West Indies (Anglophone Caribbean); the Dutch Antilles; the French Antilles; the Greater Antilles; the Lesser Antilles; the Leeward Islands and Windward Islands.

74 Information taken from CARICOM.org Accessed June 30, 2015.

75 14 of these states are sovereign, and one (Montserrat) is a British Overseas territory. The sovereign states are Antigua and Barbuda, The Bahamas, Barbados, Belize, Dominica, Grenada, Guyana, Haiti, Jamaica, St Kitts & Nevis, St Lucia, St Vincent & Grenadines, Suriname and Trinidad and Tobago.

76 Cuba and Dominican Republic. An imposed commercial and financial embargo on Cuba (lifted in 2015) by the United States of America prohibits Cuba from becoming a member of CARICOM. The Dominican Republic is included in a Cariforum union with CARICOM member-states.

77 Anguilla, Bermuda, British Virgin Islands, Cayman Islands, Montserrat (CARICOM member-state), and Turks and Caicos Islands.

78 Aruba & Curacao.

79 French Guiana, Guadeloupe and Martinique.

80 Puerto Rico and the US Virgin Islands.

2.2 Examination of the Caribbean

Most of the Caribbean islands feature three main geographical characteristics, namely: they are enveloped by coral reefs and white sand beaches; created by volcanic activity, which led to a composition characterized by a mixture of black and white sands and arable soil; and defined by alluvial, coastal, and low terrace deposits.

Additional geographical features of the Caribbean islands include their mountainous terrain, undulating countryside, coastal plains, a tropical (marine) climate, and a mixture of limestone, volcanic and swampy landscapes. Active volcanoes still exist on Montserrat⁸¹, Dominica, St. Vincent, St. Lucia, and Grenada which has crater lakes formed by recent activity.

Although limited, Caribbean countries feature natural resources such as deposits of bauxite and gypsum in Jamaica; petroleum, pitch, and natural gas in Trinidad and Tobago; and deposits of copper, lead, manganese, and zinc on most of the Caribbean islands⁸². The Gulf of Mexico and the northern South American basins, two of the largest hydrocarbons territories border the Caribbean region; due to this researchers advance, and recent studies⁸³ reveal potentially large deposits of hydrocarbon in the Caribbean.

Notwithstanding their small sizes/limited land area⁸⁴, agriculture is a main source of income for most countries. However, Pearson et al. (2008: 37) notes that, along with a climate favorable for the specific tropical crops, CARICOM countries are “highly susceptible to weather-related natural disasters” due to “their location within the hurricane belt”.⁸⁵

There is a glaring disparity between the member-states in CARICOM with respect to their size and population⁸⁶. Montserrat, the smallest country in CARICOM, with an area of a mere 102 square kilometers is less than 10% of the size of the largest country, Guyana, which has an area of more than 190,000 square kilometers. Guyana and Suriname together account for more than 81% of the total land mass of CARICOM⁸⁷. The land area of more than a third of the CARICOM member-

81 In Montserrat, explosive/effusive volcanic eruptions in 1995 saw the total destruction of the capital city and airport, and the evacuation of approximately half the country's population.

82 In some cases, these resources are so limited that the islands are forced to import additional supplies from external sources.

83 See for example Escalona1, Mann, and Bingham (2008).

84 Total land area -in the Caribbean is over 727,000 square km, and the total land and sea area is over 3 million square km. Statistics taken from CARICOM.org. Accessed June 30, 2015.

85 They further note that these environmental factors affect the CARICOM economies, which tend to exhibit a sharp downturn due to damages; that “environmental degradation, including excessive deforestation, soil erosion, and increased susceptibility to floods and landslides, also are common problems facing the countries in the Caribbean Basin region”(Pearson et al 2008:37).

86 Total population in the Caribbean is over 37 million. The chapter later reveals that factors such as population and size contribute to what some term as malaise in CARICOM. For more on malaise in the Caribbean see for example Girvan (2008).

87 Excluding Haiti.

2.2 Examination of the Caribbean

states is less than 500 square kilometers, whilst that of more than another third is above 10,000 square kilometers.

There is also a huge disparity between CARICOM member-states with respect to population⁸⁸. Montserrat has the smallest population in CARICOM, approximately 5,000⁸⁹ inhabitants. Dominica has the second smallest population, approximately 72,000, compared to more than 1.2, 2.8 and 9.6 million inhabitants in Trinidad, Jamaica and Haiti respectively.

The distance between the CARICOM islands is also significant⁹⁰. The islands are typically isolated and removed from one other; for example, Jamaica is located in the center of the Caribbean Sea⁹¹, and Trinidad and Tobago is located at the other end of the archipelago, in/near the Atlantic Ocean. Belize is closer to Central America than it is to Jamaica or Haiti. These distances significantly impact on trade, for example, it is logistically more cost-effective and practical for Trinidad and Tobago to trade with Venezuela and other countries in Latin America than with Belize (close to Central America) or with Jamaica (in the center of the Caribbean).

Notably, these limitations actually drive CARICOM countries to integrate⁹² because:

ever since their independence, Caribbean countries have been painfully aware of the constraints of small size, and it is these constraints that, perhaps more than anything else, have driven the regional integration process (through) economic integration, foreign policy coordination and functional cooperation. Jessen and Vignoles (2005:3)

2.2.2 *Economy*

The CARICOM economies exhibit many similarities; all CARICOM member-states are former colonies, and therefore were once plantation economies,⁹³ with their major exports being sugar, tobacco and/or bauxite, and later tropical crops. More recently, these economies have gradually diversified to include the assembly and export of apparel and light manufactured goods, tourism, and financial services.⁹⁴

88 Statistics from the CIA World Fact Book, 2010 estimates.

89 Approximately 8,000 refugees left the island following volcanic activity in 1995.

90 According to CARICOM.org (Accessed June 30, 2015) the largest distance North/South - approx. ,560 square km, and largest distance East/West - approx.4,480 km2.

91 The Greater Antilles.

92 In spite of these challenges, the integration process has recently deepened and widened in CARICOM. See following section.

93 Except for some islands of the Lesser Antilles which have concentrated on mining.

94 Countries in CARICOM are now invested in offshore finance services, gaming and casinos.

2.2 Examination of the Caribbean

The finance⁹⁵ and service sectors in CARICOM, complement/supplement earnings from agriculture and natural resources such as bauxite, crude oil, minerals. Technology and structured schemes such as Western Union help in measuring remittances, which account for a substantial part of the national budgets of these small Caribbean states.

There is an intriguing correlation between the size of a CARICOM member-state, and its per capita GDP⁹⁶. All CARICOM member-states of approximately (or smaller than) 10,000 square kilometers⁹⁷ feature the highest per capita GDP in CARICOM⁹⁸. All CARICOM member-states larger than 20,000 square kilometers have the lowest per capita GDP⁹⁹. Therefore, in CARICOM the smaller the member-state, the higher its GDP tends to be, and vice versa. Additionally, “CARICOM members display highly dissimilar levels of economic development. Annual per capita income in CARICOM ranges from \$17,432 in the Bahamas to \$557 in Haiti. The difference in per capita income between the richest and the poorest CARICOM country is 35:1”.¹⁰⁰

The economies of CARICOM member-states are all small, however, “some are much smaller than others. Trinidad and Tobago, the largest economy in CARICOM, accounts for around 30 % of the group’s combined GDP, whereas the seven OECS countries together account for just 8 %”.¹⁰¹ CARICOM economies are able to take advantage of their proximity to the USA by engaging in multilateral trade, based on exporting and importing goods and services. Most CARICOM member-states are therefore heavily reliant on the USA for trade, investments, remittances and further economic assistance in the form of loans and grants. This further translates to an economic dependence on the US dollar. Additionally, due to their historic ties as colonies to the region, Caribbean countries are also considerably dependent on Europe, especially England. More recently they have developed ties with China relating to trade, investments, loans and grants.

Research¹⁰² reveals that the budgets of the CARICOM member-states are dependent on external countries and factors, instead of internal trade; mainly because “up until the nineties, many small states did not pursue an especially liberalized trade regime. Even where there is movement

95 For example 'tax havens'.

96 Statistics from the CIA World Fact Book, 2010 estimates.

97 Antigua and Barbuda, The Bahamas, Barbados and Trinidad are all approximately or smaller than 10,000 square kilometer.

98 per capita GDP of or above 10,000 USD.

99 Belize, Guyana, Haiti, Jamaica, and Suriname, which are the largest member-states have the lowest GDP in CARICOM.

100 Jessen and Vignoles (2005:8).

101 Jessen and Vignoles (2005:19).

102 See for example Onnis (2014).

2.2 Examination of the Caribbean

towards freer trade, many protectionist barriers still characterize the trade of most small states”.¹⁰³

Compared to a recorded annual global growth of 3.5% and 4.3% in other developing countries, the 1.8% growth of CARICOM countries reveals the sluggish nature of the CARICOM economies, which has been a trend for the past 20 years¹⁰⁴. Factors such as high unemployment, narcotics trade and drug abuse, crime, and violence further affect persistently high poverty rates in CARICOM countries. The devastation from recurring hurricanes hampers the reaction of CARICOM countries in adjusting to global change.¹⁰⁵

Moreover, CARICOM member-states are identified¹⁰⁶ as “carrying debt-to-GDP ratios in excess of 100 percent and have economies that are struggling to recover from the spill-over effects of the 2008 global economic and financial crisis”.¹⁰⁷

2.2.3 Culture

As mentioned above, the CARICOM member-states share a colonial past. They were all at one time European colonies and plantation or mining economies. This shared history translates to a similar culture in terms of religion, values and ideologies, music, and the way of life across the Caribbean population. It has often been argued that the cultural association and commonality in CARICOM are more essential than economic compatibility among member-states.

History and culture in the Caribbean have proven to be positive factors for integration. Caribbean political strategists and policy makers often emphasize the value of a shared identity and culture, in propelling regional integration in CARICOM. In 1981, Trevor Farrell wrote that:

our basic motivation ‘for integration’ is not economic at all...because from a purely economic point of view, there is more reason for Jamaica to be interested in economic integration with Cuba or Puerto Rico than with Montserrat or Grenada. ... I believe that subconsciously we chose our partners first, and then... began to worry consciously about economics of the relationship... The real basis and impetus for our integration is cultural. (Jessen and Vignoles 2005:5)

103 Ramkissoon (2002:10).

104 Statistics from Jessen and Vignoles (2005:12).

105 Jessen and Vignoles (2005:12).

106 These economic problems negatively affect the process of integration in CARICOM, especially relating to the implementation of treaty provisions.

107 Caribbean Community Secretariat (2013).

2.2 Examination of the Caribbean

This cultural identity, which is often alluded to by academics and members of the CARICOM governments, is frequently cited as the driving mechanism behind the regional integration movement in the Caribbean.

Therefore, although integration in CARICOM is approached and established from an economic perspective, cultural factors are often held to be complementary to unilateral and multilateral trade liberalization.¹⁰⁸ This is a compelling argument, especially due to the benefits gained from the harmonization of practical resources such as education. Countries in the Caribbean have achieved harmonized education among its members including a unified “Common Entrance Examination” for all primary school-leaving students of CARICOM member-states. There are also unified secondary school structures and a regional body administering external exams for CARICOM secondary school leavers. The University of the West Indies, with campuses in CARICOM member-states, is a key institution at the tertiary level. Unified education structures serve as quality control in the education system and also complement the free movement of people within the Caribbean Community. Cooperation in CARICOM should then be identified as functional “where countries hope to achieve both cost savings and quality enhancements in the common provision of social services”.¹⁰⁹

The level and characteristics of democracy are also relatively similar among CARICOM members¹¹⁰. International indexes measuring factors affecting democracy such as general elections, parliamentary meetings, civil society, press freedom and the structure, strength and transparency of government institutions reveal these similarities in member-states.¹¹¹ Except Haiti, CARICOM countries reflect a mostly stable political society.¹¹²

108 Jessen and Vignoles (2005:4).

109 Jessen and Vignoles (2005:5).

110 For more information see Onnis 2014.

111 The Economist Intelligent Unit uses 60 indicators grouped in five categories (electoral process and pluralism, civil liberties, functioning of government, political participation and political culture) for its Democracy Index. For more information see http://www.economistgroup.com/what_we_do/our_brands/the_economist_brand_family/economist_intelligence_unit.html Accessed June 30 2015.

Freedom House publishes an annual report which assesses the degree of democracy of countries on a scale from (most free) to 7 (least free). The indicators also include those above.

World Audit.org also uses Political rights, Civil liberties, press freedom, rule of law, corruption, human rights, and other indicators to compare democracy among countries.

112 There are democratic deficiencies which are reflected in voting structures and elections as prescribed by the respective constitutions. See for example Onnis (2014).

2.3 History of Regional Integration in the Caribbean

Two primary phases of integration can be identified in the region; these are integration attempts by England under colonial rule, which can be labeled as the 'Colonial Phase'; and integration attempts of the independent Caribbean territories, labeled as the 'Post Colonial Phase'.

Additionally, five major cycles of integration can be identified through examining the history of regional integration in CARICOM. The first two cycles fall under the Colonial/Federation phase, and the latter three, the Post-Colonial phase of Caribbean integration. These cycles are:

- the first attempts at regional economic and political integration in the Caribbean by England;
- the West Indies Federation, which marked a rise in attempts at 'colonial integration' and also the end of colonization of the Caribbean;
- the creation of CARIFTA, which represents the birth of independence in the Caribbean and the first attempts of integration by the independent Caribbean Countries;
- the creation of the Caribbean Community which signifies a deepening of economic integration among the Caribbean Countries;
- a further deepening and widening of economic and political integration through: the creation and implementation of the CSME, movements towards perceived political integration by the creation of the CCJ, and the creation and utilization of a regional platform from which to negotiate with other regions such as the EU.

Regional integration in the Caribbean can therefore be presented as an endeavor that was initiated by external parties and intensified by the independent CARICOM states.

2.3.1 The Colonial Phase: The First attempts at Regional Integration

From the end of the 15th century until the mid-20th century, the member-states of CARICOM were colonies of Europe, specifically the British monarch.¹¹³ Throughout the colonization period, the Caribbean countries possessed limited political and economic autonomy.¹¹⁴ Initially, the politics and economic welfare of the colonies were remotely governed from Europe, and much later political structures were created in the Caribbean; which reflected the design and regulations of the British monarchy. The colonies were further characterized by:

113 Except for Haiti, a former French colony which achieved independence in 1804, and Suriname, a former British and Dutch colony.

114 Under direct British rule, for example, the Caribbean countries were termed 'crown colonies', meaning that they were ruled by a governor who was appointed by the monarch.

2.3 History of Regional Integration in the Caribbean

an appointed upper house, and an elected lower house. The electoral franchise, however, was extremely restricted, being vested on a few wealthy male property holders. Power was divided between the governor, who executed the laws, and the assembly which made them. However, the assembly retained the right to pass all money bills (including the pay for the governor) and so used this right to obstruct legislation or simply to control new officials. Meditz and Hanratty (1987)

The function of the government was preoccupied mainly with bureaucratic efficiency; the 'crown colony government' was essentially concerned with law and order, and serviced the land owners in the colonies. Democracy or economic welfare for others, such as former slaves and indentured workers did not fall under the mandate of this government. Therefore since they were technically a part of their respective European empire, the economies, mostly based on agriculture/plantations, were created, designed and served the purpose of satellite economies.

During British rule, efforts were made at regional integration in the Caribbean as a step towards economic austerity. Attempts at integration started with small groupings such as the Leeward Island Federation from 1871-1956, whose members were Antigua, St. Kitts, Nevis, Dominica, Montserrat, and the British Virgin Islands¹¹⁵. The Confederation of Barbados, Tobago, and the Windward Islands in 1876 was an additional effort by the British monarch at regional integration in the Caribbean due to their proximity. Further attempts included the Union of Trinidad and Tobago in 1887¹¹⁶, and the union of St. Christopher, Nevis and Anguilla in the late 19th century¹¹⁷. Internal pressure in the Caribbean, in addition to national issues in Britain, then resulted in the idea of a confederation as a favorable option for the entire Caribbean colonies.

2.3.2 The Colonial/Federation Phase: The West Indies Federation

Regional integration in the Caribbean, especially the Anglophone Caribbean, owes its origins to the British mercantile system. The West Indies Federation was an initiative of the British authorities with which to push a modified version of self government in response to demands for political independence from its colonies. The Federation was also a means of streamlining the

115 This Federation was then enveloped by the West Indies Federation.

116 This union is still in effect.

117 After independence Anguilla became an independent territory, and St Christopher and Nevis, remained a union, was renamed St. Kitts and Nevis and became a sovereign state.

2.3 History of Regional Integration in the Caribbean

management of the colonies and increasing administrative efficiency and centralization. According to Revaugner (2008:1), the British administration attempted “to improve the management of the local economies, and reduce the need for financial support from Britain” through the promotion and implementation of a unified political system for its colonies.

The West Indies Federation was, therefore, not an initiative stemming from within the Caribbean, rather, it was systematically implemented by the British Administration for 'cost cutting' measures. In 1956 the British Parliament passed the British Caribbean Federation Act which formally established the West Indies Federation in 1958. The Federation comprised of ten Caribbean countries¹¹⁸, all former British colonies. Led by an executive governor general, the Federation's structure consisted of a prime minister, an 11 member Cabinet, a 45 member elected House of Representatives and a Senate comprising 19 nominated members. The Federation also created supporting structures and established federal institutions such as a Federal Civil Service, and a West Indies Shipping Service. In addition, it expanded the University College of the West Indies into the University of the West Indies which functions to date. Furthermore, British West Indies Airways was created by the Federation to enable intra-country air transport.

The responsibilities of the Federation included defense, foreign affairs and to a very limited extent, finance. Moreover, the Federation fulfilled functional obligations including administering shipping, education, and the West Indies Colonial Welfare funds. However, neither the British Caribbean Federation Act nor the government of the federation granted it *de facto* power. There were no compliance mechanisms in place to coerce countries to adhere to the directives of the federation. Besides, welfare and social structures remained competencies of the member-states, or rather the monarch.¹¹⁹ The Federation was political in nature, notably “emphasis was not placed on the economic aspect of Federation during the four years of its existence. Economically, the region remained as it had been for centuries, and not even free trade was introduced between the member-states during this period”.¹²⁰

Accounts and explanations for the failure of the West Indian Federation cite a push from within the colonies for full political autonomy and independence from the British monarchy as an underlying factor.¹²¹ In 1961, after a national referendum, Jamaica withdrew its membership from

118 Antigua and Barbuda, Barbados, Dominica, Grenada, Jamaica, Montserrat, St Kitts-Nevis, Anguilla, Saint Lucia, St Vincent, and Trinidad and Tobago.

119 For more information on the responsibilities of the federation see the British Caribbean Federation Act.

120 CARICOM history found at http://www.caricom.org/jsp/community/caricom_history.jsp?menu=community Accessed June 30, 2015.

121 For more information on the West Indies Federation and the failure of the federation, see: Revaugner (2008); Lewis

2.3 History of Regional Integration in the Caribbean

the Federation. This move was followed by Trinidad and Tobago and shortly afterward the Federation was dissolved in 1962. When Trinidad and Tobago announced the withdrawal of its membership it simultaneously proposed a new and more expansive union, with an emphasis on economic trade.

The First Heads of Government Conference¹²² was hosted by Trinidad and Tobago in July 1963 as a series of meetings to create this envisaged union. These meetings led to the creation of The Caribbean Free Trade Association (CARIFTA) in December 1965 through the Dickenson Bay Agreement.

2.3.3 The Post Colonial Phase: The Caribbean Free Trade Association (CARIFTA)

CARIFTA was the first attempt at economic integration in the Anglophone Caribbean.¹²³ Article two of the Dickenson Bay Agreement defines the objectives of CARIFTA which are purely economic, as follows to: promote the expansion and diversification of trade in the area of the Association; ensure that trade between member territories takes place in conditions of fair competition; encourage the progressive development of the economies of the area; and foster the harmonious development of Caribbean trade and its liberalization by the removal of barriers to it.

In 1972, Caribbean leaders decided to transform CARIFTA into a common market and to establish the Caribbean Community, of which the common market would be an integral part.

2.3.4 The Post Colonial Phase: The Caribbean Community (CARICOM)

The Caribbean Community (CARICOM) evolved from CARIFTA, whose predecessor was the West Indies Federation¹²⁴. It was established by the Treaty of Chaguaramas (the Original Treaty) in 1973 and was signed by Barbados, Guyana, Jamaica, and Trinidad and Tobago. It came into effect on August 1st of that same year. CARICOM was inaugurated as a “customs union with free movement of goods and services, complemented by foreign policy coordination and functional cooperation in the economic, social, and cultural fields”.¹²⁵ As a customs union, CARICOM created

(2008) and Wallace (1962).

122 Comprising all the former colonies of the Federation.

123 The new CARIFTA agreement came into effect on May 1, 1968 with the signatures of Antigua, Barbados, Trinidad and Tobago and Guyana. Dominica, Grenada, St. Kitts/Nevis/Anguilla, Saint Lucia and St. Vincent signed the agreement in July 1968. Jamaica and Montserrat signed the agreement in August 1968. British Honduras (now Belize) signed the agreement in May 1971.

124 The West Indies Federation was a short-lived political union/federation (1958-1962) comprising the British Caribbean Countries. After the Federation Collapsed, the Caribbean countries made another attempt at integration through the establishment of the Caribbean Free Trade Association in 1965.

125 Girvan (2008:5).

2.3 History of Regional Integration in the Caribbean

a regional boundary for tariffs and quotas. The main goal of CARICOM, according to the Treaty of Chaguaramas, is to coordinate and deepen integration among its members and to synchronize domestic and foreign policy, in order to “improve the standard of living and work for its members, enhance international competitiveness and the achievement of a greater measure of economic leverage and effectiveness of member-states in dealing with third states, groups of states”.¹²⁶ There are currently 15 full members,¹²⁷ 5 associate members,¹²⁸ and 7 observers in this union.¹²⁹

Since its inauguration, CARICOM has evolved beyond being a customs union into a quasi-single market and economy.

2.3.5 The Post Colonial Phase: The Organization of Eastern Caribbean States (OECS)

Seven CARICOM countries¹³⁰ signed the Treaty of Basseterre in 1981 and establish the OECS. The OECS evolved from the West Indies Associated States Council of Ministers (WISA) which was formed in 1966; and the Eastern Caribbean Common Market (ECCM) which was established in 1968.¹³¹ Lewis (2002:1) notes that at an OECS summit “on 28th May 1987, St Vincent's Prime Minister ... called on fellow Prime Ministers to merge their countries in a single state”.

The Treaty of Basseterre was revised in 2010, Article 4 of which delineates the objectives of the OECS that include:

- to promote co-operation among the Member States and at the regional and international levels having due regard to the Revised Treaty of Chaguaramas
- to seek to achieve the fullest possible harmonization of foreign policy among the Member States, to seek to adopt wherever possible, common positions on international issues, and to establish and maintain, wherever possible, arrangements for joint overseas representation and common services;

¹²⁶ www.caricom.org/community. Accessed June 30, 2015.

¹²⁷ Antigua and Barbuda (1974) Bahamas (1983) (not part of single market) Barbados (1973) Belize (1974) Dominica (1974) Grenada (1974) Guyana (1973) Haiti (provisional membership 1998, full membership 2002) Jamaica (1973) Montserrat (a territory of the United Kingdom 1974) Saint Kitts and Nevis (1974 as Saint Christopher-Nevis-Anguilla) Saint Lucia (1974) Saint Vincent and the Grenadines (1974) Suriname (1995) Trinidad and Tobago (1973).

¹²⁸ Anguilla (1999) Bermuda (2003) British Virgin Islands (1991) Cayman Islands (2002) Turks and Caicos Islands (1991). All the full and associate members of CARICOM are British overseas territories.

¹²⁹ Aruba, Columbia, Dominican Republic, Mexico, Netherlands Antilles, Puerto Rico, and Venezuela.

¹³⁰ Antigua and Barbuda, Dominica, Grenada, Montserrat, St Kitts and Nevis, St Lucia, and St Vincent and the Grenadines.

¹³¹ For an extensive overview of the OECS; and a comparison between the OECS and the CSME please see Onnis (Working Paper) Titled 'The OECS in CARICOM: A Comparison of the OECS and the CSME Integration Schemes'.

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- to establish the Economic Union as a single economic and financial space.

The said article also binds the signatories to: “co-ordinate, harmonize and undertake joint actions and pursue joint policies”¹³² particularly in the fields of mutual defense and security (including police and prisons); judiciary and the administration of justice; external relations including overseas representation; international trade agreements and other external economic relations; financial and technical assistance from external sources; international marketing of goods and services including tourism; transportation and communications including civil aviation; tax administration; regulatory and competition authorities; education; intellectual property rights; economic integration of the Member States through the provisions of the Economic Union Protocol; and currency and central banking.¹³³

The structure of the OECS consists of organs and institutions. Organs of the OECS include the Authority of Heads of Government of the Member States (OECS Authority); the Council of Ministers; the OECS Assembly; the Economic Affairs Council; and the OECS Commission. Institutions include the Eastern Caribbean Supreme Court; the Eastern Caribbean Central Bank; and the Eastern Caribbean Civil Aviation Authority;

The OECS Authority is composed of the heads of state of the member-states; and according to Article 8.4 of the Revised Treaty of Basseterre, is “the supreme policy-making Organ of the Organization.”

The Council of Ministers is composed of Ministers of Government in the member-states, and is responsible under Article nine of the Revised Treaty of Basseterre, to “take appropriate action on any matters referred to it by the OECS Authority and shall have the power to make recommendations to the OECS Authority”.

According to Article 10 of the Revised Treaty of Basseterre “each Parliament of an independent State ... shall be entitled to elect five of its members to the OECS Assembly. ... (the duty of which is to) consider and report to the OECS Authority on any proposal to enact an Act of the Organization”.

Article 11 of the Revised Treaty of Basseterre, lists the composition and functions of the Economic Affairs Council. Specifically, it comprises Ministers of Government named by their Heads of Government and act under the Economic Union Protocol.

The OECS Commission is “the principal Organ responsible for the general administration of

132 Areas of Legislative competence of the OECS include common market including customs union; monetary policy, trade policy; commercial policy; environmental policy; immigration policy; and foreign affairs policy.

133 Article 4 of the Revised Treaty of Basseterre.

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the Organization”¹³⁴; whose functions include monitoring the implementation of Acts and Regulations of the OECS; providing secretariat services including servicing OECS meetings, taking up action on decisions.

The OECS therefore representative of a high level of segmentation and differentiation in CARICOM. It moreover highlights deeper commitments at integration, as opposed to the general CSME. Although it is not used as an empirical variable¹³⁵, it requires further analysis. To this extent, I offer possible proposals for future research in Chapter 7.

2.3.6 The Post Colonial Phase: The Caribbean Single Market and Economy (CSME); The Caribbean Court of Justice (CCJ); and the European Partnership Agreement (EPA)

The Caribbean Single Market and Economy (CSME): at the 10th meeting of the Conference of Heads of Government of the Community,¹³⁶ a new strategy was launched for transforming the common market into a Caribbean Single Market and Economy (CSME). The CSME was conceived as 'an economic integration scheme' by means of 'open regionalism'¹³⁷. It was initiated by the Grand Anse Declaration in July 1989 to sustain economic development through the full liberalization of capital, labor, production, services, and other human resources in CARICOM. It further envisions coordinated economic, fiscal, monetary and foreign investment policies of member-states. The CSME is therefore a means for maintaining economic development in CARICOM through economic harmonization and liberalization. Such an undertaking additionally requires harmonization and coordination of legal and social policies by the participating member-states. The Treaty of Chaguaramas, now Original Treaty, was amended to the Revised Treaty of Chaguaramas (Revised Treaty) to provide the legal basis for the operation of the CSME. Unlike the Original Treaty, which legally differentiates between the Community and the common market, the Revised Treaty does not make this distinction, therefore, the CSME is entrenched in the Caribbean Community.

The CSME is divided into two parts: a single market and a single economy. Under a single market, CARICOM introduces provisions for free intra-CARICOM movement of goods, services, skills, capital and the right to establishment. Under the single economy, a monetary union is highlighted as an ideal. The main focus of the CSME is on the single market, and less on the single economy, with the provisions and commitments to the single economy reflecting little or no

134 The Revised Treaty of Basseterre, Article 12.

135 As highlighted earlier, the empirical variables address change in the entire CARICOM region, the OECS on the other hand represents change in specific regional in CARICOM.

136 10th meeting 1989 in Grand Anse Grenada.

137 Revised Treaty of Chaguaramas.

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progress over time. Some of the initial accomplishments of the CSME include:

- the abolition of a work permit for member citizens of CARICOM countries working in other CARICOM countries;
- the introduction of a CARICOM Skills Certificate which unifies skill levels in CARICOM;
- the introduction of free entry for six months for visitors in all CARICOM countries as an attempt to universalize immigration laws;
- the introduction of an indefinite length of stay of CARICOM citizens in a member-state; and also
- the right to transfer one's social security benefits from one CARICOM state to another.

The CARICOM website also highlights changes that enable intra-community travel, including the introduction of a CARICOM passport which excludes CARICOM nationals from visa requirements, and queuing at immigration points. Both of these changes are designed to enable the free movement of CARICOM member-state nationals within CARICOM.

The CSME further provides a guarantee of the free movement of capital in CARICOM including the equal right to purchase land, and shares in companies, and the right to transfer social securities in CARICOM. The CSME also calls for the harmonization of company and intellectual property laws.

Basic requirements for a functioning single economy include a central bank, which regulates interest rates, and a single currency. Regional provisions and regulations do not reflect these necessary requirements. Chapter 4 offers a detailed overview of the single market and economy in the Caribbean.

The Caribbean Court of Justice (CCJ): the institutional and legal framework of the CSME includes the CCJ which was established in 2001.¹³⁸ Article 3 of the 'Agreement Establishing the Caribbean Court of Justice' agreement establishes the original jurisdiction and appellate jurisdiction of the CCJ. which possesses two jurisdictions: an original jurisdiction and a final appeals jurisdiction It is

As a court of first instance, the CCJ possesses sole and compulsory jurisdiction¹³⁹ to interpret

¹³⁸Ten CARICOM members signed the agreement establishing the CCJ, namely Antigua and Barbuda; Barbados; Belize; Grenada; Guyana; Jamaica; St. Kitts and Nevis; St. Lucia; Suriname and Trinidad and Tobago. Dominica and St. Vincent and The Grenadines, signed the agreement on the 15th February 2003.

¹³⁹Under Article 7 of the Agreement Establishing the CCJ, for more information see Chapter 5.

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the Revised Treaty of Chaguaramas., and therefore possesses exclusive jurisdiction to hear and deliver judgment on: disputes between member-states; disputes between member-states and the community; referrals from national courts or tribunals of member-states; and applications by nationals of member-states concerning the interpretation and application of the Treaty. Article 13 of the agreement also appoints the court the “exclusive jurisdiction to deliver advisory opinions concerning the interpretation and application of the Treaty”. Ipso facto, the CCJ is the sole interpreter and the only CARICOM institution that applies the Revised Treaty when necessary. Article 15 of the Agreement establishes the supranationality of the CCJ by imposing its binding judgments on all member-states and institutions of CARICOM. The article specifically demands that the parties to whom the judgment applies “shall comply with that judgment”. The compulsory jurisdiction of the court is further laid out in Article 16 of the Agreement where it states that “contracting parties agree that they recognize as compulsory, ipso facto and without special agreement, the original jurisdiction of the court”.

Under its appellate jurisdiction, Article 25 of the Agreement provides the court with the authority to make “final decisions” on civil proceedings for both intra- and inter-community matters. Article 25 also empowers the court with the final decision to exercise jurisdiction in determining the right of access to the CCJ. This suggests that the CCJ can overrule a decision of a national court as to whether or not a member-state or citizen can bring a case before the CCJ. Therefore, national appellate courts no longer possess sole power to grant leave for a case to be heard before the CCJ. Furthermore, the CCJ also possesses the jurisdiction to overturn judgments of the lower courts. Chapter 5 offers an in-depth overview of the structures, competences and rulings¹⁴⁰ of the CCJ under both its final and appellate jurisdictions.

The Economic Partnership Agreement (EPA): between CARICOM and the EU was signed in October 2008 and represents an agreement between the two unions which effectively binds all the respective member-states to this agreement. The EU EPAs are the only existing economic based treaties negotiated on a regional platform between two unions.

After the creation of the CSME and the CCJ, the EPA constitutes the third significant step in the process of institution building in CARICOM, and therefore represents a further deepening of regional integration. It covers extensive provisions for the full liberalization and market freedom of goods and services in both unions. It touches on commitments of the CSME, and essentially extends most of these provisions to the EU. In so doing, the EPA opens up the liberalized CARICOM

140 Rulings up until December 2013.

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markets¹⁴¹ to the EU and vice versa. It also imposes new regional institutional structures on CARICOM member-states because by establishing new institutions in CARICOM to oversee its implementation. These institutions are entrenched in the EPA, and established with the signing of the EPA.

In comparison with the EPAs of the other unions of the ACP groupings, the CARICOM-EU EPA represents the most extensive and highest level of commitment between the EU and any other union¹⁴². The CARICOM-EU EPA also exemplifies a new form of regional alliance, and a new form of trade association. The bilateral agreements between two countries, or multilateral agreements among a group of countries, have been replaced by a new form of regionalism and institution building. This new type of partnership overshadows any previous economic agreement between CARICOM and other countries, including the USA. It also testifies to the high level of economic commitment and market liberalization among CARICOM countries, as such an extensive agreement could have only been negotiated under the presence of internal market liberalization. Therefore, if the CSME was not in place, it would have been highly unlikely that the EPA could have been so extensively negotiated; and that the current level of commitment could have been achieved¹⁴³. The commitments of the EPA, including its extensive provisions for trade liberalization between CARICOM and the EU, were accepted by CARICOM because most were already present in its internal market. The CSME exhibits a high level of market liberalization and regionalism. Disparities in the negotiation process arose mainly from achieving a consensus on commitments to the EU. The signing of the EPA therefore reveals information on the level and depth of integration in CARICOM, as Chapter 6 will explore further.

The creation of the CSME, establishment of the CCJ, and the negotiation and signing of the EPA thus mark the most recent cycle of increased integration in CARICOM.¹⁴⁴

141 The CSME liberalizes the CARICOM markets, and harmonizes market regulations. The EPA extends some of these liberalizations to the EU.

142 Information as of December 2013. Refer to the EU's website on the EPA at http://trade.ec.europa.eu/doclib/docs/2009/september/tradoc_144912.pdf for further updates on the statuses of the EU EPA.

143 Negotiations with other ACP groupings reveal that parties are reluctant to liberalize trade with the EU based on the necessity to also liberalize internal markets. For more information see for example http://www.stopepa.de/img/EPAs_Briefing.pdf.

144 As mentioned in Chapter One, the negotiations of the EPA and the commitments represent a new geographical aspect of CARICOM, and reflect the commitments of the CSME.

2.4 Examination of CARICOM

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The Revised Treaty of Chaguaramas outlines the institutional arrangement of CARICOM. It makes a distinction between 'organs' and 'bodies'. The 'principal organs' of CARICOM are the Conference of Heads of Government and its bureau (the Conference), and the Community Council of Ministers (the Council), these organs are assisted by the Secretariat, the administrative institution of CARICOM.

Article 10 of the Revised Treaty further outlines the supporting organs that assist the Conference and the Council to perform their functions. These are the Council for Finance and Planning; the Council for Trade and Economic Development; the Council for Foreign and Community Relations; the Council for Human and Social Development.

In addition to these institutions, Article 18 of the Revised Treaty also establishes three “Bodies of the Community”, namely: the Legal Affairs Committee; the Budget Committee and the Committee of Central Bank Governors.

Article 18 of the Revised Treaty additionally confers the power to establish “as they deem necessary, other bodies of the community” to the organs of the community. To this end, the organs established The Caribbean Regional Negotiation Machinery (CRNM)¹⁴⁵, which negotiated the Economic Partnership Agreement (EPA) between CARICOM and the EU. The Conference also established a non-active Assembly of Caribbean Community Parliamentarians, a deliberative and consultative body whose members are elected representatives of CARICOM citizens.

2.4.1 *The Conference of Heads of Government*

As one of the “principal organs”¹⁴⁶ of the community, the Conference's main objective, as laid out in the Revised Treaty, is to “determine and provide policy direction for the Community”.¹⁴⁷ The Revised Treaty further grants the conference exclusive powers to establish institutions, and issue directions about which policies the Community can pursue, and the manner in which they can be pursued. Moreover, the said article confers authority on the Conference to admit members and observers to the union. The Conference also possesses the final authority on concluding treaties with external unions or member-states, and determining the community’s policies and financial affairs.¹⁴⁸

145 Now called the Office of Trade Negotiations (OTN), which is incorporated into the Secretariat.

146 Treaty of Chaguaramas Article 6 delineates 2 principal organs, the Conference and the Council.

147 Article 12 of the Revised Treaty.

148 Essentially, any order of business related to finance, policy, the inclusion of new members, and deepening of the community, falls within the scope of the responsibilities of the Conference.

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The decisions of the Conference are only made after an affirmative vote by all the members¹⁴⁹. The heads of state vote according to country preferences, acting as direct representatives for their individual countries.¹⁵⁰ These characteristics of the Conference define CARICOM as an intergovernmental union, since the heads of government, who are directly elected by the citizens of the member-states, are also the members of the Conference.

2.4.2 *The Council of Ministers*

Article 13 of the Revised Treaty,¹⁵¹ defines the Community Council of Ministers (the Council) as consisting “of Ministers responsible for community affairs and any other minister designated by the member-states in their absolute discretion”. Among other responsibilities, the article gives the Council the responsibility the obligation to plan and coordinate economic integration, functional cooperation, and external relations; and to ensure the operation and development of the CSME.

Similar to the Conference, the members of the Council are designated at the absolute discretion of the member-states. The decisions of the Council, like those of the Conference, require an affirmative vote from the members who reflect the intergovernmental aspect of both organs.

2.4.3 *The Secretariat*

The Secretariat is specified by Article 23 of the Revised Treaty as: “the principal administrative organ of the community”¹⁵² and consists of the secretary-general and staff. The article further outlines that the Secretary General and his administration shall perform their duties independently of government, member-states, or 'any other authority'. This precludes member-states from advising, instructing, and/or influencing the Secretariat. Paragraph 5 of Article 23 of the Revised Treaty of Chaguaramas, additionally affords the Secretariat some autonomy, as it dictates that: “member-states (should) undertake to respect the exclusively international character of the

149 Additionally, Article 27 also makes it clear that member-states, whose contributions to the regular budget of the Community are in arrears for more than two years, shall not have the right to vote. At the same time, Article 27 also delineates that a simple majority constitutes a quorum and Article 28 of said treaty also declares that non-participation in voting procedures is deemed to be an abstention and furthermore abstentions do not impair the validity of the decisions. Therefore, failing/withholding/abstaining from voting on issues does not hinder the passing of same issue through a quorum. Additionally, Article 28 also declares that “parties to a dispute or against which sanctions are being considered shall not have the right to vote on the issue falling to be determined”. Moreover, Article 5 prescribes that the Conference may, by majority decision, modify the status of a member-state; this therefore includes the possibility of dealing so when the member-state is absent from proceeding under Article 28. As such, member-states can be 'voted out' of the union without being present.

150 CARICOM often suggests that all social, economic and political decisions of CARICOM reflect the decisions of the member-states.

151 Distinction made between the Original Treaty of Chaguaramas 1973, and the Revised Treaty of Chaguaramas 2002, based on the provisions they make.

152 Also in Article 15 of the Original Treaty. The Revised Treaty did not make any changes to the provisions of the Original Treaty regarding to the roles and functions of the Secretariat.

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responsibilities of the Secretary-General and staff and shall not seek to influence them in the discharge of their responsibilities”. However, since the Secretary General can only be appointed by the Conference on the recommendation of the Council for a term of 5 years, his/her position is reliant on the Conference and the Council. Theoretically, the Council and the Conference can and do have an impact on the selection of the Secretariat, and its work. Additionally, paragraph 6 and 7 of Article 23 imposes the will of the Conference and Council on the Secretariat; they declare that “the Conference shall approve the staff regulations governing the operations of the Secretariat ... and ... The Community Council shall approve the financial regulations governing the operations of the Secretariat”. Article 23 also requires that the staff of the Secretariat have an 'equitable' geographical distribution.

2.4.4 The Assembly of Caribbean Community Parliamentarians (ACCP)

At the tenth meeting of the Conference, it was agreed that an Assembly of Caribbean Community Parliamentarians would be established as a deliberative body to deepen the integration movement¹⁵³. Article 3 of the agreement establishing the ACCP defines its membership as consisting of “representatives of member-states and Associate Members elected by their Parliaments or appointed in such manner from their membership as the Parliaments shall decide”. It further adds that each member-state is entitled to four representative, and associate member-state two. The ACCP is not directly appointed by the electors of the member-states, rather, members of the ACCP are elected by the national parliaments of the member-states¹⁵⁴. Article 4 of the agreement defined the objectives of the ACCP. These include the mandate:

- to involve CARICOM nationals in the process of unifying and strengthening the community;
- to provide opportunities for involving CARICOM nationals in integration issues;
- to provide a forum for CARICOM national to make their views known through their representatives;
- to deliberate on and encourage the adoption of a common policy on economic, social, cultural, scientific and legal matters by the CARICOM member-states.

Article 5 of the agreement lists the functions and powers of the ACCP as being a “deliberative and consultative body for the discussion of policies, programs and other matters falling within the scope

153 Agreement Establishing the Assembly of Caribbean Community Parliamentarians introduction.

154 Including elections from both the rulings and opposition parties.

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of the Treaty”. Article 5 additionally confers the ACCP the power to make recommendations to the Conference, the Council, institutions, associate institutions, and the Secretariat; to request information and reports from the councils and bodies;¹⁵⁵ and to “discuss and make recommendations on any matter within the scope of the objectives of the community”. Article 6 of the Agreement states that the ACCP must meet “at least once in every year”. It also states that decisions of the ACCP shall be made by a majority vote. Member-states were left with the full obligation to ratify and implement the ACCP¹⁵⁶.

2.4.5 The Office of Trade Negotiations (OTN)

One of the main goals of the Caribbean Single Market and Economy is to enable the region to compete in the global market. Due to the vital importance of trade negotiations in fulfilling this goal, and given the limited human and financial resources of CARICOM, the Caribbean Regional Negotiation Machinery (CRNM) was created in 1997 as an external arm of CARICOM. It was entrusted with the coordination, development, and execution of all external trade negotiations of the community at multilateral, inter-regional (EPAs), and bilateral levels. In 2009, the CRNM was incorporated as an office within the CARICOM Secretariat and was renamed the Office of Trade Negotiations (the Office). The Office consists of¹⁵⁷ a 'Technical Working Groups' and a 'College of Lead and Alternate Lead Negotiators', comprising individuals with expertise in various negotiating subjects and trade-related disciplines including diplomats of member-states, CARICOM dignitaries, member-state ministers of government, regional specialists, and consultant ministry advisers of the member-states.¹⁵⁸

The OTN assists foreign and trade ministers, together with their staffs and their representatives in centers such as Brussels (EU) and Geneva (World Trade Organization [WTO]), in integrating their efforts into common regional negotiating positions. The process of the external negotiation by the OTN is achieved firstly through national and then through regional consultations. It reports to the Council for Trade and Economic Development (COTED) which also defines the mandate for its negotiations.

155 Outlined in the above section.

156 The Agreement was signed by member-states between 19 February 1992 (Barbados) and 6 July 1996 (Montserrat and Saint Vincent and the Grenadines).

157 At the same time, CARICOM neither delineates clear rules and regulations on how members of the technical working groups and the college of negotiators are elected, nor does it specify which NGOs are involved in the negotiation process.

158 For an exhaustive list of the college of negotiators, visit <http://www.crnmm.org>. Note: the process of choosing the college negotiators is not addressed there. Although the OTN is incorporated in CARICOM, there are no amendments or clear rules or regulations on election of members by CARICOM, as is typically done in CARICOM.

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The above overview of the organs and bodies of CARICOM reveals that the structure of CARICOM is intergovernmental. Key officials of CARICOM are elected and appointed to national positions by the citizens of the member-states. These national positions are then extended regionally; there are no direct elections in CARICOM.¹⁵⁹ Additionally, the bodies in CARICOM, which are elected by CARICOM officials, are given limited power and effect on the member-states, and work with the competences of the organs of CARICOM,¹⁶⁰ with the exception of the CCJ.

In commenting on the organizational structure of CARICOM, Jordan (2003:4) suggests that CARICOM lacks the institutional framework necessary to function effectively. According to Jordan (2003:4) “the weakness in the CARICOM Treaty is that ... the CARICOM agreement fails to create an effective executive institution, such as the European Commission, to oversee the implementation of the Treaty.” Instead of an institution that monitors the implementation of the Treaty, the CARICOM Secretariat's function is that of an administrator and think-tank within CARICOM. Additionally, the above description of the Council suggests that it oversees the implementation of policies in the member-states. It is not specified as to how this monitoring should be achieved however, and the Council's tasks are further limited to implementing only its own decisions, and not those of other institutions. Therefore, neither the Council nor the Secretariat implements CARICOM policies in the member-states. Thus, there is no executive institution delineated by the Revised Treaty to discharge or oversee the implementation of both internal and external agreements in CARICOM¹⁶¹.

2.4.6 Other Councils and Bodies of CARICOM

As mentioned above, the Revised Treaty of Chaguaramas identifies and outlines specific councils and bodies, and their respective responsibilities. Notable councils are the Council for Finance and Planning; Trade and Economic Development; Foreign and Community Relations; and Human and Social Development. These councils consist of the ministers of the respective member-states responsible for each portfolio. Noteworthy bodies are the Legal Affairs Committee, the

159 Therefore, there are no CARICOM elections by the citizens of the member-states; rather, the representatives who are elected in the national and general elections in the member-states are those that fill the portfolios of the organs and bodies, except for the CCJ and the CARICOM Secretariat.

160 As the section below will reveal, the main supranational institution in CARICOM is the CCJ. It interprets the CARICOM Treaties, and acts as a final appellate court for CARICOM member-states. There is however no single institution that enforces the judgments of the CCJ in CARICOM member-states. Though the CCJ might possess some *de jure* sovereignty over member-states, it lacks *de facto* rule due to the unclear enforcement measures in CARICOM. Therefore, the member-states operate as politically sovereign states in CARICOM.

161 This includes those rulings of the CCJ, which will be fully addressed later on in this chapter and also in the conclusion.

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Budget Committee and the Committee of Central Bank Governors. The Legal Affairs Committee is made up of the ministers responsible for Legal Affairs or the Attorney General of the member-states, and is responsible for providing the organs and bodies, either on request or on its own initiative, with advice on treaties, international legal issues, the harmonization of community laws and other legal matters; it only possesses an advisory position on legal matters of the Community. The Budget Committee is also made up of the member-states' senior officials; whose role is to examine the draft budget and work program of the community prepared by the Secretariat and submit recommendations to the Community Council. The Committee of Central Bank Governors consists of the governors or heads of the central banks of the member-states, or their nominees. The Committee's task is limited to making recommendations on matters relating to monetary cooperation, payment arrangements, free movement of capital, integration of capital markets, monetary unions and any other related matters referred to it by the organs of the community.

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2.5.1 *The Impact of External Factors on CARICOM*

The historical account of regional integration above reveals that there have been decisive external influences on the integration process in the Caribbean since colonization. These endeavors were initially conceived as cost-cutting measures related to the budgetary constraints in overseeing the small islands individually. Initially, regional integration was also seen as a means of alleviating the strain of governing the micro-states in the Caribbean individually. Revealing both economic and political motivations and characteristics of integration.

Regional integration in CARICOM, continued to be influenced by external events after the Caribbean islands gained their independence from colonial rule. After colonization, advances in integration perfectly aligned with external events. That is to say, the major cycles and advances in integration in the Caribbean (CARIFTA, CARICOM, CSME and the EPA) all coincided and were a direct reaction to external events and external pressures.

For example, the possibility of UK entry into the EEC in 1961 was the impetus that drove Caribbean leaders to form CARIFTA; which came into effect in 1965. The second application of the UK to the EEC in 1971 also provided stimulation for the negotiation and signing of the Treaty of

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Chaguaramas, establishing CARICOM in 1973.¹⁶²

Further impacts of European integration on CARICOM were seen in the mid- and late 1980s, with the European Commission's White Paper in 1985 and the incorporation of the 1986's Single European Act in the Treaty of Rome. CARICOM responded to these events with a proposal for a single market and economy in the late 1980s with a prescribed date of implementation set for the early 1990s.

Economic integration in CARICOM is also a direct reaction to globalization. Jones (2004:61) argues that “the region and its affairs were increasingly being drawn into the international scheme of things where the very barriers on economic transaction which the region had imposed on itself were being dismantled”.

The creation of the CSME is a reaction by CARICOM to integration in the EU, as well as other global events. For example, the preamble of the Revised Treaty of Chaguaramas, which establishes the CSME, states that the member-states of CARICOM in “recognizing that globalization and liberalization have important implications for international competitiveness (have) resolved to establish conditions which would facilitate access by their nationals to the collective resources of the Region on a non-discriminatory basis”. Economic integration in the Caribbean is therefore utilized as a means of increasing bargaining power for negotiations with external countries and blocs. In attempting to extend its regional political clout, the Conference actively chooses to integrate and liberalize CARICOM internal markets. These attempts give rise to further actions of deepening integration.¹⁶³

Suggestions of external influence can also be seen in the political structures of the Caribbean Islands. Structurally, the internal legal/political make-up of the CARICOM member-states “is patterned on the Westminster model of parliamentary democracy and all countries retain allegiance to the British sovereign as head of the state except Guyana and Trinidad and Tobago which have become republics”¹⁶⁴ The Privy Council in England, remains the court of last resort till date, for most CARICOM countries who have not yet ratified the Caribbean Court of Justice as their final appellate court.

Therefore, although internal economic and political factors are often highlighted as the main

162 During his process of deepening in CARICOM, there was the hope from larger Anglophone countries such as Jamaica that they might become associate members in the EEC due to ties with the UK. This anticipation saw some members stalling integration efforts in the Caribbean.

163 This point of 'spill-over' will be discussed in more detail in the subsequent chapters.

164 Axline (1979:64).

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influences for the process of integration in CARICOM, external factors also play a decisive role in the integration process.

2.5.2 *Political Integration in CARICOM*

The steps towards regional integration in CARICOM ultimately resulted in the creation of a single market, and attempts to create a single economy, i.e., the CSME; and although the process of integration in CARICOM is economic, it also possesses a political characteristic.

To prevent disintegration, the Revised Treaty explicitly prohibits member-states from introducing “any new restrictions on the provision of services in the Community by nationals of other member-states except as otherwise provided in this Treaty”. In liberalizing its internal market, CARICOM introduces Articles that initiates political and legal integration. The Revised Treaty addresses external relations and foreign policy coordination, which are critical to politics in CARICOM member-state; and are “often referred to as the second pillar of integration after the CSME”.¹⁶⁵ The Revised Treaty calls for member-states to collaborate with “the Council for Human and Social Development to adopt measures to develop the Community's human resources which shall, inter alia, support its thrust toward international competitiveness in the development, production and delivery of goods and services”. Moreover, in Article 8 of the Revised Treaty, there is a 'Most Favored Nation Treatment clause', which states that “subject to the provisions of this Treaty, each member-state shall, with respect to any rights covered by this Treaty, accord to another member-state treatment no less favorable than that accorded to: (a) a third member-state; or (b) third States”. These “fail safe” provisions in the Revised Treaty essentially ensure some insulation of the CARICOM market and foster trust among the Community members. They further reflect political motivations and political influences in the process of regional integration in CARICOM.

The Revised Treaty creates “the right of establishment, the right to provide services, and the right to move capital in the Community”¹⁶⁶. To facilitate these rights, the treaty also dictates that the community is required to agree on “common standards and measures for accreditation or when necessary for the mutual recognition of diplomas, certificates and other evidence of qualifications of the nationals of the member-states in order to facilitate access to, and engagement in, employment and non-wage-earning activities in the Community”. In establishing this policy, the provisions of the CSME touch on political issues.

Issues such as nationalism and nationalistic principles, pressure groups, and other elements of

¹⁶⁵ Jessen and Vignoles (2005:3).

¹⁶⁶ Revised Treaty of Chaguaramas, Article 30.

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the CARICOM political landscape defer, obstruct policies and impede the overall process of regional integration, therefore adding to the problems affecting regional integration in CARICOM. The process is often viewed by member-states as relinquishing newly found sovereignty for an ineffective regional consortium. Prevailing nationalistic sentiments in CARICOM member-states add to skepticism and distrust of regional cooperation and institution building. Essentially, regional integration in CARICOM is preconceived, and to some extent, reflects a 'top down' approach, where agreements are initiated and finalized by political élite, at times against popular choice.

This can be reflected in Article 12 of The Revised Treaty, which addresses the competences of the Conferences, states that “the Conference shall be the supreme Organ of the Community”. This is a new inclusion, as the Original Treaty only detailed the functions and powers of the Conference, and did not define it as being *the supreme organ*. This compounds the idea that although CARICOM has moved from a common market to a single economic space, political ideologies are still crucial in CARICOM.

2.5.3 Integration among CARICOM countries

Interestingly, There are two 'streams' of integration in CARICOM. The CSME and the Organization of Eastern Caribbean States (OECS). The OECS is a nine member group¹⁶⁷ of eastern Caribbean island embedded in CARICOM. They share an economic union, with a single financial and economic space characterized by a harmonized monetary and fiscal policy; and the free movement of goods, persons and capital. Moreover, the OECS have harmonized agriculture, education, energy, environment, health, tourism and trade policies. They additionally share a single currency¹⁶⁸ which is overseen by the Eastern Caribbean Central Bank; and a common high court and court of appeal.¹⁶⁹

Integration in CARICOM is used as a means of achieving 'economic development'. Owing to the small size of the region, the resources are limited and CARICOM therefore it is dependent on external input for production. The constraints of small size also work against the coordination of foreign policy in a union. These small public administrations possess limited resources with which to conduct international negotiations, resulting in limited opportunities and a biased outcome against CARICOM when participating in bilateral negotiations and inter-community trade.

167 The group consists of Antigua and Barbuda, Commonwealth of Dominica, Grenada, Montserrat, St Kitts and Nevis, St Lucia and St Vincent and the Grenadines. Anguilla and the British Virgin - See more at: <http://www.oecs.org/about-the-oecs/who-we-are/about-oecs#sthash.AmSII RiA.dpuf>. Last visited June 30 2015.

168 Eastern Caribbean Dollar.

169 Like other CARICOM countries not subjected to the jurisdiction of the CCJ final appeals go to the Privy Council in the UK.

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Considering this situation, CARICOM's small size forces its member-states to pool resources and integrate economically in order to coordinate foreign policy and to cooperate functionally.

The CSME is an attempt to deepen economic integration in CARICOM. However, the implementation of the CSME has been challenged by numerous obstacles. These include the level of participation of CARICOM members and the ratification speed of treaties and directives. Additionally, regional integration in CARICOM can be viewed as counterproductive in some instances¹⁷⁰; for example, in the 1970s, after the Montserrat paper, the MDCs¹⁷¹ asserted that integration was preventing individual economic development in favor of slow regional development. Regulatory fee and the assistance in the development of the LDCs, were some of the requirements that were viewed with disdain and opposed by CARICOM member-states. CARICOM itself admits that there has been a profound difference in the importance of the Caribbean regional market for different CARICOM member-states. It accepts that up until recently, the process of integration in CARICOM has been:

affected by variations among member-states in the importance of the regional market for their economics. For Barbados and Trinidad and Tobago, CARICOM is a significant market, absorbing 45 percent and 22 percent, respectively, of their total merchandise exports in the past five years. For Belize, Jamaica and Suriname, it is not, in these countries the share of intra-regional in total exports ranges from 5-7 percent. (Jessen and Vignoles 2005:10).

During the process of integration in CARICOM, economic and social underdevelopment have been addressed through regional policies. However, not all the countries in CARICOM demonstrate the same level of integration, nor have they implemented all the CSME mandates. Member-states in CARICOM may opt in and out of some sections of the CSME, and from external trade agreements between CARICOM and other unions or countries. For example, during the process of negotiation of the Economic Partnership Agreement between CARICOM and the EU, Guyana agreed to sign only a part of the agreement, and Haiti decided to opt out of the agreement entirely. CARICOM member-states can effectively define their level of participation in the CSME, or their participation

¹⁷⁰ For more information see Onnis (2011).

¹⁷¹ The terms MDC (Most Developed Countries) and LCD (Lesser Developed Countries) were used in the Original treaty to distinguish among CARICOM countries with reference to their economic capacities.

2.5 Overview of Regional Integration in CARICOM

in regional agreements, though there is evidence of coercion.¹⁷²

At the same time, trade and integration disputes such as the ‘onion rows’ and ‘textile wars’ in CARICOM reveal a new rise in the importance of regional trade in CARICOM. The additional polarization and specialization in CARICOM countries reflect the effects of, and reaction to integration. The observation that during CARIFTA (and in the formative years of CARICOM) disputes were centered on the benefits of integration, whereas currently CSME disputes are generally centered on which country is profiting more from integration, reveals not only a shift of emphasis but also in the values of CARICOM member-states.

Regional integration in CARICOM also reflects some form of institutional deficit. The COTED is the institution in CARICOM responsible for “the promotion of trade and economic development of the Community”¹⁷³ which includes the obligation to “promote the development and oversee the operation of the CSME”.¹⁷⁴ The membership of the COTED consists of ministers designated by the respective country in CARICOM. Therefore, overseeing and implementing the CSME is mandated to the same member-states that are bound to its provisions. CARICOM possesses limited or no supranational force over member-states in addressing issues of non-compliance. For example, there is no appointed body in CARICOM that possesses *de facto* rule over the member-states with regard to implementing the provisions of the CSME. The CCJ is the sole institution that interprets the Revised Treaty and decides whether member-states are in breach of the said treaty; however, it possesses limited *de facto* rule over the member-states. Therefore, even if the CCJ rules that member-states should comply and fines them for breaches, there is a) no institution to oversee these rulings, and b) no provisions for how to deal with non-compliance. Compliance in the CSME is thus based on an intangible rule of law or an honorary code of the member-states. Member-states that breach CSME provisions are directed by the CCJ to rectify the situation are left to their own decisions and inclinations as to whether and when they comply.

The secretariat could be an answer to addressing *de facto* rule in CARICOM. However, it is preoccupied with administrative issues, and lacks administrative support among member-states. Moreover, the:

secretariat’s authority is limited to requesting info and submitting reports. Members are

172 For evidence of coercion, see the section on the negotiation of the EPA in Chapter 6.

173 The Revised Treaty of Chaguaramas Article 15 Paragraph 2.

174 The Revised Treaty of Chaguaramas Article 15 Paragraph 2 (a).

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allowed to implement agreements at their discretion and although the secretariat is the only organ of the CARICOM capable of monitoring and enforcing community decisions and initiatives, it has no legal authority to do so. This inconsistency has handicapped efforts at deepening integration. (Storr 2004:14)

It is however acknowledged that:

despite the slow progress in the formal integration process, there is anecdotal evidence of growing 'real' economic integration among CARICOM countries. This is most evident in the financial sector ... where in the face of growing external competition with a lot of liquidity in their own market, Trinidadian companies are seeking to consolidate their positions in their own market through investments in other Caribbean countries financial institutions. It is also happening in other sectors of the economy, though to a lesser degree. (Jessen and Vignoles 2005:35)

Therefore although, integration in CARICOM has stalled and is characteristically slow, this could in fact be seen as a part of the process of integration, i.e. of cycles of change followed by those of rest. There might therefore be no real failure of integration in the region, or failure of the region to integrate. Rather, there are slow starts and ebb and flows of integration. However, these arguments do not answer deficits such as the limited regional *de facto* powers, and other implementation deficiencies. There still remains the need for an institution or an office to provide such a service.¹⁷⁵

2.6 The Study of Regional Integration in CARICOM

The study of the field of regional integration in the Caribbean has developed exponentially over the last two decades and is relatively extensive, including literature in the economic, political, and social fields.¹⁷⁶

¹⁷⁵ For suggestions refer to the section addressing possible solutions in Chapter 7.

¹⁷⁶ In the economic field, for example, there is literature on the global economic crisis and CARICOM, on the Economic Partnership Agreement and on the benefits and disadvantages of regional integration. Research in political science includes colonial studies, political and historical development, democracy or the lack thereof, and sovereignty. Other social research fields include overviews and examinations of media and telecommunications, geography, culture and development.

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There is however, one research area which is lacking in CARICOM. Theorizing regional integration is not a new idea, indeed it is essential to the study of regional integration. Yet, as highlighted in Chapter 1, in CARICOM, this area of study has been non-existent.

Etzioni (1962) has long since proposed a 'Paradigm for the Study of Political Unification'. In his paradigm he advanced the notion that in analyzing any integrative processes it is necessary to focus on factors such as the state of international relations and the various political units at the time of an increase in integration; the factors that enhance hinder unification; the forces utilized to control the process; the pattern of unification; and the progression of sectoral integration.¹⁷⁷

These factors highlight that any in-depth analysis of regional integration in CARICOM requires an examination of a system based on actors and society, instead of popular state-centric observations.

Looking back at regional integration in the Caribbean at the time this information was published, properties had negative implications for regional integration in Caribbean.¹⁷⁸ There were, for example, only very small traces of unit integration in the West Indies Federation, with a limited will to integrate politically, especially since the British colonies were hopeful for political independence. There were also limited analytical properties, in terms of heterogeneity and unification. Additionally, indicators such as per capita income and land size, as explained above and in the previous chapter, proved to be hindrances to political integration. The environmental properties in the Caribbean additionally pointed to the unlikeness of successful integration under the West Indies Federation. This is because mountainous states such as those in the Caribbean, which are far apart from each other with limited means of transport and communication, are less easily integrated than countries that are geographically close and economically dependent on each other.

In 1965, Etzioni published 'Political Unification: A Comparative Study of Leaders and Forces'. In applying these ideas, the West Indies Federation is presented as also lacking all three basic forces required for success. There was no coercive power to enforce decisions; limited economic clout with regards to, for example, taxation; furthermore, there was a lack of 'identitive assets'.

Since his seminal works, there have been fundamental changes in both the development and process of regional integration in the Caribbean; and in theorizing regional integration.

Specifically, the West Indies Federation collapsed, and regional integration in the Caribbean

¹⁷⁷ Etzioni (1962:47).

¹⁷⁸ The West Indies Federation.

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took on an economic focus, reflecting institution building with internal market liberalization and external borders. Furthermore, factors such as transportation and telecommunications, which proved to be hindrances to integration in the mid-1950s, were developed in the Caribbean and have contributed to creating a more viable network for trade.

Furthermore, advances in the Internet, communications and telecommunications (ICT), and transportation sectors in CARICOM create the possibility for the isolated and insular Caribbean countries to trade with each other and as a 'unit' with other parties. This is evident from the signing of the European Partnership Agreement with the EU. This shift of integration from political to economic can be seen in the creation of the CARIFTA, CARICOM, and CSME.

These structural and institutional changes have further created a new climate for regional integration. These three variables offer new insights into regional integration in the Caribbean. They provide new modules with which we can examine and analyze CARICOM. They also offer new prospects for a theoretical application in CARICOM, especially considering that the theories themselves have evolved over the last 50 years.

Moreover, the field of regional integration has seen the creation of theories specifically adapted to analyze the process of regional political and economic integration, especially that in the European Union. New terms such as 'spill-over', 'spill-around' and 'spill-back' give a clearer understanding of the process of regional integration. Furthermore, identifying the main actors in integration, such as political élite, creates clear independent variables for a broad analysis.

This area of research offers the perfect laboratory in which to extrapolate both independent and dependent variables; and to analyze their impact on integration. It is possible to utilize EU centric theories to study the process of integration in CARICOM with limited transverse issues and/or effects.

Chapter 3: The Theory of Neofunctionalism

3.1 Introduction

The objective of this chapter is to validate the theoretical foundation of this thesis. It introduces the theory of Neofunctionalism as the most viable mechanism for the first study of the process of regional integration the CARICOM, while acknowledging and rebutting proposed limitations by scholars. It explains the concept of Neofunctionalism, paying close attention to its emphasis on institutional change, structural design and change, and to the notion of spill-over. The chapter additionally investigates and subsequently questions the abandonment of Neofunctionalism by scientists in the field of regional political integration. It also compares this abandonment with the comparative weaknesses of other theories of regional integration. It then explores the rebirth¹⁷⁹ of Neofunctionalism and rationalizes it as a viable theory for the study of CARICOM.

3.2 An Examination of Neofunctionalism

3.2.1 *Neofunctionalism Explained*

Niemann (2006:12) proposes that “Neofunctionalism is the most refined, ambitious and criticized theory of regional integration”. Developed in the 1950s and 1960s, the theory of Neofunctionalism “finds its intellectual antecedents at the juncture between functionalist, federalist and communications theories, while also drawing indirectly from the ‘group theorists’ of American politics”.¹⁸⁰ Like the theory of Functionalism, Neofunctionalism proposes that the process of regional integration is defined by functional consequences. However, it differs from functionalism by proposing that functional gains are not the only factors of integration. It predicts that in addition to functional gains and consequences, there are other substantial factors which are in fact imperative to initiating integration. These factors consist of both internal and external components. Niemann and Schmitter (2009:46) additionally suggest that the theory of Neofunctionalism “combined functionalist mechanisms with federalist goals. Like functionalism, Neofunctionalism emphasizes the mechanisms of technocratic decision-making, incremental change and learning processes”. Other main points of disjunction between the theory of Functionalism and Neofunctionalism are:

¹⁷⁹ In doing so it presents the process of growth, death and rebirth of the theory of Neofunctionalism.

¹⁸⁰ Niemann, A. & Schmitter, P. (2009:46).

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whereas functionalists held that form, scope and purpose of an organization was determined by the task that it was designed to fulfill, Neofunctionalists attached considerable importance to the autonomous influence of supranational institutions and the emerging role of organized interests. (Niemann and Schmitter 2009:46)

Additionally, whilst functionalism did not limit integration to any territorial area, the theory of Neofunctionalism focused on integration at the regional level. Moreover, the theory of functionalism “attached importance to changes in popular support, Neofunctionalists privilege changes in élite attitudes”.¹⁸¹

Neofunctionalism further proposes that after the initiation of integration, additional factors such as politicization influence and shape the process of integration. It identifies a spill-over dynamic in the process of integration and attributes decision-making to multi-actors. Neofunctionalism therefore shifts away from a state-centric approach and presents a multivariate approach to analyzing the process of integration. An in-depth examination of the theory of Neofunctionalism is given below. Specific postulations of the theory of Neofunctionalism are that:

Regional integration is ongoing and evolving: the theory of Neofunctionalism rests on the basic premises, that regional integration is an ongoing process; is not a mere result of conscious choice; and is unintended, indirect, and inevitable. One of the theory's main founders¹⁸², Haas, states that Neofunctionalism further examines community building, portrays integration as an upward journey, and characterizes regional integration as not static, but always evolving, and 'becoming' instead of 'being'.

Influence of Non-State Actors: Schmitter, P. (2005:257) suggests that the theory of Neofunctionalism:

recognizes the importance of national states, especially in the foundation of regional organizations and at subsequent moments of formal re-foundation by treaty. Yet it places major emphasis on the role of two sets of non-state actors in providing the dynamic for

181 Niemann, A. & Schmitter, P. (2009:46).

182 Also credited to the theory of Neofunctionalism is Leon Lindberg. Whereas Haas developed his argument based on his examination of the European Coal and Steel Community, with a focus on functional determinants in a limited sector, Lindberg (1963:16) who focused on the European Economic Community proposed that “my own investigations have led me to adopt a more cautious conception of political integration, one limited to the development of devices and processes for arriving at collective decisions by means other than autonomous action by national governments.” Lindberg (1963:5) further advances that “it is logically and empirically possible that collective decision-making procedures involving a significant amount of political integration can be achieved without moving toward a 'political community' as defined by Haas”.

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further integration: (1) the 'secretariat' of the organization involved; and (2) those interest associations and social movements that form around it at the level of the region. (Schmitter 2005:257)

The theory of Neofunctionalism is an approach to the question of community building; one whose:

“ontology is ‘soft’ rational choice. Social actors, in seeking to realize their value-derived interests, will choose whatever means are made available by the prevailing democratic order. If thwarted, they will rethink their values, redefine their interests, and choose new means to realize them ... The ontology is not materialistic: 'values' shape interests, and 'values' include many non-material elements. Haas (2004:xv)

Principally, Neofunctionalism is a theory of regional economic and political integration that relies on actors who use a utilitarian approach to accomplish their interests. In this aspect, Neofunctionalism sees ongoing integration as creating a basis for the homogenization of interests.¹⁸³

Spill-over dynamics: take on an integral role in the process of regional integration. Essentially Neofunctionalism proposes that 'unintended consequences' of attempts of regional integration include the scenario where cooperation in one sector creates and reveals necessities to cooperate in other sectors. Spill-over becomes more likely with any positive movement of integration, which results in a self-perpetuating cycle. In addition to the spill-over hypothesis of Neofunctionalism, Schmitter (2002) adds new terminologies to the theory and angles to the process of spill-over, such as:

- spill-around, which refers to the ontogenesis of functionally specialized independent institutions
- build-up, which refers to member-states ceding authority to a supranational organization without expanding its competencies
- muddle-about, which describes when national actors attempt to maintain regional cooperation without adjusting existing institutions
- spill-back, which describes retraction from prior commitments by member-states.¹⁸⁴

Common regional interests motivate co-operation and alliance: the theory of Neofunctionalism accepts that common geographic complexities, (especially those attributable to economic, political

183 Rosamond (2013:237-254).

184 Schmitter (2002).

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and social circumstances) which cannot be resolved at the national level, give rise to regional integration as a means to an end. These complexities can include pressure from external regions due to standing trade agreements¹⁸⁵ and changes in attitudes towards integration. Neofunctionalism also proposes that a typical reaction to these pressures is for the member-states to enter regional agreements as a means of addressing functional needs such as economic welfare. Furthermore, when political élite create these cooperative arrangements, integration becomes “self-perpetuating through a 'spill-over' process. Through this mechanism, success in one functional area increases demands for cooperative arrangements in other functional areas”.¹⁸⁶ Lindberg (1963: 10) further characterizes spill-over as “a situation in which a given action, related to a specific goal, creates a situation in which the original goal can be assured only by taking further actions, which in turn create a further condition and a need for more action, and so forth”.

Spontaneous, unplanned, yet continuous integration: Haas’ notion of Neofunctionalism does not delineate a time span for any of the steps of spill-over and regime building. Under these circumstances, spill-over can occur spontaneously, sporadically or even calculatedly. Haas did, however, point out the changes/variables that would initiate/impact the spill-over process. These are:

an increase in economic interdependence between member-states, crises of sufficient magnitude due to unintended consequences, development of political competence and autonomy for intervention by regional bureaucrats and emergence of interest associations capable of acting on the regional level independent of national constraints. Schmitter (2005:258)

Integration is a process and not a result: the theory of Neofunctionalism does not delineate a specific time frame nor does it define the end result of an integration project. Rather, it proposes that the most probable result of international cooperation between sovereign states is a 'self-contained service-oriented' organization which neither affects the sovereignty of the member-states nor expand its competencies. Furthermore, the theory suggests that “the contemporary international system is replete with hundreds, if not thousands, of such 'regimes' at the regional and global levels. Only in exceptional circumstances will such an initial convergence produce a collectivity that will

185 This is evident with the creation of the EPA, which was a reaction to WTO rulings on trade between the Caribbean and the EU.

186 Genna and Hiroi (2004:4).

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succeed in breaking out of its capsule”.¹⁸⁷ These 'exceptional circumstances' are also unlikely to produce a federal state. Rather, the union according to Schmitter (2002:15) “is likely to retain the status of a ‘nonstate and nonnation’”. Neofunctionalism therefore proposes that the polity emerging from an existing regional agreement does not have all the necessary characteristics of a nation-state and therefore cannot be labeled as a federal state. The union would not be composed of a 'fixed center', more inherently possible, is a network of jurisdictions with eventually covariant membership.

Supranational dynamics: Haas (2004) places special emphasis on the point that in enabling spill-over dynamics, supranational power conditions are in play in the theory of Neofunctionalism. This is because the initiation and process of regional integration require a number of variables, which when present, result in citizens “shifting more and more of their expectations to the region and satisfying them will increase the likelihood that economic-social integration will ‘spill-over’ into political integration”.¹⁸⁸ This leads to the conclusion that when political integration arises, it will exhibit some of supranationalism. With this regard, Rosamund (2005) also notes that Haas precisely and purposely used the phrase ‘superimposed over’ instead of, for example, replacing', as a means of signifying some form of supranational integration. Further supranational aspects of the theory are ideas that regional integration is an:

intrinsically sporadic and conflictual process (and) ... under conditions of democracy and pluralistic representation, national governments will find themselves increasingly entangled in regional pressures and end up resolving their conflicts by conceding a wider scope and devolving more authority to the regional organizations they have created. Schmitter (2005:257)

Role of institutions and other non state actors: unlike typical state-centric theories of integration and international relations, the theory of Neofunctionalism focuses on the actions of bureaucrats in shaping and driving integration. According to Neofunctionalism, member-states are not the sole determinant of the speed and depth of integration. Bureaucrats and other 'political élite' also play a very decisive role in the process. Furthermore, Neofunctionalism places emphasis on the process of change in perception, where political actors are compelled to 'shift their loyalties' from a 'national centric' to a more dynamic 'regional collective'. This multivariate approach of the theory of

187 Schmitter (2002:14).

188 Schmitter (2005:257).

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Neofunctionalism enables the concentration on both dependent and independent variables in the process of regional integration. The theory focuses and conjointly relies on the actions of institutions in the process of regional integration. It presupposes that a large bulk of the steering of integration falls on regional institutions that require not only manpower but, more importantly, legitimacy to enact rules and regulations that are binding at member-state level.

Decision cycles: Neofunctionalism additionally introduces ideas regarding so called 'decision cycles', which refer to variations in the stages of integration and characterizes them as being essential and even as underlying to the process of integration. Decision cycles, which include 'initiation', 'priming' and 'transforming' cycles, determine the speed, depth and direction of integration. The 'initiation cycle' signals the start of the process; the 'priming cycle', defines the depth of integration; and the 'transforming cycle', defines the final outcome of the process including the redefinition of territorial scope and additional parameters.

These cycles are further characterized as a specific wave of events that (positively or negatively) affect the process of regional integration.

Schmitter (2002:31-32) also suggests that during the decision cycles “as regional processes begin to have a greater effect, national actors may become more receptive to changing the authority and competences of regional institutions”. He further proposes that only those regional integration schemes that are able to succeed priming cycles are able to progress and coherently adopt functional integrative strategies in both economic and political spheres (2002:33).

Furthermore, five context-based dependent variables are additionally highlighted as determinants of decision cycles. These are differences in: relative size/power; rates of transactions; member internal pluralism; élite value complementarity; and extra-regional dependence.

Schmitter (2002) also points out five further necessary variables that determine whether a union has started a priming cycle. These are:

- equitable distribution of benefits, which relates to the perception of which regional transaction costs are reciprocally divided among the member-states;
- regional group formation, which he defines as the “pattern of formation and active participation of new non-governmental or quasi-governmental organizations representing some or all members across national borders and designed explicitly to promote the interest of classes, sectors, professions and causes at the regional”¹⁸⁹ levels;
- development of regional identity, which relates to the “extent to which participants in

189 Schmitter (2002:27).

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regional processes come to regard such activity as rewarding due to material inducements, emotional-fraternal-symbolic ties, status satisfactions, etc., and thereby acquire a larger sense of loyalty”;¹⁹⁰

- regional reform-mongering, which refers to the level of engagement of actors/regional institutions in promoting and implementing new regional policies before the initiation of a politicization process;
- international Status Effect, which relates to the degree of dependence of the union and the individual member-states on regional institutions.

It is further argued that during each decision cycle, additional imbalances and contradictions are generated and that these imbalances enable the union to avoid ‘encapsulation’, which is characterized as 'a state of stable self-maintenance'.

The theory of Neofunctionalism also introduces bivariate and multivariate hypotheses concerning the Priming Cycles. The former proposes that there is a positive correlation between changes in the size and power of national actors and equitable perception of benefits. Additionally, the bivariate hypothesis proposes that:

the greater and more varied the changes in rates of transaction, the higher is the likely rate of regional group formation and the more rapid is the development of a distinctive regional identity likely to be ... The greater the increase in internal pluralism within and across member-states, the more likely are transnational groups to form and are regional identities to emerge. (Schmitter 2002:27)

Other key features: another predominant feature of the theory of Neofunctionalism is its concern with action and structure, in our case the actions of the actors who are vital to the process of integration and to the institutional structure of CARICOM. Neofunctionalism further pays attention to the scope and level of integration. It proclaims that the scope of competencies given to regional authorities directly relates to the level of integration¹⁹¹. Thus a limited scope signals a limited level of integration. Consequently, increased transactions lead to increased politicization, which in turn leads to a deepening of integration.

As proposed in Chapter 1, the theory of Neofunctionalism can be viewed as a general (non

¹⁹⁰ Schmitter (2002:27).

¹⁹¹ An application of the theory of Neofunctionalism to CARICOM provides the possibility to focus on regional competencies (through analyzing treaties) and their effect on integration.

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Euro-centric) theory of regional political integration, a quality which is essential for the present analysis of CARICOM. Therefore, in this chapter, Neofunctionalism will be read and analyzed as a general theory of regional integration.

3.2.2 *The Proclaimed 'Obsolescence of Neofunctionalism'*

Wolf (2002:29) argues that “no other theory (has) experienced more funerals than Neofunctionalism”. Moreover:

no theory of regional integration has been as misunderstood, caricatured, pilloried, proven wrong and rejected as often as Neofunctionalism. Numerous scholars have rejoiced at having 'overcome' the much-decried antagonism between it and Intergovernmentalism ... So much so, that with very few exceptions, virtually no one currently working on European integration openly admits to being a Neofunctionalist. Its own creator has even declared it obsolescent – on two occasions! (Schmitter 2002:1)

According to critics, Neofunctionalism failed to predict or explain the empty chair crisis in the 1970s in the EU. Even after much re-theorizing, it seemed to many critics that the theory of Neofunctionalism had seen its best days and was not just out of style, but out of touch with modern political reality. Below are some of the proposed key limitations of the theory which were responsible for its suggested failure:

Insufficient predictive qualities: an early critique of Neofunctionalism is that of Stanley Hoffmann's Intergovernmentalist view of regional political integration. Hoffmann's critique was established on the grounds that during the 1970s enduring national interests and sentiments were clearly present in de Gaulle's actions, and this could not be explained by Neofunctionalism. Although Neofunctionalism predicted defiance from national authorities, it also greatly underestimated this factor. This underestimation can be observed in examining the power of the European Council in integration, and disintegration. It was therefore advanced that although Neofunctionalism explained the first steps of regional economic and political integration in the EU up until the mid- to late 1960s, it could not fully account for what occurred afterwards. Moreover, Neofunctionalism actually raised new questions rather than answering the questions that were put forward when it was applied to regional integration in the EU in the 1970s.

Challenged theoretical basis: some scholars argue that a critical weakness of Neofunctionalism was not empirical but theoretical, namely, the base of the theory itself was faulty.

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Moravcsik (2005), for example, proposed that such a correction only occurred after the 1990s. Even then, he suggested that Neofunctionalists attempted to explain the anomalies “in an ad hoc manner by invoking various exogenous factors, such as: anachronistic concerns of high-politics and nationalism, basic ideological antipathy towards transfers of sovereignty ... at the expense of regional deepening.”¹⁹²

Excessively generic: another proposed empirical flaw by critics, was that Neofunctionalism as a theory was spread too wide, and attempted to accomplish too much by endeavoring to explain the process of regional integration in its entirety. That is to say, it was more general than specific in its analysis, and broader in its explanation than deep. Thereby overlooking situations, abstractions, and state of affairs. For example, it neglected policy areas that could have revealed important information about the factors that facilitate and hinder integration. Additionally, it was criticized as being a post hoc theory plagued with difficulties in generating testable hypotheses. Gaspare and Hiroi (2002:5) for example propose that “not only is it difficult to identify a priori exactly what issue-areas and what levels of significance of problems command regional cooperation or integration, but also functional needs do not necessarily pre-determine the direction of change that countries choose to pursue”.

It is also asserted that Neofunctionalism overemphasized the role of politicization in the 'empty chair crisis' of the 1970s, which came much later than Neofunctionalism proposed, and was a factor for disintegration rather than for an increase in integration as the theory advanced.¹⁹³

3.2.3 *Juxtaposition of Neofunctionalism with Alternative Theories*

As established above, it is common to declare that Neofunctionalism is 'dead'. At the same time, other theories of European political integration have also been met with criticisms.

Not different from Neofunctionalism: not only are other theories of regional political integration just as, or even more insufficient in explaining certain aspects of regional integration, but when they do they prove similarities to Neofunctionalism. Moreover, according to Schmitter (2002), most of the current theories used by scholars to analyze regional political integration are not “theories at all, but just more or less elaborate languages for describing what the authors thought had taken place in the recent past -- devoid of any discrete and falsifiable hypotheses about where the process might be heading in the future”.¹⁹⁴ He goes further to add that even when these attempts are theory-based, they often resemble or take on some characteristics of Neofunctionalism, and that

192 Moravcsik (2005:355).

193 Schmitter (2002).

194 Schmitter (2002:2).

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“real-live Neofunctionalists may be an endangered species, but Neofunctionalist thinking turned out to be very much alive, even if it was usually being re-branded as a different animal”.¹⁹⁵ For example, Moravcsik’s Liberal Intergovernmentalism is argued to possess some of the same core elements of Neofunctionalism. Moreover Schmitter argues that:

if Moravcsik were to concede that the calculation of member-state strategies was affected not only by 'domestic interests', but also (and even increasingly) by Transnational firms, associations and movements working through domestic channels, then, his approach would be virtually indistinguishable from Functionalism – just much less specific in its assumptions and hypotheses. His epistemology would have to admit that the gradual processes of 'low politics' could be unobtrusively encroaching upon 'high politics', his ontology would have to include the prospect that transformation might be occurring, not just successive iterations of the same power game played by rational-unitary national states. (Schmitter 2002:2)

Questionable Comprehensiveness: the inclinations and core of other theories of European Integration also relate to a limitation in their application. For example, the theory of Intergovernmentalism is rooted in the independence and sovereignty of member-states in a union. Moreover, its emphasis on intergovernmental bargaining processes neglects other important and necessary factors affecting regional integration, especially the role of institutions and other non-state actors in the process of regional integration. With reference to the 'empty chair crisis' in the EU, Awesti (2006:3) proposes that Intergovernmentalism “is able to explain the undoubted stalling of integration in the visible, ‘high’ political areas. However, its state-centrism leads it to be blinkered from the underlying processes that drive the integration project”. These include actions in 'low politics' “which furthered European integration and which laid the foundations for future spill-over into ‘high’ political areas. ... the state was (and remains) only one player out of many in the European polity”.¹⁹⁶

At the same time, proponents of Intergovernmentalism similarly suggest that the theory of Supranationalism does not adequately explain or take into account the role of influential and strong nation states in the empty chair crisis.

Conversely, new researches reveal that the theory of Neofunctionalism might not have

¹⁹⁵ Schmitter (2002:2).

¹⁹⁶ Awesti (2006:4).

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actually 'failed' in the 1970s. For example, McGowan (2007) paints a positive picture for Neofunctionalism, in theorizing integration in Europe during this period. He proposes that:

regional integration was certainly occurring but at a slower pace and not on the scale that Haas had imagined. ... Spill-over was much more localized but it could be identified. The process of regional integration in Europe has always been about ongoing incremental growth and in this vein is reminiscent of Monnet's idea of creating Europe by stealth. McGowan (2007:13)

Hence, whereas the other two theories of European Integration failed to address aspects of integration in the EU, recent research reveal an underestimation of the role of Neofunctionalism to explain integration in Europe in the 1970s. It is therefore worthwhile to 're-read' the theory of Neofunctionalism.

3.2.4 Revival Neofunctionalism

Rosamund (2013:22) proposes that the theory of Neofunctionalism is resilient and suggests that in studies such as regional political integration, theoretical approaches are commonly judged by two criteria. The first criterion is that the theory "is capable of asking meaningful questions about a given object, while insisting at the same time that a theory's success be judged in terms of its capacity to generate findings consistent with its derivative hypotheses".¹⁹⁷ The second criterion is "concerned with the theory's internal consistency and its conformity (or otherwise) to established rules of social scientific practice."¹⁹⁸ The theory of Neofunctionalism can be observed adhering to both criteria. It asks meaningful questions and is resilient and able to conform to the rules of social scientific practice. The theory of Neofunctionalism might not be 'dead', as previously decried; rather it is quite 'alive'. Currently, when regional integration is constantly theorized, it is the opportune moment to re-introduce this theory as a consistent tool for analyzing CARICOM. Researchers are increasingly finding new angles for utilizing the theory of Neofunctionalism to answer questions in regional political integration. The following factors support the idea of 'revival' or 'recycling' the too hastily disdained theory of Neofunctionalism:

Multi-directional (forward and backward) integration: the process of regional integration is characterized by Neofunctionalism as a scheme of various possibilities rather than a plane with movement in only one direction. It acknowledges what can be phrased as 'disintegration' as a

¹⁹⁷ Rosamond (2013).

¹⁹⁸ Rosamond (2013).

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possible outcome of the process of integration. According to Schmitter's 'decision cycles'¹⁹⁹, there can be 'upwards' and 'downwards' movement of integration. New hypotheses, such as 'spill-back' and 'muddle-about', offer additional variables and new insights into the process of spill-over. Therefore, not only does integration take place under uncertain circumstances, but relies on innovation and has uncertain outcomes.

New dimensions to the theory: since macro-hypotheses have been redeveloped and reintroduced, in the theory of Neofunctionalism re-reading the theory of Neofunctionalism, and applying it to new instances of regional integration is a worthwhile undertaking. For example, terminologies such as 'engrenge'²⁰⁰ and 'natural entropy'²⁰¹ help to 'recycle' the theory of Neofunctionalism by providing a network of possibilities in the process of integration.

These ideas, and additional explanations, characterize the process of integration as a reaction to tensions in the regional environment, contradictions of previous agreements and the engagement of regional institutions.²⁰²

Effect of the adaptability of actors: Haas and Schmitter (1964:718) proposes that chief actors in integration are highly adaptable and able to deal with complications, addressing any impediments to integration. Haas (1961) also noted that, apart from an increase in the frequency of intra-regional transactions²⁰³, there were marked changes in conflict resolution modes, people's emotive attachment, identification, in addition to expectations and outlook.

The factors that accounted for the variations in the intensity and outcome of integration and unions, and the original explanatory variables of integration according to Mattli (2005), are political and social pluralism, including trade unions and interest groups; bureaucratized decision-making coupled with a supranational agency; and symmetrical regional heterogeneity, which includes size, economic propensities and similarities. It is furthermore argued that "the content of each of these factors or explanatory variables can be high or low, a high value favoring integration and a low value rendering the likelihood of success more elusive".²⁰⁴

Influence of Non State Actors: in re-reading Haas, one becomes more aware of the explanatory variables of the theory of Neofunctionalism. For example, Haas (1967:323) argues that

199 See Schmitter (2002).

200 Refers to the impossibility of regional groupings to departmentalize and separate complex national issues, and the likelihood of these issues 'feeding back' to the regional units.

201 Natural entropy refers to the idea that the process of integration will normally tend to 'rest' or even stagnate save for an exceptional circumstance due to frustrations or even dissatisfaction. In the event of such regions are compelled to revise their level and scope of integration, which will lead to further spill-over.

202 Schmitter (2002:21-27).

203 Relative to inter-regional transactions.

204 Mattli (2005:329).

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integration progresses and deepens when key politicians circumvent 'high politics'. Being endowed with ultimate political power, they could accept, sidestep, ignore, or sabotage the decisions of technocrats. He also underscored the role of non-state actors and political élite in the process of regional integration (Haas 1967: 328).

He further suggests that there are various 'degrees of compatibility' between statements and other non governmental élite. This directly addressed criticisms that plagued the theory of Neofunctionalism concerning its analysis of European integration in the 1970s. Moreover, new proposals, for example those of Mattli (2005:119) emphasize the influence of political élite in the process of integration. Integration deepens/ widens and/or quickens/slow down when political élite share commitments with 'heroic statesmen-leader' in favor of/against integration.

The static character of priming cycles: Schmitter (2002) proposed that previous suggestions from critics that Neofunctionalism failed in its application to the EU were flawed, especially those relating to the 'empty chair crisis'. That during this stage, the EU was merely undergoing priming cycles, with extensive periods of static preceded by a widening and a deepening integration. That the scope and nature of common institutions could also be defined more clearly, especially when assigned specified levels of governance. Under this reasoning, the past 'failures' of implementing an EU constitution could be seen as a static part of a cycle²⁰⁵, of which the next step would be another period of deepening and/or widening of integration.

Schmitter (2002:31) goes further to add that it is possible to discern initial signs of externalization in any priming cycles, since there is an underlying positive correlation between the level and scope and the regional actions on external habituation. Moreover, success or failure of these experiments affect international perception of the project, which in turn affects the motives of national actors.

Complicating factors: Schmitter (2002) further identifies factors at the national level in member-states that lead to strategic change in regional integration. These factors include differences in relative size and/or power; differences in rates of transactions; pluralistic differences; and differences in extra-regional dependence. These extra factors present integration as an extremely complicated process. Therefore, the actions of actors coupled with these factors over-complicate the process of regional integration. Moreover, the variables of regional integration are "observer-invented, orderings of facts and perceptions and not the physical occurrences themselves. ... Even more confusingly, these concepts are usually summations or aggregate evaluations of complex,

205 The EU is currently moving towards this "transforming cycle" under the Neo-Neofunctionalism model.

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interrelated behaviors”.²⁰⁶ These complications and technicalities pose significant challenges for theoretical analysis in general. Technical issues and “failure to specify how the multiple observations are to be collapsed into a single assessment have plagued comparative research and made inter subjective reliability poor ... this problem has gotten worse rather than better as the integration process itself has become more complex”.²⁰⁷

The 'recycled' version of Neofunctionalism: with the above factors in mind, predicting an outcome of integration based on any given variable or sets of variables might not be precise. However, the 'recycled' version of the theory of Neofunctionalism simplifies this complicated spectrum by accepting both a parabolic effect and variation in values of both dependent and independent variables.²⁰⁸

The 'recycled' version of Neofunctionalism offers the possibility for approaching integration as a process that occurs between or among consenting national states. As a process that is complex, transforming and evolving, which requires a theory that possesses the ability to also transform and evolve along with it. In which case, the theory of Neofunctionalism is still relevant for the analysis of regional political integration, be it in the EU or in this case, in CARICOM.

Proponents of Neofunctionalism argue that criticism of spill-over (or the lack thereof in the European case) might not be as critical as was previously acknowledged. Rather, “spill-over takes hold only within a set of specified conditions, namely situations where there is an a priori interdependence between the component economies”.²⁰⁹ Additionally, “if cultivated spill-over placed its emphasis on the institutional interchanges between the EU actors and ... competition policy (then) ... ultimately, the EC competition regime’s growing credibility among ... domestic actors ensured that expectations and operations were increasingly to the supranational EU level of decision making”.²¹⁰

Bivariate and multi-variate hypotheses: the theory of Neofunctionalism advances the activist role of actors (in particular bureaucrats) in the process of regional integration. It proposes that actors will increasingly engage in 'reform-mongering'²¹¹, depending on previous scope of commitments, the level of institutionalization and the 'upward-grading' of decision style. The bivariate hypothesis also proposes a positive correlation among attention, concentration, independence and engagement; and expansions in scope and or level of integration. Moreover, it accepts that factors such as

206 Schmitter (2002:13).

207 Schmitter (2002:13).

208 Schmitter (2012:12)

209 Rosamond (2013:250).

210 McGowan (2007:2).

211 Schmitter (2002:29).

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benefits from regional integration across various social/political groups and distinctive regional identity also have an impact on the willingness of national actors to create, collaborate, and intensify pro-integrative efforts and strategies.

The multivariate hypothesis additionally proposes an influence in the variation of regional processes due to changes, prior to the start of the process. Furthermore, it proposes that these affect understanding, analyzing and predicting any subsequent changes. Asynchronic values after these initial changes will result in asynchronism in the regional processes, and in actor strategies.²¹² Asynchrony in rates of change in member-states positively correlates with asynchrony in rates at the regional level, which in turn enhances politicization. Another crucial point highlighted by the multivariate hypothesis is the slow rate of change relating to regional identity and externalization.²¹³

Wide scope; Beyond EU Applications: in re-reading the theory of Neofunctionalism, one is made aware that it is not necessarily sui generis. It can be applied to unions other than the EU. Although Haas argues that regional political integration might not readily occur in regions outside of the EU, such as Latin America or the Caribbean, due to existing variables. He also suggests that new 'political communities' could be established when there is “full political mobilization via strong interest groups and political parties, leadership by political élite competing for political dominance under rules of constitutional democracy accepted by leaders and followers. (Haas 2001:29–30)”. To this end, Rosamund (2013:35) argues that “the story of Neofunctionalism is better told as a tale of theory-building and evaluation that resonates with long-established social scientific norms”.

These postulations can be applied to all three independent variables in this undertaking, namely, the CSME, CCJ and EPA, to better observe the process of asynchronous change. In so doing, they can effectively measure the level of regional integration in CARICOM.

3.2.5 Defense of Neofunctionalism

Why use the theory of Neofunctionalism, despite its contested standing, and base an entire research on it? “Why bother to beat this dead horse? Why not celebrate its demise and move on to a more promising and up-to-date approach?”²¹⁴ Rosamund (2013) suggests that the fact that Neofunctionalism was 'buried' in the first place does not reflect a problem with the theory per se, instead, such an action is “indicative of a tendency within the present scholarly community to produce narratives ... that draw robust boundaries between past errors and present rigor. In the

212 Schmitter (2002:30).

213 Externalization refers to the attempts actors to address exogenous factors such as dependence.

214 Schmitter (2002:1).

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wrong hands this can induce all manner of closures and the establishment of claims that effectively outlaw particular kinds of work”.²¹⁵ The theory of Neofunctionalism is still viable for the following reasons:

Promising Re-inspection: although it is proposed that Neofunctionalism's own creator has decried it as dead, Neofunctionalism is later defended by Haas in his subsequent writings. Rosamund (2005) also highlights this fact. He argues that:

it is striking how Haas responded to his critics by reasserting the significance of societal, external and internal preconditions of integration. With that he laid the ground for (a) the reorientation of Neofunctionalism as a theory of 'background conditions', (b) Schmitter's (1971) efforts to perfect Neofunctionalism as a theory of disintegration as much as integration, and (c) Nye's (1971) interest in 'perceptual' background conditions. Rosamond (2013:250)

Additionally, a re-inspection of Haas' own writings reveals that he vociferously defends the theory of Neofunctionalism. For example, Haas (2004) argued for the current relevance of Neofunctionalism. He contended that in general, the outlook should be a positive one, that Neofunctionalism still has a relevant purpose, and can indeed predict and explain integration, which is an extremely complicated process. Moreover, he further establishes that a sole theory should not be burdened with the onus of explaining an entire political system, and therefore, Neofunctionalism must not be criticized for any supposed inability to characterize, understand, or predict the entire process of regional integration. To this end, Haas recently proposed that the theory of Neofunctionalism “is no longer obsolescent” (Haas 2004:iii); Rosamond (2013:35) also concur, and proposes that the theory of Neofunctionalism should be seriously reconsidered as a suitable theory for regional integration.²¹⁶

This is because; the problem does not lie in the theory of Neofunctionalism, rather in its interpretation and the way in which it is applied to certain settings. Haas (1975) suggests that essentially, the supposed failure of Neofunctionalism resulted from the exclusion of the possibility of change in the motives, interests and values of actors. Therefore, it is “not necessarily that Neofunctionalists failed to incorporate a theory of cognitive change into their overall approach, but that it was probably always there within their conception of loyalties, persuasion, the evolution of

215 Rosamond (2013:254).

216 Rosamond (2013:35).

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expectations and interests.”²¹⁷

McGowan (2007) also proposes that even if the theory of Neofunctionalism does not adhere with the terms of macro-theorizing in regional integration, it can still be employed as a 'mid range theory' which can be applied to analyze the dynamics and evolution of specific aspects of regional integration.

Rebuttal of criticisms: as explained above, criticisms of Neofunctionalism, pertaining to its core arguments and premises can be disputed. Additionally, criticisms pertaining to Neofunctionalism's abilities such as predictability, applicability, and compatibility have all been recently answered and/or defended. The theory has seen re-inspections, for example by Schmitter (2002); Haas (2004); and Mattli (2005). It can therefore be held as a viable theory of regional integration for conducting both singular and comparative analyses.

Alive' in spirit: despite criticisms, Neofunctionalism is still held in the fields of International Relations and Regional Political and Economic Integration as a serious theoretical approach to the process of regional integration. In light of this:

there can be few students of the ... EU who are not made aware, at least in passing, about Neofunctionalist theory. It is rare to find a textbook on the subject that fails to mention it and even its most trenchant critics feel obliged still to frame their analysis in terms of the shadow cast by Neofunctionalism. For many of these, Neofunctionalism represents a coherent 'other' against which their own (supposedly preferable) approaches to explaining the EU and elements of European integration can be defined. Rosamond (2013:238)

Although Neofunctionalism was decried as dead, it still currently appears in serious theoretical analysis of regional political integration.²¹⁸ This continued presence points to its usefulness in the field of regional integration. The 'coming back in' of the theory follows various attempts, a concentrated analysis, and the dedication of an issue in the European Journal of Public Policy to Neofunctionalism.²¹⁹ This speaks to the importance of Neofunctionalism, and the usefulness of applying the theory of Neofunctionalism to CARICOM.

Certain parameters valued by critics and proponents alike: critics of Neofunctionalism have

217 Haas (1958:292).

218 Rosamond (2013).

219 In 2005 The European Journal of Public Policy published an issue dedicated to Neofunctionalism.

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acknowledged that the theory is significant. For example, Moravcsik (2005:353) has conceded that Neofunctionalism contains some intrinsic and noteworthy qualities. He also admits that “Neofunctionalism is dynamic. It seeks to explain not just static decision making under stable political conditions, but dynamic political transformation over time. (2005:353)”

Dynamic/non-static mechanism that explains the ever-evolving process of integration: integration has, in a sense, also evolved and is ever changing. What was common in the 1970s, 1980s and the 1990s has evolved and is currently something else. A past problem, could be currently analyzed with new information and additional scenarios. In analyzing present-day CARICOM, an overview of the literature relating to CARICOM reveals the necessity of a dynamic theory for analysis. The theory of Neofunctionalism provides this non-static possibility. It is also held as adaptable and trans-formative; it updates itself to fend off critiques and is not static, rather it is adaptable. Neofunctionalism is trans-formative because it addresses situations where the actors in integration and their relationship vary. It also predicts the changes in the strategies of the actors.

Therefore, the prospect of a theoretical application to CARICOM promises interesting and important results. A theoretical application of Neofunctionalism to CARICOM would serve two purposes, it would reveal information on the process of regional integration in CARICOM, and therefore assist in understanding and characterizing the process of regional integration in CARICOM. Furthermore, it would provide information on the theory of Neofunctionalism, and therefore be useful for theory building and analysis.

At the same time, as long as the process of regional integration is occurring, there is also the necessity for theorizing it. Condemned as dead or not, the theory of Neofunctionalism can shed light on the integration process in CARICOM.

3.3 Summary and Conclusion

As mentioned above, due to background variables certain unions are more prone to spill-over than others.²²⁰ As established in the previous chapter, in addition to democratic and political factors, integration in CARICOM was directly related to externalities. Both of these points are premises of the theory of Neofunctionalism. An application of the theory of Neofunctionalism to CARICOM will, therefore, create the possibility to better observe the variables of regional integration in CARICOM and meet the aims of this thesis²²¹.

²²⁰ See for example Haas and Schmitter (1964).

²²¹ The aim is to understand how and why integration in CARICOM is deepening and widening. An extensive explana-

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Moreover, an application of the theory of Neofunctionalism to CARICOM creates the possibility for observing the conditions under which integration in the Caribbean is initiated and continues to evolve. The above review of the theory of Neofunctionalism reveals it to be a necessary tool for an analysis of CARICOM. It promises information on the factors of integration and the effect of these factors on the participants in the process. Neofunctionalism enables the observation of sectoral spill-over, and thereby presents itself as an integral for a theoretical analysis of CARICOM.

The applicability of the theory of Neofunctionalism to CARICOM includes utilizing the macro-hypotheses of the theory. According to Schmitter (2002:20), the macro-hypotheses of Neofunctionalism “should be relevant (and potentially falsifiable) throughout the integration process, i.e. during all of its decision-making cycles”.

Descriptions such as 'decision cycles', and additional components, such as regional regulations, spill-over effects, and the role of institutions in the process of regional integration, address the explanatory power of Neofunctionalism in characterizing regional integration in CARICOM.

tion is provided in Chapter 1.

Chapter 4: Neofunctionalism and the Caribbean Single Market and Economy

4.1 Introduction

This chapter offers an introduction to the background, origins, and initial goals of the Caribbean Single Market and Economy (CSME); and introduces the Revised Treaty of Chaguaramas (Revised Treaty)²²² as a deepening of the process of regional integration in CARICOM. The chapter moreover reviews key hypotheses of Neofunctionalism, namely, spill-over, externalization and politicization as they relate to the CSME.

Regional integration in CARICOM is composed of four primary components. These are economic integration; human and social development; foreign policy coordination; and security cooperation. The CSME falls mainly within the first component: economic integration. It also includes provisions for human and social development and foreign policy cooperation. Therefore, in applying the theory of Neofunctionalism to the CSME, this chapter primarily focuses on economic integration in CARICOM, with secondary reflections on human and social development, and foreign policy coordination.

4.2 History and Overview of the Caribbean Single Market and Economy (CSME)

The Treaty of Chaguaramas²²³, which established the Caribbean Community (CARICOM²²⁴), includes provisions for liberalization of trade in goods in the internal CARICOM market, the creation of a common tariff and quota structure for external trade; and for the removal of barriers that would affect the aforementioned liberalizations, including the establishment of business, and the free movement of capital within CARICOM.

The Original Treaty further prescribes the main responsibilities of CARICOM to two main

222 The Revised Treaty ratifies the CSME in CARICOM.

223 The Treaty of Chaguaramas is later amended to the Revised Treaty of Chaguaramas, and as such the former is hereinafter referred to as the Original Treaty.

224 In Chapter 2, it was established that before the CSME, the acronym CARICOM represented the Caribbean Community and the Common Market. With the introduction of the CSME, the acronym now represents the Caribbean Community, and the Common Market is redundant.

4.2 History and Overview of the Caribbean Single Market and Economy (CSME)

organs: the Conference of Heads of Governments (the Conference), made up of the heads of the member-states; and the Common Market Council (the Council), made up of ministers directly elected for their national parliaments.

Under the Original Treaty, these two 'principal organs' essentially delineated the direction, depth, and speed of integration. They were also supported by the CARICOM secretariat whose mandate, was to deal with the daily activities of CARICOM.

At its 10th meeting in 1989, the Conference made a concerted effort to deepen integration in CARICOM detailed in a declaration labeled the 'Grande Anse Declaration'. It began by stating that:

we, the Heads of Government of the Caribbean Community, inspired by the spirit of cooperation and solidarity among us, are moved by the need to work expeditiously together to deepen the integration process and strengthen the Caribbean Community in all of its dimensions to respond to the challenges and opportunities presented by the changes in the global economy. Accordingly, we set out a work programmer and specific initiatives to be implemented over the next four years.

This Grand Anse Declaration is essentially the first legal step by CARICOM to officially create the CSME. It represents a binding commitment of the CARICOM member-states to “deepening regional economic integration ... in order to achieve sustained economic development ... coordinated economic and foreign policies, functional co-operation and enhanced trade and economic relations with third States”²²⁵. The declaration is comprised of three key components, namely a deepening regional integration in CARICOM through liberalizing its internal economy by creating a single market and a single economy; a widening membership in CARICOM through the inclusion of additional member-states; and creating, developing, and increasing external trade with other third parties as a union²²⁶.

The CSME is the first of the three components of the Grand Anse Declaration. It is further divided into two sections a single market and a single economy.

Under the single market, CARICOM makes provisions for the liberalization and free movement of intra-CARICOM goods, services, skills, and capital. Additionally, the single market guarantees the right of CARICOM nationals to establish companies and other business enterprises

²²⁵ Paragraph 1 of the Preamble of the Revised Treaty of Chaguaramas Establishing The Caribbean Community including The CARICOM Single Market And Economy.

²²⁶ Efforts such as the EPA can be placed under this initiative.

4.2 History and Overview of the Caribbean Single Market and Economy (CSME)

in all CARICOM territories.

The envisioned single economy suggests a liberalized structure of regional market integration through a common currency and regional bank. In this economy, hindrances to free movement, such as dual taxation, would be eradicated.

The second component of the Grand Anse Declaration, i.e. widening integration, was a means of achieving economic mass. To that end, Suriname, whose population was approximately half a million, became a member in 2002. Anguilla, Bermuda, the British Virgin Islands, Cayman Islands, and Turks and Caicos were all granted Associate Member status between 1991 and 2003.

Under the third component of the Declaration, i.e. trade relations²²⁷, CARICOM created a Council for Foreign and Community Relations (COFCOR) whose main task, subject to the provisions of Article 12 of the Revised Treaty, is to determine relationships between the Community and international organizations and Third States. Further mandates of the COFCOR are to:

evaluate, promote and establish measures to enhance production, quality control and marketing of industrial and agricultural commodities so as to ensure their international competitiveness ... promote and develop ... coordinated policies for the enhancement of external economic and trade relations of the Community. (Revised Treaty:Article 12)

The main objectives²²⁸ of the CSME are to improve the standard of living and work of community members; create sustained economic development in CARICOM; and to make CARICOM more competitive through fully utilizing and liberalizing labor and other factors of production, including capital and natural resources.²²⁹ The key elements of the CSME are:

Free movement of goods and services: through measures for removing barriers impinging on intra-regional trade in goods and services; the harmonization of safety and health standards; and the implementation of legal measures for enabling the free movement of goods and services.

Free movement of persons: under which the CSME grants the free and unrestricted travel of CARICOM nationals throughout the CARICOM. It creates provisions for harmonizing social services, establishes universal standards for accreditation and equivalence, and removes any barrier that would impinge on free travel in CARICOM.

227 Since the Grand Anse Declaration, the most notable external trade agreement that CARICOM has brokered is the European Partnership Agreement with the EU, which is examined in Chapter 6.

228 These objectives reflect a bias toward the single market in comparison with the single economy.

229 The above account reveals that Grande Anse Declaration is limited to the economic well-being of the CARICOM countries, and it does not include political and/or social integration in CARICOM.

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The right of establishment: that binds CARICOM member-states to remove restrictions hampering CARICOM citizens from establishing businesses in other CARICOM member-states.

Free movement of capital: under which CARICOM member-states are required to eliminate barriers affecting the free movement of capital within CARICOM territories. This includes eliminating foreign exchange control measures; and creating an integrated capital market and a regional stock exchange.

A common trade policy: that calls for the harmonization of both internal and external trade policies. For internal trade policies, the CSME requires the harmonization of economic and monetary policies; it liberalizes the CARICOM market; and guarantees border-less trade among the member-states. This includes the coordination of economic policies, especially those related to exchange and interest rates; the harmonization of foreign investment policies; the harmonization of company and intellectual property; and the coordination of indirect taxes. The CSME moreover requires that CARICOM countries establish an external trade policy, and coordinate and negotiate external trade on a joint CARICOM basis.

A common external tariff: the CSME introduces a set tariff rate for external goods to be applied by the CARICOM member-states. It necessitates that the entry point of external goods in the CARICOM market does not affect the price of the product. It also requires external tariffs to be collected only once, at the first point of entry. It further creates provisions for CARICOM member-states to share the customs revenue collected on external goods.

The Revised Treaty, which creates the legal basis for the CSME, does not specifically distinguish between a single market and a single economy. However, as the analysis below will indicate, the provisions of the treaty inadvertently make a distinction between the two. This differentiation, though not explicit, is a vital determinant of the level, speed and status of implementations of the provisions of the CSME. When possible, this distinction will be highlighted throughout the remaining chapter.

4.3 Examination of the CSME

The legal framework of the CSME takes the form of nine protocols which amend the Original Treaty of Chaguaramas into the Revised Treaty of Chaguaramas. The protocols introduce, revise, and update the agreements of the Conference on regional integration in CARICOM. They cover five main areas: the institutional and legal framework of the CSME; market access in CARICOM; a

4.3 Examination of the CSME

macroeconomic framework for trade in CARICOM; sectoral policies in CARICOM, including trade, agriculture, transportation; and dispute settlements in CARICOM. The protocols therefore reflect an entire restructuring, revision, and updating of the Original Treaty. As mentioned earlier, the Grande Anse Agreement addressed limit provisions for economic integration. The protocols, on the other hand serve as evidence of the systematic deepening of regional integration in CARICOM; through a restructure of CARICOM's, they are examined below.

4.3.1 Protocol 1: Organs and Institutions of Governance

This protocol updates the administrative structure; the coordination and implementation procedures; and the consultation and decision-making process in CARICOM.

Administrative structure: the Protocol introduces institutions that redefine the institutional and legal framework of CARICOM. Specifically, Articles 12 and 14 create two councils with the mandate to oversee the single market and the single economy respectively. The Council for Trade and Economic Integration (COTED) is responsible for promoting trade and economic development in the Community, whilst the Council for Finance and Planning (COFAP) is responsible for economic policy co-ordination in addition to the financial and monetary integration of CARICOM. Additional institutions, such as the Competition Commission (CC), introduce a new layer of supranationalism to CARICOM. Subject to Article 174, in respect to cross-border transactions or transactions with cross-border effects, the CC is granted the power to “monitor, investigate, detect, make determinations or take action to inhibit and penalize enterprises whose businesses conduct prejudiced trade or prevents, restricts or distorts competition within the CSME”. The protocol further introduces new competencies to the Community, by creating institutions such as a Committee of Central Bank Governors (CCBG), a Conciliation Commission, a Regional Intellectual Property Rights Office, and a Standards Organization. It effectively expands and extends national competencies to regional institutions in CARICOM.

Coordination and implementation procedures: Article 12 of the protocol provides the COTED²³⁰, with the power to promote and oversee the development and operation of the CSME. Specifically it can “evaluate, promote and establish measures to enhance production, quality control and marketing of industrial and agricultural commodities”. The COTED is also responsible for determining, developing, promoting, and facilitating policies and measures for the accelerated development and marketing of services; the transportation of people, goods, energy and natural resources on a sustainable basis; development of science and technology; preservation of the

230 The COTED consists of ministers directly elected to the national parliaments, or a designated alternate.

4.3 Examination of the CSME

environment, and for sustainable development. Additionally, the COTED collaborates with the Council for Foreign and Community Relations, CFCR to co-ordinate external economic and trade relations policies. In short, the COTED is responsible for the single market aspect of the CSME.

Under Article 14, the COFAP²³¹ has the power to establish, promote and coordinate convergence on a macro-economic policy including a harmonized policy on foreign investment. It can also promote and facilitate fiscal and monetary cooperation, including the establishment of mechanisms for payment arrangements. Pending the establishment of a monetary union, the COFAP moreover recommends measures to achieve and maintain fiscal discipline by the member-states, and arrangements for the free convertibility of currencies. It also promotes the establishment and integration of capital markets in CARICOM. In short, the COFAP is responsible for initiating, establishing, promoting, facilitating, and overseeing the implementation of the single economy.

The COTED and the COFAP are further granted an overarching rule over the member-states. They review and consider applications from CARICOM member-states' regarding hardships arising from implementing the CSME. The COTED/COFAP determine if member-state can implement temporary restrictions, and the period and adequacy of the restrictions.²³² This removes said competences from the member-states and places them in regional institutions in CARICOM.

Article 16 gives the Council for Foreign and Community Relations (COFCOR) the task to “establish measures to co-ordinate the foreign policies of the member-states ... including proposals for joint representation, and seeks to ensure ... the adoption of Community positions on major hemispheric and international issues”. This is an integral function for a cohesive external trade agenda. Article 16 additionally takes the task of coordinating Community policy on international issues away from the Conference and gives it directly to the Community Council, which is independent of the Conference. Although these institutions are made up of directly elected parliamentarians, they possess a wide scope of rule over the member-states. For example, based on the new competencies, it can be inferred that Jamaican Parliamentarians can do more than 'liaise' with their fellow Barbadian counterparts: they can demand checks and balances, and hold their counterparts accountable for the initiation and implementation of the provisions of the Revised Treaty. CARICOM institutions consequently possess the influence to oversee regional markets and the monetary policy coordination of their member-states. They possess overarching regional responsibilities which touch on the sovereignty of the same member-states which created them.

The institutions are afforded the role of 'watchdog' for implementing and, moreover,

231 The COFAP consists of ministers directly elected to the national parliaments, or an alternate.

232 Article 47 of the Revised Treaty.

4.3 Examination of the CSME

upholding the CSME; they possess considerable and decisive influence over the welfare of each CARICOM member-state than was previously acknowledged. Not only does the CSME effectively create a wide scope of freedoms, but it also creates its very own 'watchdog' to oversee the said freedoms.

Consultation and decision-making procedures: the competencies of the institutions in CARICOM are redefined, enlarged, and expanded. For example, the Community Council is given the mandate under Article 7, to establish rules that prohibit nondiscrimination in the scope and application of the Revised Treaty. Additionally, Article 13 gives the Community Council the 'primary responsibility' to strategically plan and coordinate development policies, economic integration, functional co-operation and external relations. Article 32 further affords the Community Council the possibility to "enlarge the body of rights" granted to CARICOM citizens. In doing so, the Community Council can effectively extend and deepen regional integration in CARICOM through extending and deepening the regional commitments of the member-states.

4.3.2 Protocol 2: Provision of Services, Rights of Establishment and Movement of Capital

Whereas the Original Treaty created limited directives with regard to the Rights of Establishment, Services and Movement of Capital, the second Protocol of the Revised Treaty creates an unbiased freedom of movement, under which all CARICOM citizens are treated as nationals of the member-state that they are visiting.

Whereas Article 35 of the Original Treaty announced that "each member-state recognizes that restrictions on the establishment and operation of economic enterprises therein by nationals of other member-states should not be applied"; and further prescribed that "each member-state agrees *as far as practicable* to extend to persons belonging to other member-states preferential treatment over persons belonging to States outside the Common Market with regard to the provision of services".

Article 37 of the Revised Treaty in contrast, makes it clear that CARICOM "member-states shall abolish discriminatory restrictions on the provision of services within the Community in respect of Community nationals". Protocol 2 therefore introduces expansive changes with regard to the rights and freedoms of CARICOM nationals.

Protocol 2 also prescribes actions for the removal of restrictions on banking, insurance and other financial services; the prohibition of new restrictions on movement of capital and currency transactions; the removal of restrictions on movement of capital and currency transactions; the coordination of foreign exchange policies and exchange of information; restrictions to safeguard balance-of-payments; and measures to facilitate establishment, provision of services and movement

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of capital which were not addressed by the Original Treaty.

Regarding policies for 'sectoral development', whereas the Original Treaty limited the coordination of economic policies and development planning to 11 Articles; the Revised Treaty is more distinctive: not only does it dictate a community economic and development policy, but it also offers a sweeping account of each sector, extensively outlining issues and policies for development and comprehensively delineates policies in said sectors. It additionally makes a distinction between industrial policy, trade policy and agricultural policy and establishes common supportive measures for these policies.

4.3.3 Protocol 3: Industrial Policy

Article 51 lists the objective of the Community Industrial Policy as being the “sustainable production of goods and services for the promotion of the Region’s economic and social development”.²³³

Protocol 3 also details the coordination of economic policy in CARICOM. It addresses the implementation of economic measures; sustainable development in sectors such as micro and small enterprises, services and tourism; and the infrastructure for long-term development. The Protocol positions the COTED and COFAP as the CARICOM institutions overseeing the infrastructure of the provisions.

The policy further delineates that information and communication technology (ICT) fall under the purview of the Caribbean Telecoms Union (CTU). The CTU was mandated by CARICOM to “harmonize sector policy and frequency usage and to coordinate regional positions on international issues”.²³⁴ Additionally, the CTU was given the primary mandate and resources to analyze and develop a CARICOM ICT and telecoms policy, including guidelines and directives for harmonization at the member-state level.²³⁵ The CTU, therefore functions as an administrator in “maintaining, revising when necessary and cataloging all legal, regulatory and administrative documents related to the sector”.²³⁶

The industrial policy touches on the economic sovereignty of the member-states, and calls for a community-led approach, focused on regional development instead of developments specific to member-states. It reflects a profound 'deepening' of integration than was initially conceived by the

233 Article 52 furthermore dictates that CARICOM possesses the power over “the development of required institutional, legal, technical, financial, administrative and other support for the establishment or development of micro and small economic enterprises throughout the Community”.

234 Caribbean Regional Negotiating Machinery (2007:24).

235 Caribbean Regional Negotiating Machinery (2007:24).

236 Caribbean Regional Negotiating Machinery (2007:24).

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Grand Anse declaration.

4.3.4 Protocol 4: Trade Policy

This protocol addresses the previously limited provisions for trade policies in the Original Treaty, which included rules of origin, a common external tariff, and the schedule of goods. In the Original Treaty, trade policy was limited to just two articles, namely, 31 and 32. Protocol 4, on the other hand, offers extensive provisions for trade policies. The objectives of the protocol includes the:

full integration of the national markets of all member-states ... into a single unified and open market area ... the widening of the market area of the Community ... the securing of the most favorable terms of trade for Community goods and services exported to third States and groups of States. (Revised Treaty: Article 78)

The protocol further establishes “common instruments, common services and the joint regulation, operation and efficient administration of the internal and external commerce of the CSME”. It requires CARICOM member-states to remove all restrictions on the free movement of goods within CARICOM borders; including measures to abolish delays of CARICOM products within CARICOM borders. The CSME makes specific provisions for CARICOM products which could see intra-CARICOM goods treated more fairly than goods of national origin.

The protocol introduces a harmonized structure of trade in CARICOM, and a CARICOM-regulated operation. Article 78 requires that the member-states establish and apply common negotiating strategies to bargain 'mutually beneficial trade agreements' with third parties.²³⁷ It prohibits member-states from imposing new restrictions on imports and exports of products of Community origin. Not only does it effectively bind member-states to its provisions, but it precludes them from creating any new regulations that would alter or violate existing provisions, effectively requiring a high level of commitment from the member-states.

It furthermore creates institutional legitimacy in CARICOM, highlighting the role of the COTED in coordinating the trade policy of CARICOM, and giving it the sole authority to amend or suspend any of the common external Tariffs agreed on in the CSME. The protocol is therefore an extensive reworking of the previous two articles of the Original Treaty: it addresses and creates provisions for the removal of national barriers to regional trade, and introduces concise delineations

²³⁷ These conditions were not explicit in the Grande Anse Declaration. They therefore reveal an increase in the initial commitment to regional integration.

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for the total harmonization of national markets.

4.3.5 Protocol 5: Agricultural Policy

The Original Treaty proposed a “scheme for ... promoting complementarity in national agricultural programs and providing special opportunities for the development of agriculture in CARICOM”.²³⁸ Protocol 5, on the other hand, introduces extensive provisions for an agricultural policy in CARICOM. The main goal of the Agricultural Policy is to alleviate poverty through improving income and employment opportunities in the sector. Additionally, the policy calls for “increased production and diversification of processed agricultural products”. In achieving these goals, Article 57 of the Revised Treaty states that CARICOM shall oversee “the establishment of effective agricultural financing systems, including insurance, bearing in mind the special needs of artisanal fishers, small farmers, foresters and agro-processors”. CARICOM further possesses the power to establish “linkages among the member-states with complementary natural resources, industries, agricultural skills and technical abilities”. Likewise, Article 57 demands the member-states to develop “appropriate policies for the use of land and marine space with a view to increased agricultural production”.

Additional highlights of the policy are the development of a 'common' agricultural policy for the member-states; the emphasis on creating and developing a regional infrastructure to manage the common agricultural policy; the creation of infrastructure to enable the implementation of the common policy; and the creation and management of marketing strategies and resources complimentary to the policy.

In creating a regional policy for agriculture, Protocol 5 removes national competencies in the sector and places them in a regional authority. Furthermore, the Protocol creates the infrastructure necessary for the policy to be implemented, by harmonizing the agricultural policies of the member-states in a regional, superimposed system.

4.3.6 Protocol 6: Disadvantaged Countries, Regions, and Sectors

The Original Treaty classified CARICOM countries with the terms 'More Developed' and 'Less Developed'. Protocol 6 changes this classification and creates an instrument aimed at promoting development in particular regions within CARICOM, advancement in all member-states, and improvement in certain specific sectors which could be disadvantaged by the CSME. In other

²³⁸ Original Treaty, Article 49. The goals of this scheme included the “development of a regional plan for the integration of agricultural development in the Common Market ... and the improvement of the efficiency of agricultural production in order to increase the supply of agricultural products”.

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words, Protocol 6 serves as a fail-safe mechanism for highlighted areas in CARICOM that could be placed at a disadvantage by the implementation of the CSME.

4.3.7 Protocol 7: Transportation Policy

This protocol introduces further legal mechanisms that are intended to complement the free movement of goods and people. The aspirations of the Grand Anse Declaration did not address any substantial changes to the transport sector in CARICOM. In the initial agreement, a consensus was achieved only for the removal of barriers to trade and free movement. The transport sector was later identified as a sphere that was also in need of revision, to uphold the standards of free movement as idealized by the Grand Anse Declaration. The protocol therefore addresses an unforeseen sector in CARICOM, and revises and restructures the sector to create a new regional infrastructure. Protocol 7 thus reveals an extensive spill-over of regional integration in CARICOM.

The idea of unifying infrastructure within community members in order to ensure uninterrupted and sustained 'free' movement is proposed in this protocol. Unlike other unions which have to contend with harmonizing infrastructures such as railroad, in CARICOM, due to connections mainly by water and air, the emphasis of a common transportation policy is on the harmonization of safety standards and the creation of competitive services.²³⁹

The policy requires the protection of “marine environment from the effects of vessel source pollution and in combating the effects of such pollution”.

Protocol 7 also highlights the COTED's overarching role in overseeing the implementation of trade policy. In this respect, the COTED is conferred the power to “promote co-operation among operators of air transport services of the member-states, particularly in purchasing equipment and supplies, the management of inventories, interline and inter-modal operations, code sharing, reservations, insurance, leasing and similar operations”.²⁴⁰ Furthermore, Article 135 of the protocol avails the COTED, the capacity to coordinate the transport policy and to implement “uniform regulations and procedures ... for the development of an efficient, multi-modal transport system, particularly with respect to operations, safety, licensing and certification”.

Outside of freedom of establishment and operations, CARICOM member-states are forced to acknowledge licensing and certifications from each other. They are also compelled to harmonize and adhere to regional safety standards, and are accountable to a regional authority rather than a national authority. By harmonizing licensing in the region, CARICOM dictates the level and

²³⁹ Article 134 of the Revised Treaty delineates that the policy's aim is to provide “adequate, safe and internationally competitive transport services for the development and consolidation of the CSME”.

²⁴⁰ Article 138 Revised Treaty of Chaguaramas.

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standards of the licensees, and binds the member-states to these levels and standards. Moreover, it sets environmental standards,²⁴¹ and empowers a regional body and ministers from other CARICOM countries to regulate the transport sector of the member-states. Protocol 7 therefore adds to the unintended deepening of regional integration in CARICOM. It touches on deep commitments to harmonizing and establishing a regional transport policy, and it creates soft forms of supranationalism in CARICOM; and reveals the extent to which the CARICOM member-states have committed to revising, liberalizing and harmonizing their markets.

4.3.8 Protocol 8: Competition Policy

Whereas Article 30 of the Original Treaty barely touches on restrictive business practices, Protocol 8 outlines an expansive competition policy for the entire Community. The policy is divided into two parts: part one focuses on rules of competition and anti-competitive practices, and part two focuses on consumer protection.

Part One: Rules of competition: Article 169 of the Revised Treaty notes that “the goal of the Community Competition Policy shall be to ensure that the benefits expected from the establishment of the CSME are not frustrated by anti-competitive business conduct”. The protocol additionally underscores “the prohibition of anti-competitive business conduct which prevents, restricts or distorts competition or which constitutes the abuse of a dominant position in the market (and) ... the promotion of consumer welfare and protection of consumer interests”.

Not only does Protocol 8 require member-states to notify the COTED of any existing laws that are inconsistent with the competition policy within 24 months of signing the Revised Treaty; but they are also obligated to abandon said legislations. The COTED then oversees a program to repeal the aforementioned legislation and inconsistencies.

The competition policy further dictates through Article 170 that “every member-state shall establish and maintain a national competition authority for the purpose of facilitating the implementation of the rules of competition”. This authority is required by the competition policy under Article 170 to fully co-operate with the Competition Commission (CC) to achieve national compliance to the rules of competition; investigate any allegations of anti-competitive business conduct referred to it by the Commission or another member-state; co-operate and exchange information with other national competition authorities to detect and prevent any anti-competitive business conduct.

²⁴¹ Environmental standards were also not conceived in the Grand Anse Declaration, and therefore reflect an increase in commitments and spill-over.

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The CC is one of the few CARICOM institutions with a role at both the member-state and regional levels. Under Article 173, it is granted the mandate to apply rules of competition at the regional level with regards to anti-competitive cross-border business conduct; promote and protect rules of competition at both the national and regional levels; co-ordinate the implementation of the Community Competition Policy by the member-state; and perform any other function bestowed by other organs and bodies of CARICOM.

Article 173 also superimposes the CC on the member-states. It grants the CC a form of supremacy over private and public liability companies in member-states, and allows it to monitor anti-competitive practices of companies, and state-run enterprises. The CC can review the progress of the member-states in implementing the legal and institutional framework of the competition policy. Article 173 also places it in a position to “promote the establishment of institutions and the development and implementation of harmonized competition laws and practices by the member-states to achieve uniformity in the administration of applicable rules”.

Under cross-border functions, the CC additionally possesses the ability to investigate and arbitrate cross-border disputes in the Community. Its arbitration powers endow the commission the possibility:

in respect of cross-border transactions or transactions with cross-border effects, (to) monitor, investigate, detect, make determinations or take action to inhibit and penalize enterprises whose business conduct prejudices trade or prevents, restricts or distorts competition within the CSME. (Revised Treaty of Chaguaramas: Article 174)

It is further given the task to “make determinations regarding the compatibility of business conduct with the rules of competition and other related provisions of the Treaty”. The CC is also granted the power to “remedy or penalize anti-competitive business conduct (including ordering) the termination or nullification as the case may require, of agreements, conduct, activities or decisions prohibited by Article 170”. The CC can also direct and issue 'cease and desist' orders relating to anti-competitive business conduct by both public and private enterprises. Furthermore, the CC possesses the possibility to:

take such steps as are necessary to overcome the effects of abuse of (any) dominant position (in CARICOM) or any other business conduct inconsistent with the principles

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of fair competition, (including ordering the) payment of compensation to persons affected; (and imposing) fines for breaches of the rules of competition. (Revised Treaty of Chaguaramas:Article 174)

Additional legal provisions of Protocol 8 include details on how the CC can determine anti-competitive business conduct, including determining 'dominant position' and abuse of 'dominant position'. The Protocol therefore places the CC in an advisory role over the member-states, where in the case of uncertainty in prohibited business conduct, the member-states (under Article 174) are given the possibility to “apply to the CC for a ruling on the matter”.

The CC therefore acts without prejudice, and possesses some form of supranationality and sovereignty over CARICOM member-states.

*Part Two: Consumer protection*²⁴²: Article 169 of the Revised Treaty introduces the second function of Protocol 8, which is “the promotion of consumer welfare and protection of consumer interests”. Under consumer protection, the Revised Treaty binds the Community member-states to promote the interests of the CARICOM consumers. Appropriate measures highlighted by Article 184 include the requirements to:

- ensure that goods supplied and services provided in the CSME satisfy the regulatory standards and licensing codes set out in the Revised Treaty;
- provide consumers with expansive, informed and low cost goods and services through promoting fair and effective competition;
- create avenues that provide consumers with adequate information to enable the making of informed choices;
- prohibit discrimination against CARICOM goods and services.

The protocol further calls for the harmonization of any legislation in the member-states relating to aspects of trade that would impinge on consumer rights. These include unfair terms in contracts; trading practices for the supply of goods or services to consumers; removing the production and supply of any harmful or defective goods in the Community; and harmonized labeling and standards for goods. The Protocol empowers the CARICOM Regional Organization for Standards and Quality (CROSQ) to promote the process of standardization and quality control of goods in CARICOM. It also supports CARICOM member-states in harmonizing their infrastructure

²⁴² These stipulations were not previously envisioned under the Grand Anse Declaration. However they were included in order for the provisions of the previous Protocols to function. As such, the regulations of Protocol directly reveal some form of functional spill-over.

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through the development of certification and accreditation, and other standards and testing.

The Protocol therefore offers extensive protection and possibilities for consumer recourse in CARICOM, which were neither present in the Original treaty nor previously envisioned in the Grande Anse Declaration. It offers a monitoring mechanism for both internal and external goods and services in CARICOM member-states; creates a liberal regional platform for goods and services in CARICOM; dictates standards and practices at the local and regional level; and protect CARICOM consumers against anti-competitive business conduct.

4.3.9 Protocol 9: Dispute Settlement

This protocol offers provisions for settling disputes concerning the interpretation and application of the Revised Treaty. This includes any allegations of inconsistency, injury and/or prejudice by a member-state or CARICOM institutions against the provisions of the Revised Treaty, and specifically the CSME. The avenues offered for dispute settlement under Protocol 9 include the 'good offices' of a third party independent of the dispute (such as the Secretary General of CARICOM), mediation, consultation, conciliation, arbitration and adjudication. Protocol 9 offers a credible and authoritative means of settling disputes arising from the CSME. It further subscribes and binds member-states to the authority of the CCJ²⁴³. This ensures that grievances related to the CSME are taken into consideration and not dismissed by the party in question; and subjugates the individual member-states to the power of a regional authority.²⁴⁴

The CSME relies on both member-state governments and institutions to address cross border enforcement. Safety and environmental regulations and health standards do not rely on cross-border effect to be relevant for CARICOM nationals.²⁴⁵ Rather member-state governments are bound to implement regional standards, regardless of cross border effect.

4.4 Discussion

4.4.1 Limitations in the Revised Treaty

The above examination reveals that the 9 Protocols which define the Revised Treaty focus

243 The CCJ is the sole interpreter of the Revised Treaty. In binding member-states to the authority of the CCJ, when one member-state brings a proceeding before the CCJ against another member-state, the latter is compelled to appear before the court and can not dismiss or disregard the proceedings.

244 Again, this provision was not idealized by the Grand Anse Declaration, however, it was deemed as necessary in order for the above regulations to be in full effect.

245 Although the CSME addresses regional provisions on safety standards, it does not explicitly require a member-state national to be another member-state to demand said rights.

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primarily on a single market. They create extensive provisions for the single market, and limited and vague provisions for the single economy. Although there are notable acknowledgments of the single economy; there is no specific protocol solely and satisfactorily addressing it.

Extensive analysis of the Revised Treaty reveals provisions for foreign exchange policies and balance of payments.

Foreign exchange policy: Article 42 of the Revised Treaty delineates limited provisions regarding regional structures and competencies related to foreign exchange policies. The first paragraph states that “the member-states shall take such measures as are necessary to coordinate their foreign exchange policies in respect of the movement of capital between them and third States”. This article works contrary to the harmonizing principles²⁴⁶ of those addressing the single market: it accredits the individual member-states with sole power to devise foreign exchange policies, and therefore precludes a regional harmonization of national foreign exchange policies. Article 42 only obliges member-states to “keep the competent authorities in other member-states informed of significant unusual movements of capital within their knowledge to and from third states”. This also precludes any authoritative regional action regarding capital flow.

Notably, the Revised Treaty grants COFAP the sovereignty to “establish procedures for periodic consultations including, where possible and desirable, prior consultations with the objective of making recommendations to the member-states concerned for the removal of the restrictions”.

Balance of payments: regional authorities are only given the power under Article 37 of the Revised Treaty to “assess the balance-of-payments situation of member-states”; and prescribe “alternative corrective measures”. The article, obligates member-states to consult with regional authorities regarding implementing balance of payment restrictions, and dictates that these “consultations shall address the compliance of any restrictions ... and, in particular, the progressive phase-out of restrictions”. It also requires that all findings of the Committee of Central Bank Governors “relating to foreign exchange, monetary reserves and balance-of-payments, shall be accepted and conclusions shall be based on the assessment by the Committee of the balance-of-payments and the external financial situation of the member-states concerned”.

Article 43 of the Revised Treaty further limits the competences of regional authorities, and expands those of the member-states regarding 'Balance of Payments'. Article 43 outlines that “in the event of serious balance-of-payments and external financial difficulties or threat thereof, a member-

²⁴⁶ Whereas the single market liberalizes the freedom of movement etc, and creates blanket standards, this article relies on the member-state to implement regulations that they see fit.

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state may, in consistence with its international obligations... adopt or maintain restrictions to address such difficulties”. In doing so, the article provides a 'fail safe' option for member-states to avert any regional regulation and adopt its own national regulations. The Article goes further to prescribe that these “may include quantitative restrictions on imports, restrictions on the right of establishment, restrictions on the right to provide services, restrictions on the right to move capital or on payments and transfers for transactions connected therewith”.

Compared with those of the single market, the above overview reveal limited provisions and obligations of the member-states regarding the single economy. They also reveal that the provisions at times, endorse the competencies of the member-states, instead of creating regional regulations.

Inarticulate and insufficient definition of Single Economy: the provisions for the single economy are intertwined with those for the single market, in the nine protocols. Except for the creation of the COTED and the COFAP there is no distinction between the provisions for the single market and those for the single economy. As presented above, the protocols represent the finalized commitments for both the single market and the single economy. Compared with the single market, there is a lack of specific provisions for the single economy. Four factors, which are essential for a single economy are overlooked and not mentioned in the Revised Treaty. The Revised Treaty does not make reference to the creation of a single currency in CARICOM; introduce commitments for a Government Budget Deficit or Debt to GDP ratio; provide *expansive* regulations for exchange rates or long term interest rates; nor create a central bank to coordinate, and oversee and govern the single economy. Furthermore, additional factors that will hamper the implementation of the single economy include:

Lack of harmonization procedures: as proposed earlier, the provisions for the single economy as with the single market are limited; their descriptions are not precise as to what, when and how member-states should harmonize. Unlike the single market aspect of the CSME, the single economy does not have delineated provisions for the harmonization of policies.

The Revised Treaty sets clear provisions, such as the free movement of people across CARICOM borders, which member-states are compelled to implement. However, it does not set such clear provisions for fiscal and/or monetary policy regulations. For example, it does not delineate whether CARICOM countries should use a fixed or floating exchange rate. Additionally, it creates clear competencies for institutions to oversee and help with the implementation of the single market. It does not do the same for the single economy. For example, CARICOM created the Competition Commission to investigate unfair competition practices of firms, and the COTED to

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oversee trade and economic development. It does not, however, provide or delineate the creation of a CARICOM central bank that would oversee monetary issues. Additionally it does not delineate how or what form/shape a CARICOM monetary and fiscal policy should take.

4.4.2 Operation of the CSME

The Grand Anse Declaration proclaimed the urgency of implementing the CSME in the first paragraph of the Declaration, the heads of government proclaimed that “we are determined to work towards the establishment, *in the shortest possible time*, of a single market and economy for the Caribbean Community”. The implementation of the provisions in the CSME was set to be completed by 1993.

The ratification of the Revised Treaty legally binds CARICOM member-states to its provisions; especially because the ratification included the signing of a 'Protocol on the Provisional Application of the Revised Treaty of Chaguaramas'. The Protocol outlines that CARICOM member-states acknowledge that “the Revised Treaty should be signed and provisionally applied before 31 December 2001”. Furthermore, Article 1 of the Protocol establishes that the CARICOM member-states “have agreed ... to apply provisionally the Revised Treaty of Chaguaramas”. Therefore, the implementation of the provisions of the single market can be viewed as a step/formality by member-states which reconciles national laws with the provisions of the Revised Treaty. Consequently, even if national laws are not harmonized to reflect the provisions of the Revised Treaty, in signing the above Protocol, the CARICOM member-states have agreed to the imposition of regional obligations over their national authorities. The provisional application of the Revised Treaty therefore implies that the member-states are essentially bound to the Revised Treaty regardless of its implementation;²⁴⁷ accordingly, harmonization of national laws and the implementation of the provisions of the CSME serve a compliance purpose. Therefore, this section further examines compliance with the provisions of the Revised Treaty through analyzing the implementation of the CSME.²⁴⁸

247 Therefore, an action against the regulations of the Revised Treaty can be defined as a breach of the Revised Treaty.

248 In calling for an implementation of the CSME by 1993, the Grand Anse Declaration neither made provisions for, nor created a legal framework for the implementation of the CSME. Consequently, not only were the deadlines for implementing the CSME pushed back, but it also became necessary to draft a legal framework to incorporate the CSME in national laws, and to ratify and implement said framework. The negotiations of the Protocols lasted from 1992 until 1998, which was beyond the initial agreed deadline for implementing the CSME in 1993, as per the Grande Anse Declaration. During the negotiations, the Conference extended the deadline for implementing the Single Market to 1999. However, this deadline was also pushed back and another deadline was set for 31 December 2005. The deadline for implementing the single economy was also revised to 2015.

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4.4.3 Implementation of the Single Market

The goals of the single market were implemented in 'phases' in CARICOM. For example, in 1995 the Conference decided that free movement in CARICOM would be granted to CARICOM members who were university graduates, with effect from January 1996. In July 1996, the Conference expanded the categories of free movement for work purposes to include Artistes, Media Workers, Musicians and Sports Persons. This was made possible through the creation of a Certificate of Recognition of CARICOM Skills Qualification, which could be obtained from a specified ministry in each CARICOM member country. CARICOM then liberalized the movement of non-wage earners, either as service providers and/or to establish businesses which came into effect in 2002.²⁴⁹ Additionally, CARICOM set the target for completion of implementing the free movement of all CARICOM member citizens by December 2005. Essentially, the aim of CARICOM was to strategically liberalize sectors and harmonize regulations affecting cross-border activities by the end of 2005. This was seen as a feasible task as the then-Secretary General of CARICOM, Edwin Carrington, reported that “there was no question of an extension of time for States to become CSME ready by the end of the year”.²⁵⁰ He also added that “everyday we delay getting there, we enhance the danger. We need to get there as quickly as possible so as to get ourselves ready to deal with that avalanche of challenge that is coming, and believe me, its coming”.²⁵¹

In April 2005, Girvan published an article entitled 'Whither the CMSE', in which he asserted that:

approximately one-half of the actions required to establish the CSME have been completed ... The establishment of the legal and institutional infrastructure is reasonably far advanced. The notable exceptions to this are that the majority of the member-states have yet to enact the Revised Treaty into domestic law; and the majority have yet to establish national competition authorities. (Girvan 2005:7)

However, as pointed out, the CSME derives its legal framework from the Revised Treaty, which up until 2005 had been signed by 13 of the 15 CARICOM members. Also, as mentioned earlier, even when provisions of the Revised Treaty are not enacted in national laws, the directions of the Revised Treaty are nonetheless binding within CARICOM member-states.

249 This also included managerial, supervisory and technical staff, in addition to spouses and immediate family. CARICOM set up a program for the removal of restrictions on this category,

250 CARICOM Press Release 138/2005.

251 Ibid.

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Girvan (2005) based his analysis on three main areas: legal and institutional infrastructure; single market provisions; and single economy provisions. He noted that for legal infrastructure, 15 elements with 168 actions needed to be implemented, and CARICOM countries had completed 81% or 136 of these elements. Under the single market, 29 elements with 336 actions were necessary, of which CARICOM countries had completed 64%, or 215 actions, including the transfer of social security benefits (91%) and facilitation of travel (25%).

In July 2005, CARICOM issued a press release in which it asserted that the CSME deadline would not be changed to accommodate any of the CARICOM member-states. It suggested that “Heads of Government of the Caribbean Community ... reaffirmed that the CARICOM Single Market (CSM) and the Regional Development Fund (RDF) will be in place by December 2005”. CARICOM further emphasized the heads of states should be adamant about meeting the deadline, “proceed to put in place all of the arrangements across the Region to create a Single Market by the end of this year (2005), subject also to putting in place a special affirmative economic program for the OECS countries, Belize and Guyana”.²⁵²

Ultimately, CARICOM member-states achieved the 2005 deadline and the CSME was ratified by CARICOM member-states to be implemented on 1 January 2006.

In 2007, CARICOM initiated the CARICOM Trade and Competitive Project, the aim of which was to “provide more and better opportunities for the people of the CARICOM region to participate in and benefit from the introduction of the CSME”.²⁵³ The project featured four components:

- harmonization and standardization of administrative practices and procedures;
- enhancing the effective functioning of services and labor markets through standardized licensing & certification and mutual recognition of licenses & certificates;
- widening the scope of participation by stakeholders & beneficiaries in the process of decision-making, implementation and operation of the single market;
- the creation of national facilities and institutions in each CARICOM country for overseeing the project.

The project assisted national governments in reforming administrative rules, systems, and procedures to comply with the provisions of the CSME. It also offered information to interested CARICOM nationals about the provisions of the CSME, and provided a regional administration for

252 Press Release 148/2005.

253 CSME unit website of CARICOM. http://csmeonline.org/website/index.php?view=article&id=159:ctcp&option=com_content Website last visited June 2015.

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regulating environmental and gender related objectives of the CSME.

In January 2012, for example, CARICOM issued a press release stating that the CSME was operating at an approximately 64% level of overall compliance. It further stated that “the core regimes operate through transactions between governments and CARICOM businesses and persons; ... legal, institutional and administrative measures form part of the foundation elements from which compliance is determined and measured”.²⁵⁴ CARICOM additionally offered the overall 'compliance statistics'²⁵⁵ for the member-states on the five core regimes of the CSME. These were the:

- free Movement of Skills under which CARICOM members harmonized approximately 66% of their laws to meet the requirements of the CSME;
- free Movement of Goods harmonized to approximately 80%;
- free Movement of Services harmonized to approximately 37%;
- free Movement of Capital harmonized to approximately 72%;
- right of Establishment harmonized to approximately 64%.

Additionally, an examination of the CCJ's original jurisdiction rulings²⁵⁶ highlights that, when CARICOM countries act against and breach provisions in the Revised Treaty, they are held accountable by CARICOM institutions. They reiterate that even if CARICOM countries do not harmonize their laws and regulations with those of the provisions of CARICOM/the Revised Treaty, it does not necessarily mean that the freedoms granted by the CSME are invalid for their countries.

Dispute cases brought before the CCJ reveal the overarching jurisdiction of both CARICOM institutions and the provisions of the CSME.

For example, the dispute between a Trinidad cement company and Guyana²⁵⁷ reviewed in the upcoming chapter, which concerns a CARICOM country breaching the provisions of the CET, reveals that the CCJ ruled against the actions of the country and required that the country repeal its regulations and implement the provisions of the Revised Treaty. In brief, Guyana suspended CARICOM regulated CETs on cement, and imported cement from third countries below the CARICOM required percentage. The Case was brought before the CCJ, and Guyana was compelled by the CCJ judgment, against its own reservations and protests to reinstate the CET on all cement products under the stipulations of the CET.

254 CARICOM Press Release no. 22/2012.

255 CARICOM Press Release no. 22/2012.

256 See Chapter 5 for an extensive analysis of the CCJ's judgments.

257 *TLC v. Guyana*, (2009) CCJ 5 [OJ].

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Moreover, the case, *Myrie v Barbados* (2013) CCJ [OJ]²⁵⁸ reveals that when countries breach provisions of the Revised Treaty for Freedom of Movement for CARICOM nationals, not only is this country directed by CARICOM to harmonize its regulations, but it is additionally compelled to award punitive damages.

Furthermore, additional disputes independent of cross border effects such as the case *Trinidad Cement v The Competition Commission*²⁵⁹ [2012] CCJ 4 (OJ) reveals that CARICOM institutions, specifically the Commission, possess the power to investigate unfair competition practices of companies operating in CARICOM, even without the knowledge and against the protest of these companies.

4.4.4 Implementation of the Single Economy

As stated above, the implementation of the CARICOM single economy was set for 2015. However, in recalling the overview of implementation of the single market, it was observed that the bulk of the implementation was done 'last minute'. Therefore, at this time²⁶⁰ it would be premature to entirely assess the extent to which the provisions of the single economy have been completed. This is especially notable, since CARICOM itself, in a press release in 2010, noted that it was necessary to “re-evaluate the deadline for implementation of certain aspects of the CARICOM Single Economy ... of certain things and to identify more reasonable targets for that implementation”. CARICOM advanced that:

economic circumstances had an impact on the ability of member-states to implement aspects of the Single Economy ... The domestic challenges spurred by the global economic and financial downturn meant that CARICOM member-states could not focus on the policy initiatives that would have seen progress on the Single Economy ... (especially given the) limited human resources in (its) public sector. (CARICOM Press release 105/2010)

In 2011, the then-Prime Minister of Barbados, who was one of those responsible for the CARICOM CSME, announced that CARICOM “had come to accept that the existing timetable for achieving the Single Economy and the remaining components of the Single Market was not achievable”.²⁶¹ He

258 See case review and examination in the upcoming Chapter 5.

259 See case review and analysis of CCJ case: *Trinidad Cement v The Competition Commission* (2012) CCJ 4 [OJ] Chapter 5

260 June 2014.

261 CARICOM Press Release 246/2011 Paragraph 1.

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stated that this decision should not be interpreted to say that CARICOM had 'abandoned' the 'ultimate goal of the CSME'; however, "in light of the existing turbulent social and economic environment, a new deadline would be realistic".²⁶² It was further advanced that a single economy would remain a 'work in progress', and that:

while recent negative events have revealed the high degree of financial interdependence that already exists in our region, we cannot pretend that our efforts at macroeconomic convergence have reached the point that would allow us to create and, more importantly, to sustain a Single Economy. (CARICOM Press Release 246/2011:1)

The theory of Neofunctionalism requires that clearly delineated regional structures, competencies, and provisions are in place in order for the process of regional integration to progress. In comparing the adaptation and implementation of the single market with that of the single economy, Neofunctionalism's 'hypothesis of natural entropy' becomes relevant. As mentioned earlier, this hypothesis proposes that "all integration processes will tend toward a state of rest or stagnation unless disturbed by exceptional (i.e. unintended) endogenous outcomes or exogenous conditions not present in the original convergence or ... institutions themselves".²⁶³ Reactions to exogenous circumstances can take the form of the deepening of the level and scope of integration as seen in the single market, or encapsulation as seen in the case of single economy. In the latter, the theory of Neofunctionalism proposes that the limited scope and level of integration has a diminutive impact on changes at both the national and regional levels; consequently the process of integration does not reflect any spill-over, spill-around and spill-about. Instead, as can be observed with the single economy, the process of regional integration comes to a 'stand-still'.

Theory of Neofunctionalism, which also proposes that early in the process, i.e. before the creation/implementation of regional provisions, actors may opt to stall the integration process due to weak symbolic engagement. According to the theory of Neofunctionalism, given the existing variables it is possible and plausible that the single economy in CARICOM will stall.

The theory of Neofunctionalism requires member-states to introduce new commitments addressing the single economy, such as a 'Single Economy Act'. In drafting and signing such an act, the member-states would be bound to its provisions and also to the liberalization and harmonization of their individual economies.

262 CARICOM Press Release 246/2011 Paragraph 3.

263 Schmitter (2002:21).

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4.4.5 Factors Affecting the Process of Integration in CARICOM

The above review of the provisions and implementation of the CSME reveals factors affecting the level of integration in various areas of CARICOM. It also reveals consistent tendencies in the process of regional integration with regards to CARICOM. These are:

Correlation between Level and Scope: the provisions of the single market reveal a concerted effort by CARICOM countries at deepening integration, especially with the creation of new institutions with overarching power over the CARICOM member-states. For example, the single market provides the possibility for CARICOM nationals to travel and establish their businesses in other CARICOM countries possessing the rights and privileges of the citizens of the country that they travel to. This form of 'open regionalism' calls for the harmonization of national laws and the implementation of the provisions of the Revised Treaties. Additionally, in signing a provisional application of the Revised Treaty, in the event that certain parts of these rights are not harmonized under national laws, they are still binding on member-states, and the member-states are in effect in breach of the provisions of the CSME. This is not the case for the single economy, because, not only are there no clear provisions or limited delineations for the single economy, but there is also no clear institutional structure.

Moreover, the theory of Neofunctionalism holds that an increase in the scope of integration will positively affect an increase in the level of integration. This hypothesis was also observed in the review above. Once provisions were made for integration and institutions were created with regional mandates, there was also an increase in the level of regional integration. Regardless of the actions of member-states, the process of regional integration in CARICOM deepened. For example, cases above point to the 'forced' compliance of member-states to the provisions of the CSME, and the guaranteed liberalization of the economies of CARICOM member-states.

When a legal basis and institutional provisions are created, the implementation of these provisions can then be initiated and achieved to a certain level. This can be very clearly observed in the creation of the Grand Anse Declaration. There was no implementation of any form of the CSME until a legal basis was added to the Original Treaty in the form of the '9 Protocols' that defined and deepened the scope, thereby increasing the level of institutionalization and regional integration.

Based on the theory of Neofunctionalism, it can be argued, that a) the lack of a legal basis and b) the lack of regional competencies and regional institutions, are two of the main reasons why there has been limited progress in implementing a single economy.

For the single market to have been implemented it was necessary to create a legal basis. The

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same is true for the single economy. The single economy has not been fully or even partially implemented. For the single economy to be implemented, like the single market, it is also essential to create legal provisions and a legal basis for its implementation. For example, it is crucial to create provisions for the harmonization of monetary policies. These can take the form of a 'Single Economy Act'.

Spill-over effects: as highlighted in Chapter 3, Neofunctionalism proposes that when the members of an integration scheme are unsatisfied with the achievement of the goals previously agreed upon, they will try to resolve their dissatisfaction by²⁶⁴ devising alternative implementation strategies that were not initially in agreement, for example, by revising an original treaty and engaging in collective action in policy sectors not contemplated in the original agreement. They could also resort to cooperation with additional/alternative sectors, thereby expanding the scope of their mutual commitment. Additionally, they could intensify their commitment to the original sectors, thereby deepening both level and scope of integration.

The initial conceptual focus of economic integration as envisioned under the Grand Anse Declaration spills over to provisions for institution building and political integration. However, since the Grand Anse Declaration did not compel any binding force on the CARICOM member-states, it also did not create a legal framework for the CSME. It did not delineate specific provisions to which the member-states should subscribe. CARICOM was therefore obliged to take further steps to deepen regional integration to implement the initial conceptions of the Grand Anse Declaration, and so fulfilled a hypothesis of Neofunctionalism by seeking out alternative means:

- the protocols of the CSME created new regional institutions in CARICOM to oversee the implementation/correct breaches of the CSME. These institutions possess the power to coerce member-states to comply with the provisions of CSME. In this respect, they possess a natural super-arching role over member-states and reveal a form of supranationality;
- as institutions were created, they expanded their roles and created new competencies for themselves. CARICOM regional bodies became a decisive part of the process of regional integration. Before the Revised Treaty, two main organs in CARICOM, the Conference and the Council, possessed exclusive power and decision-making ability over the direction and pace of integration. The Revised Treaty created new regional bodies, which became decisive in the process of integration. These bodies in turn created new modes of regulation that additionally impact the speed and direction of integration. Although limited, their roles are

264 Schmitter (1969:162).

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still essential to the process and as such, they express new traces and soft forms of regional governance in CARICOM;

- member-states acted according to the utilitarian principles, with regards to the implementation of regional provisions and complying with these provisions. For example, suspending the CETs against the provision of the Revised Treaty was a clear utilitarian action;
- member-states made collective actions that were not previously in existence. The new protocols, as presented above, are extensive agreements that change the scope of the entire arrangement in CARICOM. The harmonization of trade in CARICOM led to the harmonization of sectors that were not initially addressed by the Grand Anse Declaration. The initial agreement of the Grand Anse Declaration expanded to further areas of economic and monetary integration and other sectors such as telecommunications, safety standards and quality control;
- once borders/impediments to integration were removed, other hindrances became apparent/develop and new regulations are created to address these shortcomings. The depletion of member-states borders, the abstract possibility for regional trade, services and the free movement of people become feasible. Obvious and general impediments to cross-border trade is the harmonization of national laws, especially those related to transportation; health, safety standards, and quality control; and ICT. The review above revealed that these two sectors also became two (unplanned) sectors which saw an entire revision, restructure and liberalization due to the CSME;
- new rules and regulations are imposed on member-states, further deepening regional integration. For example, the member-states were obliged to deepen their integration in relation to harmonizing standards such as the quality and packaging of goods, and other regional health and safety standards prescribed by the Revised Treaty. National and regional companies are bound to the regional regulations of CARICOM which reflect a spill-over from other sectors;
- harmonizing the movement of people and services across the borders of CARICOM created the necessity for efficient communication services in and among member-states. Roaming services and cheap data plans became necessities for business solutions. Telecommunication enable an increase or deepening of interconnectedness among CARICOM countries. Thus, the entire sector was revamped and liberalized to accommodate the liberalization of trade in

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CARICOM.

The Externalization Hypothesis: in chapter 2, it was advanced that integration in CARICOM is propelled by external factors. It was argued that from colonization to post colonization, integration in CARICOM has been a reaction to external factors, and motivated partly by external events. The above overview reveals that the initiation of the CSME through the Grand Anse Declaration is indeed proof of this argument.

The single market aspect of the CSME also underscored this hypothesis. The single market was seen not only as a means of intra-CARICOM integration, but also as a platform for negotiating with the rest of the world. One aim of the Single Market as proposed in the Protocols which create the legal basis for the CSME was to interact with 'third parties'.

According to Neofunctionalism's Externalization Hypothesis, once there is agreement on a policy or set of policies, actors will be compelled, despite initial goals, "to adopt common policies vis-à-vis nonparticipant third policies. Members will be forced to hammer out a collective external position,"²⁶⁵ and in doing so, are likely to increasingly rely on the new central institutions to achieve their goals. This is particularly visible with CARICOM and the CSME. An increase in the depth of integration in CARICOM, especially due to the competencies and provisions of treaties, gave rise to a common and unified increase in the reaction to external events and factors. Integration in CARICOM is partly driven by external motives, and creates a further interplay between regionalism and other external factors.

This common reaction to exogenous factors is based on a fixed reality of Neofunctionalism that when these factors become salient, regional integration is utilized as a means to address them. For example, globalization and attempts by external partners/contemporaries to integrate are perceived as a common threat by the individual member-states in CARICOM, who then pool resources to answer this threat through internal integration.

Non-State Actors: the examination highlighted the capitol role of non-state actors in the process of regional integration in CARICOM. Although the Conference initiated the first steps at deepening integration through the Grande Anse Declaration, the analysis identified the role of institutions and political élite in deepening integration though the CSME. The scope of competencies of institutions was extended under the Revised Treaty, which actively affected the implementation of the CSME. Member-states were bound to their commitments, and regional institutions promoted and oversaw the implementation process.

265 Schmitter (1969:165).

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Necessity of Institutions: the theory of Neofunctionalism proposes that a large part of the implementation process is due to the functions of institutions, which are necessary factors and driving forces, propelling regional integration.

Newly established institutions were given overarching power and responsibility over member-states. The competencies of the CARICOM institutions (such as the Competition Commission, the COTED, the Regional Intellectual Property Rights Office, and Regional Organizations for Standards and Quality) point to their vital role in the process of implementation in CARICOM.

The application of the theory of Neofunctionalism to CARICOM reveals consistent tendencies that should be taken into account for theorizing regional integration in general. These are once a legal basis with clear structures and provisions is created, then there is a deepening of integration; this is regardless of the pace of implementation in any particular member-state. Therefore an increase in the scope of integration correlates with an increase in the level of integration.

Moreover, spill-over mechanisms are persistent in the process of regional integration. Not only does the scope of competencies and level of commitments increase, but these increases result in further harmonization of member-state policies, which in turn relate to further regional regulations.

Additionally, there are soft forms of supranationalism, even in labeled 'intergovernmental' unions such as CARICOM. As integration deepens through the creation of a legal basis, institutions are also created and these institutions are granted power over the same member-states who create them. These powers relate to the possibility to coerce the member-states to adhere to regulations and provisions of the Revised Treaty. These institutions therefore further deepen integration.

Also, non-implementation and harmonization of provisions does not necessarily imply that member-states do not comply with and/or are in breach of regional arrangements. This is especially since legally binding treaties such as the revised Treaty of Chaguaramas provide recourse for non-compliance and breaches.

The application also revealed information to be taken into consideration, from theorizing integration in CARICOM. Specifically: lack of clear and decisive structures and regulations will stall integration. In this case, the single economy. To this end I propose introducing a 'Single Economy Act' which would:

- create a Monetary Union in CARICOM, including a single currency;
- introduce more competencies for the Committee of Central Bank Governors, to not only

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make recommendations but to implement regulations for monetary co-operation, and payments arrangements;

- apply regulations to integrate capital markets in CARICOM;
- establish a Central Bank to oversee balance of payments, interest rates, cooperation between national banks, economic and monetary policy; and to manage the common currency.

Notably, the application revealed that there is no distinction of cross border effects regarding health and safety standards; quality control and regional certification. The Revised Treaty does not distinguish between regional and national standards, rather, it imposes regulations on specific sectors. Additionally, national standards effectively reflect regional standardization, and regulations, concerning goods and services.

The application also revealed that although not explicitly stated in the Revised Treaty, CSME regulations imply direct effect in CARICOM. Specifically:

- the Revised Treaty revokes 'direct applicability', where it becomes a part of national law;
- as such, there is a defined framework within which direct effect in CARICOM is effective;
- the Revised Treaty invokes an emanation of the states, due to a vertical direct effect: between citizen and the state. CARICOM citizens can therefore invoke CARICOM law on the member-state;
- there is also horizontal direct effect, where citizens can hold other citizens or companies liable for specific issues. For example regarding anti competitive practices.

Moreover, the application revealed that the Revised Treaty provides coercive mechanisms for member-states to comply with its stipulations; and also creates institutions to oversee the implementation process.

4.5 Summary and Conclusion

This chapter has examined the CSME through the lens of Neofunctionalism. It first scrutinized the creation and the provisions of the CSME; and then analyzed the competencies of the institutions entangled with the CSME, the initiation of the CSME, and the implementation of the CSME. This undertaking afforded an exceptional understanding of the process of integration in CARICOM. It revealed the nature and some of the factors and hindrances of the process of regional

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integration in CARICOM.

These include a pronounced and unmistakable increase in regional integration in CARICOM with the CSME. The CSME represents a series of commitments on deepening economic integration in CARICOM, which extends to social and institutional arrangements. Organs and Institutions of Governance, institutions in CARICOM are revamped, and new competencies are given to CARICOM. The Provision of Services, Rights of Establishment and Movement of Capital, also creates new rules over CARICOM member-states. They impose regional regulations in the individual member-states.

With the signing of the Revised Treaty, the Conference was relieved of some of its decision making power; which relates to soft forms of supranationalism in CARICOM, especially through the creation of new institutions. The Original Treaty transcribes the decision-making power in CARICOM to the Conference of Heads of Governments and the onus to oversee the implementation of said decisions to the Council of Ministers. The Revised Treaty marks a change in the institutional structure of CARICOM, and also in the regional commitments of the member-states to deepen integration, especially since new institutions were created with regional mandates. These institutions were established for checks and balances and their mandates were overarching and imposed on the member-states. For example, the members of the Competition Commission are elected from a regional body. This is purposely done to eliminate the sentiments of member-states and to create an independent regional body positioned above member-states to police and act as a 'regional watchdog'. Furthermore, the Revised Treaty fundamentally accorded CARICOM superiority over national laws in numerous economic cases. For example, the Revised Treaty demanded that CARICOM countries revise their laws, both those directly and to some extent those indirectly relating to market and economic liberalization. Essentially, the immigration acts of most countries essentially became invalidated due to the regulations of the CSME on harmonization and liberalization of CARICOM immigration.

In liberalizing its markets, and creating a single market, CARICOM member-states relinquished their basic border & immigration rules and adopted CARICOM Protocols. This chapter therefore reflected the trickle down of rules and decisions from the regional level to the member-states and, most importantly, in numerous sectors of the member-states including, air, freight & transport, and standards & quality; which were not at first relevant from the initial Grand Anse Declaration. These are clear traces of the spill-over effect hypothesis of Neofunctionalism.

Remarkably, the provisions of the Revised Treaty extend further than cross-border

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transactions or transactions with cross-border effects. They affect the internal markets of CARICOM, especially relating to competitive practices; Moreover, they touch on standardization of education and certification programs, and health and safety standards. Regional integration therefore, address deep internal structures in the CARICOM member-states' economies.

Chapter 5: Neofunctionalism and the CCJ

5.1 Introduction

This Chapter analyzes the competencies and judgments of the CCJ and their effect on the process of regional integration in CARICOM.²⁶⁶ The competencies are analyzed in order to observe the scope of commitments; and the process of institutionalization by taking into account both prescriptive and descriptive integration. The judgments are analyzed in order to see whether there is a pattern in the CCJ's rulings, and to determine whether and how they affect the process of integration. The decisions of the judges, moreover reveal if the CCJ: generally references itself in making decisions, thereby reinforcing its competencies; upholds decisions by other community institutions, in so doing reinforcing regional authority and regulations in the Community; and rules in favor/against the deepening of integration. A review of both competences and judgments, provide information on the meaning and implications of the CCJ in the process of integration in the Caribbean. They further provide the opportunity to observe the process of creating rules; and the ways in which institutions reinforce their legitimacy and make decisions affecting integration at a technical level.

The examination of the CCJ further covers two areas: the regional area, with factors such as the competencies of the CCJ; its *de jure* powers and institutionalization; and the contents of the rulings, including the references it makes in substantiating its rulings are scrutinized. The national area, where observations will be made regarding: the direct and indirect impact of the CCJ's decisions on the sovereignty of the member-states; spill-over of integration from the legal scope to the economic, political, and social scope and sectors; and compliance with the CCJ's decisions by the member-states.

The chapter therefore primarily focuses on the institutional capacity in theorizing regional integration, and secondarily on the functional aspect of theoretical investigation.

²⁶⁶ Judgments from The CCJ's inauguration up until the end of 2013. This time span is used to cover all judgments made during the writing of this thesis. At the end of 2013 the court delivered rulings on 74 Appellate Jurisdiction cases and 16 Original Jurisdiction cases.

5.2 History and Overview of the Caribbean Court of Justice (CCJ)

Between 2001 and 2003, CARICOM member-states signed the Agreement Establishing the Caribbean Court of Justice (the Agreement). Page one of the Agreement notes that in signing the Agreement, the CARICOM heads of government were “aware that the establishment of the Court is a further step in the deepening of the regional integration process”.²⁶⁷ They also declared that they were convinced that the CCJ “will have a determinative role in the further development of Caribbean jurisprudence through the judicial process”.²⁶⁸

The mission of the CCJ, as outlined in its first annual report,²⁶⁹ is to “perform to the highest standards as the supreme judicial organ in the Caribbean Community ... underpinning and advancing the CARICOM Single Market and Economy ... (and) foster(ing) the development of an indigenous Caribbean jurisprudence”.

The first annual report²⁷⁰ also outlines the vision of the CCJ, which is to provide an “accessible, fair, efficient, innovative and impartial justice system built on jurisprudence reflective of our history, values and traditions while maintaining an inspirational, independent institution worthy of emulation by the courts of the region”.

The CCJ is administered by a Court Executive Administrator, who is head of a Department of Court Administration that is answerable to the President of the CCJ. In addition to the president, there are nine presiding judges who are appointed and granted tenure by a Caribbean Regional Judicial and Legal Services Commission,²⁷¹ and are not elected by member-states. The CCJ proposes that the judges and therefore the decisions of the CCJ to be independent of the CARICOM member-states, including political influence and sentiments.

The court is seated in Trinidad and Tobago and is funded by a trust fund administered by the Caribbean Development Bank. The budget of the court is further financed by the payment of fines and the court costs of the parties who use the services of the court.

Established in 2001, the CCJ was inaugurated in 2005 and is the only existing court which serves both as a court of first instance and a court of final appeal.

267 Agreement Establishing the Caribbean Court of Justice p.1.

268 Agreement Establishing the Caribbean Court of Justice p. 1.

269 CCJ (2006) p1.

270 CCJ (2006) p1.

271 The commission is composed of eleven members: including the Court President, who is the Chairman of the Commission; and persons appointed by the National Bar Associations, Public Services Commissions, the Secretary General of the Community, and the Dean of the Faculty of Law of the University of the West Indies.

5.2 History and Overview of the Caribbean Court of Justice (CCJ)

5.2.1 Appellate Jurisdiction

At its sixth meeting in 1970, the Conference of Heads of Government of CARICOM (the Conference) decided to create a regional court to replace the Privy Council as the final appellate court for the CARICOM member-states.

Under Article 25 of the Agreement Establishing the CCJ, the role of the court is to exercise appellate jurisdiction arising from final decisions of the courts of appeal of the contracting parties in the following proceedings: civil and for dissolution or nullity of marriage; those which involve the interpretation of the constitution of the contracting party; those relating to redress for contravention of the provisions of the constitution of the contracting party; those relating to the exercise of a jurisdiction conferred expressly on a superior court under the constitution of the contracting party; and other cases as may be prescribed by any law of the contracting party.

According to the CCJ' first Annual Report (2005-2006:91), “appellate Courts have a peculiar responsibility to protect the rule of law by correcting errors, and developing and clarifying the law”. It additionally maintained that:

appellate courts should provide review sufficient to correct errors made by lower courts including intermediate appellate courts. ... (protecting) the rule of law and improve(ing) the manner in which lower courts decide cases and dispense justice. ... The result is increased confidence in the entire judicial process. (CCJ Annual Report 2005-2006:91)

As a final appellate court, the CCJ serves as the sole jurisprudence on final appellate matters in the member-states in CARICOM, which presents the CCJ as providing checks and balances in regional jurisprudence, creating regional integration in final judicial affairs in CARICOM. In the CARICOM intergovernmental community, the CCJ has supranational power over the member-states in their own national laws and practices: the court hear matters relating to civil proceedings as well as overturning national court decisions. The CARICOM member-states are bound to:

agree to take all the necessary steps including the enactment of legislation to ensure that all authorities of a Contracting Party act in aid of the Court and that any judgment, decree, order or sentence of the Court given in exercise of its jurisdiction shall be enforced by all courts and authorities in any territory of the Contracting Parties as if it were a judgment, decree, order or sentence of a superior court of that Contracting Party.

5.2 History and Overview of the Caribbean Court of Justice (CCJ)

(Agreement Establishing the CCJ:Article 26)

Article 26 characterizes the rulings of the CCJ under its appellate jurisdiction as those of the member-state appellate courts, additionally empowering the CCJ “to make any order for the purpose of securing the attendance of any person, the discovery or production of any document, or the investigation or punishment of any contempt of court that any superior court of a Contracting Party has power to make as respects the area within its jurisdiction”. Not only does the article guarantee the unbiased implementation of the CCJ judgments, but it also grants the CCJ the power and jurisdiction to summon evidence/persons to assist in making judgments, granting the CCJ overarching competences in relation to the jurisdictions of the member-states.

As of December 2013, only three²⁷² members of CARICOM subscribed to the CCJ's appellate jurisdiction, notwithstanding efforts by CARICOM member-states to ratify the CCJ as their final appellate court. For example, in 2005 the government of Jamaica attempted to ratify the CCJ as the final appellate court of that country; however, this was challenged in the Privy Council by the opposing national party in Parliament and other national civil society organizations. The Privy Council ruled against implementing the CCJ and removing itself as the highest final appellate court of that country. It further stated that the only recourse for implementing the CCJ was a national referendum; this was never initiated, for numerous political and financial reasons. In Trinidad and Tobago, political disputes have also limited the scope of implementation of the appellate jurisdiction of the CCJ, where a proposed compromise is that the CCJ would only have appellate jurisdiction on criminal but not civil matters; this has still not been implemented to date²⁷³. St. Kitts and Nevis have also indicated interest in ratifying the CCJ's final appellate jurisdiction. Antigua and Barbuda has additionally called for an OECS-wide referendum on the CCJ as a final appellate court. Dominica has also signaled its interest in implementing the CCJ as its final appellate court in 2015. There are therefore indicators that the appellate jurisdiction of the CCJ will be expanded to additional CARICOM members. As of December 2013, the Caribbean Court of Justice had ruled on 74 appellate jurisdictions cases.²⁷⁴

272 Barbados, Guyana and Belize adopted the CCJ as their final appellate court, in 2014 Dominica adopted the CCJ as its final appellate Court, and other CARICOM countries have started proceedings to ratify the CCJ's final appellate jurisdiction.

273 At the time this chapter was drafted in 2013.

274 Taken from a case count of rulings posted on the court's website (January 2013 when this chapter was drafted) The court has expressed in its first annual report 2005-2006 that all rulings will be posted on its website as soon as they are available).

5.2 History and Overview of the Caribbean Court of Justice (CCJ)

5.2.2 *Original Jurisdiction*

As a court of first instance, the CCJ's task is to settle disputes in relation to the Revised Treaty of Chaguaramas (Revised Treaty)²⁷⁵. The CCJ possesses the sole authority to interpret the Revised Treaty of Chaguaramas, which establishes the Caribbean Single Market and Economy, (CSME). Article 12 of the Agreement confers exclusive jurisdiction on the CCJ (subject to the Revised Treaty) to hear and deliver judgments on disputes between contracting parties and contracting parties and the Community; referrals from national courts or tribunals of contracting parties; and petitions by nationals concerning the interpretation and application of the Treaty.

In exercising its original jurisdiction, the CCJ functions as an international tribunal, it applies the rules of international law in interpreting and applying the Revised Treaty.

Through its interpretation and application of the Revised Treaty, the CCJ determines the functions of the CSME and, to an extent, the level and speed of integration in CARICOM.

Article 16 of the Agreement establishes the compulsory jurisdiction of the Court. It demands that “contracting Parties agree that they recognize as compulsory, ipso facto and without special agreement, the original jurisdiction of the Court”. Furthermore, “in the event of a dispute as to whether the Court has jurisdiction, the matter shall be determined by decision of the Court”. As highlighted in Chapter 2, Article 15 of the Agreement Establishing the CCJ effectively binds all applicable parties (including member-states and Community citizens, Organs, and Bodies of the Community) to 'comply' with the judgments of the CCJ. Additionally, Article 14 addresses interim measures relating to the application of its decisions. The article proposes that the CCJ “shall have the power to prescribe if it considers the circumstances so require, any interim measures that ought to be taken to preserve the rights of a Party”.

As stated earlier, ratification of the CCJ's appellate jurisdiction in CARICOM is controversial and complicated in comparison to ratification of its original jurisdiction. Only three countries²⁷⁶ have enacted the legal requirements to make the CCJ their final appellate court. In spite of these complications, the appellate rulings of the CCJ are significant for any theoretical analysis of the CCJ. They reveal information on the competencies procedures, patterns of the CCJ's rulings, and the impact of these judgments on the general process of integration in CARICOM.

Below is an analysis of the notable cases.²⁷⁷ The cases are reviewed first based on a time line, i.e., from earliest to latest, and then grouped together as a cluster of cases when two or more are

²⁷⁵ As mentioned in chapter 2.

²⁷⁶ Up until when this chapter was drafted in 2013 Barbados, Guyana and Belize were the only CARICOM members who had ratified the appellate jurisdiction of the CCJ.

²⁷⁷ A review of the entire judgments of the CCJ (up until the end of 2014 when this thesis was drafted) is presented in this thesis; for the purpose of analysis, space and readability some rulings are placed 'the Annex of Chapter 5'.

5.2 History and Overview of the Caribbean Court of Justice (CCJ)

related to the same matter.

Under its original jurisdiction, the CCJ has the sole “responsibility to develop and clarify the law by interpreting the Revised Treaty of Chaguaramas”.²⁷⁸

Article 38 of the Agreement addresses the implementation of the CCJ's decisions and declares that “the Contracting Parties shall take all necessary action, whether of a legislative, executive or administrative nature, for the purpose of giving effect to this Agreement. Such action shall be taken as expeditiously as possible, and the Secretary-General shall be informed accordingly”. These articles establish the overarching competencies of the CCJ, and reveal that CARICOM member-states are bound to uphold and execute its decisions.

All CARICOM members ratified the original jurisdiction of the CCJ in their national laws, and as of December 2013 the CCJ had ruled on a total of 16 original jurisdiction cases.

5.3 An Examination of the CCJ

5.3.1 *Judgments under the CCJ's Appellate Jurisdiction*

1st Case: Barbados Rediffusion Service Limited v Asha Mirchandani Ram Mirchandani McDonald Farms LTD: the first final appellate case, which concerned defamatory charges in calypsos that were broadcast in Barbados, was brought before the CCJ in 2005. The case had been previously dismissed by the Barbados national appellate court, but a request was made from the appellant for a hearing before the CCJ. The CCJ was then compelled to address its jurisdiction for granting application for special leave. In its first ever final appellate judgment, the CCJ ruled that:

our function on this application is a very limited one. Our concern is only whether there is some special feature of this case which would warrant our giving special leave to appeal to this Court in these circumstances in which there is no appeal as of right and no basis on which the Court of Appeal could have granted leave to appeal to us. (Barbados Rediffusion v. Mirchandani 2015:para 42)

The CCJ ruled that although there was no basis for the Barbados court of appeal to grant leave for the case to be heard before the CCJ, it possesses the jurisdiction to grant such a leave under extraordinary circumstances.

²⁷⁸ Caribbean Court of Justice first Annual Report (2005-2006:91).

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Implication/s of the ruling: through this ruling, the CCJ established its jurisdiction to grant special leave for an appeal when such leave is denied by the lower courts. The CCJ ruled that it can grant leave for appeal regardless of the ruling of the lower court. It can therefore circumvent the authority of the lower court of appeal and grant leave for appeal, which effectively extends its jurisdiction and represents its power over the member-states.

2nd Case: Barbados Rediffusion Service Limited v Asha Mirchandani Ram Mirchandani McDonald Farms LTD: the second case was a follow-up commentary on the first, in which explanations were given for the exclusion of certain aspects of the appeal and sections of the case. Under its jurisprudence, the CCJ additionally pointed out that before the case was heard by the CCJ, it was in the Barbados national court system for more than 15 years. It commented that such a long period of time was unacceptable, thereby criticizing the legal process in Barbados. It further gave the directive that Barbados should aim to expedite such cases in the future. Its ruling then, not only pertains to the current case before it, but also to the overall legal system of Barbados, and future cases of this nature.

Implication/s of the ruling: in pointing out the level of stagnation and deficiencies, in the Barbados judicial system, the CCJ acts outside of its 'normal' requirement for ruling on a specific case. The actions of the CCJ thus reveal one of the predictions of the theory of Neofunctionalism, which is that institutions, in carrying out their functions and expanding their competencies, often times act outside of said competencies.

19th Case: Barbados Rediffusion Service Limited v Asha Mirchandani Ram Mirchandani McDonald Farms LTD: the 19th appellate case before the court was the judgment related to the cases above. Special leave was granted to hear the case before the CCJ.

The ruling again made notice, observations and commentaries “of the enormous delay which has occurred in this case and about which both sides have complained”.²⁷⁹ The CCJ ruled that due to lack of participation by either party, it would defer its ruling.

Implication/s of the ruling: the CCJ uses its power to comment on the judicial sphere in CARICOM member-states. The cases reveal that the CCJ act independently of the member-states, on its own behalf, and for its own purposes. The CCJ made reference to its previous rulings, including the content and the sentiments of these rulings. In so doing, the CCJ sets a precedent in its first rulings and establishes its political clout as an independent regional institution.

3rd Case: Brent Griffith vs Guyana Revenue Authority and the Attorney General of Guyana:

279 Barbados Rediffusion v. Mirchandani, (2015) CCJ 1 [AJ] p. 45.

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the third final appellate case before the CCJ was related to labor law in Guyana. It challenged the termination of a government employee. The CCJ ruled that it possessed jurisdiction to hear the case as an appeal case originating from Guyana; however, it ruled that the application itself was flawed due to procedural inconsistencies. The CCJ additionally ruled that:

although we consider it right to entertain this application, it must be remembered that special leave to appeal is granted purely as an act of grace ... In other words the grant of special leave is always a matter of discretion and never a matter of right. (Griffith v. Attorney General, 2006 CCJ 1 [AJ]: para 27)

Like its Original Jurisdiction ruling on *Doreen Johnson vs CARICAD*²⁸⁰, the CCJ saw the Revenue Authority (where the claimant worked) as:

a new corporate entity distinct from the government although it is a public corporation. The employees of the Revenue Authority are not holders of any public office nor are they employed in the service of the government of Guyana in a civil capacity. (Griffith v. Attorney General, 2006 CCJ 1 [AJ]: para 46)

The CCJ complicates the definition of a public sector worker, awarding itself responsibility to decide on the definition. Since the claimant was viewed by the CCJ as not being a public officer or a public sector worker, his claim was dismissed. The move of the CCJ to define public sector workers in Guyana in addition to the procedural application for appellate hearing, establishes a precedent for the interpretation of future cases. The CCJ is now required to hear and pass judgments on cases that are similar in nature; in so doing, they require a widening of the competencies of the CCJ. The CCJ also declares that it possesses the sole power to decide on the 'right' of Applicants for special leave, underscoring that this discretion would be reviewed on a case-by-case basis. Therefore, the CCJ places itself in an authoritative role to decide on granting special leave.

Implication/s of the ruling: reflecting on the above and previous extraordinary rulings of the CCJ, a clear pattern in the CCJ's judgments can be observed. The CCJ continuously rules outside of its initial requirement for the case. In making comments on the level of stagnation of a national judicial system including its own power to grant special appeals outside of national constitutions

280 For more information see *Johnson v. Caribbean Centre*, (2009) CCJ 3 [OJ] in the following section.

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and the CCJ Act, the CCJ acts as an independent and supranational institution in CARICOM²⁸¹. Moreover, in pronouncing that leave is granted purely as an act of grace, the CCJ ruled that it possesses the sole discretion to determine the merits of an extraordinary case; furthermore, these merits would be based in its interpretation, and there is no 'law' to apply in such a case. This effectively implies that the CCJ is able to create a new body of 'law' regarding special leave.

4th Case: The Attorney General Superintendent of Prisons vs Jeffrey Joseph Lennox Ricardo Boyce: the fourth appellate jurisdiction case was an appeal following criminal court sentences in Barbados. Prior to its inauguration and shortly thereafter, the CCJ was considered to be a “hanging court”.²⁸² Therefore, this case concerning the commuting of death sentences to life in prison is of high importance for the analysis and discussion of the CCJ's decisions on criminal matters and death sentences. When the case was brought before the CCJ, an appeal had already been made before the Judicial Committee of the Privy Council on the unconstitutionality of the death penalty in the state of Barbados. Death warrants were read to both men twice in a period of two years (between 2002 and 2004). The CCJ reviewed the case and decided to rule on three principal issues; namely: the exercise of power of the Governor-General of Barbados with reference to commuting a death sentence; whether it (the CCJ) can commute or give other relief to death sentences; and if so, “in what manner, if at all, may unincorporated international human rights treaties which give a right of access to international tribunals affect (the present case)”.²⁸³ The CCJ judges ruled unanimously that the CCJ possesses the jurisdiction to commute death sentences to life in prison, and also that it can grant other relief to death sentences.

Implication/s of the ruling: this ruling exonerates the CCJ as a 'hanging court,' representing the commitment of the CCJ to offer “fair... impartial justice”²⁸⁴ and to act as an “independent institution”.²⁸⁵ However, The CCJ did not make reference to the existing Charter of a Caribbean Civil Society (the Charter); rather, it looked to international instruments in spite of the charter having been adopted by all the heads of government of the Community. In sidestepping the Charter and applying international instruments, the CCJ attempts to establish itself as an international body

281 This is in line with the Neofunctionalism's prediction, as the analysis in the section below will further explain

282 In 2004, the Jamaican Parliament passed bills to establish the CCJ as its final appellate court. The opposition party appealed the bill in the Privy Council, the country's final appellate court. It did so under the grounds that the CCJ was a 'hanging court'. It referenced cases such as *Pratt vs Morgan Pratt & Morgan -v- The Attorney General of Jamaica* [1994] 2 AC 1, where the Privy Council previously granted a commuted capital punishment to life in prison. It was feared that the CCJ would in future similar cases, interpret Jamaica's constitution, and uphold death sentences.

283 *Attorney General v. Joseph*, (2006) CCJ 1 [AJ] para 11.

284 CCJ (2005:1).

285 CCJ (2005:1).

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that is reliant on international law, instead of regional regulations and laws. This action establishes a precedence in interpreting international law regarding human rights instead of the Charter. It also reveals the CCJ's aspirations to be an international court.

The CCJ decided that human rights treaties protect the right to life, which should be upheld in capital punishment sentences. It held that even when member-states have not subscribed to these human rights treaties, they still can be used in delivering judgments. This aspect of the judgment embodies the 'externalization hypothesis' of Neofunctionalism, which proposes that there is at times difficulty in isolating decisions of institutions from a global context, and these difficulties further lead to tensions and or contradictions.

The CCJ additionally decided on steps that Barbados should take in future capital punishment cases to create a case body. In creating a case body, the CCJ sets precedents and make references. Both actions increase its level of supranationality, and are proposals of the theory of Neofunctionalism.

5th Case: Tyrone da Costa Cadogan vs The Queen: the fifth appeal case is also a request for special leave to appeal the conviction for murder, which carries the mandatory death sentence in Barbados.

Due to a 'savings' clause in the Constitution of Barbados, the national courts are precluded from repealing mandatory death sentences in spite of the fact that a death sentence violates the fundamental rights protected by the Constitution of Barbados, which are granted by the Charter and other international treaties to which Barbados is a signatory. Due to this, the Barbados Court of Appeal upheld the trial judge's ruling directions on the "need for the jury to be satisfied that the accused intended to kill or cause serious bodily harm to the victim".²⁸⁶ The appellant argued that it was necessary for the trial judge to "direct the jury that they were not entitled to find the necessary intent for murder unless they felt sure that death or serious bodily harm was a virtual certainty as a result of the Applicant's actions".²⁸⁷

The appeal was dismissed by the CCJ, citing that there was no miscarriage of justice. This was in spite of two additional points raised during the case, which are: a lack of public funding for making the services of an independent (non government) expert witness for legal aid defendants; and limited legal aid fees for murder trials, which should be higher, with the provision of a leading counsel and a junior counsel, or at least two counsels.

The CCJ rejected these claims, noting that there is inadequate evidence for alleging that

286 Cadogan v. The Queen, (2006) CCJ 4 [AJ] p. 2.

287 Cadogan v. The Queen, (2006) CCJ 4 [AJ] p. 2.

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government employed expert witnesses are biased or incompetent.

Implication/s of the ruling: the two above points could probably have refined the legal system in Barbados; however, the CCJ decided that it was not necessary to change them. Additionally, the CCJ could have made an extra-judicial ruling on the death sentence of the case. It could also have issued directives on other aspects of the case, which would have allowed the case to be heard before the CCJ on other grounds. Substantiated grounds were given later when the case was brought before the Inter-American Court of Human Rights under a mistrial based on the questionable mental state of the appellant. These grounds should have been suggested by the CCJ as a reason for a new retrial, or for a discretionary hearing and a new final appellate ruling.

The exclusion of such a possibility shows disregard for the provisions of the Charter. Also, it goes against previous rulings, in which the CCJ considered international treaties and their provisions regarding fundamental human. This ruling is a brutal blow to the reformation of the legal system in Barbados, especially given the CCJ's past comments on the legal process there.

In contrast to the previous case, the CCJ had already expunged its reputation as a 'hanging court'. Neofunctionalism characterizes actions such as these as 'conflictual' and contradicting the status quo. It further proposes that such actions are accomplished as a result of institutional convictions and misconceptions.

9th Case: Dwarka Nauth v The Attorney General, the Public Service Commission, the Regional Executive Officer, the Minister of Finance of Guyana: the ninth final appeal case, from the Court of Appeal in Guyana, was dismissed by the CCJ. The case concerned a temporary social security officer, who after dismissal sought and was granted remuneration and compensatory salaries in the Public Service Appellate Tribunal in Guyana. The decision was appealed by the state of Guyana, and the appeal was granted, which saw the initial ruling set aside.

The CCJ based its rulings on two issues: the applicants brought the application to the CCJ after the deadline, and requested special leave to appeal; and it considered whether there was sufficient merit to grant special leave.

The CCJ referred to its previous ruling *Griffith v. Attorney General, (2006)* in its judgment, in which it “laid down the parameters within which it will exercise its discretion to grant special leave to appeal, and emphasized that the grant of special leave is purely an act of grace or discretion, and never a matter of right”.²⁸⁸ The CCJ therefore decided that because of the long delay in submitting the application²⁸⁹, and given that the excuse for the long delay was unacceptable, the court could not

288 *Nauth v. Attorney General, (2007) CCJ 4 [AJ] p. 6.*

289 The required time for submitting an application is 30 days after a ruling of from the court of appeal, and this appli-

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be “persuaded that there are sufficient and adequate grounds for the exercise of ... (its) discretion”.²⁹⁰

This procedural flaw in the application process was cited as the main reason for rejecting the application. However, in the same case to which it made reference to substantiate its judgment (Griffith v. Attorney General, (2006)), the CCJ ruled that procedural flaws should not affect the judgment of a case.

Furthermore, the CCJ had also ruled that an application for special leave can be granted when there are reasonable grounds for the appeal. Application for leave could have been granted for the above case based on its merits, irrespective of 'procedural flaws'.

However, the CCJ decided that: “no proposed grounds of appeal were filed by the Applicants, but one can safely assume that they would have been the same as those advanced as grounds for the application for special leave”.²⁹¹

It further ruled that there were no arguable grounds for granting special leave for an appeal. In doing so, it: precluded the Applicants from submitting substantial grounds for appeals; dismissed any 'probable' grounds for appeals; and refrained from advising/precluded the Application to submit updated grounds for the appeal.

Implication/s of the ruling: these contradictory behaviors reveal a pattern in the CCJ's rulings. Although it sets precedents and interprets national/regional regulations and laws, the CCJ retains a fixed set of ideals.

These inconsistencies do not reveal a discrepancy in the CCJ rulings; rather, they exhibit an unwritten internal code by which the CCJ performs and operates. These underlying factors often surpass the very requirement of the CCJ to show impartiality in its judgments. The theory of Neofunctionalism addresses such behavior by proposing that such actions signify that regional technocrats can and often act insensitively which deteriorates the deliberative process.

10th Case: Euland Hendy v The Commissioner of Police et al: the tenth case came from the Guyanese court of appeal, concerned the termination of a police officer. He was awarded 20 months' salary for as compensation. He then challenged the amount of compensation in the lower court of appeals and an additional pension was granted. Not satisfied with the ruling, he applied to the lower court to appeal the decision in the CCJ which was granted on the condition that he pay security for costs at the hearing in the sum of 400,000²⁹² dollars. The CCJ noted that the security for

cation was submitted 13 months and 12 days after such rulings.

290 Nauth v. Attorney General, (2007) CCJ 4 [AJ] p. 7.

291 Nauth v. Attorney General, (2007) CCJ 4 [AJ] p.7.

292 All monetary amounts are denoted in the working currency of the appellate country. In this case Guyana.

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cost decision was: “without any written notice of application by the respondents or any evidence as to the intended appellant’s financial position”.²⁹³

The CCJ not only upheld the ruling of the lower court of appeal, however; it also ruled that the decision to pay securities for cost action was legal. This ruling is questionable, given that securities of cost were demanded without any prior knowledge of the appellant's financial position, especially considering that the matter was related to a dispute over financial remuneration.

Implication/s of the ruling: from an institutional perspective, any ruling of the CCJ on securing cost in appeal cases would also extend to its own livelihood. From the Neofunctionalist point of view, institutions will make decisions that are beneficial to themselves. Thus, as per the theory of Neofunctionalism, this incident can be seen as an instance of the CCJ ruling with bias to extend its own livelihood, which is a pattern noted in its other rulings as well.

11th Case: Wesley Emptage vs The Attorney General of Guyana: in the 11th final appellate case, the CCJ ruled that “the relevant facts and documents in this case are respectively in all material respects the same as, and *mutatis mutandis* identical with (the previous case)”.²⁹⁴ Thus, the CCJ ruled *ad verbum* referencing the previous case.

Implication/s of the ruling: the CCJ references its own rulings in its entirety, and also creates case law, dictating that in the event that a case has the same conditions as a previously ruled on case, then the ruling for the latter case will entirely reflect the positions of the former. The CCJ thereby creates its own body of case law and reaffirms its position as an independent institution in CARICOM. Moreover, the CCJ creates a situation in which it reviews some cases individually, concentrating on the merits of the case, with others based on precedents. This is a common action proposed by the theory of Neofunctionalism, reflecting the individual character of the institution as an entity with independent characteristics of its initial inauguration.

13th Case: Elizabeth Ross v Coreen Sinclair: the 13th final appeal case originated from the appellate court in Guyana. The appellant had been refused leave to appeal as a poor person and was thus required to provide security for costs in the sum of \$100,000. As the court noted, this was in spite of the fact that: “the appellant, Ms. Elizabeth Ross, is blind and virtually penniless ... (and) the respondent, Ms. Coreen Sinclair ... is no better off financially than the appellant”.²⁹⁵

The CCJ granted leave to appeal as a poor person, overturning the ruling of the Guyana appeals court that the Applicants provide securities. In so ruling, the CCJ set the precedent for

293 Hendy v. Commissioner Of Police, (2008) CCJ 1 [AJ] para 16.

294 Emptage v. Attorney General, (2008) CCJ 2 [AJ] p. 2.

295 Ross v. Sinclair, (2008) CCJ 4 [AJ] para 2.

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CARICOM citizens to be able to appeal on the grounds of 'poor persons', precluding the mandatory provision of securities of costs.

Implication/s of the ruling: this judgment opens up possibilities for poor Community members²⁹⁶ to circumvent the requirements of the national appeal courts that they provide security costs before they can go before the court. As the CCJ had advanced in its first annual report (quoted earlier), it creates the possibility for an “accessible, fair ... and impartial justice system” in which it rules against national laws and allows poor persons access to lower courts of appeals.

35th case: *Elizabeth Ross Appellant v Coreen Sinclair*: this case is the decision on the above case, which concerned a dispute over the rightful tenement of the property between the owner and the tenant of this property. The CCJ ruled that:

it is regrettable that, in effect, the Authority has been permitted to escape the consequence of their 'grave error'. ... This is not the first occasion in recent times that we have had to deal with a situation where the real wrong-doer in cases of this sort has been allowed quietly to exit the stage, unnoticed, leaving two innocent parties to tough it out one of whom ultimately is bound to lose. ... Since the Authority is not a party before us we are not even able to make an order in these proceedings ... Nevertheless, we trust that good sense will prevail and that the Authority, as a responsible body in a democratic society that strives to abide by the rule of law, will act in an appropriate manner so as financially to undo the effects of its breach of contract. (Ross v. Sinclair 2008:para 24)

The CCJ further allowed the appeal and quash the orders made by the courts below. In light of the fact that both parties were poor persons, it made no order as to costs.

Implication/s of the ruling: the CCJ chastised the judiciary system of Guyana, an action which reveals a pattern of acting outside the necessary parameters of the case. Its judgments were, however, limited to comments on the unfairness of the judicial system. It did not make any recommendations for any party to bring the state of Guyana to court to hear grievances, nor did it require an extra-judicial review of the case by the lower courts. The theory of Neofunctionalism proposes that these actions indicate the insensitivity of regional technocrats, and their role in causing the deterioration of the deliberative process.

16th Case: *Vibert Gibson v The Attorney General of Guyana*: the case originated from the

296 Only Community member-states who have incorporated the CCJ as their final appellate court.

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Guyanese appellate courts, and was concerned with a dispute over the termination of employment of a police officer. The CCJ struck out this appeal by referencing its rulings in previous similar cases, namely, the tenth and eleventh, which were reviewed above.

Implication/s of the ruling: as mentioned earlier, this action signifies the CCJ's move in creating a body of case law in which it can refer to itself in passing judgments.

17th Case: Yolande Reid v Jerome Leon Reid: the case originated in Barbados and was concerned with divorce and the division of marital assets. This case is of particular importance because the divorce was filed and granted in the USA. The appeal courts in Barbados upheld appeals. Because both parties were dissatisfied with the outcome; the case was referenced back to the USA authorities, where it proceeded without the presence of one party (Mr. Reid, the defendant). An action was filed in Barbados for the decision enforced; Mrs. Reid's interests prevailed. This action was successfully appealed in the Barbados High court and the ruling was overturned in favor of Mr Reid. Mrs Reid appealed the Court of Appeal Ruling before the CCJ. The CCJ ordered the restoration of the rulings of the High Court of Barbados, thereby overturning the ruling of the Appeal Court. The CCJ ruled that:

while we agree ... that the issue of substantial justice must be determined by standards accepted by the courts of Barbados, this cannot mean that the system of justice or the course of the proceedings in the foreign court will be acceptable only if it resembles or approximates what obtains in Barbados. A failure to meet the threshold of incompatibility with substantial justice connotes some aberration, some procedural or other deviation that is so fundamental that we regard it and the result it produces as not being in accord with our basic notions of what is fair and just ... we can find nothing of the sort here. (Y. Reid v. J. Reid, 2008:para 47)

In doing so, the CCJ upholds the rulings of a 'foreign court' and struck out the entire process of appeal in Barbados.

Implication/s of the ruling: this procedure follows a pattern of the CCJ of referring to and relying on international tribunals, courts and agreements, over regional judicature. It attempts to establish itself as more than a regional and independent 'international' court, which takes into account international rules over those of national or regional regulations. These actions of the CCJ to create a body of cases can be explained by the Neofunctionalist utilitarian concept.

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18th Case: Chamanlall Mukhtiyar et al vs Poonardai Sukhu et al.: the case came from the Guyana appeals court and concerned land titles. The appeal was based on the argument that the Barbados court of appeal erred in its ruling, including the fact that the appellant's appeal to appear as a 'poor person' was dismissed. The CCJ ruled that: “the reason for the dismissal of the application ... is that we do not consider that the appeal which it is sought to bring, is arguable”.²⁹⁷

Implication/s of the ruling: the CCJ consciously excludes from the dismissed appeal the appeal for the right to be heard as a poor person, and maintains its body of case law on ruling in favor of the right of poor persons to go before the lower courts without securities of cost or court costs. In so doing, it clears itself from upholding the lower court's dismissal of an appeal to appear as a 'poor person', which it had previously ruled on. This judgment also enables the CCJ to maintain its body of case law, while ruling against an appeal, especially regarding appeals to appear as a poor person. It furthermore proves that CCJ consciously rules in a certain pattern, also substantiating the theory of Neofunctionalism, which states that actions are calculated by actors, and are utility-based. Such a pattern of ruling also denotes that actors utilize their positions when there are new opportunities for strategic intervention, in this circumstance, creating a legal body of cases in which poor persons are granted the right to appeal in the higher Courts and the CCJ without court costs. This points to an independent moral component of Neofunctionalism.

23rd Case: John Sealey v The Attorney General of Guyana and The Police Service Commission: this case also originated from the Court of appeal of Guyana and concerned the dismissal of a police officer. The appellant's services were terminated on November 1984, he filed a petition in October 1987, wrote an inquiry as to the petition in January 2001 and filed a motion in February 2001. The Court of Appeal dismissed the appeal, under the grounds that “it is unjust to give a remedy to the appellant due to his neglect in filing his proceedings in a timely manner. His undue delay without any explanation has rendered the proceedings an abuse of the court's process which will undermine the integrity of the judicial system”.²⁹⁸ The CCJ upheld this ruling even while accepting that “no specific limitation period applies to claims under Article 153”²⁹⁹ under which the appellant filed suit, by arguing that “it is in the public interest that claims do not become stale, the courts assisting those who are vigilant to enforce their claims, but not those who sleep on them”.³⁰⁰

Implication/s of the ruling: this follows previous rulings of the CCJ where also it ruled that parties should not 'drag their feet' in the judicial process. This additionally points to the CCJ's

297 Mukhtiyar v. Sukhu, (2008) CCJ 9 [AJ] para 1.

298 Sealey v. Police Service Commission, (2008) CCJ 11 [AJ] para 6.

299 Sealey v. Police Service Commission, (2008) CCJ 11 [AJ] para 12.

300 Sealey v. Police Service Commission, (2008) CCJ 11 [AJ] para 13.

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previous comments on berating national systems for slow judicial procedures. It follows the idea under the theory of Neofunctionalism that institutions will act within their means to change issue areas relating to their convictions. In this case it is the speed of the judicial process.

26th case: *Clyde Anderson Grazeette v The Queen*: arising from Barbados, the case concerned the appeal of murder charge. The CCJ dismissed the petition, but advised for application to plea against the death sentence. The grounds of the appeal were problems with DNA samples and gaps in the chain of chain of custody. The CCJ dismissed these arguments by quoting Canadian case law, specifically Romilly J, in *R v Larsen* (2001) BCSC 597. It is interesting to say the very least that the CCJ would look to common law in Canada to make reference to DNA sampling in the Caribbean, when it did not establish that the process is similar. The only argument can be that Canada is a member of the common wealth, to which all countries of CARICOM belong as well, and as such similar case law and background to law applies. The CCJ additionally ruled in favor of the public appointed medical doctor in charge of the DNA sampling and labeling. It ruled that “Dr. Murray did not say precisely how he labeled the sample ... in its ordinary English ... “label” refers to a piece of paper or other material attached to an object and giving information about it”.

Implication/s of the ruling: with this ruling the CCJ was able to dismiss the appeal to set aside a murder sentence, however, it upheld its pattern of ruling against a death sentence, and recommended an application against the death sentence on its own accord. The CCJ again defines itself as an independent institution which can rule outside of the questions raised in the cases brought before it.

28th case: *Subhas Ramdeo v Heralall*: this case came from the Court of appeal of Barbados. The case was concerned with dispute over a contractual land purchase. The Appellant and purchaser Mr Ramdeo, failed to lodge a caveat, despite delays on the part of his vendor in transferring title. He then relied on fraud allegations as his argument, given that the Respondent/vendor Mr Heralall, had been involved in some fraud relating to the transfer.

The CCJ ruled that “this case emphasizes the need for a contractual purchaser of land from a registered proprietor to protect himself against a subsequent transfer of title to another person by lodging a caveat against that title”.³⁰¹

The CCJ dismissed the case arguing that even though rationally the appellant was 'right' there were no legal provisions in the law of Guyana for granting the appeal.

Implication/s of the ruling: this case reveals the limitations to the CCJ's *de jure* power, as it

301 *Ramdeo v. Heralall*, (2009) CCJ 3 [AJ] Para 1.

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can only interpret law, but it is not granted the competence, nor does it possess the necessary capacity to rule outside its scope of legal entitlements. Given its role as a court of final appeal, the CCJ acted under the sole recourse available. This is in commenting that the appellant was 'technically right' however the law of Guyana does not provide any recourse. The competencies of the CCJ are then put under question.

31st Case: Ramnarine Somrah Applicant v The Attorney General Of Guyana et al: this case came from the Guyana Court of Appeal. It followed a lengthy process, which was concerned with an appeal over the dismissal of the Applicant from the public sector, for being absent from duty without leave or excuse. After a lengthy process of appeals, including a petition for compulsory retirement with benefits, which was ignored; the Applicant filed leave in the Guyana Court of Appeal to apply to the CCJ. This application was also denied. The CCJ however heard the request under other technical grounds and ordered that the “Applicants is paid pension and other superannuation benefits to be assessed and calculated on the basis of 24 years of pensionable service”.³⁰² The CCJ overturned the ruling of the Guyana Court of Appeal.

Implication/s of the ruling: contrary to previous appeals of former public sector workers, the CCJ ruled in favor of the appellant. In this case, the termination was not based on forced retirement due to the termination of an agency. As such the ruling is well within the body of case law which the CCJ created. The CCJ circumvented the rulings of the lower courts, especially relating to permission for the CCJ to hear the appeal. In doing so, the CCJ reinstates itself as an independent institution, above national laws and court rulings. This action of the CCJ further reflects its political clout and its supranationality.

38th case: Jeffrey Adolphus Gittens v The Queen: the case concerned a murder conviction. The lower court of appeal in Barbados quashed the conviction and substituted a conviction for manslaughter and a sentence of 20 years. Among the main grounds, the appellant argued that Barbados Court of Appeal did not comply sufficiently or at all with the Penal System Reform Act of Barbados. The CCJ ruled that there was a breach of and non-compliance of the Barbados law. The CCJ further ruled that the Court of Appeal failed to afford the appellant an opportunity to be heard on the question of sentence, which amounts to a denial of due process, and as such rendered the sentence invalid. The CCJ found other “blatant errors” in the rulings of the Court of Appeals and therefore reverted the case to be reviewed by the same judge for re-sentencing.

Implication/s of the ruling: wordings such as “blatant errors” and “denial of due process”

302 Sean Gaskin v. The Attorney General, (2010) AL 9 para 33.

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reflect a stern stance of the CCJ on upholding the right of CARICOM citizens, which it committed itself to do in its first annual report quoted above. The CCJ can also be seen as being consistent in its judgments.

41st Case: Daniel Ramlagan v Narine Singh: the case came from the Guyana Court of Appeals and was concerned with the dispute over the ownership of two acres of land. The CCJ ruled against the Court of Appeal, ordering that the ruling be quashed. Additionally, the CCJ ruled that: “in all the circumstances the action of the Court of Appeal in this case was unjustified and wrong”. It ordered the case be remitted to the lower court to be reheard on its merits. It also ruled that the order of the lower courts to produce court cost also be quashed and that “the appeal will be re-listed for hearing without delay”.³⁰³

Implication/s of the ruling: again, the CCJ addresses its dislike for the slow process of the judiciary system. This case adds to the pool of cases in which the CCJ has addressed the pace of the judiciary system in the member-states. In the present case, not only does the CCJ comment on the slow pace of the judiciary system in the member-states, but it also rules that the lower courts expedite hearing in this particular instance, which is a step further than simply issuing comments.

45th case: Jippy Doyle V The Queen: originating from the Court of Appeal of Barbados, this case was concerned with the conviction of a pastor for the rape of his then 13-year-old church member. During the trial, the jury was ordered to consider that since the victim was a child, any proof of sexual intercourse should be treated as rape. The pastor was then convicted by the jury and fined 10 years imprisonment for rape. The lower court of appeals substituted the 'guilty verdict' with that of an 'indecent assault offense', which carried a 3-year imprisonment charge. In its ruling, the CCJ made reference to its previous ruling, quoting itself verbatim, that:

this Court will only intervene in criminal cases in circumstances where a serious miscarriage of justice may have occurred in the court below or where a point of law of public importance is raised and the Applicants persuades the Court that if not overturned a questionable precedent might remain on the record. (Doyle v. The Queen 2011:para 4)

The CCJ further argued that “The Court will not lightly interfere with findings of fact implicit in the verdict of the jury or those made by the court from which the appeal originates”.³⁰⁴ As a result of these arguments, the case was dismissed.

303 *Ramlagan v. Singh*, (2010) CCJ 4 [AJ] para 14.

304 *Doyle v. The Queen*, (2011) CCJ 4 [AJ] para 5.

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Implication/s of the ruling: In quoting itself verbatim, the CCJ repeated its previous actions in creating and following a series of case laws. This case reiterates previous proposals, in which it was advanced that not only does the CCJ set precedents; it also follows its rulings verbatim, thereby creating a new regional case law.

47th case: Romeo Da Costa Hall v The Queen: originating in the Court of Appeal of Barbados, this case was concerned with a sentence of manslaughter. The CCJ commented that “the present appeal raises an important issue as to how a sentencing court should treat time spent on remand by a prisoner, whether the courts below applied the proper principles in that regard and whether or not as a result the sentence imposed was excessive”.³⁰⁵ In its ruling the CCJ again made reference to South African laws for no apparent reason³⁰⁶. It ruled that:

in order to ensure that custody time will be fully credited in a consistent and transparent way, the reasons for departing from the rule should be compelling and stated in open court when passing sentence. Moreover, the time that must be set off against the sentence must be clearly specified by the sentencing judge. Clarity demands no less. (*Da Costa Hall v The Queen* 2011:para 51)

In calculating time spent in custody, the CCJ ruled that it agreed “the courts below have erred in not applying the proper principles”.³⁰⁴ The CCJ further commented that “sentencing judges have no business with concepts like 'calendar years' or 'prison years’”.³⁰⁷

Implication/s of the ruling: this case sets out the methods for calculating 'time in remand' and 'sentence time'. It depicts the CCJ's opinions and directives as having a clear impact on the judicial process and for future cases of a similar nature. It further highlights the nature of the CCJ to use international instruments, or those of the Privy Council (a rival under its appellate jurisdiction) rather than regional instruments. In choosing its specific case reference in each setting, instead of relying on a set body of jurisprudence the CCJ rules according to its own desires; instead of being bound by a particular set of regional regulations/laws, the CCJ chooses the instruments which it will apply on a case-by-case basis. Consequently, the CCJ has the possibility of shaping the direction of its judgments.

305 *Da Costa Hall v The Queen* (2011) CCJ 6 [AJ] para 1.

306 Bearing in mind that it did a similar action in the 2nd case, where it made reference to Canadian rulings relevant to DNA samples.

307 *Da Costa Hall v The Queen* (2011) CCJ 6 [AJ] para 55.

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50th Case: Florencio Marin & Jose Coye v The Attorney General of Belize: this case originated from the Court of Appeal of Belize, and concerned an appeal against hearing a case in which the attorney general of Belize went against two government employees who were alleged to have, without lawful authority, transferred state land to a company, beneficially owned and/or controlled by one of them, for \$1 million under market value. The lower court of appeal held that the former ministers could be held liable for loss of public property and that the Attorney General was entitled to institute proceedings. The CCJ decided that:

an action of the kind initiated by the Attorney General in this case is to all intents and purposes unprecedented and that from one perspective centuries of forensic thought and assumptions could be taken to lean against his proceeding ... to allow this suit could have significant implications for the role of the State in the law of torts. To recognize competence in the Attorney General to bring this suit naturally raises the prospect of the Crown suing, possibly as *parens patriae*, in a host of other torts including trespass, nuisance and negligence. (Marin v the Attorney General of Belize 2011:para 152)

Nevertheless the CCJ ruled in favor of the Attorney General.

Implication/s of the ruling: through this case, the CCJ expands the pool of Applicants who can bring suit before it, and also extends its competencies to hear cases such as these. The CCJ's actions can therefore be seen as a means of increasing its competencies and political influence.

51st Case: Delys O'leen Colby V Felix Enterprises Ltd & Felix Broome Incorporated: this case came from the Barbados Court of Appeal, and was concerned with a vendor-purchaser dispute caused by “delays of the parties and the courts and due to the absence of detailed standard conditions of sale containing clear comprehensive provisions governing the process through to completion or termination of contracts for the sale of land”.³⁰⁸ The CCJ criticized the process in Barbados and asserted that:

it would be remiss of us if we did not again comment adversely upon the excessive delays in the delivery of reserved judgments. The trial judge took over two years four months – and even then it took over eight months for his order to be finalized – while the Court of Appeal took two years. (Colby v Felix Enterprises 2011:para 3)

308 Colby v Felix Enterprises (2011) CCJ 10 [AJ] para 1.

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Implication/s of the ruling: although the CCJ ruled that the orders of the lower courts should be accepted and followed by both parties; it explicitly chastised the judicial system of Barbados. This was not the first time it had made reference to its previous rulings in which it had criticized the time-consuming judiciary process in Barbados.

53rd Case: Sea Havens Inc. Appellant v John Dyrud: this case came from the Court of Appeal of Barbados. It concerned one party who purchased a property it had previously leased from the other party and used for business. The case was complicated by the process of concluding land sale in Barbados. Again, in its ruling the CCJ criticized Barbados for the unnecessary delays, citing rulings in which it had made fixed procedural delineations that “in our view, as a general rule no judgment should be outstanding for more than six months and unless a case is one of unusual difficulty or complexity, judgment should normally be delivered within three months at most”.³⁰⁹

The CCJ further criticized the extensive delay (over four years) in the case before the Appellant’s case was heard. It again chided the system, declaring that:

this is a most unsatisfactory situation that needs to be remedied ... The expeditious resolution of commercial disputes yields a net benefit not just to the litigants but also to the economy of Barbados. It is very important that specific performance cases such as this be identified early as needing timely disposition. (Sea Havens v Dyrud 2011:para 7)

Although the CCJ noted that such delays affect the interest in the outcome of money, it did not rule that the State should be held culpable for such funds, instead it commented again on the delay in cases. However, it acknowledged that Barbados had recently (2008) introduced a 'Civil Procedures Rules' (CPR), which is a practice directive to decrease case backlog. The CPR lists civil cases which are still in the judicial process dating back to 1990, and aims at efficient management of these cases.

Implication/s of the ruling: the introduction of CPR influenced by the CCJ prior rulings are directly related to the CCJ's directives on the pace of the judicial system in Barbados. The implementation of the CPR therefore reflects the CCJ's impact on the Barbados judicial system.

56th Case: The Guyana Cricket Board v The Attorney General Of Guyana: this case came from the Guyana Court of Appeals, and concerned financial accountability of representatives of the Guyana Cricket Board. Specifically, the Ministry of Sport assumed the national administration of

309 Y. Reid v. J. Reid, (2008) CCJ 8 [AJ].

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cricket outside of the jurisdiction of the Guyana Cricket Board. During the appeals process in the lower court, the case was dismissed with no option for appealing the ruling. In a very interesting move, the CCJ ruled that: “due to the seriousness of the issues and the urgency of the matter this Court most exceptionally will exercise the powers of the Court of Appeal”.³¹⁰ The CCJ made an unprecedented move in taking over the role of the lower court.

Implication/s of the ruling: the above action of the CCJ, to take over the role of the lower court again reveals an attempt to extend its competencies. The CCJ ruled in according to what it believed should have been done by the lower court of appeal. It extends its competencies to those of the lower courts and acts as the theory of Neofunctionalism predicts that institutions would do.

57th Case: Marjorie Ilma Knox v John Vere Evelyn Deane et al.: this case came from the Court of Appeal of Barbados. The case is an interlocutory appeal relating to an order from the lower court of appeal affirming security of cost of the appeal. The lower court required the appellant pay securities of cost because of residence outside the jurisdiction of Barbados. The CCJ ruled in favor of the appellant, and stated that although decisions on securities of cost is discretionary, the lower court was “wrong in that it was erroneous in law ... it took into account irrelevant considerations and failed to take into account matters relevant to the exercise of that discretion and whether it was just in all the circumstances to make such an award”.³¹¹ The CCJ further ruled to set aside the orders of the lower court.

Implication/s of the ruling: the CCJ made new interpretations on both securities of cost, and the implications of residential status of appellants/respondents in appeal cases. This is another example in which the CCJ rules beyond its obligations to the case, and according to the theory of Neofunctionalism, 'muddles about' in the regional judicial process.

67th case: BCB Holdings Limited & The Belize Bank Limited v The Attorney General Of Belize: originating in the court of appeals of Belize, this case was related to a dispute over a special tax regime allegedly crafted in a deed by the government of Belize for two companies. The case was complicated, because it was not only concerned with challenging arbitration proceedings and the power of international tribunals over CARICOM states, but also with public policy in Belize. The case reveals a blatant level of corruption related to state-regulated market preferences in Belize. The CCJ's recounting of the case reveals that the deal “was executed by the Prime Minister (the then Minister of Finance) and also by the Attorney General of Belize. The document was expressed to be “confidential”. The parties agreed not to make any announcement concerning its contents or

310 Sing v The Attorney General of Guyana (2012) CCJ 2 [AJ] para 41.

311 Knox v Dean (2012) CCJ 4 [AJ] Para 51.

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any ancillary matter”³¹²

Additionally, the CCJ noted that, the arrangement, in the form of a deed was not brought before the Commissioner of Income Tax of Belize, who had been unaware of the deed and implications more than a year after its execution. Furthermore:

the deed was never legislated by Parliament, but was honored for two years until a change of administration following a general election. The companies challenged the decision in an international arbitration under a tribunal. The Tribunal ruled against the State of Belize and awarded damages against Belize including arbitration totaling approximately \$44 million. (BCB Holdings v The Attorney General of Belize 2013:para 2)

The judgment also included compounded annual interest of 3.38%. The companies applied to the High Court of Belize to have the award enforced; it was resisted on the grounds that the act was unconstitutional. The dispute could not be arbitrated, as it related to the tax rates and liabilities of the companies, which was a matter for the Parliament of Belize.

The CCJ decided that courts should act with great respect for judgments from foreign tribunals and should only in the rarest circumstances refuse these judgments. It further ruled against remitting the case due to additional cost for both parties for a new cycle of litigation, and because the case would have to be reheard before a new panel, as the presiding judge was no longer employed in the Court of Appeal. It ruled that the present deed created a unique tax regime in Belize which the parliament could not alter, and the implementation of such a deed without legislative approval (which was not sought or granted) was illegal. Furthermore, it stated that:

the rights and freedoms of the citizenry and democracy itself would be imperiled if courts permitted the Executive to assume unto itself essential law-making functions in the absence of constitutional or legislative authority so to do. It would be utterly disastrous if the Executive could do so, selectively, via confidential documents. (BCB Holdings v The Attorney General of Belize 2013:para 42)

312 BCB Holdings v The Attorney General of Belize (2013) CCJ 5 [AJ] para 5.

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The CCJ went further to comment that:

in young States especially, keen observance by the courts of the separation of powers principle remains vital to maintaining the checks and balances that guarantee the rule of law and democratic governance. Caribbean courts, as part of their general function of judicial review, have a constitutional obligation to strike down administrative or executive action that exceeds jurisdiction or undermines the authority of the legislature. (BCB Holdings v The Attorney General of Belize 2013:para 42)

Implication/s of the ruling: this case follows a pattern of the CCJ superimposing itself in a 'supervisory' role, via rulings outside of the case requirements, and commenting on consequential matters. This is in line with the suggestions of the theory of Neofunctionalism in relation to actions and characteristics of institutions. The CCJ officially appoints itself as 'guardian of democracy' in the Caribbean in such matters.

74th Case: Clyde Brown v Michelle Moore: this case came from the Court of Appeals of Barbados. It raises the question of “whether the CCJ has jurisdiction to set aside an order it has previously made”.³¹³ The Applicants contended that an order of the CCJ “was a breach of natural justice, and that there should be a rehearing by a different panel”.³¹⁴ The previous claim before the CCJ related to a dispute over the possession of a parcel of land. Under the present claim, the Applicants made two main arguments, that: the CCJ had erred in its judgment because it did not read his written submissions, and as such his rights to a fair hearing was thereby prejudiced; and the respondents had no standing at the previous hearing before the CCJ and should not have been considered parties, because their documents were filed and the fees paid late/after the deadline.

The CCJ dismissed both arguments as unfounded and therefore the application for leave to appeal was also dismissed.

Implication/s of the ruling: through such judgments, the CCJ did not have to rule on whether it possesses the jurisdiction to dismiss its own rulings. In disregarding the main contention of the case, i.e. its competencies, and ruling along another line, the CCJ avoids putting its competencies under scrutiny.

The review of the above cases was intended to examine the process of integration in CARICOM. The case rulings were inspected to reveal any patterns in the CCJ's rulings. The

313 Brown v Moore-Griffith (2013) CCJ 12 [AJ] para 1.

314 Ibid para 1.

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patterns discovered were found to be consistent with the proposals of the theory of Neofunctionalism, namely: the CCJ acts as a regional institution, with utilitarian interests, superimposing its jurisdiction over CARICOM member-states; it holds international opinions over national sentiments and regional practices; and it rules on extra-judicial aspects of cases outside of the initial questions of the case extending its competencies.

5.3.2 Judgments under the CCJ's Original Jurisdiction

As mentioned previously, unlike its appellate jurisdiction, all CARICOM countries have ratified the CCJ's original jurisdiction. The cases that are reviewed below are notably lesser than those under the appellate jurisdiction³¹⁵. However, this can be attributed mainly to what Neofunctionalism describes as the 'initiation cycle of integration' in CARICOM. In this phase, according to the theory of Neofunctionalism disputes begin sporadically, the reaction to these disputes affect the process of regional integration, most times for the better. The theory further proposes that over time the number of cases will increase, especially as cross-border integration deepens and national borders eventually disappear; the cases below therefore signify the initial step of deepening integration in CARICOM. In analyzing these cases, it is imperative that we observe any patterns in the rulings of the CCJ, and whether these rulings positively or negatively influence the depth and speed of regional integration.

1st Case: Trinidad Cement Limited & TCL Guyana Incorporated v Guyana: the first original jurisdiction case that was brought before the court, was between Trinidad Cement Limited (TCL) and Guyana Incorporated (TGI), the appellants, against the Republic of Guyana, the defendant.³¹⁶ The case, request for special leave, sets the precedent for the CCJ as a court of original jurisdiction.

In the suit, TCL and TGI claimed that Guyana breached the provisions of Article 82 of the Revised Treaty of Chaguaramas (Revised Treaty) which obliges contracting countries to establish and maintain a Common External Tariff (CET) on all goods which do not qualify for community treatment, in this case cement.³¹⁷ In the case files, according to TCL and TGI, prior to 2007 the government of Guyana suspended the CET on cement for third parties; and opened markets for the free import of cement for external companies outside of CARICOM.

This affects both TCL and TGI as cement manufacturers, who therefore enjoy a competitive advantage over external producers. The CET is a pillar of the CARICOM Single Market and

315 Since its inauguration until the end of 2013, the CCJ had ruled on 15 original jurisdiction cases. They are reviewed below, and are categorized first numerically and then by relation and context.

316 TLC v. Guyana, (2008) CCJ 1 [OJ].

317 As reviewed in Chapter 4, the common external tariff on cement protects the local producers of cement in the CARICOM market.

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Economy, creating a competitive bubble for CARICOM manufacturers in the CARICOM community. Cement is also a determinative product for CARICOM markets. Prices and the supply of cement affect and regulate the manufacturing, construction and other sectors in the CARICOM member-states; therefore, the ruling of the CCJ on this matter was of utmost importance to the CARICOM manufacturing sector.

In its decision, the CCJ noted that since this was the first original jurisdiction case, there was no authoritative example to follow in interpreting and applying the Revised Treaty. It further stated that in the future, the rulings of the CCJ would form the body of literature, which the CCJ can rely on and refer to for its decisions. In the first paragraph of its first jurisdiction ruling, the court sets its first precedent by ruling that:

Guyana and Trinidad and Tobago are parties both to the Treaty and to the Agreement. Each of them has ratified and implemented these instruments which confer on the Court *compulsory* and *exclusive* jurisdiction to hear and determine disputes concerning the interpretation and application of the Treaty ... both States have submitted to the jurisdiction of the Court. Further ... the Agreement confer on the Court jurisdiction to determine its jurisdiction in the event of a dispute concerning its jurisdiction. (TLC v. Guyana 2008:para 1)

The Court further stated that “the language of a treaty's text is often imprecise and sometimes deliberately ambiguous in order to accommodate politically acceptable interpretations in different jurisdictions. This is particularly the case with multilateral treaties”.

It made reference to Article 31 of the Vienna Convention on the Law of Treaties (VCLT), which reads “a treaty shall be interpreted in good faith in accordance with the ordinary meaning to be given to the terms of the treaty in their context and in the light of its object and purpose”.³¹⁸ Following this, the CCJ decided that in making its decision it should take into account factors such as:

the context, object and purpose of the Revised Treaty; the status and role of private entities accorded by the Treaty; the intention of the States Parties to the Revised Treaty; the ordinary meaning to be attributed to the language of the text of the Treaty, and the

318 TLC v. Guyana, (2009) CCJ 1 [OJ] para 10.

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subsequent conduct of the States Parties establishing their understanding of the instrument ... (and to) also comment on the relevance and significance of rules that have been made pursuant to the Revised Treaty. (TLC v. Guyana, 2009 CCJ 1 (OJ) para 10)

The court affirmed the status of the individual as an object of international law in the *Mavrommatis Palestine Concessions* from The Permanent Court of International Justice.³¹⁹ It also considered comments from the International Law Commission on the status of private entities under international law.

In its twenty-page judgment, the court set a precedent, settling the “question as to whether a private entity of a Contracting Party is entitled to bring proceedings against that Contracting Party” by applying Article 222(c) of the Revised Treaty. In doing so, the CCJ grants the possibility for future private businesses to bring proceedings to the CCJ against the member-states in which they operate.

Implication/s of the ruling: such a move provides clarity to company law and cross-border trade in CARICOM; it moreover creates competencies for the to rule on future cases of this nature, and therefore the possibility to further impose its will on the CARICOM member-states. The explanation by the court that it will rely on itself and make self references for its judgment, adds to the notion that the CCJ embodies a regional institution with autonomy from CARICOM member-states. It further signals the CCJ's attempts to create a regional judiciary system in which it can be viewed as setting the precedents and creating a body of literature, an action substantiated under the utilitarian concept of Neofunctionalism. With this argument, the court has given itself 'compulsory and exclusive jurisdiction' in cases relating to interpreting and applying the Treaty of Chaguaramas. This compulsory jurisdiction excludes other bodies and institutions from the competencies of the CCJ; it defines it as the sole interpreter of the Revised Treaty of Chaguaramas (Revised Treaty), and therefore as the sole judiciary tribunal for disputes concerning the Revised Treaty.

The fact that the CCJ draws on international law in its interpretation of the Revised Treaty reveals that the CCJ sees itself as an international court. This act also points to the utilitarian hypothesis of the theory of Neofunctionalism, in which it is stated that institutions extend their competencies for utilitarian purposes and in so doing extend the amount of 'supranationality' in a union.

319 *Greece v. U.K. (1924) Mavrommatis Palestine Concessions* P.C.I.J. Reports, Series A, No. 2, p.12.

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2nd Case: Trinidad Cement Limited v The Caribbean Community: the second original jurisdiction followed the previous case (a request for special leave to bring proceedings before the court). The case was concerned with the suspension of CARICOM's Common External Tariff (CET) on cement for some community members. Although individual CARICOM member-states maintain the CET, it is the CARICOM's Council for Trade and Economic Development (COTED) which is in charge of its regional administration.

Additionally, according to CARICOM CET guidelines, in order for the suspension of CET to be granted, a member country must provide reasons for the suspension; identify respective member-states which previously supplied the goods; and specify endeavors to source the product from within CARICOM.

According to the CCJ (Application No. AR 3 of 2008), in September 2006 the COTED granted a 15% CET waiver to several member-states including Trinidad and Tobago and Suriname; Guyana unilaterally suspended the CET which was till in effect at the time of the suit.

First, a suspension of CET was granted to Jamaica. In 2008, Jamaica applied for the suspension of CET on cement. It was noted that Barbados could supply the necessary amount; therefore, the application was declined. However, after a few days the Secretary-General granted authorizations for suspension of the CET to Jamaica for a specific amount of Grey cement with reference to Article 83(3) of the Revised Treaty. The court additionally noted that (CCJ Application No. AR 3 of 2008) “no reason was given for the Secretary-General's apparent volte face, and TCL was not consulted or notified”.³²⁰

Secondly a suspension of the CET was granted to Antigua and Barbuda, Dominica, Grenada, St. Lucia, St. Kitts and Nevis, St. Vincent (the six OECS states), and Suriname.

Audit reports made to the court revealed that “the TCL Group consistently supplied between 79% and 93% of the region's demand for cement between 2001 - 2008. The forecast was that it would supply 100% of that demand in 2009 and 93% in 2010”.³²¹

These facts contradict the guidelines and provisions of the COTED for waivers of the CET in which a suspension can only be given where supply is “insufficient to satisfy a minimum of 75% of regional demand for those goods”. The applicants therefore claimed that the actions of both the COTED and the Secretary-General's suspension were 'unreasonable, illegal and null and void'. Furthermore, they required “orders setting aside or quashing these suspensions; a restraining order against the Community; and a mandatory injunction against the Community to revoke the

320 TLC v. Caribbean Community, (2009) CCJ 2 [OJ] p5 para 10.

321 TLC v. Caribbean Community, (2009) CCJ 2 [OJ] p5 para 13.

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suspensions and notify those affected”.³²²

This is a landmark case for the CCJ because it is the premier original jurisdiction case in which the court references itself in a ruling. It made reference to its previous ruling, *TCL v The State of the Cooperative Republic of Guyana*; it ruled that CARICOM had a legal personality and that a private entity could seek redress against CARICOM in the CCJ. It therefore ruled against CARICOM, referencing its institutional independence and autonomy.

In its thirty-six page judgment, the court declared that Although Article 82 of the Revised Treaty, which CARICOM relies on to explain its actions, delineates that CETs “can be suspended or altered at the discretion of the body administering the CET, there are limitations on the circumstances in which that discretion is exercisable and arguably on the manner of its exercise”.³²³ Therefore CARICOM cannot rely upon Article 82 of the Revised Treaty to suspend the CET without reasons and moreover CARICOM does not possess the jurisdiction to interpret said article, since the CCJ possesses sole competency to interpret the Revised Treaty and all articles herein.

Implication/s of the ruling: with such a judgment, the CCJ asserts its independence as an international institution and puts itself above the regulations of CARICOM. This ruling reflects the competence of the CCJ as well as its status and hierarchy in CARICOM. The initial will and action of CARICOM are declared void, and a 'Community will' is enforced by the CCJ, which prescribes a 'Community system' and rules in favor of harmonizing integration in CARICOM. Thus, this ruling did not only address a dispute; it cemented the position of CCJ as an independent institution, functioning outside of the power of CARICOM bodies. It reinforced the CCJ's mandate as the sole interpreter of the Revised Treaty of Chaguaramas.

In its interpretation of Articles 187, 211, and 222 of the Revised Treaty, the CCJ also set a precedent for who can take leave to appeal under original jurisdiction at the court, the types of disputes, and the matter of jurisdiction of the court.

4th Case: Trinidad Cement Ltd and The Caribbean Community: this case follows the ruling of the above case, *Trinidad Cement Limited (TCL) v The Caribbean Community*. TCL had challenged decisions by CARICOM to authorize the suspension of the CET on Grey cement in specific CARICOM member-states. TCL claimed that both decisions were *ultra vires*, and as such requested that they be “quashed” by the CCJ.

The CCJ rejected the appeal of TCL to quash the decision of the Secretary General. It ruled that the:

322 *TCL v. Caribbean Community*, (2009) CCJ 2 [OJ] p7 para 20.

323 *Ibid* p10 para 28.

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Secretary-General acted throughout in good faith and in conformity with a practice (now declared obsolete) that he inherited when he assumed office. While his procedural flaw attracted an appropriate declaration, it was not of a sufficiently serious nature to warrant the annulment of his decision. (TLC v. Caribbean Community, 2009:para 35)

Implication/s of the ruling: the CCJ's dismissal of TCL *ultra vires* claim shows that it sided with CARICOM and upheld the decisions of CARICOM even when they were based on practices that the CCJ itself made obsolete.³²⁴

5th Case: *Trinidad Cement Limited and TCL Guyana Incorporated Claimants v Guyana*: this case dealt specifically with the issue of the suspension of CET on Grey cement by Guyana. The plaintiffs requested various forms of relief, including declarations that Guyana was in breach of the Revised Treaty by failing to maintain and implement CET on cement; a court order directing Guyana to reinstate the CET; damages for lost profits suffered by the companies due to the CET suspension.³²⁵

The ruling centered around the following questions: Could Guyana be liable for damages; is TGI entitled to said damages, and if so, what amount; and what declaratory relief could remedy the situation? The proceedings of the case revealed that TCL “still managed to sell all the cement it could produce without making a loss on the cement that might otherwise have been shipped to Guyana”

This revelation caused TCL to abandon its claim for compensation due to damages by Guyana, and the court declined any claim for compensatory damages.

The CCJ issued a declaration that Guyana was in breach of the provisions of Article 82 of the Revised Treaty in failing to implement the CET. Furthermore, it made a coercive order requiring Guyana to reimpose CET within 28 days.

Implication/s of the ruling: this judgment is in favor of the deepening of integration. The CCJ ruled that through Guyana's commitment to the Revised Treaty, it must uphold the provisions of said treaty, which include implementing the imposed CET determined by CARICOM. The rulings clearly impinge on the sovereignty of Guyana, and in issuing a coercive order the CCJ further

324 Ibid para 80, The CCJ ruled (on the present case) that in order for the Secretary-General to be supplied with “accurate, relevant and timely information when it meets to consider a suspension of the tariff ... appropriate ... forms must be devised for both importers at the domestic level and for Competent Authorities. The importer should provide evidence of unfulfilled orders; evidence of the response of the regional producer including transportation logistics and information showing what efforts they have made to obtain regional supplies”.

325 TLC v. Guyana, (2009) CCJ 5 [OJ].

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imposes the 'Community will' on Guyana. The arbitrary number of days - 28 - additionally reflect the imperative stance of the CCJ to impose a set amount of time in which Guyana has to follow its coercive order. In setting a deadline, the CCJ places further liability on Guyana to comply with its decision.

6th Case: *Trinidad Cement Limited & TCL Guyana v Guyana*: pertaining to the case above, through the sixth original jurisdiction case, Guyana had sought a stay of execution of the CCJ's judgment for an "extension of time for compliance with that order and/or a variation thereof".³²⁶ In response to this stay of execution, the Claimant, Trinidad Cement, filed a counter appeal, requiring the CCJ to dismiss the case on the grounds of contempt of the court. The CCJ dismissed the application from Guyana on all grounds, in addition to ordering Guyana to pay the court costs which included all necessary taxes.

Implication/s of the ruling: the judgment against Guyana reveals the *de jure* power of the CCJ to rule against the will of the nation states which founded it. The case also highlights that there is some, albeit limited, *de facto* power of the CCJ, as Guyana not only submitted to the CCJ's jurisdiction but also requested that the CCJ grant a stay of execution.

7th Case: *Trinidad Cement Limited & TCL Guyana v Guyana*: the seventh original jurisdiction case was again related to the previous cases and judgments. TCL petitioned the CCJ to hold Guyana in breach and contempt of the Court for not carrying out the rulings of the CCJ (August 20, 2009), i.e. to reinstate the CET on cement within 28 days of the judgment. During this period, Guyana had purportedly filed an extension a day before the 28-day grace period ended (September 16, 2009) and an application seven days after the end of the grace period. The application was dismissed on October 14, and the Court ruled that Guyana had been in non-compliance since September 17, 2009 (the day after the 28-day grace period). On October 15, 2009 Guyana reinstated the CET on cement imported from non-CARICOM countries on shipments that had been ordered after October 15, 2009. The CCJ noted that:

at a case management conference on November 13, 2009 counsel for Guyana admitted that Guyana remained in continuing breach of the Order because of the Commissioner-General's failure to reinstate the CET in respect of all non CARICOM cement imported into Guyana regardless of the date when it was ordered. (TCL v. Guyana 2009:para7)

326 TCL v. Guyana, (2009) CCJ 6 [OJ] p. 2 para 2.

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On January 8, 2010, nearly four months after the 28-day grace period, Guyana reinstated with immediate effect the CET on all imports of cement from non-CARICOM countries.

Implication/s of the ruling: in hearing the matter, the CCJ was compelled to rule on its power to treat 'disobedience', it decided that Article 26 of the Revised Treaty “does not confer an express power on the Court to enforce its orders by contempt proceedings”.³²⁷

In its executive summary of the decision, the CCJ noted that the lack of provision was because it was:

assumed that the Court would have such powers to punish contempt of court as the national courts had, without averting to the fact that civil law systems of some member-states knew no such concept. It was unclear what forms of contempt, if any, the CCJ Agreement meant to introduce on the international plane. (TCL v. Guyana 2010:Executive Summary)

Furthermore although: “ad hoc international criminal tribunals such as the International Criminal Tribunal for the Former Yugoslavia (ICTY) asserted an inherent jurisdiction to punish contempt of court, it had not been established that such power existed in non-criminal cases”.³²⁸ It further stated that:

it had not been shown that the Court was endowed with an express, implied or inherent power to make declarations or orders with respect to civil contempt of court. Further, even if such a power existed on the international plane, the only practical remedy was a declaration that a party was in contempt of court. The fact that such a declaration was not significantly different from a declaration of non-compliance under Article 215 of the Revised Treaty suggested that the drafters of the CCJ Agreement might not have intended to confer on the Court any jurisdiction over civil contempt. (TCL v. Guyana 2010:para 9)

The Court emphasized that national legislation could neither confer powers on the Court nor diminish the powers of the Court in its original jurisdiction. The Court reiterated that whereas a provision had been enacted for enforcing in the local jurisdiction orders made in the Court's

327 TCL v. Guyana, (2010) CCJ 1 [OJ] p. 12 para 33.

328 Ibid p. 3 para 8.

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appellate jurisdiction, no express provisions had been made for original jurisdiction orders, and therefore the CCJ might require the assistance of the 'enforcement machinery of the national courts' to impose its original jurisdiction decisions. In doing so, the CCJ calls on the lower national courts to provide enforcement assistance for its ruling.

Additionally, in noting that “the CCJ Act ... contains no express provision for making the orders made by the Court in its original jurisdiction enforceable by the domestic process applicable within the jurisdiction of Guyana”³²⁹,

It moreover admitted its lack of *de facto* power over the national states of CARICOM with regard to its original jurisdiction rulings.

Furthermore, the CCJ also accepted that it does not possess the power to compel the nation-states to agree on any protocol to amend this; rather, it can only 'hope and comment' that “closer coordination will have been achieved between the drafters at the Caribbean Community and those within the national jurisdictions”.³³⁰

This ruling points to the *de facto* limitations mentioned above. The CCJ is not granted any competence to compel member-states to follow its actions; neither is there any machinery to enforce the decisions. These *de facto* limitations have a conditional effect on the *de jure* competencies of the CCJ. Studies such as Melton (2014) have revealed an under-performance of *de jure* competencies when there are limited *de facto* competencies. The conditional theory of efficacy of Neofunctionalism also offers an explanation for this situation. As presented by the theory of Neofunctionalism, the member-states act to retain their distinctive identity; that is to say, the fear of the member-states of losing their competencies will compensate for lower efficacy in the functions of institutions such as the CCJ. The member-states will consciously limit the same competencies that they confer on the institution, limiting the influence of these institutions over the member-states, even to the detriment of the functionality of the institutions.

The theory of Neofunctionalism also explain that when there is limited scope, such as with the competencies of an institution to carry out its functions, there will also be a limited level of integration in CARICOM. Thus, when the scope of competencies of the CCJ is limited, the level of the power it wields over the member-states and over regional integration in the member-states will also be limited.

However, in referencing the Yugoslavia case, the CCJ noted that these *de facto* limitations were under its original jurisdiction, and did not pertain to its appellate jurisdiction. Therefore, while

329 TCL v. Guyana, (2010) CCJ 1 [OJ] p. 18 para 52.

330 TCL v. Guyana, (2010) CCJ 1 [OJ] p. 18 para 53.

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the CCJ accepts its limitations, its advances competencies in other areas and under other jurisdictions at the same time.

Overall, the above cases prove that the CCJ was the competent authority in CARICOM to hear cases pertaining to a breach of the Revised Treaty. The above judgments also reveal the CCJ taking steps to further uphold its decisions, and referencing itself. The CCJ can likewise be seen making references to international tribunals, and acting as an international court.

Additionally, although its influence is limited, the CCJ does possess some coercion power and a soft form of *de facto* rule over the intergovernmental countries in CARICOM.

The CCJ also upheld the decisions of the Secretary General of CARICOM and did not hold his actions as *ultra vires*, although it ruled that the way in which the Secretary General carried out his decisions was incorrect; it changed the way in which the Secretary-General conducts its decisions in hearing CET appeals. The CCJ reaffirms the actions of the Secretary-General and in turn CARICOM as overarching in the regional integration process in CARICOM. This draws on the arguments of Neofunctionalism, which suggest that institutions in regional integration are not loyal to the member-states which create them but to the process of deepening regional integration and therefore, to the integration project and union.

3rd case: *Doreen Johnson v Caribbean Center for Development Administration*: this case concerned the termination of a CARICOM employee. It sets a precedent and further defines the jurisprudence of the Court under the matters of 'who' can be sued and what 'they' can be sued for in the CCJ under its original jurisdiction.

Doreen Johnson is a national of Barbados, who worked from 1990 to 2007 for the Caribbean Center for Development Administration (CARICAD)³³¹. According to the case files of the CCJ, the Applicant was on an approved no-pay study leave between September 2005 and 2007. In August 2007, she wrote to the Executive Director of CARICAD requesting details of the terms and conditions of her employment, including her right to a pension. Upon the applicant's return to work on September 3, 2007 "she was informed that her services were terminated forthwith. The Board of CARICAD had decided to make her position as Head of the Administration Unit redundant with immediate effect".³³² She then sought special leave from the CCJ to contest:

abuse of power, wrongful dismissal, violation of the labor laws of Barbados, breach of contract, and breach of the Constitution of Barbados. She also claimed that she had been

331 Article 21 of the Revised Treaty recognizes/establishes CARICAD as an institution of CARICOM.

332 *Johnson v. Caribbean Centre*, (2009) CCJ 3 [OJ] para 1.

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discriminated against on grounds of nationality, because employees who were Barbados nationals were not afforded the pension rights conferred upon employees who were nationals of other countries. (Johnson v. Caribbean Centre 2009:para 1)

The court: directed preliminary issues be tried before hearing of the application, specifically, can CARICAD be sued in the Caribbean Court of Justice; which of the Applicant's complaints are justifiable by the Court? The Applicant's argument to bring the case before the court was that:

CARICAD is listed in Article 21 of the Treaty as one of the Institutions of the Community; further, that being such an Institution, CARICAD's legal personality and capacity to be sued are derived from Article 228 of the Treaty which accords the Community full juridical personality ... (The) Applicant further submitted that Article 222 of the Treaty gives this Court jurisdiction to hear this matter as the interests of justice require that she be allowed to bring the claim irrespective of the identity of the defendant. (Johnson v. Caribbean Centre 2009:para6)

The CCJ made it clear that under its original jurisdiction, its duty was to interpret the Revised Treaty of Chaguaramas, and rule on matters that were in breach of this treaty. Therefore, domestic law contentions such as those relating to labor law or constitutional rights do not fall under the purview of its original jurisdiction.

It further argued that although CARICAD can be characterized as an associate institution of CARICOM "working within the CARICOM system they have no power actual or ostensible to bind or represent the Community. Their acts and omissions are not necessarily attributable to the Community".

Following this argument, the court ruled that actions against CARICAD cannot be undertaken in the CCJ. It further concluded that "the Community can be sued for the conduct of its Organs and Bodies and that of the Secretary General"

It however excluded other entities in CARICOM from any legal personality by arguing that "even if CARICAD were an Organ of the Community, it could not be made a defendant in proceedings commenced in the Court as proceedings in respect of its acts or omissions would have to be brought against the Community itself". It further identified CARICAD with certain agencies of the United Nations, and suggested that:

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Institutions and Associate Institutions of the Community are not unlike the specialized agencies of the United Nations which are not Organs of the United Nations. ... Specialized agencies are autonomous intergovernmental agencies which contribute in their own way to the achievement of the objectives and purposes of the United Nations. These institutions form part of the United Nations System, but they are not an integral part of the United Nations. Similarly, Institutions and Associate Institutions of the Community are autonomous inter-governmental entities which contribute to the achievement of the objectives of the Community, but are not an integral part of the Community. (Johnson v. Caribbean Centre 2009:para12)

In the event that the CCJ technically does not possess the jurisdiction to rule on labor disputes, this decision isolates certain institutions of CARICOM from judicial recourse in the CCJ. Although CARICAD was acknowledged by the Court as an entity of CARICOM, it was characterized as an 'independent' CARICOM organization which can only be sued under labor laws in the respective country where its main offices are -- that is, in Barbados. This characterization of CARICAD as being similar to 'specialized agencies' in the United Nations fails to take into consideration additional possibilities for characterizing regional institutions. For example, the European Court of Justice rules on cases in the category of direct action, especially actions for damages "caused by its institutions or by its servants,"³³³ which includes institutions of the EU. The Treaty of Lisbon gives the EU and all its bodies and organs full legal personality. Nevertheless, the CCJ chooses to make reference to the United Nations rather than to the European Court of Justice in making its rulings. This is in spite of the fact that the European Court of Justice, and the EU institutions are more similar to the situation in CARICOM, than the UN and its specialized agencies.

Implication/s of the ruling: with reference to the Revised Treaty, the CCJ's claims leaves loopholes in characterizing and giving personality to parts of CARICOM. This judgment isolates parts of CARICOM from legal recourse and creates a loophole for institutions in the community such as CARICAD, and the Competition Commission to be characterized as 'specialized agencies'; precluding them from a legal personality and consequently their actions from some legal recourse; granting some form of supranationality to these said 'specialized agencies'. Setting a precedent, CCJ rules that actions such as those from the COTED or the Competition Commission might be not

333 Consolidated Version of the Treaty on the Functioning of the European Union 2008 Article 340, Paragraph 2.

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liable to being brought before the CCJ. In precluding such actions from legal recourse, the Competition Commission can, for example, carry out extensive review of cases or member-states, without the possibility of any judiciary recourse before the CCJ.

9th and 10th and 11th Case: Hummingbird Rice Mills v Suriname & The Caribbean Community: the dispute was regarding the period of January 2006 to June 2010 during which Suriname imported wheat and meslin flour from the Kingdom of the Netherlands at a rate of 0-5% customs duty instead of the rate of 25% as was stipulated by the CET. Following the procedures that the CCJ installed (arising from the TCL cases above), complaints were made by the trade ministries in the affected country, in this case Trinidad and Tobago, to the Secretary-General of CARICOM. This original jurisdiction case differs from the TCL cases in that a majority of the procedures that were carried out by the CCJ in the TCL cases were taken over, in this case, by the COTED and the CARICOM Secretariat.

Following is a brief overview of the proceedings that occurred before the case was brought to the CCJ, which took place in consecutive COTED meetings. In February 2006, The Ministry of Trade and Industry of Trinidad and Tobago notified the CARICOM Secretariat of the non-imposition by Suriname of the CET on wheat or meslin flour. Following this notification, the CARICOM Secretariat consulted with the government of Suriname in March 2006; and also reported the dispute to the following COTED meeting in May 2006. The COTED required Suriname to investigate the dispute and report to the Secretariat. At a COTED meeting in November 2006, the CARICOM Secretariat reported that Suriname had admitted to importing flour from the Netherlands at a 0% tariff. However, due to the type of flour imported further investigations had to be carried out. In December 2006, Suriname requested a suspension of the CET on wheat or meslin flour due to quality concerns regarding the regionally supplied flour and long-term arrangements with Dutch suppliers. The request was denied in January 2007, and Suriname was required to impose the CET on extra-regional flour imports by February 2008. In January 2008, Suriname requested that COTED exempt flour from the CET. This request was also denied. The CCJ case background revealed that in June 2008:

the CARICOM Secretariat reminded Suriname of the February 2008 deadline, and in October 2008 Suriname advised the Secretariat that consultations were taking place in Suriname with a view to rescinding the Ministerial Decree of 1997 that allowed for duty-free imports of flour. (Hummingbird Rice Mills v Suriname 2011:para 7)

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Suriname implemented the CETs on June 15 2009. Hummingbird Rice Mills brought the above proceedings to the CCJ and applied for leave to hear the case before the CCJ. It challenged actions of both Suriname and CARICOM. Regarding Suriname, that it breached the provisions of the Revised Treaty regarding CETs. Regarding CARICOM, that “the Secretary-General through COTED unlawfully accepted Suriname’s undertakings and acquiesced in COTED’s extensions of time granted for compliance with the CET”.³³⁴ Additionally, Hummingbird Rice Mills contended that “the Secretary-General illegally and irrationally made an implied decision to authorize the suspension of the CET over the relevant period”.³³⁵ The CCJ granted leave for the application.

Implication/s of the ruling: the decision to grant leave follows the rulings of previous cross-border disputes brought before the CCJ. In following its set precedence, the CCJ referenced itself in its decision to grant leave, an action which reveals the political influence of the CCJ.

10th Case: this case follows from the previous case, the grievances of which, are outlined above. In its judicial review of the acts of CARICOM, the CCJ noted that:

the Secretary-General, perhaps, could have put forward more forceful proposals for consideration by COTED in dealing with Suriname’s prolonged non-compliance. (However) there was not much scope for COTED to be more definitive in dealing with breaches of treaty obligations by member-states. (Hummingbird Rice Mills v Suriname 2011:para 36)

The wording of the judicial review of the CCJ reveals that the CCJ clearly sides with the Community. For example, the CCJ cited words such as “noteworthy and commendable”³³⁶ to address the Secretary General's actions, even though it accepted that the Secretary General could have been more forceful in its actions. In its ruling the CCJ announced that:

without evidence of a specific mandate from COTED, there is no basis to entertain the allegations of more detailed responsibility by the Secretary-General in relation to the monitoring and implementation of the CET... In all the circumstances of this case, the Court finds that the Secretary-General did not act in dereliction of duty in respect of the non-imposition of the CET by Suriname. (Hummingbird Rice Mills v Suriname

334 Hummingbird Rice Mills v Suriname (2011) CCJ 1[OJ] para 11.

335 Hummingbird Rice Mills v Suriname (2012) CCJ 1[OJ] para 11.

336 Hummingbird Rice Mills v Suriname (2012) CCJ 1[OJ] para 37.

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2011:paras 37-38)

As a result of this action, the CCJ dismissed the argument of unlawful conduct of the Secretary-General. The CCJ additionally rationalized that the COTED could not be held culpable for the non-compliance of Suriname. Therefore, the CCJ ruled that neither the Secretary-General or the COTED did not conduct themselves unlawfully in the matter, and therefore were not liable for punitive damages to the claimant. With regards to Suriname, the CCJ ruled that it did indeed breach its obligations to the Revised Treaty with respect to the CET on rice; however, since Humming Bird Rice Mills could not sufficiently prove financial damages, all claims for damages were dismissed.

Implication/s of the ruling: this ruling of the CCJ excludes this and future actions of a similar nature of the COTED and the Secretary General of CARICOM from legal recourse. The very wording of the communication between the COTED and Suriname should have been drawn into question. For example, it should have been noted that the Secretary General and the COTED 'reminded' Suriname of the deadline, and 'urged' it to comply, rather than 'requiring' and 'compelling' it to do so. However, the CCJ excludes the actions of the COTED and the Secretariat from legal recourse, thereby establishing the sovereignty and arbitrary actions of both the COTED and the Secretary General as being lawful and just. This action positions the will of CARICOM entities over the member-states, at the same time excluding the possibility of legal recourse for these actions. The CCJ thus endows some form of soft 'supranationality' on these CARICOM entities.

11th Case: this case was concerned with the supplementary judgment as to the court cost between Humming Bird Rice Mills against Suriname and the Community. After hearing arguments from all parties, the CCJ ordered the Community to bear its own costs only, and that Suriname pay 50% of Humming Bird Rice Mills costs.

Implication/s of the rulings: the CCJ rulings which are related to the cluster of three Humming Bird Rice Mills cases, again reveal like the TCL group of cases, which the CCJ rules in favor of the Community and does not award punitive damages against the Community. The CCJ is also ready to rule against the nation states of CARICOM, but is not ready to sanction them by making them pay for a percentage of claimant costs in case of their breaking the CARICOM regulations. The above cases furthermore reflect the CCJ's prejudice in supporting CARICOM institutions.

The actions of Suriname can be attributed to the Neofunctionalist curvilinear hypothesis, which proposes that when integration occurs too quickly and there are too many additional factors, then the member-states act out of fear for their respective common good in a defensive and negative

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pattern.

12th 14th & 16th cases: *Shanique Myrie claimant v Barbados*: the following three related cases set the precedent for the freedom of movement of CARICOM nationals. The case concerned a Jamaican citizen who argued that her rights under the Revised Treaty were prejudiced by Barbados.

12th case: this case sets a precedent, because it concentrates on “important issues of Caribbean Community law which have not previously been addressed by this Court. The most prominent among them is whether and to what extent CARICOM nationals have a right of free movement within the Caribbean Community”.³³⁷ The claimant (a Jamaican citizen) argued that on leaving Jamaica and traveling to Barbados, she was denied entry with no reason given. Furthermore she claimed that:

she was subjected to insults based on her nationality and to an unlawful body cavity search in demeaning and unsanitary conditions. Her luggage was also searched but none of these searches revealed any contraband substances. Ultimately, Ms Myrie was not allowed to enter Barbados and was instead detained overnight in a cell at the airport and deported to Jamaica. (*Myrie v Barbados* 2012:para2)

The Claimant then sought a number of rulings from the CCJ, which included that Barbados pay both special and punitive damages in addition to her legal fees.³³⁸ These were based on her arguments that her right to free movement in the Community was denied; she was prejudiced because of her nationality and treated less fairly than other Community nationals; and her body search was “an assault, a rape, of such a serious character that it constitutes a violation of her fundamental human rights and freedoms for which the State of Barbados must be held accountable;”³³⁹

Among other points, Barbados challenged the provision of free movement of CARICOM nationals across the Community as not being 'legally binding rights', and that furthermore, even if there was such a right, it would not be absolute or without restrictions. Additionally, Barbados asserted that immigration and customs procedures do not fall under CARICOM jurisdiction.

14th case: the particulars of this case were related to the acceptance of witnesses/a witness for the claimants against the will of Barbados, and additionally, the state of Jamaica seeking leave to be

337 *Myrie v Barbados* (2012) CCJ 3 [OJ] para 1.

338 *Myrie v Barbados* (2012) CCJ 3 [OJ] para 3.

339 *Myrie v Barbados* (2012) CCJ 3 [OJ] para 3.

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party to the suit, which was granted.

16th case: this case is the judgment on the above cases, in defining its jurisdiction, the CCJ allowed for the review of the impingement on the claimant's fundamental rights under the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, and the American Convention on Human Rights. Like its appellate jurisdiction rulings, no mention was made of the Charter of Civil Society of the Caribbean Community.

The CCJ declared that Barbados had breached Ms Myrie's rights in conjunction with Article 45 of the Revised Treaty. The CCJ additionally established and awarded both pecuniary and non-pecuniary damages to the claimant, in addition to her court fees.

Implication/s of the ruling: the ruling solidifies the freedom movement of CARICOM nationals in the Community under CARICOM law. The free movement of persons is a cornerstone of the CSME, it signifies a deepening of regional economic and political integration. The CARICOM member-states are obliged to implement provisions to facilitate CARICOM nationals to travel freely across their borders. The CCJ has the sole authority for interpreting these provisions and to rule over the extent to which member-states comply with them. Furthermore, the Revised Treaty and this judgment of the CCJ additionally bind the member-states to CARICOM legislation and offer a threat in the form of pecuniary and non-pecuniary damages, when states do not abide by this legislation. In doing this, the CCJ clearly asserts its rule over the member-states and supports integration.

This case further delineates the stance of the CCJ on intra-regional travel. Following the ruling, countries in CARICOM updated their regulations, liberalizing intra-regional travel for CARICOM members. However, it is odd to say the least that, in ruling on an original jurisdiction case involving the violation of human rights, the CCJ did not make reference to the Charter of Civil Society of the Caribbean Community. By doing so, it would have introduced the Charter as a vital document in the Community's legal hemisphere. The Charter is incorporated in the Revised Treaty and therefore falls under the original jurisdiction of the CCJ. However, the CCJ chose yet again to isolate certain facets of CARICOM from its jurisdiction.

Although this decision adds to the increased scope and level of integration, it also provides limitations to that scope. The CCJ could have made a more extensive and compelling ruling on the matter. Its ruling neglected certain provisions of the Community, and undermining the authority of the instruments provided by the very treaty that it interprets.

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13th Case: Trinidad Cement v The Competition Commission: the case involved TCL as claimant against the CARICOM Competition Commission (the Commission). TCL brought special leave to the CCJ to hear its grievances against the Commission, initiating and conducting a probe into anti-competitive practices of TCL in the Community without notification. The case posed questions regarding the work, role, and functions of the Commission.

The Commission challenged the juridical personality of the CCJ and contended that the CCJ did not have jurisdiction “to review actions of the Commission in relation to the initiation and conduct of ... investigation”.³⁴⁰ Contrary to its decisions on the third original jurisdiction case reviewed above, the CCJ ruled that the Commission has 'full juridical personality', and as such is liable for suit in the CCJ. Furthermore:

there was no conduct or exercise of power on the part of a Treaty-created institution which could escaped its judicial scrutiny, due to the CCJ's compulsory and exclusive jurisdiction to adjudicate disputes concerning the interpretation and application of the Revised Treaty, as well as the Treaty's normative structure geared at transforming the CSME into a regional system under the rule of law. (Trinidad Cement Ltd. V The Competition Commission 2012: para16)

Implication/s of the ruling: notably, when the competencies of the CCJ are questioned, it rules to extend these competencies, to address legal personality in spite of the fact that it had previously ruled that only the Secretary General and organs of the Community possess legal personality. In its previous judgment, *Johnson v. Caribbean Centre*, the CCJ had excluded the institutions of CARICOM from its jurisdiction. Contrarily, in this case, the CCJ awards institutions in CARICOM legal personality, when its jurisdiction is in question. The CCJ further ruled that TCL's legitimate interest was not affected by the Commission's preliminary probe. It dismissed TCL's Application, and ordered that written submissions pertaining to costs be filed by both parties. Additionally, the CCJ highlighted and encouraged a review of procedural flaws of the Commission in order for it to conform to the standards of the Revised Treaty.

In doing so, the CCJ upholds the actions of the Competition Commission and sanctions future actions. It affords the Competition Commission the opportunity to emulate and conduct investigations without the knowledge of or the necessity to inform the business/government under

340 *Trinidad Cement Ltd. V The Competition Commission* (2012) CCJ 4 (OJ).

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investigation. The Competition Commission can therefore sidestep both businesses and government, and investigate their regional practices. With such a ruling, the CCJ places the will of the Competition Commission over that of the member-states, and grants assurance to the regional initiative of economic and political integration in CARICOM.

15th Case: Trinidad Cement v The Competition Commission: the 15th original jurisdiction case was the supplementary judgment of court costs resulting from the 13th original jurisdiction case. Since the CCJ had dismissed the appeal, it ordered that the TCL pay 30% of the costs of the Defendant.

Implication/s of the ruling: in dismissing the claimant's appeal, the CCJ upholds the supranational action of the Competition Commission, and justifies actions of this commission. It relates to the acceptance of community benefits over those of the individual member-states or companies, and reveals the allegiance of the CCJ to the Community as the theory of Neofunctionalism proposes.

These original jurisdiction cases reviewed above reveal the *de jure* and *de facto* competencies of the CCJ. They demonstrate that a limitation on the scope of competencies affect the level of jurisdiction and the content of the CCJ rulings, and point to hypotheses of the theory of Neofunctionalism. A further discussion of both appellate and original jurisdiction cases is provided directly below.

5.4 Discussion

The overview above focused on the scope and level of integration in CARICOM. The scope of integration was investigated by observing the competencies of the CCJ; and the level of integration was examined by considering the extent to which the CCJ acted in the scope of its competencies. Of special import were the content of the rulings of the CCJ, which were examined in the context of the theoretical underpinnings of Neofunctionalism.

This section employs the theory of Neofunctionalism to offer a further assessment of the judgments and of the general process of regional integration in CARICOM.

5.4.1 Appellate Jurisdiction Rulings

As mentioned earlier, at the time this chapter was drafted, only three members of CARICOM subscribed to the appellate jurisdiction of the CCJ. The review of the cases is nonetheless noteworthy since it provided the possibility to observe patterns in the rulings that were consistent

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with the theory of Neofunctionalism; an interplay, especially in the power relationship, between the CCJ and the member-states; the spatial relationship between the CARICOM member-states and the CCJ.

Patterns of rulings: in addressing the institutionalization of a regional body and the institutional aspect of theoretical analysis, Neofunctionalism introduces the term 'encapsulation', which rests on the premise that there is an underlying competition brought about by exogenous tensions and/or process-generated contradictions between regional institutions and the member-states which create them. It further proposes that this competition produces consequences which 'feed back' to the institutions.³⁴¹ Encapsulation reasons that "the policy-making forum originally established is sufficiently resourceful and flexible to handle the consequences and sustain satisfactory performance toward the attainment of common objectives, a self-maintaining international subsystem is likely to emerge".³⁴²

Encapsulation is highly relevant for examining institutions in a regional arrangement, especially the CCJ, which was already highlighted as a somewhat supranational institution in an intergovernmental regime. The encapsulation hypothesis of Neofunctionalism the observation of the power structure, order, and competition between the CCJ and the member-states³⁴³.

The CCJ was observed to be exceptionally resourceful in its judgments. It ruled in a pattern to extend its competencies, and to deepen regional integration in CARICOM, the latter of which was highlighted as a common objective in its first annual report. The patterns in the CCJ's judgments also reveal a self maintaining system, where the CCJ extends its livelihood and its competencies.

Self maintenance characteristic: as was previously highlighted, the characteristic of international cooperation typically resembles 'service oriented' cooperation, which is 'self contained' and aimed at resolving mutual issues. This cooperation neither expands the supranationality of institutions nor limits the sovereignty of the individual states. It is only in 'exceptional circumstances' that convergence creates exception, i.e., cases in which institutions become positioned above the member-states that create them. The above overview of the competencies of the CCJ and the analysis of its case rulings reveal this to be one of the exceptional cases to which the theory of Neofunctionalism points. The competencies of the CCJ under its appellate jurisdiction reveal that some CARICOM member-states have converged on mutual issues, in this case a regional

341 Schmitter (2002).

342 Schmitter (2002:14).

343 This possibility is emphasized from the CCJ's perspective, where we observed that the CCJ often times criticized the judicial process in the member-states, and ruled outside of the cases, delivered directives and chided the member-states.

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final appellate court to displace a colonial court. The cases further revealed that the CCJ often extends its competencies and superimposes its will on member-states, acting as a driving factor in the process of integration, dictating its direction and speed. The CCJ compelled member-states to increase their judicial efficiency and local processes, and called for the harmonization of regional judicial standards and created a regional body of jurisprudence.

Effect of exogenous factors: it is possible to make sense of the limitations of the *de jure* and *de facto* competencies highlighted above. The initial introduction of the appellate jurisdiction of the CCJ noted the level of politicization, and the fact that the CCJ was viewed as a 'hanging court'. These tensions relate to the actions of the CCJ in addressing human rights, especially regarding capital punishment. The CCJ chose to use international instruments rather than the regional charter to interpret and make its judgments pertaining to capital punishment. Therefore, as a result of being viewed as a 'hanging court', these exogenous factors were fed back to the CCJ. Consequently the CCJ acted to allay any fears, and the competencies of the CCJ and its structural subsystem were sufficient for 'self maintenance.' Even when the process generated contradictions and exogenous tensions were particularly evident, the policy-making forum of the CCJ was self-sufficient, and it possessed the resources to handle the consequences and sustain satisfactory performance. The structure and competencies of the CCJ also enabled it to be resourceful in dealing with issues related to the consequences of feedback.

Humanitarian and Utilitarian aspect: a prevalent action of the CCJ was to uphold and promote the right of poor persons to appeal in the Higher Court, and in the CCJ, without securities to cost. This humanitarian action of the CCJ reflects its commitment to its initial aims. Both the Agreement Establishing the CCJ and the CARICOM Civil Society Charter address the court's competencies relating to the civil rights of CARICOM citizens. The actions of the CCJ can be observed as adhering to the provisions of the two aforementioned instruments. Additionally, the actions of the CCJ such as creating a body of cases for under this topic can be explained by the utilitarian concept in the theory of Neofunctionalism, which proposes that utilitarian actions of institutions point to an increase in the level and depth of integration. Thus, the CCJ's humanitarian stance indicates that the process of integration in CARICOM is potentially deepening.

For example, under its appellate jurisdiction, CCJ played the role of 'moral police', criticizing the pace of the Barbados judicial system. As a result, in 2008, after numerous commentaries and directives by the CCJ, the Barbados Supreme Court introduced new rules of civil procedures aimed

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at addressing the number of backlog cases. This effectively had a bearing on the length of future cases in the judiciary system.

Contradictions in cases: Contradictions can be viewed in the CCJ rulings. For example: in the 8th final appellate case, the CCJ's actions were contrary to previous actions. It dismissed a case in spite of probable cause and also questionable circumstances. However, this inconsistent action can be explained in the context of the Neofunctionalist politicization hypothesis. The CCJ was quick to cite international regulations and rights in its judgment, because of the level of politicization and international visibility directly before and after the inauguration of the CCJ. Likewise, when it gained the reputation as a 'hanging court', there was political pressure to alter this image. Its initial rulings were impartial and international in nature; however, with a decrease in the spotlight, the CCJ could rule in favor of its own demands and requirements, precisely as the theory of Neofunctionalism proposes/suggests.

In the 9th final appellate case, the CCJ ruling was seen to contradict previous judgments as well as showing bias which is a reflection of an internal mechanism/nature in the CCJ. This underlying code of conduct personifies the CCJ, and reveals that it is not a mere instrument of the member-states to interpret rules and regulations, but that it possesses its own set of ideals and character. That is to say, The CCJ does not perform a set of designated tasks with predictable outcomes, instead it acts independently of not only the member-states that created it.

5.4.2 Original Jurisdiction Rulings

The examination of the original jurisdiction cases helped to observe the general process of regional economic and political integration. The above review of these cases highlights CCJ's characteristics and behavior in accordance as is predicted by the theory of Neofunctionalism.

Correlation between level and scope: the analysis revealed a limitation in the scope of both the *de jure* and *de facto* competencies of the CCJ's original jurisdiction. For example, in the third original jurisdiction case Johnson v. Caribbean Centre, the CCJ limited the definition of legal personality in interpreting the Revised Treaty to include the main organ and bodies of the CARICOM and the Secretary-General. The CCJ granted itself jurisdiction to preside over and review only the actions of the Secretary General and the main organs and bodies of CARICOM. In excluding other entities of CARICOM, such as CARICAD, the Revised Treaty diminishes the *de jure* competencies of the CCJ and further isolates certain aspects of CARICOM from regional judicial recourse. Such an action has a direct impact on the competence of the CCJ, and therefore on integration. Instead of a regional jurisprudence, judicial procedure is tasked to the member-state.

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This correlation hypothesis is exceptionally clear in this case and adequately explains the limitation in the *de jure* competences of the CCJ.

The CCJ then effectively extended legal culpability to institutions of the Community in the *Trinidad Cement Limited. v The Competition Commission* case. These contradictions reveal actions of the CCJ to limit and extend its *de jure* competencies to fit the case in question.

Relationship between de jure and de Facto power: given Neofunctionalism's proposal that *de facto* power is correlated to *de jure* competencies, the lack of *de facto* powers observed in the cases above can also be explained by Neofunctionalism. The limitation of *de facto* power negatively affects the functional capacity of *de jure* power. That is to say, the limitation of the CCJ's power to implement its judgments in the member-states in CARICOM affects its power to rule, and moreover, the possibility that member-states eventually award it more *de jure* power. This is substantiated by the above analysis of the TCL cases, which revealed that The CCJ possesses the authority to issue coercive judgments to CARICOM member-states, but has limited authority in relation to the compliance of said rulings. The member-states afford the CCJ the *de jure* power, and in turn limit its coercive capacity to reinstate said power. It also can not extend its powers and jurisdiction, without the in-put of the member-states.

At the same time, the TCL cases also point to the deepening of integration in CARICOM, where, in the end, Guyana was compelled to follow the CARICOM-prescribed notion of CET and adhere to CARICOM regulations. This is of special significance, since from the beginning Guyana was against the CET and acted on national sentiments to suspend the regionally arranged CET. The CCJ's decision to favor the Community and go against the individual member-state, reflects a deepening of integration in CARICOM. This can also be seen in the *Shanique Myrie* case, in the CCJ offered pecuniary damages against the member-state and as a warning for future cases of this nature. The award of pecuniary damages attaches some monetary value to impediments of freedoms assured from the Revised Treaty by the member-states.

Based on the CCJ's pattern of rulings, this action signals the gravity that the CCJ has placed on the freedoms granted by the Revised Treaty. The CCJ places the provisions of the Revised Treaty above the actions of the member-states and holds the member-states accountable for their actions regarding them.

As Neofunctionalism predicts, the CCJ acts on, and in circumstances where it is possible, creates more *de jure* power for itself. The CCJ at times acts as an international institution, which is superimposed over the member-states. It enjoys limited *de jure* sovereignty. Neofunctionalism

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further suggests that it does so to reinforce itself in CARICOM's legal and institutional hemisphere.

Hypothesis of curvilinearity: the theory of Neofunctionalism proposes that regional economic and political integration is innovative and experimental, and occurs under substantial uncertainty and insecurity. Where statesmen venture in new and unknown policy areas, creating new power channels. This parabolic relationship can be observed in CARICOM where, member-states knowingly or unknowingly react defensively towards regional integration, evident in cases such as TCI v Guyana and Myrie v Barbados. Neofunctionalism further explain these actions of the member-states, but proposing that when “changes are so rapid and large in magnitude ... then actors are liable to react defensively, if not negatively. They are getting too much of a good thing but not knowing what to do with it or how to react to it” Schmitter (2002:24). Moreover, the theory of Neofunctionalism directly addresses cases such as CARICOM, where there is regional integration among less developed countries. In such cases, the theory holds that there is a illustrative relationship and effect between the factors addressing change in the process of regional integration, and the actors. Specifically with regards to the limitations of the *de jure* sovereignty and *de facto* power.

The analysis revealed that the CCJ grants the institutions in CARICOM autonomy, independent of the member-states and companies. The Competitions Commission's actions for example were seen as just and benefiting the Community. The CCJ sets the precedent for the Competition Commission to act outside of the 'good graces' of both companies and the member-states, but for the 'good' of the Community.³⁴⁴

Problems affecting the CCJ: despite of traces of supranationalism, the above examination also revealed institutional flaws and limitations regarding the CCJ. As Perez (2008:7) suggests, “the problem is not what jurisdiction the CCJ has. The real fundamental problem is what the CCJ has jurisdiction over”. Although the CCJ is ideally established as both a final appellate court and a court of original jurisdiction, this does not hold true for all member-states of CARICOM. The CCJ cannot definitively establish direct effect unless it has a Community over which to preside: this is a fundamental obstacle to legal integration --and regional integration in general-- in the Caribbean. This prevalence of opting in and out of the appellate jurisdiction, or of attempting and failing to ratify the CCJ's appellate jurisdiction, points to the inability and inherent lack of decisiveness of the CARICOM member-states further reflecting on the larger issue of compliance.

In addition to its *de jure* flaws, the CCJ is plagued by *de facto* limitations, namely, possessing

³⁴⁴ The above cases also relate to Neofunctionalism's hypothesis of curvilinearity, which explains this absence of *de facto* power.

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limited power to enforce its rulings. There is no supranational body in CARICOM that can enforce the rulings of the CCJ and compel member-states to pay fines when they do not adhere to the rulings. As the cases above reveal, the CCJ also complained about the inefficiencies of the national judicial processes.

Additionally, specific functions of the judiciary and general economic integration are affected by the initial provisions of the Revised Treaty and the member-states. For example, in pertinence to the TCL cases, Guyana took more than four months to re-implement the CET rather than the 28 days which the CCJ declared in its judgment. In spite of this, the CCJ itself admitted that it did not have the competence to hold Guyana in contempt of court. Moreover:

an economic community needs an executive institution in the same way that a business needs not just a Board of Directors, but it also needs a Chief Executive Officer (CEO) or in the same way a government with a parliament also needs the executive arm of the Prime Minister's Office. What CARICOM instead has is a Secretariat which essentially functions as an administrative institution. The absence of an executive institution means that the system lacks a proper means to implement policy. (Jordan 2003:4)

In spite of the CCJ's attempts to widen its competencies and create a body of law for reference, there is still a lack of a complementary institution to enforce the judgments of the CCJ. This issue of compliance is a very essential one in the CCJ. This is because "the enforcement of CCJ rulings requires that national legislatures transplant the ruling into national law. Thus, the member-states have control over their own compliance."³⁴⁵

These arguments point to a weakness in the Revised Treaty and CARICOM's failure to create an effective executive institution, to implement the judgments of the CCJ in the member-states. The analysis revealed that the lack of oversight to create an institution to implement the rulings of the CCJ is an inherent factor that slows down integration.

Another glaring omission in the Revised Treaty, which was noted by the CCJ, is the absence of an adequate and efficient means of resolving disputes between member-states. The Agreement outlines a process for resolving disputes which involves negotiations that may lead to arbitration. A major weakness of this process is that it requires the wronged party to initiate the process. Very often, for political reasons, a member-state may not want to lodge a complaint against another

345 Perez (2008:7).

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member-state which also limits the judicial scope of the CCJ.

The independence of the CCJ from the will of CARICOM member-states is therefore arguable, as the CCJ and Caribbean integration in general are hostage to national partisan politics. Hinds (2005:6), for example, suggests that in the Anglophone Caribbean, “control of political power means absolute control of state resources and paramountcy of the party over the state. In many respects the ruling party in the Anglophone Caribbean is indistinguishable from the state”. Furthermore, this centralized power results in a general unwillingness to accept any form of supranational authority, such as that of the CCJ's, because such an authority is perceived as eroding national sovereignty. In a fervent move to control and assert their own power and authority, these politicians limit the scope and competencies of institutions. It shows that the actions of élite in limiting the competencies of institutions also correlate to a limitation of the pace, depth, and scope of regional integration in CARICOM. Neofunctionalism proposes that an increase in level and scope points to an increase in *de facto* rule of regional institutions; an increase in the level but not the scope points to limitations for *de facto* rule; and an increase in the scope but not the level also points to *de facto* rule. Therefore, in order for CCJ rulings to have an impact on the member-states and integration, there must be an expansive scope of provisions including an expansive level.

The analysis therefore reveals important underlying factors for the general field of theorizing regional integration. Specifically:

- there are both endogenous and exogenous forces at work during the process of regional integration;
- regional integration is a process, and not an outcome. It is characterized by reactions of states to global issues, which in turn propels the process:
- regional integration requires:
 - a. democracy;
 - b. non-state actors which act according to utilitarian concepts, independent of external perception;
 - c. supranational institutions, such as the CCJ, to provide checks and balances;
 - d. broad scope of regional competencies;
 - e. coercion mechanisms including an institution to oversee the implementation;
 - f. regional decisions in the member-states' commitments.

Establishing an institution to implement the judgments of the CCJ, for example, would not only increase the scope of competencies of the CCJ, but would act as a coercive mechanism, which is

currently lacking in CARICOM.

5.5 Summary and Conclusion

The aim of this chapter was to apply the theory of Neofunctionalism to the CARICOM. This was done by using the CCJ as an empirical case. The analysis concentrated on employing the theory of Neofunctionalism to explain the actions of the CCJ, and understanding their effects on the member-states and the process of integration.

The CCJ reflected institutional weaknesses, which is reasoned by the theory of Neofunctionalism, to slow down integration. The CCJ admits that it lacks jurisdiction to rule on cases of national discrimination brought against organs of CARICOM. Such a ruling relates to the fact that there is limited form of regress for disgruntled nationals against the organs of CARICOM. This highlights either the lack of institutionalization in CARICOM, and the supranationalisation of the organs of CARICOM. In the former case, the 'specialized entities' in CARICOM are subject to national jurisdiction, and in the latter as, the CCJ precludes institutions in CARICOM from both the judicial process and pecuniary damages. These actions reveal the CCJ sidestepping national laws and acting outside of judicial recourse, enabling CARICOM institutions to act outside of regional regulations.

The CCJ was further envisioned as acting in good faith for stable economic decisions, which extend to promoting macro-economic stability for a capital importing region as CARICOM.

The analysis also uncovered a lack of 'symmetrical regional heterogeneity'; that is to say, variation in the social political and legal values of the CARICOM member-states. Some CARICOM member-states were skeptical about expanding the CCJ's final appellate mandate, although the CCJ itself builds on its initial mandate and creates new areas of rulings, comments on extra-judicial matters, criticizing and making recommendations for the judicial processes in CARICOM member-states.

Additionally, in spite of the fact that the CCJ was established for and envisioned as mirroring the collective social ethos of the region politically, with its appellate jurisdiction, and political and monetary independence; the CCJ was observed as citing internal instruments over regional charters on numerous occasions.

Additionally, according to the theory of Neofunctionalism, spill-over occurs partly when the political élite decide that integration is relevant; if the political élite is against integration, the result

5.5 Summary and Conclusion

will be little or no spill-over. Therefore, the CCJ judges play a vital role in integration in CARICOM; for example, when they use international and domestic orders as a frame of reference in their rulings, then transnational dialog, which is a vital asset for integration, will arise.

A decisive point from the above analysis is an identified trade-off between *de jure* and *de facto* power. The limitation of *de facto* power adversely affected the *de jure* power and vice versa. Coupled with the *de jure/ de facto* trade-off, Neofunctionalism's conditional theory of efficacy, where member-states decrease the efficacy of institutions even at the cost of their efficiency due to self-preservation tendencies, is a fitting explanation for the process of integration in CARICOM.

Chapter 6: Neofunctionalism and the European Partnership Agreement between CARICOM and the EU

6.1 Introduction

This is the third and the final empirical chapter of this thesis. It follows the direction of the previous two empirical chapters³⁴⁶ by examining CARICOM, specifically the European Partnership Agreement (EPA), with the theory of Neofunctionalism. It investigates the process of negotiation and bargaining, and analyzes the outcome of the EPA; while acceding the impact of external factors on regional integration in CARICOM. It furthermore pays close attention to the competencies of the political élite and regional institutions in CARICOM. It furthermore treats the structure and flow of competencies in these institutions as indicators of power relations, and therefore as defining factors in the process of integration in CARICOM. Questions answered in this chapter are:

- what are the roles of institutions in CARICOM in relation to the EPA;
- what are the actions of institutions and the political élite, and how do they affect the dynamics that shape the EPA;
- do institutions have or create supremacy over national laws, and does the operation of institutions contradict with national supremacy;
- what is the nature of the relationship between domestic preferences and actions of political élite in the decision-making process in CARICOM
- what are the factors that explain the institutional design in CARICOM and those that are an outcome of the EPA?

To answer these questions, the chapter considers certain parameters of the EPA including the various stages and issues in the process of bargaining the EPA; the content of the EPA; and member-state sentiments after signing the EPA.

346 The previous two chapters examined the Caribbean Single Market and Economy and the Caribbean Court of Justice.

6.2 History and Overview of the European Partnership Agreement (EPA)

As previously stated in chapter 2, three major developments have occurred since the creation of the common market in the Caribbean, these are: the signing of the Revised Treaty of Chaguaramas (Revised Treaty) which created the Caribbean Single market and Economy (CSME); the establishment of a regional tribunal with original and final appellate jurisdiction over the community members, i.e. the Caribbean Court of Justice (CCJ); and the negotiation of the European Partnership Agreement (EPA) with the EU. Like the CSME and the CCJ, the EPA critically affects the deepening and widening of the process of integration in CARICOM. This is because the EPA addresses all matters related to the movement of people, goods, and services across CARICOM and EU borders. In order to enable said free movement, CARICOM was forced to review its regional provisions for the CSME before signing the EPA.

Furthermore, the EPA is one of the extremely rare instances in which all the member-states of CARICOM made a concerted effort and negotiated on a single platform as a union, on matters directly affecting all areas of commercial activity.³⁴⁷ Previous regional negotiations, such as air and sea transport between the West Indies Federation/CARIFTA and the US, ended in individual CARICOM member-states signing bilateral treaties. For the first time, CARICOM as a union negotiates on behalf of its member-states on an expansive scope of issues ranging from trade to welfare and financial aid. The EPA therefore provides the opportunity to observe the interplay of member-states' preferences and their effect on the overall process of negotiation and integration in CARICOM.

Background: between the late 1950s and 1960s most of the colonies³⁴⁸ of the UK achieved independence, and as a part of their independence agreement, they were granted preferential access to the UK for both goods and services. In 1973, when the UK joined the then-European Economic Community (EEC), it brought along its former colonies of Africa, the Caribbean, and the Pacific (ACP). EEC cooperation with the ACP grouping was further extended to the Lomé Conventions.³⁴⁹ These outlined preferential access to the European markets and aid relief for the ACP countries. After they expired, the Cotonou Partnership Agreement went into effect.

The US and countries in Latin America brought the Cotonou Partnership Agreement between the EU and the ACP to the WTO under trade disputes, citing a contradiction to the non-

347 Before the EPA, CARICOM member-states negotiated bilateral arrangements, or arrangements affecting only specific groups, for example, the Organization of Eastern Caribbean States, or other groupings inside of CARICOM.

348 Most CARICOM member-states are former UK colonies

349 A span of conventions from Lomé Convention to Lomé IV bis Convention.

6.2 History and Overview of the European Partnership Agreement (EPA)

discrimination principle³⁵⁰ in the WTO. A waiver with an expiry date was granted by the WTO, essentially requiring the EU and ACP countries, including CARICOM member-states, to renegotiate an agreement within the WTO stipulations³⁵¹.

The EU characterizes its EPAs as 'aid for trade' policies that fit under WTO stipulations. In 2009, the European Commission published that it has financially supported regional integration in developing unions by arguing that from “the European Commission alone, total Aid for Trade to the ACP in 2007 was € 2.12 billion. Of this, €412 million was trade related assistance”.³⁵² It went further to state that “the Commission is working with the ACP partners and EU member-states on the preparation of what it has called 'Regional Aid for Trade Packages'. The role of these packages is to support ACP's regional integration efforts”.³⁵³ The European Commission further describes these packages as a means of providing:

concrete EU financial response to needs and priorities expressed by the ACP countries and regions, including in national and regional development plans. ... (T)heir preparation involves mapping and matching key areas of support for regional integration with ongoing and needed responses by various actors ... This work is primarily carried out at regional level, with the regional integration organizations in the lead as coordinators of the process. (European Commission, DG for Trade 2009:6)

These arguments reveal that the EPA, promotes regional integration by creating financial incentives. Essentially, in signing the EPA, CARICOM would be making commitments pertaining to market liberalization relating to EU trade, and internal regional integration, in exchange for development aid from the EU.

Moreover, in negotiating the EPA, CARICOM is directly reacting to the pressures of external forces. It is responding to the regulations of the WTO and negotiating an agreement designed according to the ideologies of the EU. The EPA further represents a bilateral trade agreement between the EU and CARICOM as two unions, and not a set of arrangements among countries. It is

350 Unlike South/South Agreements, according to the WTO North/South and North/North FTA agreements must adhere to Article XXIV for goods, and Article 5 under the GATS for services. These delineate strict limitations in which North/North and North/South trade agreements are limited to a non-reciprocal Generalized System of Preferences under the Enabling Clause, or a reciprocal FTA either partially under Article XXIV, or under Article XXIV and Art 5 of the GATS. The Cotonou Agreement was challenged and upheld by the WTO as contradicting these regulations.

351 For more information see World Trade Organization (2001).

352 European Commission, DG for Trade. (2009:5).

353 European Commission, DG for Trade. (2009:5).

6.2 History and Overview of the European Partnership Agreement (EPA)

the most expansive agreement between any two existing regional unions³⁵⁴ which incorporates both trade in goods and services.

The process of negotiation of the EPA: the Dominican Republic was included in the CARICOM EPA negotiations with the EU, creating CARIFORUM. CARICOM was also compelled by the EPA stipulations to 'create' a new institution³⁵⁵ to coordinate and negotiate with the EU on its behalf. This led to the formation of the Caribbean Regional Negotiation Machinery³⁵⁶ (CRNM)³⁵⁷.

Process of Consultations: the process of consultation among the CRNM and member-states is explained below:

- consultation Rounds were initiated at the national level through interactions with individuals, interest groups and Non Governmental Organizations (NGOs), and the national civil societies in general. They were then extended to the regional level where additional input from regional entities was taken into consideration;
- technical Working Groups (TWGs), which included representatives of governments, the private sector and NGOs were formed and both national and regional interests were coordinated and harmonized into negotiating positions;
- a College of Negotiators comprised of representatives from regional organizations, and national and regional stakeholders was created. The task of the College of Negotiators was to formulate recommendations from the representatives for an overall negotiating strategy;
- the recommendations of the College of Negotiators were presented to the CARICOM Council for Trade and Economic Development (COTED) and the Cariforum Council of Ministers. These two CARICOM institutions reviewed, refined, approved the recommendations; and created a negotiating strategy;
- the strategy was presented to the CARICOM Heads of Government. The CARICOM Heads of Government then provided the final authorization.

CARICOM points out that this process of review ensured that the interests of all Cariforum member-states were taken into account, highlighting that the positions were not at variance with the

354 To date, with the drafting of this chapter at the end of 2014. The EU is in the process of negotiating agreements with other unions and countries. See for example the Transatlantic Trade and Investment Partnership (TTIP) between the United States of America and the EU; and other agreements between ACP unions and the EU.

355 Given that there was no existing institution of the type.

356 These included diplomats of the member-states, CARICOM dignitaries, ministers of governments of various member-states, specialists and consultants employed by the CRNM and CARICOM and ministry adviser of the member-states. For an exhaustive list of the college of negotiators please visit <http://www.crnmm.org> website last visited June 2015. The CRNM can therefore be seen as a representation of the so-called 'political élite' referenced by the theory of Neofunctionalism.

357 Renamed 'Office of Trade Negotiations' and incorporated in the Secretariat. The CRNM includes a 'College of Lead and Alternate Lead Negotiators' and Technical Working Groups.

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agenda of the CARICOM integration process as outlined in the Revised Treaty of Chaguaramas.

In addition to this five-step process, the EU Commission called for a Regional Preparatory Task Force, (RPTF), the task of which was to develop “a work program with specific interventions that would reflect identical needs in the Cariforum states and be complementary to the National Indicative Programs”.³⁵⁸ To do this, the RPTF would be present at the meetings of the technical working groups. Additionally, a parallel process of consultation with regional stakeholders, including the private sector and non-governmental organizations (NGOs), was also facilitated and coordinated by the Caribbean Regional Negotiating Machinery (CRNM) to complement the formal consultation process.³⁵⁹

The above review reveals that the process of consultation and the structure of deliberations are initiated, defined, and organized by CARICOM. Up until the Conference's signature, all decisions and actions are spearheaded and influenced by CARICOM.³⁶⁰

The phases of negotiations: CARICOM, through the Cariforum, formally opened negotiations on the EPA with the EU on the 16th of April 2004 in Kingston, Jamaica. These negotiations were organized in four phases.³⁶¹ Phase 1: the 'Initial Phase', in which the priorities of the EPA negotiation were established. This included a local focus on measures and guidelines for the EPA implementation, the fundamental concerns, interests, and the priority issues of the EPA.³⁶² Phase 2: a local/regional convergence on a strategic approach for entering into the EPA is reached. This included the technical negotiations on aspect of the EPA.³⁶³ Phase 3: focused on structuring and consolidating the negotiations, including discussions and points of common understanding, which resulted in a draft EPA.³⁶⁴ Phase 4: the final phase of the EPA negotiations, in which the agreement was finalized between the two unions, and an institutional framework was created for the implementation of the EPA³⁶⁵.

Before the outlined phases of negotiations began, the EPA's parameters were defined by

358 United Nations Economic Commission for Latin America and the Caribbean (2008:18).

359 Midweek Nation, four-page feature, Titled The Economic Partnership Agreement. CRNM and European Commission. October 15, 2008.

360 Additionally, in comparison with the competencies of the EU Commission which negotiates on behalf on the EU, the CRNM is at a disadvantage. There is no agreement or declaration which grants the CRNM any special competences like those of the EU Commission to determine provisions on CETs, for example, on dumping, or on ICTs. For more information on the competencies of the EU commission please see http://ec.europa.eu/index_en.htm Last accessed 30.06.2015

361 The first two phases took place on a national level, the third phase took place on a regional level and the fourth phase was between CARICOM and the EU.

362 This phase took place from April 2004 until September 2004.

363 This phase took place from September 2004 to September 2005.

364 This phase lasted from September 2005 to December 2006.

365 This was to take place between January 2007 to December 2007.

6.2 History and Overview of the European Partnership Agreement (EPA)

CARICOM (not by the member-states). These parameters were divided into four technical negotiating groups relating to: market access; services and investment; trade related issues; and legal and institutional issues.

Phase One: as mentioned above, the purpose of phase one was to establish the priorities of the EPA negotiations. The framework for the EPA was set and its key issues were addressed. This stage was spearheaded by the CRNM, which posted a bulletin on its website encouraging “the region's private sector to participate more fully in the current negotiations on an Economic Partnership Agreement”.³⁶⁶ Along with the bulletin, the CRNM also provided 'user friendly matrices', that summarized the positions of the EPA negotiations in the areas of market access in goods and services, trade facilitation, investment, and a broad area called trade-related aspects (such as innovation, competition policy, etc.). The private sector organizations in CARICOM countries were urged to include their positions and comments in specific columns provided in the matrices. The feedback would then be included in preparing the position briefs submitted to the trade ministries of each CARICOM country. However, no specific deadline was given for such feedback. CARICOM also asserted that during the first phase of the EPA,

several fora were established to formulate regional negotiating positions. National positions which were formulated through national consultations, as well as the positions of regional sectoral interests and regional NGOs, were systematically harmonized and refined into coherent regional negotiating positions. (Caribbean Regional Negotiating Machinery 2008:1)

Though no specific number was given, it was asserted that there were at least 29 meetings in this round of consultations.³⁶⁷ CARICOM additionally suggests that the process of intra-CARICOM negotiation included harmonized strategy recommendations by the colleges that were referred to the CARICOM Council for Trade and Economic Development (COTED) and the Cariforum Council of Ministers for review and consideration. CARICOM further proposed that these institutions “determined the negotiating mandate with the authority of the Cariforum Heads of Government. The approval of strategy and final positions therefore lay firmly within the ambit of the Region’s elected representatives”.³⁶⁸ Sacha Silva, the Commonwealth Secretariat/IDB Market Access

366 Trade Bulletin CRNM website (now the Office of Trade Negotiations website). http://www.crnmm.org/index.php?option=com_docman&Itemid=111 Accessed June 30, 2015.

367 Caribbean Regional Negotiating Machinery (2008:1).

368 Caribbean Regional Negotiating Machinery (2008:1)..

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Consultant to the Caribbean Regional Negotiating Machinery, wrote an article in *Trade Negotiations Insight*³⁶⁹ discussing the process of negotiations and the provisions of the EPA. The article outlined the stages of the EPA, including the preparatory stage and final stages of negotiations. During the first stages, the article explained the process of achieving the two main goals of the CRNM, which were to build a trade and tariff database and to conduct country consultations. The database was created in order to provide a clear overview of tariff structure for the Cariforum states. The article made it clear that both goals were challenging for the CRNM; it was noted that “in regions that shared the CARICOM CET, few countries had updated their national tariff data to meet the new classification ... no single country had all three years of data ... even procuring the actual tariffs and trade data proved to be a headache”.³⁷⁰

It was further reported that “in many countries, turnout was low and understanding of the EPA limited among the various stakeholders, even after the two rounds of country consultations which were eventually conducted”.³⁷¹ It was moreover highlighted that “the biggest obstacle and greatest challenge for Cariforum was its lack of human resources and a general funding constraint at both the national and regional level”.³⁷² Silva (2008:10) additionally addressed inequalities affecting the process, especially that the CARICOM states, which have a relatively long history and advanced level of regional integration relative to the other ACP regions, had different ‘streams’ of integration”. These were identified as “the deep integration of the Organization of Eastern Caribbean States (OECS)³⁷³; the recent accession of Haiti; and the participation of the Bahamas (a CARICOM member but not signatory to the Single Market)”. Additionally, the Dominican Republic was a part of the Cariforum, but not CARICOM, and it already had an existing relationship with the US and Canada, which was an additional issue in the negotiations.

To this end, Cariforum proposed that the uneven development of the Cariforum countries must also to be reflected in the EPA, with a component of the EPA dedicated to differential and special treatment of these differences. The Cariforum also called for emphasis on national development strategies and assistance for development of regional economies in vulnerable sectors.

The first phase of the EPA saw the CRNM define the scope of the EPA with limited to no input from the member-states; the CRNM further delineated the structure of the institutional

369 *Trade Negotiations Insight* Volume 7 no.1 Feb. 2008.

370 Silva (2008:9).

371 Silva (2008:9).

372 Silva (2008:9).

373 As highlighted earlier, the OECS is a regional integration scheme embedded within CARICOM, and reflects deeper commitments in comparison with the CSME. For more information on regional integration in the OECS see Lewis (2002) and Onnis (working paper) *The OECS in CARICOM: A Comparison of the OECS and the CSME Integration Schemes*.

6.2 History and Overview of the European Partnership Agreement (EPA)

arrangement for the negotiations; and the competent parties privy to participation in the negotiations. The CRNM also defined the primary objectives of the EPA as they would relate to CARICOM member-states, objectively determining the issues of importance regarding the EPA for the member-states.

In this stage, the CRNM takes a rather paternalistic view that was not initially conceived in its competencies. In comparison to previous instances in which institutions were given their competencies dependent on the permission of the member-states, this particular occasion reveals some form of national dependence on CARICOM and the independence/autonomy of CARICOM. This relates to Neofunctionalism's proposal that institutions take on a paternalistic approach towards regional integration, and are decisive in determining the level and speed of regional integration. As the chapter will reveal, this issue is prevalent throughout the four phases of negotiations.

Phase Two: the second phase of the EPA negotiations was related to the definition of the goals of the EPA following its implementation. Additionally, another goal of this phase was CARICOM's convergence on a strategic approach to outstanding issues of regional integration that were not addressed in the Revised Treaty. During this phase, targets and deadlines were established to be reached before the signing of the EPA, which was planned for the end of 2007. The negotiations were organized through a structure in which the heads of governments provide the overall direction and decision-making. Answering to these heads of governments was the appointed lead ministerial spokesperson. The ministries established a Technical Coordinating Committee composed of officials from various government ministries, private sector groupings, Chamber of Commerce and Industry, NGOs, labor and other civil society groups. As previously stated, CARICOM's Council on Trade and Economic Development (COTED) makes recommendations at the CARICOM level, and approves strategies and positions for negotiations in addition to giving overall guidance for the negotiations.³⁷⁴

During the second phase, the CRNM again initiated and oversaw the entire process of negotiations. For example, it launched a series of 'boot camps', an educational initiative primarily targeting CARICOM-based companies engaged in exporting goods and services. The CRNM characterized the 'boot camps' as interactive sessions which explain market access, services, and trade facilitation terms, with the objective of training CARICOM businesspeople “in techniques

374 Ministry of Trade, Industry Investments and Communication of Trinidad and Tobago
<http://www.tradeind.gov.tt/Agreements/TradeAgreements/EconomicPartnershipAgreementEPA/EconomicPartnershipAgreementEPAOverview.aspx> Website last visited end of 2014.

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which would enable them to develop position papers to be fed into trade negotiations”.³⁷⁵ The CRNM, however, did not explain how the participants were chosen for these boot camps or the extent to which their feedback affected the consultation rounds and the EPA negotiation process.

In 2005, the CRNM additionally initiated a series of private sector surveys to collect data for the negotiations and as a means of reinforcing “existing private sector outreach and (to) canvas current private sector opinions on and input to, the region's external negotiations”.³⁷⁶ In 2006, further surveys targeted respondents from National Chambers of Commerce, Manufacturer's Associations, regional sector-specific associations, and private liability companies.³⁷⁷ The surveys addressed issues such as barriers and obstacles to market access and competitiveness, current and future market interest, the perception of benefits to be derived from negotiations, challenges to involvement in negotiations, and what the CRNM could do to improve its outreach.

Even the CRNM admitted that the surveys done in the private sectors in the Cariforum countries revealed a lack of private sector participation, going further to acknowledge that the private sector was not well informed, did not utilize information made available to it, and did not give extensive input for the identified matrices. It additionally opined that the regional private sector was placing itself at a disadvantage by not participating and assuming responsibility for the CRNM surveys.³⁷⁸ Nevertheless, CARICOM advances the notion that the process of review done by the CRNM “took account of the interests of all member-states ... and that the positions were not at variance with the agenda of the CARICOM integration process as outlined in the Revised Treaty of Chaguaramas”.³⁷⁹

The results of the local and national surveys by the CRNM were pooled into a regional strategy for negotiation, while the interests of local businesses and national groups became the regional interests and platforms for negotiation. Therefore, the formulation and drafting of the priorities, strategies and approaches, admittedly, reflect a CARICOM agenda instead of a country or civil society agenda.

The second phase of negotiations therefore saw CARICOM initiating the dialog on the EPA in the member-states. In the process, it defined the scope of discussions, provided background

375 Caribbean Regional Negotiating Machinery (2006).

376 Caribbean Regional Negotiating Machinery (2006).

377 The Survey noted that the response rate included responses received from 20 national and sector specific associations, located in 8 of the 15 CARICOM target countries, with the associations representing more than 31512 individual enterprises, including 3850 exporters. A large increase from 200 associations from 9 countries and 4700 individual enterprises in the prior year.

378 Caribbean Regional Negotiating Machinery (2006).

379 Caribbean Regional Negotiating Machinery (2008).

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information on the EPA, and essentially guided the EPA discussions in these member-states.

The actions of CARICOM, especially those of the CRNM, reveal ideas from the theory of Neofunctionalism which suggests that institutions will act based on utilitarian means and that their actions will reflect a form of self maintaining logic. In this case, the CRNM spearheaded the two phases and initiated most of the bargaining instances as a means of retaining power and maintaining a regional presence. Additionally, the member-states did not interject because the issue area was too complicated and it was easier to delegate them to a regional institution; moreover, due to lack of knowledge, the member-states did not perceive that their sovereignty was threatened by the CRNM.

Interestingly, the first two phases of negotiations, which were aimed at NGOs and other local sub-national groups, did not meet as much criticism from scholars, civil society, or other interest groups as in the following two phases of the EPA. For example, phase three, which related to the structure and consolidation of the EPA negotiations and common understanding for a draft EPA agreement, revealed numerous instances of contentions. It mirrored Neofunctionalism's politicization process among local civil society groups and also among CARICOM member-states which were not present in the initial two phases.

The final two phases of negotiations took place at the regional level, and were concerned with negotiating the content of the EPA between CARICOM and the EU. Due to the fact that the private sector in CARICOM and the civil society were not fully mobile in the first two phases of the negotiations, phases three and four reflect a high level of ambiguity for the CARICOM civil society.

Phase Three: the third phase of the EPA negotiations was aimed at consolidating the above points into a draft agreement. The structure of the EPA and the level and scope of its provisions were defined by both parties, that is, Cariforum and the EU Commission. Issues such as those related to trade liberalization, sustainable development and regional economic aid, were categorized in the four technical negotiation groups mentioned above, namely: market access, services and investment, trade-related issues and legal and institutional issues.

The third phase of negotiations reflected an accentuation of the differences between Cariforum and the EU. For example:

despite the evidence of meaningful progress, the current state of negotiations reflects four principal areas of divergence between the two sides as follows: (a) approach to tariff liberalization; (b) articulation of the regional integration dimension of the EPA; (c)

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scope and domain of commitments in the fields of sustainable development and good governance; and (d) funding for the costs of EPA implementation and adjustment. (Preville 2007:34)

A Select Committee on International EPA Development of the United Kingdom Parliament, reviewed the negotiations of the EPA and concluded that:

the EU is approaching the negotiations with the ACP as if they were playing a game of poker. The Commission is refusing to lay its cards on the table and to dispel the ACP's fear that it stands to lose more than it will gain ... The ACP is negotiating under considerable duress and the EU approach emphasizes the unequal nature of the negotiation process. (Mandelson 2005: Summary)

The overview of the third stage of negotiations therefore revealed that the emphasis of the two parties differed on various aspects of the EPA. For example, Cariforum's emphasis was on economic and sustainable development, whilst that of the EU was on regional integration. Neofunctionalism suggests that this external pressure will compel CARICOM to develop new tactics and find avenues to cope, such as forcing member-states to relinquish a majority of decisions to the regional level.

Phase Four: consisted of 14 rounds of negotiations between the CRNM and the European Commission. The theory of Neofunctionalism predicts that during the negotiations, states will make their positions on a particular subject known and the political élite acts 'selfishly' according to their own sentiments rather than supporting national positions.

During the negotiations for financial services, Jessop (2008b:1) noted that "Europe tried to have the Caribbean adopt OECD principles or developed country rules on the regulation and supervision of the financial services sector relating taxation, money laundering and possible tax evasion". He further explained that:

early European Commission draft text also required information exchange. For the Caribbean, this was seen as Europe attempting to obtain via a back door, agreement on issues that would affect the competitiveness of the region's onshore and offshore financial services industry and impose a form of extra-territorial financial services

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supervision.(Jessop 2008:1)

He went further to add that

in the end Caribbean negotiators backed by Heads of Government rejected the EC's approach and achieved language that was neither intrusive nor challenging to Caribbean sovereignty. Thus, the main text of the EPA makes it clear that both the EC and Cariforum will only 'endeavor' to facilitate the implementation and application in their territory of internationally agreed standards for regulation and supervision in the financial sector. (Jessop 2008:1)

Article 101 of the EPA, for example, has a 'Confidentiality of information' clause, in which it is stipulated that “The EC Party and the Signatory Cariforum States shall ensure the confidentiality of telecommunications and related traffic data by means of a public telecommunication network and publicly available telecommunications services”. At the same time, the EU possessed the upper hand during the entire process, which negatively affected CARICOM; and:

in setting the parameters of the negotiations, European Commission officials were able to use the doctrine of ‘WTO compatibility’ as the basis for their negotiating demands and to use their advantages over the ACP in legal and technical resources to exploit ambiguities in existing WTO rule. (Girvin 2008:9)

He further argues that “the EC decided that EPAs would be negotiated within the terms of the GATT Article XXIV relating to Regional Trade Agreements; which requires that ‘substantially all trade’ between the Parties be liberalized within a ‘reasonable time’. EC negotiators interpreted this to mean at least 90 percent of all EC-ACP trade should be liberalized within 10 years and sought to have these established as benchmarks for the EPA negotiations.(2008:9)” It is further argued that this was against the interest of CARICOM, because “Article XXIV was established to facilitate integration among countries of roughly equal levels of development rather than North-South agreements; and that there is no written WTO rule or precedent to support the requirement of 90 percent liberalization. Nonetheless in the EPA negotiations the EC interpretations prevailed.

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(2008:10)³⁸⁰ Specific cases further reveal the extent to which the EU controlled the negotiations; for example, during consultations, certain EU NGOs lobbied for adjustments to border tax, which would include:

(a) rules securing European investments, (b) stronger Intellectual Property rights coverage and enforcement provisions, including Geographical Indications, (c) reduction of non-tariff barriers to EU exports and investments, such as application of anti-dumping mechanisms, national treatment, and competition policy and (d) opening up of public procurement markets. As well (e) the European Services Forum. (Girvan 2008:10)

Girvin (2008:11) further adds that during the process of negotiations, the EC increased its leverage against the Cariforum members. He argues that in 2001, when the EC created its 'Everything But Arms' initiative, providing free market access to the EU for all less developed countries as categorized by the WTO:

the effect of this was to exert pressure on non-LDC ACP countries to conclude EPAs, so as not to be disadvantaged vis-à-vis LDCs. The pressure was substantially increased when it became apparent that the EC had maneuvered the situation so that these countries would face considerably higher tariffs on their exports to Europe from January 1, 2008 if they failed to conclude EPAs before the official deadline. (Girvan 2008:10)

Additionally, it was argued that the EC used a deadline and indirect 'threat' of higher tariffs to pressure Cariforum negotiators in speeding up negotiations and signing the EPA. Furthermore, the EC put further pressure on Cariforum members by determining that:

the only alternative to EPAs for non-LDCs would be to access the European market under the Generalized System of Preferences (GSP) scheme or Most Favored Nation (MFN) provisions ... The higher tariffs payable under GSP/MFN would result in major trade disruption for ACP non-LDCs, a group that includes 14 of the 15 Cariforum countries. (Girvin 2008:11)

380 Girvan (2008:10).

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Girvan (2008:11) specifically denotes that “this threat of trade disruption proved to be a potent weapon in the hands of European negotiators in the final stages of the EPA negotiations.” It is also evident that consensus between Cariforum countries was difficult to attain; during the final phase of the EPA, Cariforum/CARICOM member-states were still not united on the provisions of the EPA. For instance, Guyana demanded an extra clause in the agreement for a review of the EPA after five years, and the LDCs demanded a 'phase' clause on the signing of the EPA, in which specific goods from the EU markets would still be subject to quotas and tariffs, that would eventually be phased out, as opposed to a blanket liberalization. The list of goods³⁸¹ in the EPA was also under discussion, with some CARICOM member-states demanding special protection of fisheries, for example, which was eventually delineated in the annex of the EPA. These concessions reveal the limited initial input of the member-states during the first two phases. However, increased politicization of the EPA during the final phases resulted in increased controversy.

Additionally, ideas of Neofunctionalism, such as 'spill-back' and 'opting-out', can also be observed in this phase of the EPA. For example, Guyana agreed to sign only a part of the agreement, and Haiti decided to opt out of the agreement completely.³⁸² Moreover, although “the EPA appears to include a single regional liberalization schedule for Cariforum (with some national exceptions) the reality is that the schedule comprises 15 country-specific schedules with a certain level of overlap”.³⁸³ For instance, the products for trade ranged from 400 tariff line exceptions for Dominica to 3,600 for Bahamas.³⁸⁴ CARIFORM liberalization commitments varied among the member-states, with Dominica committed to liberalize 23% of items highlighted in the EPA; Antigua and Barbuda 88%; Jamaica committed to liberalize 11% of products that face a tariff of 20%; and the Bahamas more than 90%.³⁸⁵

In January 2008 then-President of Guyana, Jagdeo, asserted that the Caribbean lost in the EPA negotiations.³⁸⁶ His position as stated in a Guyanese newspaper was that the EPA “would cause significant shock to the regional economies since many were already running on 'bare-bone' budgets and they would incur bigger fiscal deficits and have to borrow more money, while their interest

381 Found in the annex of the EPA.

382 For an extensive review of provisions of the EPA, please see the section below and the tables at the end of the chapter.

383 Meyn (2008).

384 Meyn (2008).

385 Meyn (2008).

386 The then head of government of Guyana made numerous speeches where he stated that the EPA was 'forced' on CARICOM and not in the best interest of the member-states of CARICOM. Please see extracts of the speeches at the end of this chapter.

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rates would go up”.³⁸⁷ He argued that “the European Union would say that they had given the region enough time to adjust, but regardless of the time-frame for adjustment, the idea of reciprocity between developed and developing states would place the region at a disadvantage”.³⁸⁸ He further proposed that the EPA “was a situation the region had been forced into even though the EU would claim otherwise;” that the EPA was a “well thought-out ploy by Europe to dismantle the solidarity of the ACP by effectively dividing the ACP into six negotiating theaters – that is six EPAs – and playing one-off against the other which they did very effectively”.³⁸⁹

The EPA was further conceived as CARICOM institutions coercing member-states, who unwillingly entered into the agreement. Neofunctionalism predicts that it is the same institutions that the nation states create to address externalities which ultimately spearheaded integration. The member-states of CARICOM created the CRNM as a result of external pressures from the WTO and the EU to negotiate a new EPA. The CRNM possessed some form of control over the process and negotiated a treaty for the 'good of the Community', with some concessions for the individual member-states.

During the final phase of negotiations, CARICOM member-states could not agree on the contents and structure of the EPA; the governments could not concede on principal issues in order to sign either a full or interim EPA before October 31st 2008. Cariforum member-states like Jamaica feared that³⁹⁰ if the agreement was not signed by that date then the preferences and provisions would be withdrawn by the EU; whilst other countries like Guyana wanted to renegotiate the EPA for more preferential provisions for their circumstances. Up to the last day before signing the EPA, Cariforum countries were still at loggerheads with regards to the EPA. Although a drafted EPA was eventually acquiesced, the countries argued that the EPA was structurally flawed³⁹¹. The then-President of Guyana, Jagdeo, proposed that the Cariforum countries sign a goods-only agreement rather than the full EPA. The then-Prime Minister Thompson of Barbados, however, was against this proposal, warning that reopening EPA negotiations might result in the ultimate collapse of the entire process. The then-Prime Minister of Jamaica was also against any changes, citing that renegotiation would bring about a situation in which the EC would also want concession on items of their choice. With pressure from the EU to sign the EPA, The CARICOM heads of states decided on

387 The Caribbean lost in the negotiations with Europe (2008).

388 The Caribbean lost in the negotiations with Europe (2008).

389 The Caribbean lost in the negotiations with Europe (2008).

390 September 10th 2008 CARICOM Conference meeting in Barbados.

391 September 10th 2008 CARICOM Conference meeting in Barbados.

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signing the EPA. Thirteen of the 15 Cariforum member-states signed the Economic Partnership Agreement (EPA) in Barbados on October 15, 2008. Haiti and Guyana were the only exceptions. Five days after the 13 CARICOM countries signed the EPA in Barbados, Guyana signed the EPA in Brussels, after the EU agreed that the EPA would be revised every five years, and Haiti on the 10th of December 2009. Caribbean scholars such as Brewster (2008) Girvin (2009, 2011) Khor (2008) and Thomas (2009) criticized the EPA after it was signed, and proposed that CARICOM member-states were forced into an agreement with multiple and more negative than positive ramifications. The COTED called for a review of the EPA. Critics also noted that other Cariforum countries like Barbados and St. Lucia had some levels of 'discomfort' to the EPA.³⁹² Additionally, EPA critics also argue that there was “a large gap between the CRNM’s rather formulistic description of the consultation process and the reality of those consultations. ... asymmetries existed between the CRNM and CARICOM member-states including the various national and regional private sector bodies”.³⁹³ The clear dissonance of the CARICOM member-states towards the EPA reveals that the EPA did not entirely reflect their will; rather as the theory of Neofunctionalism suggests, it instead represents the will of the political élite and institutions in CARICOM; and is a result of efforts to address pressing external factors. This is also in line with the idea of 'decisional cycles' of the theory of Neofunctionalism, which argued that increasingly, tasks and functions of the member-states will be allocated to a regional body, and that this body will make decisions for the Community and not the individual member-states. In this process they will intentionally or inadvertently deepen and expand integration.

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As some scholars and interest groups have suggested that the EPA is “littered with examples of the asymmetrical commitments ...(which) can be evinced in the liberalization schedules for goods and services where the EU’s commitments are higher than those of the Caribbean”.³⁹⁴

The EPA document is structured as following: Trade Partnership for Sustainable development (Art. 1 – 8); Trade and Trade related Matters (Art. 9 – 201); Dispute Avoidance and Settlement (Art. 202 – 223); General Exceptions (Art. 224-226); Institutional Provisions (Art. 227-232); and General

392 Caribbean leaders at loggerheads (2008).

393 Hall, Kenneth & Chuck-A-Sang, Myrtle (2012:168)

394 Lodge (2008:1)

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and Final Provisions (Art. 233-250). Added to these parts are protocols on Rules of Origin, Mutual Administrative Assistance in Customs Matters and Cultural Cooperation.

Below is a review of each section of the EPA, including an examination of the competencies and scope of regional integration, which Neofunctionalism proposes defines the level of integration; and moreover, to juxtapose these commitments with those provisions of the CSME.

6.3.1 Trade Partnership for Sustainable Development (Art. 1- 8)

Article 1 of the EPA lists the objectives, which include:

- reducing and eventually eradicating poverty through establishing a trade partnership based on sustainable development;
- promoting regional integration and economic cooperation;
- integrating Cariforum States in the world economy in accordance with their political choices and development priorities;
- improving trade policy and trade related issues in Cariforum states;
- increasing investment in Cariforum states;
- strengthening and enhancing commercial and economic relations.

The partnership detailed by the EPA is envisioned as a trading dynamic that enhances regional integration in CARICOM. The wording of the objectives expresses the benefits of the EPA for CARICOM. The EU assumes a paternalistic role towards CARICOM, characterized by its fostering of economic, social, and political integration under the auspices of regional integration in CARICOM.

Article 4 of the agreement, which addresses regional integration, focuses on CARICOM, emphasizing the importance of integration in accordance with the Revised Treaty. Additionally, it further acknowledges that “the pace and content of regional integration are matters to be determined exclusively by the Cariforum States in the exercise of their sovereignty and in the light of their current and future political ambitions”.³⁹⁵ The article emphasizes that the EPA is built on the priorities set by CARICOM member-states for themselves, and cooperation and implementation of the EPA should be done with respect for the regional integration process in CARICOM.

Article 7, which addresses cooperation, also exhibits a paternalistic view of the EU towards CARICOM, as with Article 1. 'Cooperation' is seen as the EU supporting development and integration in CARICOM. Furthermore, the EU takes on the role of benefactor for CARICOM, and bears the responsibility to support and create economic development to make the EPA viable.

³⁹⁵ EPA Article 4 paragraph 4.

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Article 8 outlines the technical, technological, and infrastructure assistance that CARICOM requires from the EU in order for the agreement to be effective. Specifically, the first sections of Article 8 detail that the EU shall provide assistance to “build human, legal and institutional capacity ...(for) institution building for fiscal reform in order to strengthen tax administration and improve the collection of tax revenues with a view to shifting dependence from tariffs and other duties and charges to other forms of indirect taxation”. Additionally, the EU committed itself in Article 8, to provide “support measures aimed at promoting private sector and enterprise development, in particular small economic operators, and enhancing the international competitiveness of Cariforum firms and diversification of the Cariforum economies”. The EU also maintains the responsibility of helping CARICOM countries to diversify their export goods and services, and to enhance the technological and research capabilities of its member-states to facilitate development.

The wording of the above Articles (1-8) quite apparently suggests that CARICOM requires assistance from the EU in order for the EPA to be efficient and successful; and a commitment on the part of the EU to fulfill them.

6.3.2 Trade and Trade Related Matters (Art. 9 – 201)

Market access: One of the main focus of the EPA is market access which “removes quota and tariff limitations on 98 percent of all goods from Cariforum countries into the EU. This provides duty-free, quota-free access for agricultural products such as beef, dairy, cereals, fruits and vegetables that previously incurred tariffs”.³⁹⁶

In addition to the articles in the EPA concerning trade in goods, the EPA also has a schedule delineating each of the goods traded between the two unions. Of the nearly 2,000 pages of the EPA, over 1,800 pages contain a 'Schedule of tariff liberalization of the Cariforum States'.

Eliminating customs duties: Article 14 of the EPA requires an elimination of all customs duties on exports originating from CARICOM member-states to the EU, it does not however require the same for EU exports to CARICOM.

Preferential Access: As previously mentioned in the history of the EPA, a 'Banana row' initiated the EPA when ACP countries were brought to the WTO for preferential treatment and access in the EU by the USA and other countries in Latin America. Under the EPA, the CARICOM countries enjoy full duty-free and quota-free access to the EU for bananas, with no schedule, i.e. from the inception of the EPA. The parties also concur that banana exports to the EU have been assisted in the past by a substantial tariff preference and that the maintenance of such preference for

396 Thorburn et al (2010:06).

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as long as possible would increase the benefits of the EPA to the region.

Extraordinary provisions: The EPA, at the request of the EU, contains a 'Most Favored Nation Concession' (MFN); which requires CARICOM to offer privileges to the EU that it has made with any third-party, when if they are more favorable than these present concessions.³⁹⁷ The Cariforum stated that they “consider that the possible reduction of the MFN tariff and the implementation of Free Trade Agreements between the EC Party and certain third countries would pose significant competitive challenges for the banana industry in several Cariforum countries”.³⁹⁸ They further proposed that the possible reduction of this MFN tariff imposed by the EU on non-preferential banana imports - and the implementation of new free trade agreements such as those now being negotiated with Latin American countries - “would pose significant competitive challenges for the banana industry in several Cariforum countries”. Bananas have also been acknowledged in a section of the EPA that specifically addresses traditional agricultural products, in which the EC commits itself to undertaking 'prior consultations' on trade policy issues that may impact on the competitive position of a range of Caribbean products, including bananas. This is taken by Caribbean negotiators to mean a commitment to consult in advance when the European Union (EU) removes or changes its tariffs in any new free trade agreement or in the context of the World Trade Organization (WTO). Moreover, under the EPA, the EU is committed to maintaining significant preferential access for CARICOM agricultural products such as bananas, rum, rice, and sugar “for as long as is feasible and to ensure that any unavoidable reduction in preference is phased in over as long a period as possible”.³⁹⁹

Furthermore, Article 16, paragraph 3 specifically denotes that “for a period of 10 years after the signature of this Agreement, the Cariforum States may continue to apply any such customs duties ... other than those listed in Annex III to any imported product originating in the EC Party, provided that these duties were applicable to this product on the date of signature of this Agreement, and that the same duties are imposed on the like product imported from all other countries”. This 'grace period' grants CARICOM member-states a time frame in which to prepare for a complete liberalization of their market. Article 16 paragraph 6 goes further to dictate in favor of CARICOM member-states by delineating that “in the event of serious difficulties in respect of imports of a given product, the schedule of customs duty reductions and eliminations may be reviewed by the

³⁹⁷ These economies account for over 1% of world merchandise and their exports count for 1.5% or more (Lists for quotes pp6 exclusive or shared competencies in the CCP. 1994 ECR 1-5267 paras 36-5).

³⁹⁸ Final Act accompanying the EPA (2008:10).

³⁹⁹ Jessop (2008c).

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Cariforum-EC Trade and Development Committee by common accord with a view to possibly modifying the time schedule for reduction or elimination”. Additionally, the article provides further concessions in the case that the committee cannot bargain and reach an agreement that the CARICOM member-states view as preferential. In the case where a decision cannot be reached in 90 days, Cariforum states are able to suspend the timetable for up to one year. Therefore, although the EPA has been discussed earlier as being 'imposed' on the CARICOM member-states, its contents reveal that CARICOM did bargain for sustainable outcomes.

Article 23 of the EPA offers CARICOM countries protective measures against EU-subsidized products. It refers to anti-dumping policies and gives CARICOM countries the right to take “countervailing measures in accordance with the relevant WTO agreements” to protect themselves against any dumping by the EU. The article further makes it clear that anti-dumping in the EPA falls outside the dispute settlement agreements of the two parties, giving CARICOM member-states political clout over the EC countries in relation to fair competition and dumping. The EPA also provides a 'safeguard-clause' in Article 25, in the event the event of 'dumping' where CARICOM member-states can suspend the reduced rate of import duty for the specific product; increase the customs duty on the specified product to that of other third-party values; introduce tariff quotas on the specified product.

Moreover, the Article offers CARICOM countries up to eight years to impose such safeguards, whilst the EU is afforded two years. This article directly provides a 'fail-safe' for CARICOM member-states, and allays the fears of CARICOM private sectors, by suggesting a possible introduction of increased tariffs on EU products.

Export Subsidies: Article 28 of the EPA addresses export subsidies. It prohibits CARICOM member-states from introducing new subsidies on specific agricultural products⁴⁰⁰ for export to the EU. This can be seen as a win for the EC countries. This is especially because the EPA requires the EC to phase out all existing subsidies granted upon the exportation of that product to the territory of the Cariforum States”. This commitment creates a more level playing field for CARICOM member-states by being more favorable for producers in CARICOM member-states than for those in the EU.

Article 34 of the EPA makes clear that for trade in goods to occur between the two parties, they are both required to “promote to the fullest extent possible regional integration in the field of customs and shall work on the development of regional customs legislation, procedures and requirements, in line with the relevant international standards”. This extra demands for unified

400 These products are outlined in the Annex of the EPA.

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customs provisions include calls for steps to unify border regulations by each CARICOM member-state, and commitments related to those of the CSME.⁴⁰¹ These demands by the EC reflect the necessity for addressing current regional arrangements, and therefore regional integration in CARICOM.

Agriculture and Fisheries: Chapter 5 of the EPA addresses agriculture and fisheries. Article 37 refers to the needs of the CARICOM member-states; for example it was noted that:

the Parties agree that the fundamental objective of this Agreement is the sustainable development and the eradication of poverty in Cariforum States, and the smooth and gradual integration of these economies into the global economy. In the agricultural and fisheries sectors, this Agreement should maximize those benefits in relation to such factors as food security, employment, poverty alleviation, foreign exchange earnings and social stability of fishing communities. (EPA:Article 37)

The constant reference to the economic well-being of CARICOM member-states in the EPA is a welcome feature for CARICOM. Article 40, which addresses food security, acknowledges that the removal of trade barriers can pose significant challenges for not only the producers in CARICOM, but the consumers as well. The article makes provisions for the well-being of consumers in CARICOM, providing the opportunity for CARICOM member-states in events “where compliance with the provisions of this Agreement leads to problems with the availability of, or access to, foodstuffs or other products essential to ensure food security of a Signatory Cariforum State and where this situation gives rise or is likely to give rise to major difficulties for such a State” to take “appropriate measures”. for alleviation.

Traditional Agricultural Products: refers to agricultural goods which had preferential access to the EC member-states' markets. Article 42 binds the EU to “maintain significant preferential access within the multilateral trading system for these products originating in the Cariforum States for as long as is feasible and to ensure that any unavoidable reduction in preference is phased in over as long a period as possible”. This article therefore replicates conditions for CARICOM member-states that were similar to the previous preferential agreements with the EC. Consequently, hidden in the EPA is a clause for CARICOM member-states to trade their 'traditional' goods to the EC with preferential access for an unlimited period of time. Additionally, CARICOM member-states are not

401 For information on the CSME see Chapter 4.

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required by article 42 to reciprocate these commitments.

For the reasons described above, the trade in goods section of the EPA reveals that although CARICOM was at a disadvantage in negotiating the EPA and was forced to make concessions, it did secure certain provisions and 'preferential' treatment.

Investment, Trade in Services and E-Commerce: Thorburn et al (2010:06) notes that “the service provisions (of the EPA) are of particular importance since the Caribbean is the only member region of the ACP grouping that is a net supplier of services. The benefits negotiated under the EPA include agreements that cover investment, trade in services and electronic commerce”. They further note that “the EU has undertaken to liberalize 94 percent of the list of services sectors and sub sectors, while Cariforum countries will liberalize only some 65 to 75 percent of their trade in services.(2010:6)”. These include “barriers to Cariforum investment in the EU, the cross-border supply of services, limitations on the number of suppliers and volume of transactions, and access for Caribbean business professionals.(2010:6)”

Article 60 of the EPA illustrates the objectives and scope of the agreement on Investment, Trade in Services and E-Commerce. It reaffirms the EPA's commitment “to facilitating the regional integration and sustainable development of the Signatory Cariforum States and their smooth and gradual integration in the world economy”. Additionally it delineates “the necessary arrangements for the progressive, reciprocal and asymmetric liberalization of investment and trade in services and for cooperation on e-commerce”.

Article 62 of the EPA addresses 'future liberalization', in which it states that “the Parties shall enter into further negotiations on investment and trade in services no later than five years from the date of entry into force of this Agreement with the aim of enhancing the overall commitments undertaken under this Title”.

Article 64 makes reference to a 'Regional Cariforum integration'. It recognizes that through removing regulations and other barriers to trade, economic integration, contributes to the deepening of the process of regional integration in CARICOM. To this end, the article recognizes and emphasizes that the principles for liberalization are a mere 'framework' for “the further liberalization of investment and trade in services between Cariforum States in the context of their regional integration”. The wording of this section is a direct contradiction to those of the previous section on trade in goods. In the previous section, emphasis was placed on the permanence of the EPA and its binding force between the two parties, while this section refers to the EPA as a 'mere framework' for the liberalization of the sector.

6.3 Examination of the EPA

Commercial Presence: Article 65 of the EPA addresses commercial presence, defining commercial presence as any business or professional establishment performing an economic activity in Cariforum states and/or the EU. This is a broad definition, leaving room for the inclusion of a variety of actors.

Except for mining, manufacturing and processing of nuclear materials; production of or trade in arms, munitions and war material; audio-visual services; national maritime sabotage; and national and international air transport services; the EPA text grant commercial presence for both signatories of the EPA.

Article 68 of the EPA grants 'national treatment' to the parties of the EPA. Additionally, like the section on trade in goods, this section of the EPA also has a 'most favored nation treatment clause' which dictates that “the EC Party shall accord to commercial presences and investors of the Signatory Cariforum States a treatment no less favorable than the most favorable treatment applicable to like commercial presences and investors of any third country with whom it concludes an economic integration agreement after the signature of this Agreement” and vice versa. Unlike the previous clause, this section of the EPA offers certain exceptions for CARICOM, such as qualifications, licenses, or prudential measures and arrangements relating to taxation.

The Investment, Trade in Services and E-Commerce section of the EPA also addresses all cross-border supply of services⁴⁰². Article 75 goes further, defining service parameters of the EPA as “any service in any sector except services supplied in the exercise of governmental authority”, that is to say, any service supplied for a competitive/commercial basis. This far-reaching definition opens up European markets to CARICOM member-states to provide cross-border trade in services. These notable liberal provisions of the EPA reflect not only the reciprocal nature the EPA, but also the depth of and the commitments of the member-states.

Financial services: The section of the EPA on 'services' also specifies that financial institutions in both the EU and Cariforum countries have the same rights as local companies to establish financial services, including insurance, banking and money brokering, in the corresponding markets. Article 106, for example, grants “a financial service supplier of the other Party (the right to) provide any new financial service of a type similar to those services that the EC Party and the Signatory Cariforum States permit their own financial service suppliers to provide under their domestic law in like circumstances”.⁴⁰³ At the same time, there are limitations for

⁴⁰² With the exception of audio-visual; national maritime; and national and international air transport services.

⁴⁰³ The schedule and annexes of the EPA also grant companies and other providers of EU and Cariforum member-states the 'same treatment' as the local competitors. The EPA creates regulations and guidelines for pensions and social security schemes in both the unions.

6.3 Examination of the EPA

financial services, as Article 104 of the EPA gives both parties the right of non-disclosure, which makes it clear that “nothing in this Agreement shall be construed to require the EC Party or the Signatory Cariforum States to disclose information relating to the affairs and accounts of individual customers or any confidential or proprietary information in the possession of public entities”. This is especially important for banking services in CARICOM countries, because bank secrecy in the Caribbean is related to attractive services for international companies and individuals. The non-disclosure condition in Article 104 therefore guarantees continued and complete banking privacy in CARICOM countries, and thus a continued tax haven. Coupled with the freedoms of establishment, it essentially creates a new system of tax haven for EU companies in CARICOM.

Tourism: During the process of negotiations, the EC campaigned for the inclusion of a small section on tourism in the EPA. Cariforum, on the other hand, demanded a much lengthier text, because of the importance of tourism for CARICOM member-states. The chapter in the EPA on tourism covers eight articles, including provisions for the prevention of anti-competitive practices; the protection of small- and medium-sized enterprises; mutual recognition; environmental and quality standards; development cooperation and technical assistants; and increasing the impact of tourism on sustainable development, among other issues.

Additionally, the EPA guarantees fair competition for Cariforum member-states by strict rules on anti competitive practices, identifying development needs in the tourism industry of the Cariforum member-states, and making provision for skills development of the Cariforum members.

The EPA also reflects very specific limitations for “European operators in areas such as the operation of hotels and restaurants; the letting of furnished accommodation; beverage serving with entertainment; travel agencies and tour operators; tourist guides; hotel management; renting yachts and so on”.

Cultural cooperation: The EPA contains a protocol on cultural cooperation. During the last phase of the negotiations, CARICOM was more than willing to make compromises on other issues to secure a cultural cooperation clause in the EPA. The Barbados' Prime Minister, at the time, Owen Arthur, suggested that liberalizing access for the export of Caribbean cultural and entertainment products was 'a line in the sand' for the Caribbean. Jamaica, Trinidad and Tobago, and other countries agreed, that “without access to the EU market for those involved in the region's hugely valuable creative industries there would be no EPA: the Caribbean had to see gain in a sector in which it excelled”⁴⁰⁴. To this end a 'Protocol on Cultural Cooperation' was included in the EPA. The

404 Jessop (2008a).

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protocol emphasized “the importance of facilitating cultural cooperation between the Parties and for that purpose to take into account, ... the degree of development of their cultural industries, the level and structural imbalances of cultural exchanges and the existence of preferential schemes for the promotion of local and regional cultural content”. It further recognizes that “protecting and promoting cultural diversity is a condition for a successful dialog between cultures”, and as such, it integrates a “cultural dimension at all levels of development cooperation and, in particular, in the field of education” in the EPA.

6.3.3 *Dispute Avoidance and Settlement (art. 202 – 223)*

Article 203 of the EPA defines the scope of the dispute avoidance and settlement provisions as limited “to any dispute concerning the interpretation and application of” the EPA. The first resort for dispute settlement of the EPA is consultations between the two unions. Article 205 of the EPA then offers a mediation clause, which states that “if consultations fail to produce a mutually agreed solution, the Parties may, by agreement, seek recourse to a mediator”. The mediators are chosen from countries that are not members of either union. The mediators' options are, however, non-binding, with non-compliance leading to an arbitrary procedure. The arbitrary panel again comprises non-member parties to the dispute.

Chapter 2 of Article 213 further addresses non-compliance to the rulings of the arbitrator, and introduces compensation in this event. Furthermore, the article dictates that in the event that no agreement on compensation is reached in 30 days, then the appealing party is entitled to adopt 'appropriate measures' against the defending party, which can also extend to the other signatories of the agreement. Therefore, the actions of and judgment against one Cariforum country are further extended to the other Cariforum countries, although they were not party to the dispute; which again demonstrates some form of institutional rule over the member-states. In theory, Cariforum member-states should act and sign international agreements that reflect the character of their intergovernmental union. However when an arbitrary panel consisting of other member-states is entitled to make decisions that directly affect a country without its direct or indirect participation in any part of the process of dispute, this directly contradicts the intergovernmental principle in CARICOM. Moreover, it reflects the idea that institutions are a driving force in integration and that there are soft traces of supranationalism in CARICOM.

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6.3.4 General Exceptions (art. 224-226)

Article 224 of the Agreement guarantees that commitments between the parties are null and void if they “constitute a means of arbitrary or unjustifiable discrimination ... or a disguised restriction on trade in goods, services or establishment”. Article 225 also introduces security exceptions, where the signatory parties to the Agreement are not liable to furnish/disclose any information which it considers “contrary to its essential security interests”. Furthermore the EPA under said article does not preclude the parties “from taking any action which it considers necessary for the protection of its essential security interests”.

Moreover, this section of the EPA highlights the independence of the parties to enforce their fiscal regulations regarding taxpayers whose place of residence is in one party and who invest in the other territory. Additionally, Article 226 states that “nothing in this Agreement ... shall be construed to prevent the adoption or enforcement of any measure aimed at preventing the avoidance or evasion of taxes”. It also prevents double taxation and guarantees that in the event of any inconsistency between this Agreement and any (international tax convention), that convention shall prevail to the extent of the inconsistency.

6.3.5 Institutional Provisions of the EPA (art. 227-232)

Article 39 refers to 'enabling policies' of the EPA. It dictates that “the Cariforum States commit themselves to adopting and implementing policies and institutional reforms to enable and facilitate the achievement of the objectives” of the EPA. The EPA additionally introduces institutional provisions through Articles 227 to 232, including a:

Joint Cariforum-EC Council: Created by Article 227, it supervises the implementation of the EPA. The council meets at the ministerial level at regular intervals, at least every two years and in any extraordinary circumstances, and is responsible for the operation and implementation of the EPA; including monitoring the fulfillment of the objectives of the EPA⁴⁰⁵. Article 227 further stipulates that the council “shall also examine any major issue arising within the framework of this Agreement, as well as any other bilateral, multilateral or international question of common interest and affecting trade between the Parties”.

Article 229, suggests that “in order to attain the objectives of this Agreement, the Joint Cariforum-EC Council shall have the power to take decisions in respect of all matters covered by the Agreement. The decisions taken shall be binding on the Parties and the Signatory Cariforum States, which shall take all the measures necessary to implement them in accordance with each

⁴⁰⁵ The council as such is an institutional provision that oversees the implementation of the EPA. It possesses similar competencies like the COTED relating to the CSME.

6.3 Examination of the EPA

Party's and Signatory Cariforum State's internal rules". These institutional provisions place the council in an overarching role in relation to the member-states, in which it possesses the power to make binding decisions on the member-states. These provisions are more extensive than those of the CSME. The council is similar to the COTED/COFCUR in that it oversees the implementation of the provisions of the agreement. However, unlike the institutions of the CSME, the council possesses coercive power over the member-states; and therefore, the commitments of the EPA are in some cases deeper than those initial commitments of the CSME.

Cariforum-EC Trade and Development Committee: Article 230 also creates a committee whose mandate is to evaluate the results of the agreement, resolve disputes regarding the interpretation or application of the Agreement, and facilitate trade, investment and business opportunities between the two unions.⁴⁰⁶ It also has the power to set up and oversee special committees and bodies relating to the EPA, in addition to making decisions and recommendations on issues relating to the EPA.

Cariforum-EC Consultative Committee: Article 232 creates a Cariforum-EC Consultative Committee, which has the mandate to assist the Joint Cariforum-EC Council in promoting "dialog and cooperation between representatives of organizations of civil society, including the academic community, and social and economic partners".⁴⁰⁷ The Cariforum-EC Council decides on the membership of this committee; in doing so, the Cariforum-EC Council reinforces its institutional power.

The operation and implementation of the EPA is dependent on these three institutions which touch on the sovereignty of the member-states. They monitor the implementation of the objectives of the EPA and make major decisions on the overall functioning of the EPA. They furthermore rule over disputes between the regions on matters relating to the EPA and even interpret the application of the EPA. These institutions are, therefore, supreme governing bodies with regards to the EPA. They act outside of the intergovernmental member-states of CARICOM and take decisions and power, relating to the EPA, away from the member-states. CARICOM, in addressing the importance of the said institutions, noted that:

the effective functioning of the EPA Institutions, particularly the Joint Cariforum Council, the Cariforum-EC Trade and Development Committee and the Special Committee on Customs Cooperation and Trade Facilitation, is considered paramount to

⁴⁰⁶ Article 230 EPA.

⁴⁰⁷ Article 232.

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the successful implementation of the Agreement. These institutions hold responsibility in varying capacities for overseeing the operation of the Agreement and for ensuring that the Agreement meets its principal objectives which includes reducing poverty in Cariforum States by facilitating their economic growth through freer trade. (CARICOM Regional Negotiating Machinery:2009)

6.3.6 General and Final Provisions (Art. 233-250)

This section of the EPA included three protocols on Definition of the Concept of 'Originating Products'; Mutual administrative assistance in customs matters; and Cultural Cooperation.

Article 234 of the EPA further designates a 'Coordinator' to “facilitate communication and to ensure the effective implementation of the Agreement”. Article 235 addresses transparency of the EPA and requires both signatories to: “ensure that any laws, regulations, procedures and administrative rulings of general application as well as any international commitments relating to any trade matter covered by this Agreement are promptly published or made publicly available and brought to the attention of the other Party”.

Article 238 acknowledges regional preferences and necessitates that “any more favorable treatment and advantage that may be granted under this Agreement by any Signatory CARIFORUM State to the EC Party shall also be enjoyed by each Signatory CARIFORUM State”.

The EPA also included Joint Declarations Development Cooperation, Bananas, Used Goods, Rice, Reallocation of Undelivered Quantities under the Sugar Protocol.

6.4 Discussion

In analyzing the EPA, both the process of negotiations and the resulting content of the agreement reflect core Neofunctionalist hypotheses, specifically the role of:

Political élite: in line with the theory of Neofunctionalism, political élite played an important/irreplaceable role in the crafting of the EPA, deciding the fate of regional integration in CARICOM. Political élite further decided on the parameters and contents of the EPA, which impacted the scope and level of regional integration in CARICOM. The signing of the EPA arose from a CRNM-centered negotiation process, also revealing the determinative role of political élite in the process of the EPA and regional integration in CARICOM in general. Non-state actors therefore waived influential power and political clout in the process of negotiation, which is ultimately expressed in the overall content of the EPA.

6.4 Discussion

External Conditions: a prevailing factor that was evident throughout the above analysis was the impact of external conditions on the process of integration. This initial observation reveals evidence of Neofunctionalism's exogenous factors hypothesis, which proposes that external factors and institutions have a considerable impact on and affect the process of regional integration. It advances that “tensions from the global environment and/or contradictions generated by past performance give rise to unexpected performance in the pursuit of agreed-upon common objectives”.⁴⁰⁸ Moreover:

external conditions begin, as do all the independent variables, as givens. While the changes in national structures and values become at least partially predictable as consequences of regional decisions, the global position and the dependent client status of member-states and regions as a whole continue to be exogenously determined ... integrating units will find themselves increasingly compelled—regardless of original intentions— to adopt common policies vis-à-vis non-participant third parties. (Schmitter 2002:22)

In the present case, it can be observed that the WTO rulings, forced CARICOM countries to negotiate an agreement based on the EU's set ideals, structures, and terms. In spite of its non-member status, CARICOM was forced to align with the Dominican Republic to negotiate with the EU. The Cariforum symbolizes an EU hybrid construct in which CARICOM was compelled to operate and to negotiate the very agreement that was forced on it by external factors. The EPA spans a comprehensive agreement on trade in goods and services and cross-border freedoms, affecting most sectors in CARICOM, and therefore symbolizes a pronounced and significant representation of the effects of exogenous factors on the process of regional integration in CARICOM.

Neofunctionalism's 'externalization hypothesis' also predicts that external conditions will become less 'exogenously' determined when integrative rather than 'disintegrative' strategies are commonly adopted. The 'independent' role of these conditions should decline as integration proceeds until joint negotiation in relation to third parties becomes an integral part of the process, in order for the international system to affirm the new party 'full participant status'. This also explains the actions by CARICOM to incorporate the CRNM as the 'Office of Negotiations' in its official structure after the signing of the EPA.

408 Schmitter (2002:21).

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Neofunctionalism's externalization hypothesis additionally suggests that member-states will face considerable difficulties when attempting to isolate their joint negotiations from a global context and dependence. This relates to the sentiments of the then Secretary General of the ACP Sir Kaputin in addressing the negotiations of the EPA, that:

the ACP Ministers responsible for EPAs held a meeting in early November, less than two months before the end of the Cotonou trade regime and the expiry of the WTO waiver. By then it was clear that the process towards the finalization of the EPA talks had become crucial in light of the information that most, if not all, of the ACP regions would not be able to conclude the negotiations on time. Moreover, the European Commission had categorically repeated that there was 'no plan B'. (Kaputin 2008:12)

The ACP Secretary General went on to suggest that the EU further placed pressure on the ACP, noting that:

the ACP Ministers were seriously concerned about the possible disruption of trade flows should negotiations on EPAs not be completed on time. ... (T)he EU Commission issued a communication on EPAs ... which provided a sort of road-map based on signing interim agreements as the only way of stemming the disruption of trade. ...Therefore, I can describe the process towards the initialing as one fraught with panic, confusion and disagreements at the national and regional level. (Kaputin 2008:12)

These statements not only reveal the impact of external pressure from the EU on the ACP, but also reflects the severity of external pressure on CARICOM. They moreover explain the actions of CARICOM to act on behalf of its member-states to negotiate 'aid for trade' with the EU.⁴⁰⁹

Decision-Cycles: Neofunctionalism's proposal of decision cycles enables not only a clear understanding of the actions of CARICOM in the negotiation process, but also the possibility to pinpoint CARICOM's level of integration. Moreover Schmitter (2002:31) suggests that it should be possible to distinguish the first signs of externalization during these cycles. That is to say, attempts by CARICOM actors to manage 'extra-regional dependence'. External dependence affect regional decisions, and the level and scope of integration which positively correlates with 'progressive'

⁴⁰⁹ Sir Kaputin further conceded that apart from CARICOM, other ACP unions were not able to sign an EPA. Revealing the importance of the highlighted factors in CARICOM in the process of regional integration.

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nature of the decision-making style. Therefore, new commitments will reveal an increased scope and a higher level of integration in comparison with what was generated by initial commitments.

It is understandable then that in comparison with the CSME, the commitments of the EPA reveal deeper obligations in certain sectors. For example, non-compliance of EPA commitments by one CARICOM country can result in sanctions by the EU on all CARICOM countries. With reference to dispute settlement, in choosing mediators and arbitrators from external member-states, the member-states that sign the EPA effectively concede some form of sovereignty to an institution to rule over decisions affecting their trade practices; member-states are compelled to relinquish more sovereignty to an arbitrary panel.

Institutionalization: the initial phases of the EPA reflected ideas of the theory of Neofunctionalism; notably, they reveal a level of institutionalization in CARICOM. In spite of CARICOM being characterized as an intergovernmental union, the initial phases, especially the actions of CARICOM during the process, exhibit a high level of supranational authority in CARICOM. The CRNM crafted the matrices and parameters of the EPA and conceded that it spearheaded most of the consultations. It additionally, emulates the expansion of the institutional landscape of CARICOM, and the successive creation of new institutions in CARICOM. This reflects a change in both the institutional provisions of CARICOM, and the functional domain of regional integration. With emphasis of regional structures, institutions are created and granted regional authority, to implement provisions arrived at above at the regional level. The process reveals a 'top down' approach towards integration, emphasizing the crucial role of institutions and concurrently a deficit in the role of the member-states in the process of integration.

Non-state actors: the above analysis underscored the exhaustive role played by CARICOM throughout the entire EPA process. CARICOM institutions represented a constitutive role in defining the structure of the EPA and guided member-states during the process. Essentially, CARICOM controlled the negotiations for the member-states. The first two phases reflected CARICOM's initiative in spearheading the negotiation process with no decisive involvement of a regional civil society and limited input from individual member-states. The final two stages affirm a more concerted effort on the part of the individual member-states and regional civil society. The stages also reveal intensive media coverage, which directly affected the input of the respective member of the Council and Conference. As such, they represent a high level of politicization as proposed by the theory of Neofunctionalism.

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Notably, CARICOM argued in a press briefing that civil society in the region was involved in negotiating the contents of the EPA. CARICOM advanced that “the (C)RNM's outreach activities are geared at engaging a broad cross-section of stakeholders, to the extent that resources allow. We want to hear their concerns and views. We consider the involvement of civil society an integral part of the process”.⁴¹⁰ The CRNM's Director General Ambassador, Dr. Richard Bernal, went further adding that civil society representatives including the Barbados-based Caribbean Policy Development Center (CPDC) exchanged views on the EPA with EU representatives. He noted that “this most recent consultation between the (C)RNM and the NGO community demonstrates the (C)RNM's commitment to regular interchange with these set of stakeholders”.⁴¹¹ However, this merely reflects the informal exchange and input of regional stakeholders in the process of forming the EPA. Although such exchanges are extremely valuable, they do not relate to a substantial interaction or input of the regional civil society in defining the substance of and negotiating the EPA. Furthermore, CARICOM does not detail any existing structure or formal arrangement between local government, private sector and/or local and regional civil society and the CRNM. On the contrary, the analysis revealed the clear role of non-state actors in the formulation of the EPA,

Politicization: the third and fourth phases of the EPA reflected a high level of politicization. The process of politicization in CARICOM with reference to the EPA fits within the explanations of the theory of Neofunctionalism. Specifically the level of controversy relating to decisions at the regional level increase which results in a widening of the audience interested in the effects of integration.⁴¹²

The first two phases of the negotiations were technical and complicated; therefore, they were overlooked and did arouse much media attention. However, the final two phases were plagued with controversy, which led to politicization of the process. As a result of national sentiments among the member-states, the decision-making process of the EPA was scrutinized by media and pro/opponents of regional integration. Media attention and controversy were more evident in the final two phases than when the civil society input was necessary. The final phases of the EPA reveals a widening of the audience interested in the EPA as a result of the joint decision-making venture.

410 CRNM Press release No. 02/2006 Bernal: RNM Welcomes Interchange with Civil Society.

411 CRNM Press release No. 02/2006 Bernal: RNM Welcomes Interchange with Civil Society.

412 Schmitter (2002:21) proposes that “somewhere along the line, a manifest redefinition of mutual objectives will probably occur (transcendence) ... Ultimately, one could hypothesize that there will be a shift in actor expectations and loyalty toward the new regional center. Nevertheless, it seems worth repeating that only in exceptional, i.e. high scoring, circumstances is such a cumulative process to be anticipated. Normally, the response by established national officials to higher costs and wider public's will be entropy.”

6.4 Discussion

After the EPA, CARICOM member-states provided new information to their citizens, on understanding the EPA and benefits than can be derived from the EPA. These actions reveal a slight shift in embracing the EPA and its regional objectives, and therefore a shift in expectations to the new regional center, which is highlighted by the theory of Neofunctionalism.

Natural Entropy: the advances of the theory of Neofunctionalism in its hypotheses of 'natural entropy', help explain bargaining situations such as the EPA. The hypothesis refers to the process by which integration reaches a state of rest or stagnation unless affected by new exceptional and often unintended exogenous conditions and endogenous outcomes, which were not present at the initial convergence.⁴¹³ Only in exceptional circumstances will externalities give rise to actions to avoid entropy; under normal circumstances, the actors will opt for encapsulation or stagnancy. Entropy in CARICOM was avoided due to reactions to the external pressures of the EPA. The EPA, a new 'obstacle' for CARICOM compelled CARICOM to create the Cariforum as an institutional arrangement and solution for negotiating with the EU Commission. The creation of the Cariforum and the move by CARICOM to redefine and extend its borders to negotiate under Cariforum with the EU can be seen as one of these 'exceptional circumstances' which define a decisional cycle in the process of integration in a region.

Insights into the process of Regional integration: the analysis revealed useful information for the theorizing regional integration in CARICOM, particularly:

- strengthening the competencies of institutions positively reflects on the process of integration in CARICOM;
- regional institutions are not only dominant but useful in bargaining at the regional and international levels;
- providing information for respective parties and interest groups works to the benefit of regional integration;
- assessing and concentrating on regional gains, as opposed to national gains, has a positive correlation with the process of regional integration;
- member-states must relinquish certain competencies, in both negotiation processes and the general process of integration, to regional authorities;
- the EPA superimposes a deep scheme of regional integration on CARICOM, which simultaneously affects its internal and external economic commitments.

It also revealed salient features of theorizing integration in general, particularly:

413 Schmitter (2002:21).

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- member-states are inclined to react to external forces that drive integration.
- these external conditions critically affect the process of regional integration. Exogenous factors affect the actions of both states and non-state actors in defining the direction, pace and depth of integration;
- there are distinctive (decision) cycles of integration; it progresses in bouts of action followed by stages of rest;
- during the cycles of integration, the levels of politicization increase, giving rise to an increase in the process;
- decision making in unions is decentralized, that is to say, there are numerous parties who play a vital role in the decisions making process and in the general process of regional integration; these include the heads of member-states; and non state actors, including institutions and other political élite. In the case of CARICOM, the CRNM dominated the first three stages of the EPA, defining parameters of the EPA, spearheading negotiations and disseminating information on the EPA to relevant parties. These actions reveal the dominant role of the CRNM as an institution in CARICOM.

6.5 Summary and Conclusion

The theory of Neofunctionalism was employed in this chapter to analyze the EPA negotiated between CARICOM and the EU. The examination revealed information on the process of consultations, negotiations, and the commitments of the EPA, and highlighted the applicability of certain key hypotheses of Neofunctionalism.

Whilst the previous two empirical chapters examined the process of integration in CARICOM from a functional and institutional perspective, this chapter additionally paid close attention to the actions of the political élite and other non-state actors at the supranational level, and the ways in which they shape the scope and domain of regional integration.

The analysis of the chapter specifically converged on the process of negotiation, the platform of bargaining utilized by CARICOM, and the power and will of the political élite in CARICOM. It examined the scope of regional integration in CARICOM by reviewing the commitments of the EPA. It moreover proposed that regional institutions, such as the CRNM are pivotal, and decisive in the process of regional integration in CARICOM. The CRNM initiated and oversaw the process of local and national consultations and shaped the preferences of the state. In so doing, the

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institution takes on the personality of and acts in the role of a member-state. Institutions as such, are more than an arm of the state, they take on a persona of their own.

The EPA, therefore signifies a cycle of deepening regional integration in CARICOM. The analysis of the EPA, also reveals that inherent problems in CARICOM might not be related to CARICOM itself, but to failure to identify structural and functional issues through theoretical analysis.

CARICOM itself admits that the process of consultations was flawed, that, for example, national groups did not play as big a role as was expected.

It is therefore necessary to conduct further analysis on regional groupings and orders in CARICOM, including, research that focus on the understanding process of preference formation and development; analyzing local participation in political processes; theorizing borders or lack thereof, and on the formation of normative order.

Chapter 7: Discussion and Conclusion

7.1 Introduction

This is the final chapter of the thesis. It offers a summary and discussion of the results of the dissertation; presents new perspectives on CARICOM and the theory of Neofunctionalism; and offers proposals for future theoretical applications and analyses of regional integration in CARICOM.

7.2 New Perspectives on CARICOM

The analysis of CARICOM using the theory of Neofunctionalism brought interesting details to light. Notably:

External Forces and Integration in CARICOM: Chapter 2 presented regional integration in CARICOM as a reaction to external global events. It outlined previous integration efforts by the UK during the period of its colonial rule in the Caribbean. It also related attempts at regional integration by the newly independent CARICOM member-states as being directly linked to these prior efforts and a reaction to exogenous factors.

The analyses in chapters 4, 5 and 6 additionally revealed the extensive effects of external forces on the process of regional integration in CARICOM. All three incremental changes in CARICOM, i.e. the CSME, CCJ and the EPA, which have proven to deepen regional integration in CARICOM, reflect reactions to external events.

Chapter 4 highlighted a deepening of regional integration in CARICOM with the creation of the CSME. It argued that the Grande Anse Declaration, which initiated the CSME, was a mere reaction to global events, which spilled over to a structured agreement that introduced regional competencies and organizations in CARICOM.

In Chapter 5, the analysis of the judgments of the CCJ demonstrated a considerable influence of international law on the rulings of the CCJ.

Chapter 6 presented the entire partnership agreement (EPA) with the European Union (EU) as a reaction to external events, including those of the World Trade Organization (WTO) and the EU. It further established that the contents of the EPA, especially its institutional provisions, reflected objectives of the EU's external trade policy. Moreover, it proposed that the reaction of CARICOM

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to these external events largely characterize the nature of the political process in CARICOM.

Spill-over: the theory of Neofunctionalism proposes that spill-over mechanisms are driving forces behind the process of integration. The analysis of the process of integration in CARICOM also reflects these ideas.

Chapter 4 proposed that the provisions of the protocols in the Revised Treaty, along with the creation of the regional institutions, resulted from spill-over of initial commitments to deepen integration; and in spill-over of economic integration to other sectors in CARICOM, most significantly, in immigration policies, education, social security, standards and quality, and environmental issues. For example, the harmonization of immigration procedures was a direct spill-over from the requirements for regulation in CARICOM states to accommodate the free movement of CARICOM nationals across CARICOM territories. In the education sector, skills and other degree requirements were harmonized in order to accommodate the provisions for free movement of CARICOM nationals across member-state borders. Furthermore, provisions for social securities and national pension schemes provided by the CSME in order to accommodate the free travel of CARICOM individuals also reflect spill-over. Consequently, not only were CARICOM member-states compelled to ratify the provisions of the protocols; they were also compelled to implement new provisions which would address any limitations in providing benefits. This spill-over reveals the extensive impact of the CSME on sectors that were not initially under consideration *ab initio* the CSME.

The analysis also revealed both horizontal and vertical connectivity among social, economic, political, and legal actors. These connections⁴¹⁴ evolved and spilled-over various areas. As predicted by Neofunctionalism, as essential deterrents to regional exchanges were removed and policies harmonized, new deterrents became obvious in other sectors. These hindrances were then perceived as salient, new competences and new regulations for regional authorities were introduced. Intrinsically, the process of integration continued to spill-over into additional policy areas. For example, the removal of tariff and quotas on intra-regional goods revealed explicit variations in customs standards and regulatory, health and safety standards which were then harmonized. Thus, what started as an attempt at addressing tariffs and quotas, explicitly evolved into concrete regulations and provisions for regional safety standards, which then spill-over to health and other regulatory standards.

414 As noted, Stone Sweet and Sandholz (1997:304) suggest that “vertical linkages are the stable relationships, or patterned interactions, between actors organized at the (regional) level and actors organized at or below the member-state level. Horizontal linkages are the stable relationships, or patterned interaction, between actors organized in one member-state with actors organized in another”.

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Chapter 4 therefore presented the CSME as an expansion of an initial intergovernmental effort at addressing global problems and issues, and a transformation of the functional sphere of CARICOM. This included both a widening and deepening of economic integration and institutional building with spill-over in economic, political and social sectors.

In Chapter 5, spill-over effects were observed in relation to the CCJ's rulings.⁴¹⁵ For example, under its final appellate jurisdiction, the CCJ's judgments on property purchases urged the government of Barbados to introduce 'Civil Procedural Rules' as a means of updating its legal system.

The analysis of the final appellate cases also revealed that the CCJ often rules on cases beyond the scope of its requirements. It comments on the deficiencies of the legal system of Barbados, especially on the slow pace of its judicial system. The CCJ also ruled that Barbados should take certain steps in future capital punishment cases.

The CCJ created functional spill-over through the integrative action under its original jurisdiction, and an expansion of the reach of community law under its final appellate jurisdiction. The CCJ therefore initiated and expanded structural change and spill-over in CARICOM.⁴¹⁶

Structural Change in CARICOM: the three empirical chapters revealed extensive structural changes in CARICOM's institutional landscape.

Chapter 4 disclosed that the Revised Treaty represents a clear effort of CARICOM member-states at deepening regional integration through economic, social, and political policy changes; all symbolizing a structural adjustment in the functional sphere of CARICOM. The Revised Treaty extend those initial agreements in the Original Treaty on a common market, to include an institutional, legal, and a macroeconomic framework. It moreover created provisions and regulations for market access and sectoral policies. The CSME not only introduces regional institutions and new regional competences to CARICOM, but its also address the harmonization of member-state legislation and economic and financial convergence in specific issue areas.

In addition to an overhaul of the functional scope of CARICOM, the protocols reflect a fundamental modification in the institutional landscape of CARICOM. They extensively introduce new institutions⁴¹⁷ with regional competencies over policy areas relating to agriculture; capital and establishment; commercial enterprise; competition and trade; consumer protection; customs;

415 Both rulings under its original jurisdiction and its final appellate jurisdiction revealed spill-over.

416 The CCJ also represents a form of legal integration in CARICOM resulting from functional spill-over created by the deepening of the process of economic integration through the creation of the CSME.

417 Institutions including the COTED, COFAP, and the Competition Commission were created to monitor, implement and act as 'watchdogs' for the provisions reviewed above; revealing their importance to the process of regional integration in CARICOM.

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dumping and other market protection/regulation fiscal and macro-economic convergence; industry; services; social securities; transport; and quality and standards.

The Revised Treaty and the CSME therefore represent a functional overhaul of the preexisting arrangements of trade, and an introduction of harmonized regulations governed at the regional level in CARICOM.

Chapter 5, presented and highlighted the supranational competences of the CCJ as a distinct systematic transformation, arising from the CSME. Not only does the CCJ possess sole competency to interpret the Revised Treaty, but it also possesses an appellate jurisdiction over some CARICOM countries. It represents a decisive structural deviation of CARICOM's legal landscape, as it typifies a supranational institution in a previously perceived intergovernmental union.

Chapter 6 also reveals functional development in CARICOM. The CARIFORUM embodies a new construct outside of the typical functional arrangement of CARICOM. Moreover, the EPA represents the first concerted effort of CARICOM to negotiate on a single platform with another union.

Priming cycles in CARICOM: the analysis of the three variables, the CSME, the CCJ, and the EPA, provided information related to the level and scope of regional political and economic integration in CARICOM.

As explained in Chapter 3, Neofunctionalism's 'decision cycles', as recounted in Schmitter 2002:26, offer a thorough explanation for the initiation and deepening of integration in CARICOM. Decision cycles explain why CARICOM countries decided to negotiate the EPA with the EU, unlike the member-states of other regions in the ACP grouping. Furthermore, decision cycles also provide the possibility of characterizing the state/advancement of regional integration in CARICOM.

These 'decision cycles' include an 'initiation cycle' and a 'priming cycle' of integration. Neofunctionalism further suggests that at each decision cycle actors, member-states, the political élite, and regional institutions are compelled to re-examine their initial respective plan of action. A substantial variation between an initiating cycle and a priming cycle is the increase in relevance of particular regional processes. Crises are overcome with a deepening of regional integration, including the establishment of new institutions, whose importance increase and outweigh national sentiments.

Moreover, under Neofunctionalism's 'hypothesis of additivity', actors begin to calculate and internalize the impact of the regional processes in their decisions. They also begin to add additional variables to their calculations 'one at a time', with each variable either having a negative or a

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positive impact on the outcome of their decisions. This hypothesis enables us to precisely observe the 'cycles' of integration and therefore to better understand the process of integration in CARICOM. It is possible to not only pinpoint CARICOM's current decision cycle, but also the conditions under which these cycles are initiated and the influences of these cycles.

The effort of deepening regional integration in CARICOM through the initiation of the CSME represented one of Neofunctionalism's proposed decision cycles. Prior to which CARICOM had already undergone the initial phase of integration. Under the Original Treaty of Chaguaramas, it created institutions, delineated the borders of integration and the competences of the institutions. Through the Revised Treaty of Chaguaramas, integration in CARICOM further deepened; new competences were extended to existing institutions; and new institutions were granted supranational tendencies and characteristics. Moreover, the initial goals of CARICOM were redefined and extended. The Revised Treaty therefore, signifies a deepening regional integration in CARICOM, and also the start of a new decision cycle in CARICOM.⁴¹⁸

The establishment of the CCJ, is also evidenced for the rising importance of supranational institutions in the landscape of CARICOM. The *de jure* and *de facto* competencies of the CCJ, reflects a high level of institutionalization, and traces of supranationalism in CARICOM.⁴¹⁹

Additionally, the analysis of the EPA revealed a suggested 'redefinition' attempt by CARICOM, both structurally and ideologically. The EPA signals the first step of CARICOM members in negotiating as a single regional unit with their parties. CARICOM countries have thus signaled their commitment to integration among themselves and the supranationality of institutions which can act on their behalf.

I therefore propose that the CSME, the EPA, and the CCJ reflect a general and prevalent deepening of integration in CARICOM. Moreover that CARICOM has well undergone an initial cycle of integration and is already on the verge of starting a new cycle of integration. The presence of institutions such as the CCJ, the influence of non-state actors on the process, the formation/development of a regional civil society, signal that this pending cycle is a 'priming cycle' as described by the theory of Neofunctionalism.

The role of institutions and other non-state actors in CARICOM: a striking revelation of the analysis is the important role of institutions and political élite in the process of regional integration in CARICOM. The assessment of the competences of institutions created by the Revised Treaty of

418 This decision cycle can be observed through the creation of the CSME, which embodies a new step of CARICOM towards creating supranational institutions such as the CCJ and the Competition Commission.

419 A high degree of supranationality can also be observed through the introduction of institutions such as the COTED and the CRNM (now OTN), which took its own initiative and defining the parameters of the EPA.

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Chaguaramas highlighted a clear and decisive role of political élite and non-state actors in the process of integration, which had not previously been considered.⁴²⁰

Chapter 4 further detailed the significant role of institutions in CARICOM. The CSME introduced and expanded the competences of existing institutions; which are positioned above CARICOM member-states and were found to be decisive in the process of regional integration.

The analysis in Chapter 5 underscored the importance and competences of the CCJ and its power over member-states regarding both its final appellate and original jurisdictions. Under its final appellate jurisdiction, it was possible to observe the CCJ directly influencing the laws and reviewing the existing legal structures in member-states, introducing a symmetrical regional heterogeneity and cohesion into the legal hemisphere in the member-states. With reference to its original jurisdiction, the chapter described the CCJ's overarching position and its influence on member-states' trade and customs regulations.

Chapter 6 emphasized the role of the CRNM⁴²¹ in spearheading the process of negotiating the EPA. Furthermore, the chapter suggested that the EPA reflects the initiative of institutions and non-state actors rather than those of the member-states.

Therefore, all three chapters revealed the vital role of institutions and non-state actors in the process of integration in CARICOM. The competences and power of institutions in CARICOM point to their conclusive role in the process of regional integration.... Some CARICOM institutions possess the ability to 'police' the individual member-states. Such actions relate to the inherent possibility of coercive power to bind member-states to regional commitments.

Supranationalism: the analysis in Chapter 4 demonstrated evidence of supranationalism in CARICOM. The Revised Treaty withdrew certain competences, such as the administration of customs regulations and safety standards from the member-states, and assigned these responsibilities to regional bodies. Member-states therefore, effectively relinquish sovereignty in specific areas to regional authorities in CARICOM. In addition to extending the competences of existing institutions, the Revised Treaty also introduced new institutions in CARICOM, further superimposing these institutions on member-states and creating an overarching institutional and legal framework in the region.⁴²² These institutions were created to address financial and economic

420 A review of earlier literature on regional integration in CARICOM highlighted the tendency to approach CARICOM by analyzing the actions of the member-states, or the effect of integration on an individual member-state and vice versa. This study represents the first attempt to address CARICOM from a 'non state-centric' approach, focusing on the role of individuals and institutions in the process of regional integration.

421 Renamed OTN and incorporated as an office of the CARICOM Secretariat.

422 These include the establishment and ratification of the CCJ; the creation of the Competition Commission; COFUR; COFAP; COTED; a Conciliation Commission; a Regional Intellectual Property Rights Office; and a Standards Organization.

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convergence; help and oversee the implementation and harmonization of CSME provisions; and propose and initiate new policies for future regional integration in CARICOM.

Additionally, the CSME introduces provisions for breaches by member-states. Member-states are directed to implement the binding agreements and harmonize their laws, relinquishing power to regional institutions. These institutions are therefore 'superimposed' on the member-states. They provide checks and balances for the commitments of the Revised Treaty, and direct the speed and depth of integration. Moreover, by being in charge of overseeing the process of integration, they consequently contribute to the depth and speed of integration in CARICOM.

In Chapter 5, the analysis (of the appellate and original jurisdictions of the CCJ) also revealed supremacy of the CCJ over CARICOM member-states.

The examination of the original jurisdiction of the CCJ highlighted its *de jure* power, and to some extent its *de facto* power over the member-states. The CCJ's original jurisdiction introduces further supranationality to CARICOM in two additional aspects.

The competences of the CCJ under its original jurisdiction enable it to deliberate and decide on all issues related to the Revised Treaty of Chaguaramas. It directs and compels member-states to follow its rulings, and is therefore 'superimposed' on both the judiciary and executive branches of government.

Moreover, it imposes compulsory jurisdiction on matters related to the Revised Treaty, binding CARICOM member-states to comply with its decisions. The compulsory jurisdiction⁴²³ of the CCJ also avails it authority to grant third parties and other extraordinary entities the possibility of bringing proceedings against a CARICOM member-state. CARICOM member-states are not only obliged to submit to any proceedings brought against them before the CCJ, regarding the Revised Treaty, including any perceived breach of the treaty; but also bound to the decisions resulting from these proceedings.

The CCJ therefore possesses static competences on matters regarding the Revised Treaty, as well as judgments under its original jurisdiction, which affect numerous policy areas and sectors in the CARICOM member-states. It is able to rule on economic issues relating to agriculture and fisheries, tariffs and quotas, the quality standards of goods and service, telecommunications, immigration issues concerning CARICOM nationals, social securities, and a further extensive list of elements affecting numerous sectors in each of the CARICOM member-states.

Regarding both its final appellate jurisdiction, the CCJ possesses final authority on both civil

⁴²³ The CCJ possesses the power to decide on allowing a third party to hear grievances before the Court.

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and criminal matters⁴²⁴. However, like its original jurisdiction, it is reliant on the member-states to implement its judgments;⁴²⁵ therefore, comparable to national courts and the national judiciary, the CCJ is dependent on the executive branch of the member-state government to enforce its supranational decisions. Neither the treaty establishing the CCJ nor the Revised Treaty of Chaguaramas create any form of regional executive structure to enforce the decisions of the regional judiciary and *de jure* competences they introduce in CARICOM. The *de jure* competences created for the CCJ are limited by its dependence on the executive arm of the member-states government over which it presides.

The bi-variate hypothesis concerning priming cycles proposed by Neofunctionalism offers an explanation for the above highlighted issue, and a highly likely outcome for legal integration in CARICOM. The theory of Neofunctionalism argues that regional institutions and regulations materialize after a crisis is successfully resolved and after the initiation cycle of regional integration; the process of regional integration then intensifies after which the gains of regional integration is significantly evident, outweighing national sentiments. Non state actors are then bound to increase regional competencies, which would offset the emphasized *de facto* limitation problems above.

Thus, although there are limitations in the executive competences of the CCJ --or rather, the CCJ is reliant on the member-states to enact its decisions -- over time, the gains of legal integration coupled with those of economic integration will create a status effect, in which group formation leads to the development of regional reforms. In this respect, the CCJ sets precedents, exerting its competences and promoting legal spill-over. For example, the analysis of the CCJ's final appellate jurisdiction revealed that the CCJ granted itself the mandate to preside over matters in the member-states that are directly related to democracy. A notable instance is the civil appeal case CV 7/2012 originating in Belize, where the government granted tax breaks to a specific company. The CCJ ruled that “the rights and freedoms of the citizenry and democracy itself would be imperiled if courts permitted the Executive to assume unto itself essential law-making functions in the absence of constitutional or legislative authority so to do”.⁴²⁶ The CCJ expressly stated that it possessed the mandate to act as 'guardian of democracy' in CARICOM. Furthermore, the CCJ ruled that as a part

424 These include administrative, banking, civil, criminal, debenture and other corporate laws, environmental, family, intellectual, public, and tax laws.

425 Article 26 declares that CARICOM member-states are obliged to “take all the necessary steps, including the enactment of legislation” in order to ensure that an “order or sentence of the Court given in exercise of its jurisdiction shall be enforced by all courts and authorities in any territory of the Contracting Parties as if it were a judgment, decree, order or sentence of a superior court of that Contracting Party”.

426 *BCB Holdings v The Attorney General of Belize* (2013) CCJ 5 [AJ] Para 42.

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of its 'general function of judicial review,' it has “a constitutional obligation to strike down administrative or executive action that exceeds jurisdiction or undermines the authority of the legislature;”⁴²⁷ creating and extending its competences to address extra-judicial matters; and presiding over the actions of the executive branch of the member-state. This action reveals the imposition of the regional judiciary over the national executive in CARICOM. The CCJ therefore, not only creates new competences for itself, but it establishes itself over the very branch of government which created it.

Chapter 5 therefore revealed both abstract and concrete supranational influences of the CCJ over the CARICOM member-states.

Chapter 6 also affirmed that CARICOM institutions, such as the then CRNM⁴²⁸, exhibit supranational tendencies in negotiating the EPA. The analysis of the EPA revealed that the parameters of the EPA were defined independently of the CARICOM member-states, and that the negotiations and some definitive provisions of the EPA were contrary to the will of the CARICOM member-states.

All three empirical chapters disclosed supranationalism to be a common variable in the process of regional integration in CARICOM.

New power structure in CARICOM: the above analysis leads to the conclusion that the traditional approach of characterizing CARICOM as a purely intergovernmental union should be revised; moreover, that it is necessary to rethink the current approach of understanding CARICOM, which is to typically conceptualize CARICOM state actions as the sole driving force in regional integration.

Due to the influence of institutions and non-state actors in the process of regional integration in CARICOM, I propose a new 'flow' of power in CARICOM⁴²⁹, which retains the Conference of Heads of Governments as the primary institution in charge of the decision making. It also accepts the role of the Council of Ministers. However, it also acknowledges the influence and competences of institutions such as the CCJ, the Council for Trade and Economic Development (COTED), the Council for Finance and Planning (COFAP) and the Competition Commission; and their decisive roles in the process of integration in CARICOM. These institutions directly and indirectly impact the level and scope of integration in CARICOM, and are therefore definitive factors in the process.

Such a proposal also inherently suggests the presence of supranationalism in CARICOM, as

427 BCB Holdings v The Attorney General of Belize (2013) CCJ 5 [AJ] Para 42.

428 Now Office of Trade Negotiations, incorporated in the Secretariat

429 See attached Graph titled 'Proposed CARICOM Structure Based on the Analyses in the Thesis'.

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non- state-power centers drive and control regional integration and policy-making in the CARICOM member-states.

Non-compliance: notwithstanding the influence and authority of institutions, issues of non-compliance were also found to be prevalent in CARICOM; especially evident were those related to the CCJ under both of its jurisdictions.

Under its original jurisdiction, it was noted that although the CCJ's rulings are *contra rem iudicatam non audietur* and binding on member-states, neither the treaty establishing the CCJ⁴³⁰ nor the Revised Treaty create legal provisions relating to the implementation and compliance of the CCJ's decisions, particularly under its first instance jurisdiction. Although the CCJ is technically armored with an 'overarching position' in the CARICOM region and can theoretically decide on issues that would change the constitutions of member-states, conceptually it does not possess brute force to implement or coerce member-states to comply with these decisions. In other words, it possesses limited *de facto* power and competence to oversee and bind member-states to its rulings. It was further reasoned that this limited *de facto* power of the CCJ is based on both an institutional construct in CARICOM, or rather the lack thereof. There is no institution at either the regional or the national level in CARICOM to actively coerce member-states to implement the CCJ's rulings.⁴³¹

The analysis also revealed that pertaining to its original jurisdiction⁴³², the member-states in CARICOM were also slow to ratify the rulings of the CCJ.

The process of legal integration in the Caribbean is therefore riddled with both an implementation problem and a compliance deficit. When there are no legal provisions to address non-compliance and implementation, then there is little to bind member-states to the provisions. These problems in CARICOM partly result from matters addressed in Chapter 2. Factors such as: limited resources⁴³³ for instance monetary and human capital of the CARICOM member-states to act expeditiously on the CCJ's rulings, and to implement regional directives and provisions; inconsistencies in the Revised Treaty with regards to implementing the CSME and addressing issues of non-compliance of the CCJ's decisions (including a blurred chain of command in addressing regional directives, institutional arrangements, and *de facto* power to coerce member-

430 The Treaty Establishing the CCJ incorporates the CCJ in CARICOM,

431 Moreover, the CCJ's final appellate jurisdiction was not ratified in most of the CARICOM countries.

432 This was especially in rulings such as a) the Shanique Myrie case in which it took approximately eight months for pecuniary damages against Barbados to be paid; b) Guyana failed to react expeditiously to the CCJ or to re-implement canceled CETs per CCJ's deadlines.

433 Limited resources are due to small administrations, and the incorporation of regional competences in offices already burdened by national mandates. Additionally, the relevant party at the national level for addressing regional directives is not fully equipped either structurally or knowledgeably to address said directive.

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states to implement said provisions.⁴³⁴); and that member-states were unwilling to endorse the competences of and comply with the decisions of the CCJ⁴³⁵ negatively affect the process of implementation and compliance, and therefore regional integration in CARICOM.

In international Relations (IR), the issue of non-compliance is generally theorized by advancing utilitarian approaches or following the logic of consequences. These ideas or rationalist theories advance that states are unitary, rational and act on self-interest, and that their decisions to comply with or breach treaties are based on calculated costs and benefits. Rational theories advance that enforcement and deterrence are primary ways of handling non-compliance. However, the focus of these theories on the causative factors (denoted above) of non-compliance in CARICOM is limited.

To address compliance in CARICOM, it is necessary to first address the constraints of the Revised Treaty. The Revised Treaty provides limited legal recourse for member-states, CARICOM citizens, companies, and other private entities for non-compliance and breaches of its provisions;⁴³⁶ and empowers specific institutions in CARICOM with some limited role in overseeing the implementation of regional prerogatives, especially those concerning the CSME.⁴³⁷

Although the Revised Treaty explicitly offers numerous provisions and a legal basis for the CSME, especially with the compulsory authority of the CCJ to interpret the treaty, it does not explicitly address the implementation of the judgments of the CCJ, especially with regard to its original jurisdiction. Save for the power of the Conference,⁴³⁸ the Revised Treaty does not create any legal provisions for the implementation of the results of legal recourse relating to the original jurisdiction of the CCJ. It neither provides an instrument addressing non-compliance, nor does it create an institution specifically for the implementation of original jurisdiction decisions, especially those arising from mediation, arbitration, or the CCJ's rulings. Therefore, although member-states and CARICOM citizens do possess avenues for legal recourse, there is no guarantee that their rights granted by the Revised Treaty, and ruled on by the CCJ will be upheld by the member-states. Not only are there limited possibilities to implement regional decisions; there is also no possibility to provide further sanctions, as seen fit by the CCJ, for previous cases of non-compliance.

434 Additionally, the final appellate jurisdiction of the CCJ is ratified by only three CARICOM member-states. Up until the first draft of this Thesis in December 2014.

435 Arising from a lack of trust in the CCJ as an institution by the CARICOM member-states.

436 The only recourse that the Revised Treaty provides is mediation, an arbitrary panel, or a hearing before the CCJ.

437 Article 13 paragraph 4 of the Revised Treaty endows the Community Council of Ministers the competences to establish a regional system in order to “promote, enhance, monitor and evaluate regional and national implementation processes”.

438 Under Article 12, para 6 of the Revised Treaty gives the Conference power to create/establish “such Organs or Bodies as it considers necessary for the achievement of the objectives of the Community”.

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Tackling Non-compliance in CARICOM: Buchanan (1977:288) proposes that without robust regulations and enforcement mechanisms, even universally accepted rules become ineffective. Part of the delay in the integration process in CARICOM can be blamed on the weakness of its organizational structure, because decisions and policies cannot be implemented without a functioning structure and body to oversee their implementation. Convergence and compliance are often necessary and are inextricably bound to the enforcement of rules by a collective entity. The CCJ admitted that unlike other international tribunals, it does not possess the competences necessary to add (automatically or after the fact) pecuniary damages and monetary interest to its rulings as a coercive mechanism. This includes increasing the *de jure* competences of the CCJ to penalize member-states which do not comply with its initial rulings, in the form of pecuniary damages, deadlines to pay fines, including 'interest accrued' as a term in the initial fine.

It is therefore mandatory to introduce structural changes to CARICOM's institutional landscape, including a new institution responsible to oversee non-compliance. The introduction of a new institution would apply coercion and other methods of deterrence as a means of curbing/coping with and addressing non-compliance, especially with regards to the CCJ's original jurisdiction; effectively increasing the *de facto* powers of the CCJ.

The Secretariat is the principal administrative organ in CARICOM, whose mandate includes initiating, developing and conducting studies/proposals related to the community objectives, including requesting the assistance and services of member-states to accomplish the matter in question; assisting member-states on community-related matters and taking appropriate follow-up action on decisions; and assisting in the implementation of community programs and decisions. These responsibilities partially fulfill the role of a regional *de facto* institution

Therefore, the institution could be incorporated as an Office of the Secretariat.⁴³⁹ The office could be created by the Conference of Governments, which possesses the power from Article 18, paragraph 3⁴⁴⁰ of the Revised Treaty to establish new bodies; and from Article 12⁴⁴¹ to directly address non-compliance. The office would be tasked to directly oversee the implementation of

439 In the same way that the CRNM was at first created to negotiate a specific trade agreement (the EPA) on behalf of CARICOM and was subsequently incorporated in the office of the Secretariat as the Office of Trade Negotiations; this proposed office could also be incorporated in the Secretariat.

440 The article declares that "the Organs of the Community may establish, as they deem necessary, other Bodies of the Community".

441 This section declares that "the Conference may establish such Organs or Bodies as it considers necessary for the achievement of the objectives of the Community. ... Notwithstanding any other provision of this Treaty, the Conference may consider and resolve disputes between member-states. ... The Conference may consult with entities within the Caribbean Region or with other organizations and for this purpose may establish such machinery as it considers necessary".

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supranational judicial decisions of the CCJ in the member-states; oversee the implementation of decisions of other institutions that relate to the community; and offer a physical address to post issues of non-compliance, report non-compliance to the regional bodies who delivered the initial ruling, and recommend further actions.

Alternately, the office could be incorporated into the CCJ and established by the CCJ, since Article 14 of the Agreement Establishing the CCJ permits the application for intermittent measures to address its rulings. It declares that “the Court shall have the power to prescribe if it considers the circumstances so require, any interim measures that ought to be taken to preserve the rights of a Party”. The CCJ could then technically create an body that functions intermittently (i.e. when implementation and compliance issues arise) whose mandate is to address non-compliance.

This arrangement could also be addressed as a provisional feature in all the CCJ's original jurisdiction rulings. Such an office could function similarly to the COTED⁴⁴², one of whose current mandates is to oversee the implementation of CARICOM decisions in the member-states. Since the CCJ has the sole mandate to interpret the Revised Treaty as well as final appellate jurisdiction, this office could also operate alongside the CCJ in implementing the rulings of the CCJ in the member-states, especially concerning original jurisdiction and final appeals.⁴⁴³

As mentioned previously, the overview of Chapters 4 and 5 revealed breaches of the Revised Treaty and issues of non-compliance in CARICOM related to the CSME and the CCJ's original jurisdiction. The mandate⁴⁴⁴ of such an office would be both to work closely with the secretariat and the Council of Ministers to monitor and oversee the implementation of community decisions at the national level, and would also primarily include the mandates to ensure that member-states comply with the CCJ's rulings⁴⁴⁵ and implement the provisions of the Revised Treaty; create a list of items already successfully implemented and those pending, according to the schedule in the annex of the Revised Treaty and any other provisions of the Revised Treaty related to the implementation of its provisions; work directly with sectors of the member-state to harmonize these regulations; and adopt the necessary technical measures to ensure that the said decisions are enforced in the member-states.

442 For information on the structure and competences of the COTED, see chapter 2, pp. 19, 30, 32; and chapter 5, pp. 8, 10, 11-13, 15 - 16.

443 For a graphic detail of this institution, see the attached Graph titled 'CARICOM Structure Based on the Proposed Institution in Chapter 7'.

444 For an extensive list of mandates of this proposed office including financial structure and accountability, and composition, see working paper, entitled 'Addressing Non-Compliance through restructuring CARICOM's Institutions' Tamara Onnis.

445 This would also include decisions from arbitrary panels presiding over matters (in)directly related to the provisions of the Revised Treaty.

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The office could be assisted by non-state actors at the local level in gathering information, monitoring, and implementing community decisions. Proposed violations could be brought first to this office, just as with the Competition Commission, before a hearing in the CCJ⁴⁴⁶.

Regarding financing such an office, the office could be privy to the budget of the secretariat, or the budget of the CCJ⁴⁴⁷. Such an office would operate at both the regional and national levels in CARICOM.⁴⁴⁸

Like other steps taken to deepen integration, the creation of this office would be beneficial to each member of the conference, as it would ensure that the rights and assurances granted to it under the Revised Treaty are upheld by other members.

Alternately, the office could be independent, resembling the competition commission;⁴⁴⁹ Under all three options, there is no need for national ratification or any extensive change of the Revised Treaty because, as highlighted above, the Revised Treaty does not explicitly require a ratification when new institutions are created; rather, the Revised Treaty guarantees the legal personality of such an institution when created under the provisions of Article 12.

The theory of Neofunctionalism proposes that once competences are increased and *de facto* power is given to CARICOM institutions and bodies, member-states could then possibly be coerced into implementing and conforming to regional rules and regulations.

Complexities of preference formation in CARICOM: the analysis in Chapter 6 revealed the importance of preference formation in the process of regional integration in CARICOM. A historical review of CARICOM revealed similarity in cultural and social preferences among member-states. Additional concepts, such as interest and politicization, which affect and define preferences, were also observed. Moreover, the systematic impact of externalities on preference formation and deepening integration in CARICOM were likewise salient.

The interplay of cultural and social constructs in preference formation was also disclosed to be important in the process of integration in CARICOM. The interaction of heuristics, ideologies and schema in preference formation were also noteworthy.

Especially relevant was that politicization is related to preference formation and directly affected the process of integration in CARICOM. This revelation points to the necessity for further examination of how social actors develop and use social relations, for example, to interrogate and

446 Such an action could cost the plaintiff less in financial terms.

447 In the case that the office is incorporated in the Secretariat, it would be privy to the budget of the Secretariat; and in the case that it is incorporated in the CCJ, the budget of the CCJ.

448 Given that one of the mandates of the Council of Ministers is related to overseeing the implementation of the Revised Treaty, this office could also work alongside or be affiliated with the Council of Ministers.

449 For a revised power flow, see Graph, titled 'CARICOM Power Structure with Proposed Enforcement Institution'

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form preferences.

Also critical is the necessity for further examination of the importance of social filters in defining preferences; evaluation of social filters and other sources; and their role in the process of regional economic, political, legal and social integration in CARICOM. It is therefore crucial to further examine preference formation and social constructs in CARICOM and their impact on the process of regional integration.

To further understand the underlying issues affecting the process of regional economic, political, legal, and social integration in CARICOM that were revealed by this research; it is necessary to observe the relationship among the member-states; to ask questions about the similarity of the relationship and characteristics of the CARICOM member-states and that of states in other nations elsewhere.

To summarize, the application of the theory of Neofunctionalism to CARICOM provided several interesting results, including the possibility to:

- observe actors in the process and the general phenomenon of regional integration in the Caribbean;
- identify a high level of transaction flow and interdependence in CARICOM, and observe and start to understand the power and interdependence of relationships in CARICOM, especially with relation to policy frameworks and international boundaries;
- review regime politics in CARICOM from a non state-centric point of view;
- identify the importance and impact of non-state actors on the process of regional political, economic, legal and social integration in CARICOM;
- observe the importance of societal factors and institutions in the process of integration with regard to the EPA, the CCJ, and the CSME.

The analysis therefore revealed prevailing conditions, circumstances and characteristics particularly evident in the process of regional integration in CARICOM; specifically:

- the history of regional integration in CARICOM is largely a reaction and adaptation to external factors;
- institutions and other non-state actors such as the political élite play a decisive role in the process of regional integration, which is often enough equal to, or more than that of the member-state themselves;
- elements of supranationalism are present in CARICOM;
- spill-over mechanisms deepen both the level and scope of integration;

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- issues of non-compliance in CARICOM, especially those related to the CSME and rulings of the CCJ, are based on the limited scope of institutional competences. Once competences are increased and *de facto* power is given to CARICOM institutions and bodies, member-states could then be coerced into abiding by rules and regulations;
- there is evidence of extensive structural change in CARICOM, which has an impact on integration;
- the process of regional integration in CARICOM undergoes various 'decision cycles' which are decisive for its outcome. These cycles reveal the level of integration, or rather the state of the process of integration.

The analysis in chapter 6 additionally revealed the complexities of preference formation. These are evident at both the national and regional levels, and play a substantial role in the process of regional integration in CARICOM.⁴⁵⁰

These results are essential, given that CARICOM is a union designed on intergovernmental constructs. These results point to a new mode of understanding regionalism in CARICOM, and suggest new possibilities for examining regional integration in CARICOM.

7.3 New Perspectives on the Theory of Neofunctionalism

Along with the advantages of theoretical research in CARICOM the analysis revealed the usefulness of the theory of Neofunctionalism to investigate the deepening of integration in CARICOM. It disclosed the role of institutions and other non state-actors, and their effect on both the level and scope of integration in CARICOM. The research revealed significant information and perspectives about the integration process, which had hitherto not been considered⁴⁵¹. It also provided the possibility to:

- focus on the actions of non-state actors and institutions in the process of regional integration;
- understand power relations, social constructs, and the politicization process;
- highlight new factors affecting integration that were not previously considered, such as preference formation;

450 Preference formation is therefore of paramount importance for any future analysis of the process of integration in CARICOM.

451 This study, however, represents only the first step in theorizing regional integration in CARICOM. It reveals the necessity for further theoretical analyses of CARICOM.

7.3 New Perspectives on the Theory of Neofunctionalism

- observe the presence and role of supranationalism in the process of regional integration in CARICOM;
- detect and analyze spill-over of economic principles and integration in CARICOM;
- understand the general dynamics of the process of integration.

The application of the theory of Neofunctionalism to CARICOM further revealed the need for advancement in current research. Although this first attempt at theorizing CARICOM provided interesting results, it also points to the necessity for future research and moreover future theoretical analyses of CARICOM to further analyze:

- the effects (and outcome) of the process of bargaining on regional integration;
- the process of preference formation at the local and regional levels in CARICOM and its role in grand bargaining situations;
- the relationship between 'grand bargains' and regional integration/the extent to which/impact of bargaining on the process of integration in CARICOM;
- the formation of normative orders, and the (non)existence of borders in CARICOM;
- the factors relating to complex governance, and their role in the process of regional integration in CARICOM.

The theory of Neofunctionalism is the only theory of European integration which takes the role of non-state actors as a starting point for explaining regional integration. It takes supranational interactions and governance in and among the institutions in addition to political processes at the supranational level, as being of vital importance to the process of regional integration. Neofunctionalism further addresses the roles, effects, and actions of the national élite on the process of integration. The theory of Neofunctionalism further provided the possibility of unearthing a 'supranational' trend in CARICOM, where institutions and the political élite play a primary role in the process of integration. It also enabled spill-over effects to be observed from one sector to another, and the creation of new institutions to address the general and overall deepening of integration in CARICOM. The theory also revealed valuable information regarding the politicization process in CARICOM. It further highlighted that preference formation at the local level plays a vital role in 'grand bargain situations' at the regional level in regional integration, pointing to the necessity to examine the intrinsic nature of borders and normative orders in CARICOM.

At the same time, a purely Neofunctionalist approach can produce limitations for future analyses, especially for research concentrating on the formation of preferences and orders.

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Specifically, the Neofunctionalist perspective might not offer an extensive explanation of the creation and formation of preferences of local and national civil society and other groups active in the process of bargaining and regional integration; or a comprehensive examination of the formation of national/local preferences to explicitly observe local government participation especially in 'grand bargaining' situations such as the EPA.⁴⁵²

During the round of local and national consultations in CARIFORUM, for example, it became clear that CARICOM initiated the civil society participation. The lack of mobilization and input of a regional civil society in both local and regional matters, especially in forming national preferences, should therefore be extensively addressed in future theoretical analyses in CARICOM. Moreover, future research on CARICOM should concentrate on processes within the nation states and within the regions; that is to say: the formation of local preferences and how they define the scope of nation state/regional preferences; on understanding the lack of engagement in regional politics at the domestic and regional levels in CARICOM; and on social systems and their importance and role in the process of regional integration. To this end, I propose a few possibilities for future theoretical analyses in CARICOM. Specifically:

Coupling Neofunctionalism with other prospective theories: the current theoretical application of Neofunctionalism to CARICOM revealed a system of 'interconnectedness' and a mode of governance by various actors, rather than the traditional intergovernmental approach which was previously conceived. Additionally an overview of regional integration among CARICOM countries, revealed two 'streams' of integration. This rendition directly relates to the necessity and importance of examining the power and politics notions/relations in CARICOM to better understand the process of regional integration.

Therefore, in maintaining that the theory of Neofunctionalism is still useful for analyzing CARICOM; and in acknowledging the necessity to further examine factors such as the formation, persistence, internal/external exchanges⁴⁵³, and cycles of preferences in the process of regional integration; I propose a dialog between Neofunctionalism and another social theory focused on society, and societal structures and systems, as a possibility for conceptualizing future research in CARICOM.

452 The theory offers an extensive account of the role and input of structures and institutions in the process of bargaining and regional integration. Is still the best suited of theories of European regional integration for an analysis of CARICOM. Moreover, although it has a few limitations it was still capable of providing/revealing new information on CARICOM in a single analysis. These arguments prove that the theory of Neofunctionalism is still relevant for theoretical study of CARICOM.

453 Issues with preference formation were not only revealed from the analysis of Chapter 6, but also from the overview of integration among CARICOM where a deeper level of commitments of the OECS was identified.

7.3 New Perspectives on the Theory of Neofunctionalism

In spite of the fact that any dialog between theories requires considerable research and assessment, to distinguish points of conjunction/disjuncture between the individual theories;⁴⁵⁴ I propose that such a venture would be a promising possibility for future theoretical research in CARICOM. This is because the findings of this research coincide with previous assertions that regions such as CARICOM, “are not natural givens, but are outcomes of political processes of social construction”.⁴⁵⁵ Moreover, since Neofunctionalism reveals that regions are observed as social forms, independent of the actions of states, and rather dependent on non-state actors; it is necessary to ask further questions relating to the particulars and interplay of ordering, bordering, and social processes, which were revealed to characterize and drive the process of regional integration in CARICOM. It is also necessary to further analyze the interaction of the inner systems of these societies, in order to observe and understand, and analyze any differentiation among them.⁴⁵⁶

Keohane (1984) has long since cited asymmetrical interdependencies as sources of power among international actors. Through the work of Keohane and Nye (1977), for example, one can read unions such as CARICOM as a network of norms, procedures, and rules creating interdependent relationships. These ideas concur with the revelations of this analysis, specifically that there is a distinctive relationship between social actors and institutions, independent of the nation-states, in CARICOM; and also issues related to institutional design, including those related to social process, functional needs, and society in general. Particularly in this regard, Martin and Simmons (1998:739) suggest that IR scholars are “turning ... to models of domestic politics to suggest new questions and approaches to the study of international institutions”. Moreover, recently:

the field of international relations has developed into a state where ‘society’ plays an increasingly important role. ... the attentiveness towards *theories of the state* has risen in the field in the wake of debates on an emerging ‘post-Westphalian’ order, it seems all but natural that the interest in the concept of ‘society’ should ferment interest towards sociological *theories of society* also. Albert (2004:1).

454 An amalgamation of theories, requires substantive overview and assessment of both theories, in order to identify which aspects of the theories of useful for a specific research. For more information see for example Albert (1999).

455 Albert and Onnis (2010:7)

456 The theory of Neofunctionalism revealed that non-state actors drive the process of regional integration, it however did not distinguish a specific combination of actors, and interactions. A societal approach would shed light on this aspect.

7.3 New Perspectives on the Theory of Neofunctionalism

Under this 'ideal type' view, it is possible to approach CARICOM independent of states as the primary actors in regional integration, and rather from a new angle focused on a cluster of interdependent social systems.

A societal approach that focuses more on social systems would further take emphasis away from states as actors, and concentrate on the interplay of the systems that were revealed in this dissertation to make up CARICOM. This would aid the theory of Neofunctionalism in further examining the role of power relations, the 'connectedness' of systems in sub/regional/international political processes, bargaining processes and the outcome of grand bargaining, factors affecting spill-over, and the effect of spill-over processes on the general process of regional integration in CARICOM.

The theory of Neofunctionalism is still relevant for future research; the thesis highlighted the ability of Neofunctionalism to disesteem the role of nation-states in regional integration and instead approach the process from a non state-centric angle, concentrating on non-state actors, functional spill-over, spill-back, and muddle-about. Further hypotheses of the theory, including externalization, curve linearity, and bivariate and multivariate hypotheses concerning the Priming Cycles also reveal the value and significance of employing the theory of Neofunctionalism⁴⁵⁷ for future investigation in CARICOM.⁴⁵⁸ Yet it is also necessary to further investigate deep rooted systems functioning below and above the nation-states in CARICOM. That is to say, although the theory of Neofunctionalism is useful for future studies, it also requires assistance in examining social systems, and differentiation in CARCIOM, It is therefore useful to pair the theory of Neofunctionalism, with a theory such as Modern Systems theory to address the above delineated factors.

The idea of a theoretical dialog could very well be a viable possibility for theorizing CARICOM. Albert (1999:239) has already highlighted the lack of communication between theoretical disciplines; and has argued for 'partial usage'⁴⁵⁹ of a theory and for a dialog between theories. Albert (2004:1) moreover, advanced world society as a point for theoretical analysis and proposed a dialog between a Systematic World Politics approach and other International Relations

457 A study employing both MST and Neofunctionalism will help overcome limitations of the theory of Neofunctionalism and will throw better light on the issues of preference formation and power relations. The coupling of MST approach, which takes on a holistic notion of society, with the Neofunctionalist approach, which addresses institutions and non-state actors along with utilitarian objectives, would appropriately address the highlighted requirements for future theoretical analysis in CARICOM.

458 Preference formation was revealed in the analysis to be important to grand bargains such as the EPA and necessary for future examinations. Moreover, the overview of integration among CARICOM member-states revealed two 'streams' of integration, which is crucial to examine in future research on CARICOM.

459 Albert (1999:242).

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theories. In this regard, I also propose the use of Modern Systems Theory (MST) coupled with the theory of Neofunctionalism, as a possible option for further addressing a theoretical analysis of regional integration in CARICOM. This specific dialog is recommended because “MST as developed particularly by Niklas Luhmann, forms the only theory of society which takes world society as its starting point, (and as such) a dialog between it and IR theory might seem to form a particularly promising endeavor”.⁴⁶⁰

In fact, a dialog between Neofunctionalism and MST is already in the making. The theory of Neofunctionalism can be linked to Luhmann's System Theory and:

“systems theory is, in fact, clearly functional because it analyzes system processes in terms of an implicit functional requisite: systems need to reduce an environmental complexity. That is, Luhmann analyzes structure (law, the states, organizations, etc.) and cultural codes in terms of their functions for reducing environmental complexity. (Turner and Maryanski 1988:10)

In addition to its functional component, MST offers the possibility for engaging in a critical understanding of the factors addressing regional economic, political, legal, and social integration at a local, regional and international level. Such an undertaking is also especially important for the field of regional integration and international relations in general.

An approach that takes regions as social forms in world society, empathizes the relationship between social systems, and downplays nation-states as sole actors in international politics, can essentially provide the ability to better understand the interplay, modes of relationship, and social structures among the members in CARICOM⁴⁶¹ and in Caribbean regional society⁴⁶².

The notion of state is completely sidestepped⁴⁶³, and in taking the route of a coupling of Neofunctionalism and MST we would focus not only on non-state actors and their role in the process of regional integration, but also on the structure of CARICOM independent of member-

460 Albert (2004:1).

461 For more information see for example Albert and Onnis (2010)

462 A state-centric approach in IR does not fully address the performance of civil society in bargaining, and is limited in addressing the creation of institutions and bargaining outcomes. A society approach that focuses more on social systems, takes the emphasis away from states as actors, and look at the interplay of the systems that make up CARICOM.

463 As Albert (1995:4) highlights “one of the most theoretical questions is whether the arrangements in the sphere of “governance by multiple government” could come to be seen as a model for a development which could transcend the duality of a statehood defined territoriality and a governance defined functionally, thus creating building blocks for a structure of world society”.

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state borders, orders, and relationships; and the various 'streams' of integration highlighted in CARICOM.⁴⁶⁴

In using such a route, it would also be possible to take the notion of a federation of states as the end game of integration out of the question all together, and instead focus on the process and the underlying actors and factors of integration in CARICOM. Identifying and observing the interplay of social systems in CARICOM would also address and examine issues previously identified, i.e. the formation of national preferences; the participation of a regional civil society or lack thereof; the implications for regional integration; segmentation and differentiation related to the deep integration in the OECS compared with the rest of CARICOM; and regional politics and integration in general.

As explained earlier, the idea of a dialog between theories is a possibility that requires extensive theoretical research⁴⁶⁵. I am also compelled to state that this proposed format for future research does not in any way diminish the findings of the present theoretical research⁴⁶⁶; rather, this study represents the first step at theorizing regional integration in CARICOM, and forms groundwork for further exploration. Furthermore, it is only through the present application of Neofunctionalism that we are made aware of the level of institutionalism and role of non-state actors in the process of regional integration in the Caribbean.

Extension to other unions: As with this analysis, the theory of Neofunctionalism could prove useful for an initial analysis of alternative unions in other developing regions such as those in the ACP areas. The universality of the theory of Neofunctionalism makes it an ideal theory for a first attempt at analyzing the process of regional integration, especially for those integration schemes in continental Africa. The analysis underscores the possibility for 'duplicating' this approach for analyzing other unions. True, the level and scope of regional integration in CARICOM are unmatched by other unions in the ACP; however, the applicability of the theory of Neofunctionalism in addressing issues relating to the process of regional integration such as those affecting the pace and effectiveness of the general process should remain constant, regardless of the union under consideration. For example, the application of the theory of Neofunctionalism to CARICOM, particularly the CSME, revealed the changing functional nature of CARICOM, particularly the economic and institutional restructure. The theory of Neofunctionalism further pointed to the fact that the evolution of the common market into the CSME represents not only a

464 Which are the deep integration of the OECS, and the expansive integration of the CSME.

465 Space and time limit the presentation of extensive characteristics and ideas of MST.

466 Utilizing MST and Neofunctionalism to theorize integration in CARICOM would signify building on the results of this current research, and focusing on this new notion of 'governance by multiple government'.

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deepening of integration based on economic provisions, but also the creation/expansion of new institutions and thus the restructuring of the institutional domain in CARICOM. This new perspective of viewing the widely held intergovernmental union reveals the possibility of observing other unions in the ACP.

An application of the theory of Neofunctionalism to other ACP groupings would address three aims: it would be an attempt to characterize and analyze the process of regional integration in these unions; it would serve to propose solutions for the frequently highlighted malaise and inefficiency (characteristically muddle-about/spill-back of integration in these unions); and it would offer information on the theory of Neofunctionalism.

Given the similarity in the functional and structural composition of unions in the ACP, an application of the theory of Neofunctionalism to these unions, promises interesting results.

Furthermore, the theory of Neofunctionalism could also directly address development policies of the ACP. Spill-over and spill-back tendencies in the theory of Neofunctionalism would directly address the evolving and expansive nature of regional integration in ACP. Neofunctionalism's decision cycles would also explain the changing climate in the relationship in and among ACO countries.

A comparative study: the results of this analysis suggest that it could be worthwhile to further observe inter-state relationships between CARICOM and other unions. A question that can be asked is for example is the characteristic of the relationship among the member-states in CARICOM the same as that among states elsewhere/in other unions. Chapter 2 highlighted the peculiar nature of the history of regional integration in CARICOM. External forces have had more impact on the process of regional integration in CARICOM than was previously thought.

Chapter 2 and 6 revealed the high level of dissonance among CARICOM countries, especially with reference to internal trade and harmonization; and external cooperation.

A comparative analysis could therefore shed light on the different streams of integration within a particular union. That is to say, a concentration on the factors of economic integration, and utilizing key hypotheses of Neofunctionalism, could address the intensifying of commitments in particular sectors, and among a groups of nations within a specific union. A case in point being the OECS, which reflects deeper commitments at regional integration than those of the CSME⁴⁶⁷. Employing the theory of Neofunctionalism, an effective comparison could be undertaken to examine the factors of integration driving the deep commitments of regional integration in the

⁴⁶⁷ As mentioned earlier, integration in the OECS reflects extensive commitments at regional integration, and should be concentrated on in future analyses.

7.3 New Perspectives on the Theory of Neofunctionalism

OECS, as opposed to those in the general CSME. Although the OECS is essentially embedded in the integration scheme of the Revised Treaty, it reflects commitments at deeper economic, therefore further analysis of this undertaking would provide useful for understanding regional integration in CARICOM.

Pool of theoretical analyses: In characterizing the process of regional integration in union(s) in the ACP, such research would be similar to this study in that it would concentrate on the factors affecting integration in said unions. It would identify the extent and depth of regional integration including its implications in the unions affected. The success of this study also points to the possibility that such a venture might add to a pool of theoretical analyses on regional integration in the ACP, and such a venture would no doubt add to the school of (theoretical) analysis of ACP unions.

Therefore, it would be interesting to further examine the relationships among CARICOM countries, and attempt a comparative analysis among its members and those of other unions in ACP or the EU.

Economic Integration and Foreign Policy: the results of this research also point to the value of inspecting the relationship between economic integration and foreign policy in CARICOM. As revealed in chapter 4, the Revised Treaty established the Council for Foreign and Community Relations (COFCOR). One of COFCOR's mandates is to determine the relationship between CARICOM and other unions/states. Since the COFCOR was established by the CSME and possesses economic mandates, it would be interesting to observe the interplay between economic integration and foreign policy in CARICOM.

Chapter 6 revealed the extensive 'aid for trade' component of the EPA, and the dependence of CARICOM on the EU and other external bodies for its financial well-being. This underscored the importance of foreign relations and agreements such as the EPA, and essentially in the process of regional integration in CARICOM.

7.4 Summary and Conclusion

This thesis provided a first attempt at theorizing the process of regional integration in the Caribbean, specifically, CARICOM. Through the application of Neofunctionalism to CARICOM, it was possible to observe and analyze the process of regional integration in CARICOM, and the Caribbean in general. The application of the theory of Neofunctionalism to CARICOM further approached regional integration from a non state-centric view, in so doing, offered an introduction

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and overview of regime politics in the Caribbean. The analysis revealed the decisive role of institutions in the overall process of regional integration in CARICOM, and the importance of regimes in traditionally conceived intergovernmental unions. Furthermore, it provided the opportunity to observe why and how change take place in international regimes; identified a high level of transaction flow and interdependence in CARICOM; revealed extensive segmentation in relation to the OECS; and in so doing, provided the possibility to start understanding the power and interdependence relationships in CARICOM, especially in relation to policy frameworks and international boundaries.

The theory of Neofunctionalism moreover revealed that regional integration in the Caribbean represents more than a mere political, economic, social and foreign policy arrangement among a group of Caribbean governments; rather, it is a complex system initially employed by the CARICOM member-states to address globalization and other exogenous issues, which proliferated to other sectors, and thus reflects a transformation into a decentralized, non-static, institutional construct. Where political élite, institutions and other non-state actors determine the direction, speed, and depth of integration, and bind the member-states to regional provisions and regulations.

The theory of Neofunctionalism furthermore emphasized the importance of the process of regional integration as ongoing, unintended, indirect, and inevitable in CARICOM. It also introduced a positive correlation between the level and the scope of integration, offering that an increase/decrease in scope relates imperatively to an increase/decrease in the level of integration. In addition to the process of politicization being an integral factor in integration.

The aim of the thesis has been to examine why integration in CARICOM deepens and widens; the critical support factors and impediments and the role of institutions in this process of integration in CARICOM; and how far the process of integration in CARICOM has developed.

As to why integration in CARICOM is deepening and widening, the thesis revealed that external factors initially foster integrative steps and institutions, and non-state actors primarily drive the process of integration in CARICOM.

Regarding the factors in the process of regional integration in CARICOM, the application of the theory of Neofunctionalism revealed institutions and other non-state actors as decisive factors that are vital to the process of integration.

As to where and how far the process of integration in CARICOM has developed, the thesis revealed that CARICOM has undergone various decision cycles, as described by the theory of Neofunctionalism, and is at the beginning of / has started a priming cycle.

7.4 Summary and Conclusion

The analysis therefore provided an initial understanding of the phenomenon of regional integration in the Caribbean. It revealed the interaction and power relations of actors in the process of regional integration. Moreover, this research disclosed the necessity for further examining issues such as normative orders and the existence of borders in CARICOM, along with prospective analyses of the impact of politicization on the overall process of integration in CARICOM. To address these demands, subsequent examinations of CARICOM require a novel approach concentrating on social actors and the role of institutions in the process of regional political, economic, legal, and social integration in CARICOM.

This thesis should therefore serve as a reference point for theoretical analyses or undertaking in CARICOM focused on understanding the process of regional integration. That is to say, it represents the commencement for observing the actions of Caribbean political actors, operating in a regional society, in which the power and constructs/definitions of nation states are becoming indistinct, where there are “changes in the functions of borders and of the cross-border activities of sub national levels of government”.⁴⁶⁸

468 Albert (1995:3)

Annex to Chapter 5

Appellate Jurisdiction Rulings of the CCJ

6th Case Gladston Watson vs Rosedale Fernandes: the sixth final appeal case was concerned with a dispute over land in Guyana, which due to procedural irregularities was awarded to the defending parties in the national court. The CCJ ruled that procedural flaws are no grounds for legal arguments and such there is an instance of the miscarriage of justice. In doing so, the CCJ overturned the rulings of the lower court of appeal. It further remitted the matter to the lower court of appeal, to be retried and ordered the respondent to pay to the appellant court cost. In setting aside the rulings of the lower court and ordering a retrial, the CCJ clearly exerts its political power over the national courts.

7th Case Vaughn Thomas v Guyana: the seventh final appeal case also originated from the Guyana courts. It concerned the conviction of buggery, in which a policeman in uniform, as such a government employee in service, was accused of sexually molesting a then 14 year-old boy. The police officer was sentenced to 10 years in prison for this act. In addition to this conviction and sentence the appellant was also charged and found guilty for common assault in relation to the same incident. However the ruling judge failed to impose a penalty. Based on the merits of the case,

the CCJ ruled that due to material misdirection and “the length of time (over seven years) which had elapsed since the appellant was arrested; (b) the opportunity which a re-trial would give to the prosecution to correct the several mistakes which were made at the first trial; and (c) the ordeal which a second trial would involve not only for the appellant but also for the virtual complainant”⁴⁶⁹ the appeal would be allowed, the convictions and sentences would be quashed and the appellant discharged. In doing so, the CCJ rules on humanitarian grounds, and according to the Charter of Civil Society for the Caribbean Community.

8th Case The Queen v Mitchell Ken O’Neal Lewis: the eight final appeal case before the CCJ, originated from Barbados and concerned an appeal against the dismissal of the death sentence ruled on by the Barbados Court of Appeal. The CCJ dismissed this appeal in so doing upheld the ruling of the Barbados Court of Appeal. Like the Barbados Court of Appeal, the CCJ cited deprivation of a fair hearing and an unsatisfactory verdict as grounds why the defendant, Mr O’Neal should be

469 Thomas v. The State (2007) CCJ 2 [AJ].

Appellate Jurisdiction Rulings of the CCJ

acquitted. In doing so the CCJ ruled against the convictions of the Barbados court of Appeal and upheld the provisions in the Charter of Caribbean Civil Society.

12th Case Mohammed Yasseen VS The Attorney General of Guyana: the twelfth final appeal case also originated from the appellate court in Guyana. It was concerned with Mr Yaseen's compulsory dismissal from the Police Force. The CCJ ruled that the appellant did not have the right to appeal to the CCJ in the given circumstances and that “in any event the appeal was wholly lacking in merit and that therefore it should be struck out”.⁴⁷⁰

14th Case Toolsie Persaud Limited v Andrew James Investments Limited et al: the fourteenth final appeal case again originated from Guyana and was concerned with land titles. The CCJ rejected the view of the Guyanese court of appeal and ruled in favor of the appellant, it further made rulings as to court costs. It ruled that “the first and second respondents in the case should pay two-thirds of the Appellant's cost “in the CCJ and in the courts below while the Appellant was ordered to pay one- third of the Third Respondent’s costs in the CCJ and the courts below”.⁴⁷¹ In setting aside the rulings of the lower courts including those relating to court cost, the CCJ inserts itself in not only the legal claims, but also the financial and monetary aspects of appeals. Additionally, by using the wording “courts below” the CCJ establishes itself as being above the national appeal courts, i.e. supranational.

15th Case Harrinauth Ramdass v Salim Jairam et al: the fifteenth final appeal case also originated from the Guyanese courts, it was concerned with property sales. The CCJ upheld the ruling of the Guyanese appeal court.

20th case Wesley Emptage vs The Attorney General Of Guyana: the twentieth final appeal case brought before the CCJ was similar to a previous case *Hendy v Commissioner of Police and the Attorney General of Guyana*, and as such the CCJ referred to said ruling in its entirety as decision for this case. In doing so the CCJ creates a body of case law for references and gives its rulings more judicial and political clout especially observed in light of the arguments of Neofunctionalism presented above.

21st Case Chamanlall Mukhtiyar et al Poonardai Sukhu et al: the ruling of the twenty-first final appellate case is related to a case. Again, such an action reflects the CCJ referencing itself and acting along utilitarian ideas.

22nd case: Stephen Edwards v the Attorney General of Guyana and the Public Service Commission: the case originated from the Guyana appeal courts and was concerned with unlawful

470 Yasseen v. Attorney General, (2008) CCJ 3 [AJ] para 1.

471 Toolsie Persaud v. James Investments, (2008) CCJ 5 [AJ] Summary of ruling.

Appellate Jurisdiction Rulings of the CCJ

dismissal of a public servant. The case was dismissed by the lower courts “on the ground that constitutional proceedings brought some twenty years after termination of the appellant's employment constituted unreasonable delay and were an attempt to abuse the process of the court”.⁴⁷² The CC also agreed with the lower court.

24th case *David Lachana et al vs Cooblal Arjune et al*: this case came from Guyana and concerned dispute over a 480 sq m. of land. It concerns a family living for generations on land without a title and appealing court decisions under adverse possession against the transport of the parcel of land (as a part of a compound) to another party. The appeal was dismissed by the CCJ due to technical flaws in the appellants case.

25th case *Chamanlall Mukhtiyar et al v Poonardai Sukhu et al*: this case arose from Guyana, and was dismissed by the CCJ, it again was concerned with dispute over land. However, the CCJ ruled that there was not substantial evidence to review the appeals.

27th case: *Winton Campbell v The Attorney General*: this case came from the Court of Appeal of Barbados and raises important issues as to the rights of senior civil servants. The appeal concentrated on the termination of the appellant's employment in the public service, with the argument that this was against the constitution and as such the Applicants remained in the public service and was entitled to receive the emoluments that had been attached to his position. The CCJ ruled that an important purpose of the law is the avoidance of disputes and that it will “ensure as far as possible that proper solutions can be reached within the confines of the governmental powers themselves, without the public servant having to resort unnecessarily to, what often proves to be, expensive, tortuous and extremely lengthy litigation”.⁴⁷³

The CCJ further ruled that

“clearly, a public officer whose office has been abolished in accordance with the law and who subsequently has been retired from the public service in violation of the law, is not in a position to be reinstated in an office that no longer exists and can, therefore, not be deemed to have remained in his post such as to entitle him to continued payment of emoluments”.

The CCJ reviewed the case considering “the dual dimension of the public employment relationship” under which it ruled in the *Edwards v Attorney General of Guyana* case. In doing so, the CCJ referenced not only its own ruling but its classification of legal cases and civil servants. The CCJ follows its previous rulings on the dismissal of government employees, as being just by the state.

⁴⁷² *Edwards v. Attorney General* (2008) CCJ 10 [AJ].

⁴⁷³ *Campbell v. Attorney General*, (2009) CCJ 1 [AJ] Para 59.

Appellate Jurisdiction Rulings of the CCJ

29th Case L.O.P. Investments Limited Appellant v Demerara Bank Limited et al: came from the Court of Appeals of Guyana and concerns debentures issued in Guyana.

The CCJ found that the appellant had wrongly been refused leave to appeal by the Court of Appeal and as such gave leave to appeal the case before the CCJ.

30th Case Vernon O'Connell Hope v Shaka Wayne Rodney et al: this case came from the appeals court of Barbados and concerned a claim to enforce a contract for the sale of a parcel of land. The CCJ ruled that “we consider that it would require very grave and weighty reasons for us to take a course which would result in, first of all, our hearing argument and resolving an issue which should have been raised before the Court of Appeal but was not, and secondly, in our overriding the discretion exercised by the Court of Appeal when it declined to entertain the respondent’s notice which was not properly brought to its attention. We do not think that those circumstances exist in this case and accordingly we will not allow the issue ... to be revived before us in this appeal”.⁴⁷⁴

In doing so the CCJ indirectly cited procedural flaws as a reason for its dismissal of the case. This is another instance where the CCJ follows its previous rulings.

32nd Case Julian Oscar Francis vs the Queen: the case arose from the court of appeals in Barbados, and concerned an appeal against both the conviction and sentence relating to the theft of a motor car. The appeal was dismissed by the CCJ and the rulings of the Barbados Court of Appeals upheld.

33rd Case Lackram Bisnauth v Ramanand Shewprashad et al: this case originated from the appeals court in Guyana and concerns a petition to obtain land by prescription. The case was dismissed by the lower courts in Guyana and subsequently by the CCJ.

34th Case L.O.P. Investments Limited Appellant v Demerara Bank Limited et al: this case is the ruling on the 29th case concerning debentures which was reviewed by the CCJ. The appeal was dismissed, and the judgment of the Guyana Court of Appeal was upheld and affirmed.

36th case Vernon O'Connell Hope v Shaka Wayne Rodney: this case came from the Court of Appeals of Barbados and concerned the contracted sale of property between two parties. The appeal had been dismissed by the lower court and the CCJ upheld this dismissal.

37th case Jeffrey Adolphus Gittens v The Queen: this case came from the Court of Appeal of Barbados. The CCJ gave an oral Judgment for quashing a 20 year imprisonment sentence imposed by the Court of Appeal.

⁴⁷⁴ Hope v. Rodney, (2009) CCJ 12 [AJ] Para 24.

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39th case *Jassoda Ramkishun v Conrad Ashford Fung-Kee-Fung et al.*: this case came from the Court of appeals of Guyana. The CCJ in its ruling relied on “a substantial body of Roman-Dutch law, mainly South African cases and legal writings, which seemed to be highly relevant”⁴⁷⁵. It granted appeal on the basis of the said cases and ruled also in according to the rulings of the said cases. In not only referencing by relying on international law, the CCJ reveals a pattern in its rulings, which is that is it independent of national and even regional law, and instead looks to common wealth and international law for references.

40th Case *Frank Errol Gibson Appellant v The Attorney General*: the case came from the Court of Appeals of Barbados, the application was awaiting trial of murder and complained to the CCJ of breaches of his fundamental rights. The proceeding had more to do with the time the appellant spent under arrest than the matters of the case, as the appellant was charged in January 2004 and the inquiry commenced in June 2004 with the appellant being remanded in custody the entire time. The case was then further traversed to February 2006. Additionally, the appellant sought that the State pay for qualified expert forensic witnesses to assist in the preparation of his defense which was dismissed the Barbados Court of Appeals. The CCJ in its ruling “allowed the appeal, ... and further ordered the State to pay the applicant's costs fit for two counsel”⁴⁷⁶. It furthermore ruled that the length of preparation does not deem that the case should be dismissed however, the applicant should be granted bail.

42nd Case: *Sean Gaskin v The Attorney General & Clyde Nicholls*; 43rd: *Case Frederick Hawkesworth v The Attorney General & Clyde Nicholls Second Respondent*; 44th: *Case John Wayne Scantlebury v The Attorney General & Clyde Nicholls*: these cases originated from the Barbados Appeals Court and were concerned with appeals against extradition proceedings initiated by the Government of the United States of America. During the process of the applications, the appellants missed deadlines of the CCJ and neglected to file required documents in accordance with the regulations of filing appeals in the CCJ. The first case was dismissed by the CCJ on the grounds that:

“this is a case where repeated and egregious breaches of the rules have served only to prolong the final disposition of a hearing before the Chief Magistrate that is still to be completed. There is no cogent explanation for the several breaches. Since the liberty of the subject was at stake the Applicant himself should not have been as dilatory as he was. In any event it is a profound error to believe that a litigant can flout the rules, thus rendering them utterly meaningless and then take

475 Ramkishun ad item Sukhree v. Fung-Kee-Fung, (2010) CCJ 2 [AJ] para 1.

476 Gibson v. Attorney General (2010) CCJ 3 [AJ] Para 70.

Appellate Jurisdiction Rulings of the CCJ

shelter under cover of the overriding objective”.⁴⁷⁷

The cases below were also dismissed.

46th Case Guyana Bank For Trade And Industry v Desiree Alleyne: the case originated from the Court of Appeal of Guyana and was a case regarding a bank director being held liable for guaranteeing a company's liability for \$10 million. The lower court of appeals prescribed a retrial, however both parties preferred not to. As such the case came before the CCJ. The CCJ ruled in favor of the bank with the defendant, the director, paying \$10 million and an interest of 22.75% per in addition to bearing the cost of the case.

48th Case Ashmidphraque David Sheermohamed & Aslim Sheermohammed v S.A. Nabi And Sons Limited: this case was concerned with an application to appeal in the CCJ to challenge of the appointment of a director of a company. The case originated from the Court of Appeals of Guyana. The CCJ accepted the application.

49th Case Aslim Sheermohamed v Azeez Sheermohammed & Shir Affron Nabi: this case is the ruling on the previous case. The CCJ quashed the decision rulings of the Court of Appeal and reinstated those of the high court.

52nd Case Lroy Garraway v Ronald Williams et al.: this case was concerned with a 15 year process originating from the Court of Appeal of Guyana to challenge the decision of the Guyana land Commissioner of Title to refuse the prescriptive title of a private property. The CCJ following the rulings and the courts below dismissed the appeal.

54th Case Barbados Turf Club v Eugene Melnyk: the case came from the Court of Appeal of Barbados and was concerned with an appeal to overturn the rulings on a disputer between an event promoter and the winner of the event. During the process the lower court of appeal ruled in favor of the event promoter who sponsored a horse racing event where the winning horse was tested positive for 'doping'. The CCJ upheld the rulings of the lower courts.

55th Case: British Caribbean Bank Limited v The Attorney General Of Belize & The Minister Of Public Utilities Respondents: this case came from the Court of Appeal of Belize. It was a decision on a case management conference concerning a dispute between the Government of Belize, the defendant, who had initiated legislation to appropriate properties from the Appellants against their will. The Appellants sought declarations that such legislation was unconstitutional and void. Additionally the appellant sought consequential relief which included declarations, orders and directions to secure and enforce the invalidity of the defendant's actions; damages, including

⁴⁷⁷ Gaskin et al. v. Attorney General (2011) CCJ 1 [AJ] Para 22.

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punitive damages; interest; and any other relief deemed equitable by the Court.

The CCJ decided to stay the appeals on the cases below.

58th Case: *Mayan King Ltd v Jose L Reyes et al*: this case came from the Court of Appeals of Belize. It concerned claims of unlawful dismissal of employees as a result of their pro union activities. In the first court, financial damages were awarded to the employees. The company then appealed the decision, and the Court of Appeals subsequently reduced the damages and ordered the company to pay 75% of the court costs. The company appealed this decision in the CCJ on the grounds that the award of damages was still excessive. The CCJ also reduced the award. The CCJ justified its ruling by stating that “this was not ... a case that was pleaded as a constitutional action and the defendant is not a state actor or a public body. We therefore agree with the Court of Appeal that the trial judge erred in treating the action as if it were one for constitutional redress”.⁴⁷⁸

The CCJ further argued that the evidence presented to assess the pecuniary loss suffered by the employees was insufficient and unsatisfactory. Since all the employees found new employment granting extra salary where no loss of salary could be established “would secure to them an element of double-dipping”.⁴⁷⁹

59th Case *Guyana Furniture Manufacturing Limited v Robert Ramcharan & National Bank Of Industry and Commerce*: this case came from the Court of Appeal of Guyana and was concerned with default payments on debentures. The company argued that that it overpaid the debentures due to increase in commissions of the receivers. The CCJ upheld the ruling of the lower court of appeal that dismissed this claim.

60th Case *Atlantic Corporation Ltd v Development Finance Corporation*: this case came from the Court of Appeal of Belize. It was concerned with questions of if equitable property charges have priority over legal charges after obtaining a property. The appeal arose from interlocking provisions of company law, property law and the registry act in Belize. The CCJ in interpreting the provisions of the laws ruled that equity charges have priority over legal charges. This decision will settle disputes in the future preemptively and as such this case is important in the property landscape in Belize. The CCJ further ruled that charge created on the Properties by a Debenture ranks in priority to the charge by way of legal mortgage. It therefore ruled on behalf of the appellant.

61st Case *Roseal Services Limited v Michael L Challis*: this case came from the Court of Appeal of Barbados. It arose from a challenge against the attempt for sale of a property on the grounds that the appellant failed to show a good marketable title to the property and was concerned

478 *Mayan King Ltd v Reyes* (2012) CCJ 3 [AJ] para 29.

479 *Mayan King Ltd v Reyes* (2012) CCJ 3 [AJ] para 35.

Appellate Jurisdiction Rulings of the CCJ

with payment of court cost for the case in the appeal court below. The CCJ ruled that the proceedings in the Court of appeal be struck out save for court cost which should be covered by the appellant.

62nd Case Kampta Narine Called Mohan v Gupraj Persaud: this case came from the Court of Appeal of Guyana. It was an application to seek special leave to contest the rulings and dismissal of appeals of the lower court on a dispute over the sale of a motor vehicle. It was further more concerned with the legality of granting an extension to appeal to appeal any lower court of appeal judgment and also the refusal to grant recourse in the CCJ. The trial judge ruled in favor of the respondent, that is to say, the lower court of appeal ruled against an extension to appeal, and also against appealing its ruling in the CCJ citing the limited scope of the CCJ's jurisdiction. The CCJ then treated the case as a special appeal in order to review the case, and in turn overthrew the rulings of the lower court of appeal. This move reflects the power of the CCJ to rule against the appeal courts below, even if the appeal courts rule that cases can not be brought before the CCJ, the CCJ in its capacity can still sidestep this ruling, and not only review the case but also overthrow the decisions of the lower court on the case. This bold move of the CCJ reflects its political clout and how it superimposes itself as a regional judicial tribunal.

63rd Case Sandy Lane Hotel Co. Limited v Brigitte Laurayne: this case came from the Court of Appeal of Barbados. It was concerned with a dispute over constructive dismissal of an employee. The CCJ allowed the appeal and ordered the employee to pay the employer court cost as no unfair dismissal could be proved. The CCJ comment that “this is a sad case where emotional feelings would appear to have clouded rational judgment”⁴⁸⁰ however the claim of constructive dismissal cannot be established.

64th Case Alfred Chung & Ingrid Campbell v AIC Battery And Automotive Services Company Limited: this case came from the Court of Appeal of Guyana and had to do with dispute over land. It had to do with a dispute over the occupation of a property which was subject to debentures held by a bank. The bank appointed a civilian as receiver of property who filed an affidavit verifying the claim which was challenged by the appellant before the CCJ. The case is of particular importance because according to the CCJ “the issue which has to be determined in this case is procedural but of great practical importance. Its determination will alter the practice in relation to specially endorsed writs under Order 12 of the Rules of the High Court”.⁴⁸¹ In Guyana, it was an established practice that appeals arising from the final orders of judges of the High Court would go to the Court of

480 Sandy Lane Hotel Co. Limited v. Laurayne (2013) CCJ 1 [AJ] para 1.

481 Alfred Chung et al v. Aic Battery And Automotive Services Company (2013) CCJ 2 [AJ].

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Appeal. In this case however, the case judge ruled that appeals from final orders in the summary proceedings should proceed to the Full Court instead of the Court of Appeal. The Court of appeal upheld this ruling and so did the CCJ.

65th Case Jafarally Asraf Ali v John Choong: the case came from the Court of Appeals of Guyana. The case was concerned with a dispute over ownership of a parcel of land under the claim of adverse possession of land. The CCJ ruled that the claim failed due to the facts of the case which entitles the deed owner ownership of the land.

66th Case: British Caribbean Bank Limited v The Attorney General of Belize: this case came from the court of appeals of Belize and had to do with dispute over the compulsory acquisition of loan and mortgage debentures. The task of the CCJ was to assess the jurisdiction of the Belize courts in issuing injunctions which restrain international arbitration proceedings. The CCJ found that the Belize courts do have authority to grant injunctions, however it ruled that due to the merits of the case, the Belize courts should have shown restraint in granting an injunction and as such ruled outside of its discretion. The CCJ discharged the interlocutory injunction and granted leave to continue the arbitration proceedings.

68th Case Clyde Browne Applicant v Michelle Moore Griffith et al.: this case came from the Court of Appeal of Barbados and was concerned with dispute over adverse possession of a parcel of land. The CCJ dismissed the application on the ground that the applicant did not satisfy “Rule 10.3(2)(b) because he had not succinctly set out the facts upon which his claim was based”.⁴⁸²

69th Case Godfrey Andrews Applicant v Lester Moore: this case came from the Court of Appeal of Guyana and was concerned with “the interpretation of rules of procedure designed to reduce the law’s delays”⁴⁸³ The CCJ ruled on two points, whether or not to allow specific documents in an appeal in the lower appellate court below and also “where no step has been taken in an action or no document filed for more than one year, and the parties proceed to a full trial and obtain judgment, can a cause or mater be properly deemed abandoned on appeal?”⁴⁸⁴ The CCJ allowed the appeal and cited that on a case specific basis there was no abandonment of appeal and as such extended the time for the appellant to file an appeal in the court below and granted special leave to appeal in the courts below for a hearing on merits. The CCJ additionally, set aside the rulings of the court of appeal and restored those of the trial judge.

70th case: Madanlall Mahamad v S & R Abdulla Cane Farming Inc: this case is a result of a

482 Browne v. Griffith et al. (2013) CCJ 6 [AJ] Para 2.

483 Andrews v Moore (2013) CCJ 7 [AJ] para 1.

484 Andrews v Moore (2013) CCJ 7 [AJ] para 3.

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process of disputes from the High Court, Commercial Court and Court of Appeals of Guyana. It concerns a specially endorsed writ and damages from a work contract. The main grounds of appeal to the CCJ was to overturn an order set that had dismissed rulings for rewards from the lower courts for the appellant. In hearing the appeal, the CCJ relied on section 8 of the CCJ Act, which provides for “special leave of the Court from any decision of the Court of Appeal from any civil or criminal matter”. The CCJ ruled that the court of appeal had erred in its ruling, and overturned its rulings while reinstating those of the lower courts, which granted the appellant \$7 million plus \$210,000 in general damages. The CCJ further ruled that the respondent was to pay court fees for both the CCJ hearing and that of the Court of Appeal.

The significance of the sums, including those for pecuniary damages, signals as in previous rulings that the CCJ uses its rulings as a form of warning/deterrence for future cases. This impartial stance of the CCJ reflects its institutional independence from the CARICOM member-states, and its overarching role in regional integration.

71st Case Rosemarie Ramdehol v Haimwant Ramdehol: this case came from the Court of Appeal of Guyana and was concerned with dispute over matrimonial property. More specifically, it is a interlocutory appeal against an “Order restraining the execution of the judgment for the payment of \$8,000,000 ... which is part of the subject of Civil Appeal ... against the judgment ... made in Commercial Court ... until the hearing and determination of this Application for special leave or until further Order of (said) Court”.⁴⁸⁵ In other words, the Applicant petitioned the CCJ to review an interlocutory appeal and in doing so exercise discretion as to the amount and duration of the stay that can be granted by the courts below. The CCJ ruled that the courts below did not err in their judgment and dismissed the case.

72nd Case The Commissioner of The Guyana Geology & Mines Commission v Pharsalus INC: this case came from the Courts of Guyana and is related to a dispute between Pharsalus Inc and the Guyana Geology and Mines Commission. The case was a dispute over obtaining a prospecting license for radioactive minerals and rare earth elements specifically Uranium for an area of approximately 11,450 acres. The CCJ ruled that “the majority of the Court of Appeal made all four nisi orders of (the lower court) absolute so that Pharsalus obtained a uranium license over the 11,450 acres area and so that (another company's) License could not be extended to uranium in that area. This Court discharges the fourth order nisi of (the lower court) but allows (the) first three orders nisi to stand, ... Thus this Court holds that Pharsalus has no entitlement by way of a

⁴⁸⁵ Ramdehol v Ramdehol (2013) CCJ 9 [AJ] para 11.

Appellate Jurisdiction Rulings of the CCJ

substantive legitimate expectation to a uranium license over the 11,450 acres area, but it can still apply to be granted one if it can, pursuant to its three nisi orders, prevent the Commission going ahead with its intent to extend (another company) License to uranium. This will enable Pharsalus' claims to be heard at a trial on the merits of its case affording the opportunity for fuller evidence than was available so far in these proceedings".⁴⁸⁶

73rd case Da Costa Handel Marshal v The Queen: came fm the Court of Appeals of Barbados and was concerned with an appeal of drug charges relating to the possession of over 346 kilograms of a controlled drug, Cannabis and prejudice against a fair trial for the appellant. The appellant argued that "mere knowledge of the possession of controlled drugs in the hands of a confederate was not enough to fix the Applicant with possession of those drugs because he was present; (and) the opening remarks of the prosecutor, the Deputy Director, were prejudicial to the extent that they deprived the Applicant of a fair trial".⁴⁸⁷ On the first grounds the CCJ ruled that "the jury had to decide whether the Applicant was in possession of the controlled drugs. The fact that he might have been in joint or sole possession ... was neither here nor there because on the new indictment all that was necessary for the jury to find was that he was in possession as charged without the need to specify whether he was in joint possession or in sole possession".⁴⁸⁸ On the second grounds, the CCJ accepted the arguments of the respondent that "the opening remarks were well within the normal standards of prosecutorial ethics and were simply an indication of the type of case that the prosecutor intended to prove".⁴⁸⁹ With these considerations the CCJ dismissed the case.

486 Guyana Geology & Mines Commission v Pharsalus INC (2013) CCJ 10 [AJ] Para 36.

487 Marshal v, The Queen (2013) CCJ 11 [AJ] para 3.

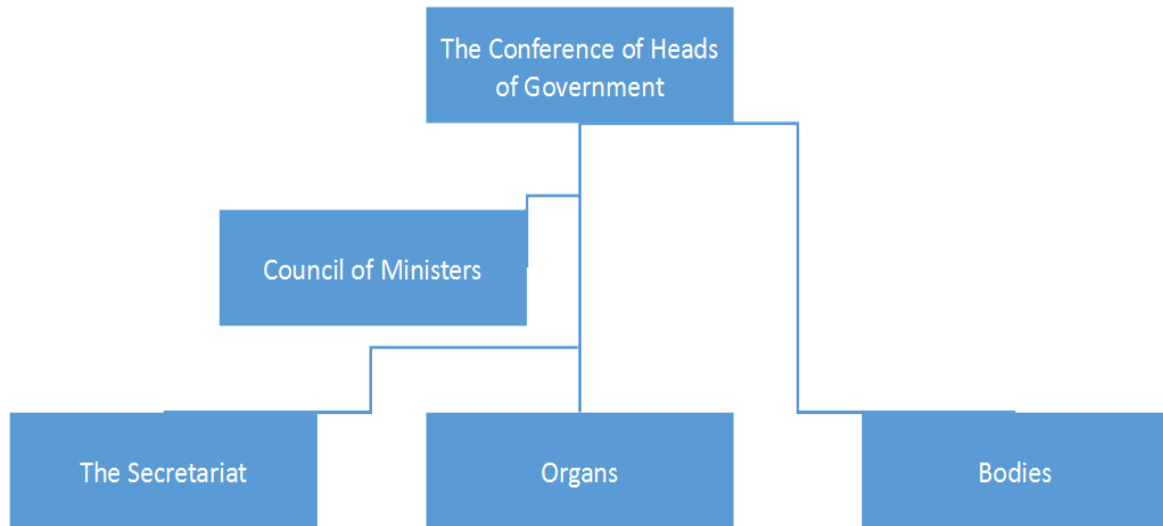
488 Marshal v, The Queen (2013) CCJ 11 [AJ] para 9.

489 Marshal v, The Queen (2013) CCJ 11 [AJ] para 5.

Appendices

APPENDIX A

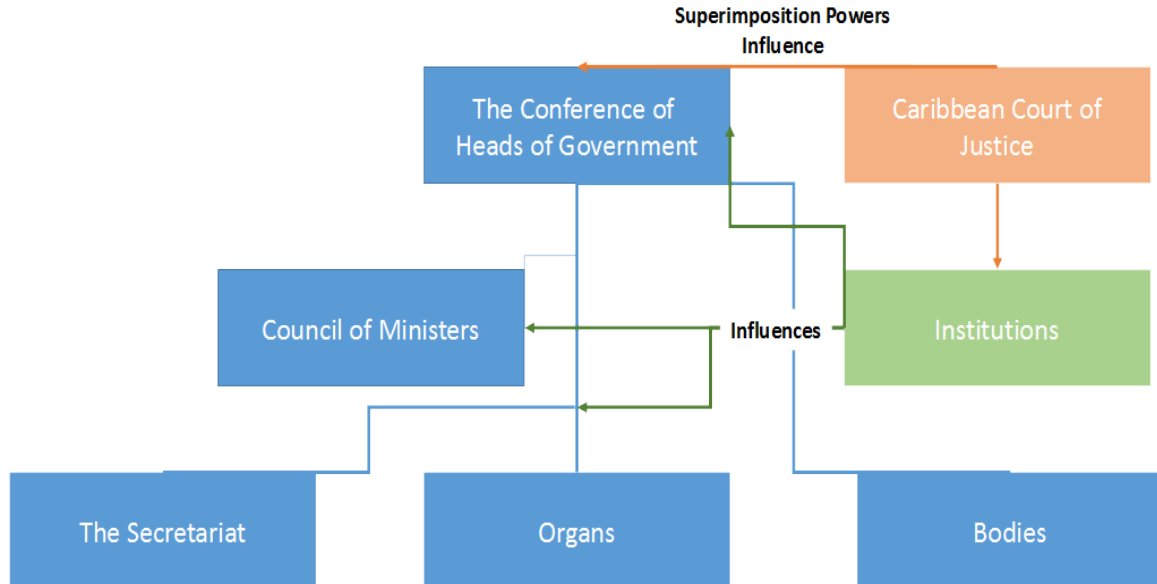
CARICOM Structure under the Revised Treaty of Chaguaramas



APPENDIX B

APPENDIX B

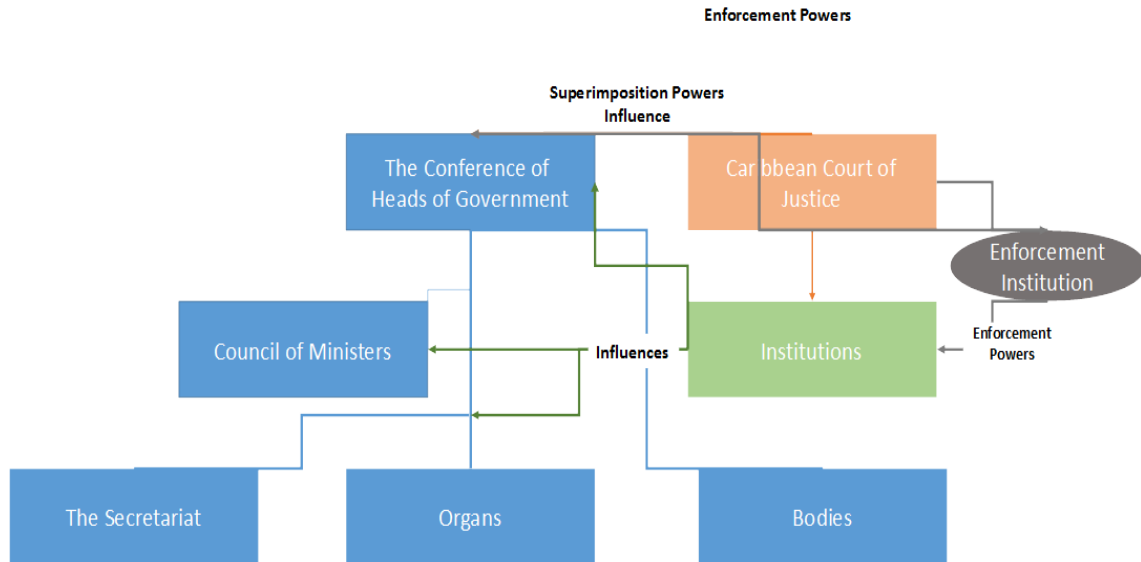
Proposed CARICOM Structure Based on the Analyses in the Thesis



APPENDIX C

APPENDIX C

CARICOM Structure Based on the Proposed Institution in Chapter 7



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