DISPUTE RESOLUTION MECHANISMS AND REGIONAL TRADE AGREEMENTS: SOUTH AMERICAN AND CARIBBEAN MODALITIES

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I. INTRODUCTION

This article examines development of dispute resolution mechanisms ("DRMs") in four plurilateral regional trade agreements ("RTAs")[1]

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[1] The term "regional trade agreement" in this article is used to include preferential trade agreements as well, including trade agreements between countries that are not within the same geographic region. The term "plurilateral" regional trade agreement is used to indicate that more than two countries of the region are parties to the agreement. This article will not focus on bilateral trade agreements concluded by the countries of South America and the Caribbean between themselves and with the countries outside those regions. For example, Chile has already concluded free trade agreements with 40 countries and trading blocs, including the

concluded among South American and Caribbean countries to create the Central American Common Market ("CACM"), the Andean Community, the Caribbean Community and Common Market ("CARICOM"), and the Southern Common Market ("MERCOSUR"). Despite the fact that they had initially been modeled after the well-known European integration, they offer interesting modalities in their DRMs. The article will evaluate the benefits (if any) gained from the development of different DRMs and the utilization of alternative paths to resolving international trade disputes.

The proliferation of RTAs in the past fifty years has triggered numerous studies in various disciplines, law being one of them, seeking to explain why the process of bilateral and regional cooperation is accelerating and how this trend influences cooperation in multilateral trade.[2] Three general reasons normally prompt countries to join together: the prospect of closer political and economic integration and/or the need for national security, coupled with social, historical, cultural, and even linguistic ties among the nations of a particular region.[3] Sharing the same legal culture and history and having similar external economic policies could make it easier to reach an agreement on mutually beneficial trade actions and to comply with such an agreement. In addition, the World Trade Organization's ("WTO") lack of progress in multilateral trade negotiations has prompted many countries to move toward regionalism in order to achieve closer economic integration and benefit from trade liberalization.

Studies of the DRMs of RTAs facilitate a better understanding of proliferation of RTAs and of compliance with the norms and rules of the regional agreements. For example, studies usually highlight various significant reasons for the dynamic development and proliferation of international DRMs:

> [T]he increased density, volume and complexity of international norms – which required correspondingly sophisticated dispute-settlement institutions to guarantee the smooth operation of these norms and their accurate interpretation; (2) greater

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E.U., U.S., Canada, Korea, and China. *See* APEC, *The New International Architecture in Trade and Investment: Current Status and Implications*, Mar. 2007. For more on economic aspects of integration in the hemisphere, see Manuel Chaves, *Trade and Environment in Latin America: When Institutions, Transparency and Accountability are Essential*, 14 MICH. ST. J. INT'L L. 225 (2006); Jaime Granados & Rafael Cornejo, *Convergence in the Americas: Some Lessons from the DR-CAFTA Process*, 29 THE WORLD ECON. 857 (2006).

[2] The trend in deepening regional integration is usually seen as a transition from "old" to "new regionalism." *But see* Jo-Ann Crawford & Roberto V. Fiorentino, *The Changing Landscape of Regional Trade Agreements*, Discussion Paper No. 8, WTO, 2005, at 3 (arguing that 84% of all RTAs in force are free trade agreements, while 8% are customs union or partial scope agreements).

[3] *See id.* at 14.

> commitment to the rule of law in international relations, at the expense of power-oriented diplomacy; (3) the easing of international tensions, in particular transformation of socialist and centralized economies into market economies; and (4) the positive experience with some international courts and tribunals (e.g., the Court of Justice of the European Communities or the ECJ and the European Court of Human Rights or the ECHR).[4]

Studies also emphasize that DRMs have been evolving from optional and power-oriented systems to rule-oriented, compulsory systems,[5] thus challenging the coherence of international jurisprudence.[6]

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[4] *See* YUVAL SHANY, THE COMPETING JURISDICTIONS OF INTERNATIONAL COURTS AND TRIBUNALS 3-4 (2003); George. W. Coombe, Jr., *The Resolution of Transnational Commercial Disputes: A Perspective From North America,* 5 ANN. SURV. INT'L & COMP. L. 13 (1999) (arguing that the global political and economic change reflected in transition from socialism to capitalism or to some form of a market economy in many parts of the world is also leading to the expansion of the human rights and individual freedoms, the intensification of trade relations and the increasing complexity of international trade; such global change should be credited for the development of DRMs and, in particular, an expansion in the use of adjudicative techniques in many non-Western parts of the world).

[5] *See* JOHN. H. JACKSON, THE WORLD TRADING SYSTEM 110-111 (2d ed. 1997); Cesare Romano, *From the Consensual to the Compulsory Paradigm in International Adjudication: Elements of a Theory of Consent* 794 (New York Univ. Pub. Law and Legal Theory Working Papers, Paper No. 20, 2006) *available at* http://www.law.nyu.edu/journals/jilp/issues/39/39-4_Romano.pdf. In brief, non-adjudication based methods such as conciliation, negotiation, and mediation are usually considered "diplomatic" means to peaceful settlement of disputes and are often perceived in international law as power-based DRMs. The power-based DRM addresses disputes through government-to-government negotiations and often results in a political settlement rather than in a determination based on the merits of the case. *See* Rachel Brewster, *Rule-Based Dispute Resolution in International Trade Law,* 92 VA. L. REV. 251, 254-56 (2006).

[6] Kyung Kwan & Gabrielle Marceau, *Overlaps and Conflicts of Jurisdiction Between the World Trade Organization and Regional Trade Agreements,* CANADIAN YEARBOOK OF INTERNATIONAL LAW 83, (Don M. McRae ed., vol. XLI 2003). For a general analysis of conflicting jurisdictions of international tribunals, see Shany, *supra* note 4. Shany identifies two conditions that bring two or more sets of proceedings into competition. The first is that the multiple proceedings involve "the very same parties" and the second is that they are proceedings over the same issues. *See id.* at 26-27. Romano argues that a shift in international treaty regimes, from the consensual to the compulsory jurisdiction of international tribunals, causes the unsatisfactory situation of concurrent jurisdiction and opens the door to parallel proceedings on the same dispute in different forums. *See* Romano, *supra* note 5. Several judges of International Court of Justice have also warned of "the danger of fragmentation in the law, and the serious risk of inconsistency within the case-law" and that "the proliferation of international courts may jeopardize the unity of international law." *See*, *e.g.*, H.E. Judge Gilbert Guillaume, President, Int'l Ct. of Justice, Address to the Plenary Session of the General Assembly of the U.N. (Oct. 26, 2000) and H.E. Judge Gilbert Guillaume President, Int'l Ct. of

This article analyzes the development of the DRMs for the CACM, the Andean Community, CARICOM and MERCOSUR in the context of these two trends and examines the wider implications of those DRMs for the international trade regime. Section II examines the evolution of economic integration in South America in order to establish the framework within which institutional systems of integration developed. Section III analyzes the different forms of DRMs established by each RTA and examines the influence of the intended level of integration in the four RTAs and DRM choice. The final section of this article draws conclusions about the effectiveness of different forms of DRM to achieve the outcomes desired in the RTAs. It also highlights the importance of the regional experience for dispute management in the broader context of world trade.

II. PATTERNS OF ECONOMIC INTEGRATION IN SOUTH AMERICA AND THE CARIBBEAN: THE ECONOMIC, POLITICAL, AND LEGAL FACTORS TEST

The types of dispute resolution regimes the parties to an international treaty choose are usually seen to reflect the depth of integration the treaty intends to achieve.[7] More specifically, the choice of dispute resolution regime will reflect economic and political goals underpinning integration (including the level of internal or domestic support for the agreement in each participating state), the relationship between the parties to the RTA, and the parties' attitudes towards the role of international institutions and the institutions' DRMs.[8]

It is usually suggested that a rule-based DRM would be beneficial to a developing country that lacks international economic, political and legal

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Justice, Speech (Oct. 30, 2001) *available at* http://library.lawschool.cornell.edu/cijwww/icjwww/ipresscom/SPEECHES/iSpeechPresident_Guillaume_GA56_20011030.htm (on file with the author). *See also* Shigeru Oda, *Dispute Settlement Prospects in the Law of the Sea,* 44 INT'L & COMP. L.Q. 863 (1995).

[7] See for example James McCall Smith, *The Politics of Dispute Settlement Design: Explaining Legalism in Regional Trade Pacts,* 54:1 INT'L ORG. 137, 148 (Winter 2000).

[8] Cherie O. Taylor, *Dispute Resolution as a Catalyst for Economic Integration and an Agent for Deepening Integration: NAFTA and MERCOSUR,* 17 NW. J. INT'L L. & BUS. 850, 851 (Winter 1996/Spring 1997). Similarly, Jackson contends that economically and politically powerful states would choose to resolve their trade disputes by negotiation, which would allow them to benefit from their bargaining power and thus attain resolutions advantageous to themselves. A corresponding assumption is that a rule-based or judicialized DRM that relies on the adjudication of disputes by an independent, impartial and unbiased third party in a transparent procedure supplemented by an enforcement mechanism is better suited for less powerful states. *See* Jackson, *supra* note 5, at 109. *See also* Frank Garcia, *New Frontiers in International Trade: Decisionmaking and Dispute Resolution in the Free Trade Area of the Americas: An Essay in Trade Governance,* 18 MICH. J. INT'L L. 357, 381-82 (1997); Andrea Kupfer Schneider, *Getting Along: The Evolution of Dispute Resolution Regimes in International Trade Organizations,* 20 MICH. J. INT'L L. 697, 702 (1999).

influence.[9] Furthermore, if the treaty is more comprehensive and intends to promote a deeper integration of the parties, then the optimal DRM is likely be the one that is more supranational, centralized, and capable of producing enforceable decisions.[10] However, even when RTAs choose the same DRM, economic, political, social and legal factors lead to very different levels of efficiency. The goals and functions of economic integration, as well as the scope of economic exchange within the RTA, comprise the economic influences.[11] Political influences include: concerns regarding sovereignty, internal opposition to the RTA, popular perceptions of the role of international institutions and international law, and the independence of tribunals and courts.[12] The relevant social and legal factors consist of the legal culture of the society in general, and the legal profession in particular, as well as the public's commitment to the rule of law and the ideals of liberal democracy.[13]

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[9] *See* W. M. Reisman & M. Wiedman, *Contextual Imperatives of Dispute Resolution Mechanisms; Some Hypotheses and Their Application in the Uruguay Round and NAFTA*, 29 J. WORLD T. 5, 9 (1995). *See also* T. Broude, *From Pax Mercatoria to Pax Europea: How Trade Dispute Procedures Serve the EC's Regional Hegemony,* 4-5 (The Israeli Assoc. for the Study of European Integration, Working Paper 4/04) (on file with the author).

[10] Reisman & Wiedman, *supra* note 9, at 11.

[11] Laurence Helfer & Anne-Marie Slaughter, *Towards a Theory of Effective Supranational Adjudication*, 107 YALE L. J. 273, 276 (1997). Helfer and Slaughter suggest on the basis of their analysis of the functioning of European courts – that is, the Court of Justice of the European Communities ("ECJ") and the European Court of Human Rights ("ECHR") – that the following clusters of factors affect the success and effectiveness of supranational adjudication:

> [F]actors within the control of states party to the treaty regime (the composition of the tribunal, the caseload and functional capacity of the court, independent fact finding capacity, and the legal status of treaties and the tribunal's decisions); factors within the control of the supranational tribunal itself (its awareness of audience, neutrality and demonstrated autonomy from political interests, its incrementalist style of decision making, the quality of its legal reasoning, its dialogue with other supranational tribunals, and the form of its opinions); and factors often beyond the control of both states and jurists (the nature of the violations to be monitored by the tribunal, autonomous domestic institutions committed to the rule of law, and the cultural and political homogeneity of the states subject to the supranational tribunal).

Id. *See also* Reisman & Wiedman, *supra* note 9, at 10; Schneider, *supra* note 8, at 727-30; Taylor, *supra* note 8, at 851. Similarly, William Davey argues that even though many of the DRMs in RTAs are modeled after the WTO's DRM, they do not seem to be as successful as the WTO's DRM. *See* William Davey, *Dispute Settlement in the WTO and RTAs*, *in* REGIONAL TRADE AGREEMENTS AND THE WTO LEGAL SYSTEM 354, (L. Bartels & F. Ortino, eds. 2006).

[12] Davey, *supra* note 11, at 10.

[13] *Id.*

The thread common to the various South American efforts towards integration is their evolution from the nineteenth century "unfinished political dream of Simon Bolivar"[14] into an attempt to achieve "sustained development through economic integration."[15] The integration process has been influenced by ideological, economic, and geographical differences among the countries. All of these influences sought to secure South American independence from the former colonial powers by establishing greater economic cooperation within the region.[16] Several factors have caused South American countries to move towards regional integration via RTAs:[17] a shift in the development policies of each of the states, frustration with the General Agreement on Tariffs and Trade ("GATT") – in particular, with the GATT's inability to ensure better terms for exports from developing countries to the developed world[18] – and an increase in intraregional investment.[19]

In the late 1960s, the countries of South America began negotiating various models of RTA with the common goal of achieving a deeper level of integration than that of a mere free trade agreement. According to Baquero-Herrera, four main features characterize the integration they have achieved: "the granting of differential treatment and preferences, politically led processes, highly institutionalized structures and forums, and antithetic positions towards external markets."[20] Despite the countries' initial commitment to integration, all of the RTAs created in South America after World War II endured serious crises. In particular, the 1970s and 1980s were problematic because of the disparity in the countries' size and level of economic development, as well as the very different political ideologies prevailing within the nations.[21] Accordingly, all of the RTAs during the past

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[14] Mauricio Baquero-Herrera, *Open Regionalism in Latin America: An Appraisal*, 11 LAW & BUS. REV. AM. 139, 140 (2005).

[15] *Id.*

[16] Many of the Latin American countries were to some degree nationalistic and/or totalitarian regimes at some point in their history. *See* Mark Baker, *Integration of the Americas: A Latin Renaissance or a Prescription for Disaster?*, 11 TEMP. INT'L & COMP. L. J. 309, 318 (1997).

[17] Emilio J. Cardenas, *The Regional Approach to Hemispheric Integration: A Modular Road Towards Free Trade*, 1 SW. J. L. & TRADE AM. 49, 51 (1994).

[18] Richard Bernal, *Regional Trade Arrangements in the Western Hemisphere*, 8 AM. U.J. INT'L L. & POL'Y 683, 687 (1993).

[19] Cardenas, *supra* note 17, at 51.

[20] Baquero-Herrera, *supra* note 14, at 139.

[21] Baker, *supra* note 16, at 317-18. The only exception is MERCOSUR, which was created in the 1990s and thus could not have endured crises in the 1970s and 1980s. Most of the RTAs established during the 1960s were of the South-South type with an objective of industrialization but without deeper integration, and South American RTAs were part of that general trend. *See* Jaime de Melo, *Regionalism and Developing Countries: A Primer,* 41 J.

two decades have had to struggle to survive.

Another important commonality within the integrationist trend in South America and the Caribbean is that regional integration has been used as a means to ensure political and legal independence from European powers and international institutions. The dominant domestic political and economic models in each country have framed perceptions of international law and international institutions. These models range from a "dependency theory" to a "Marxist imperialist paradigm" and a "metropolitan-hinterland relationship," but all reflect negative attitudes toward the dominant GATT and United Nations ("UN") regimes.[22] As such, they see them as supported by developed countries and organized on the basis of those countries' norms and values. However given the "diversity motif" that has long prevailed in South America, the countries' ideas on how to provide an alternative to the GATT and UN systems varies.[23] The constitutions of some South American countries, such as Brazil and Uruguay, reflect a deep mistrust for international law and international institutions and do not provide for direct acceptance of international law.[24] Instead, these countries opt for political integration methods with minimal institutionalism and greater residual sovereignty for the member states.[25]

Domestically, even though most South American countries have adopted the civil law system – the codified system of legal rules imported from continental Europe – most are skeptical of any political and economic integration with the former colonial powers, and of institutions based on the normative values underpinning Western law.[26] The post-colonial national politics of each country are deeply rooted in the particularities of that country's history and culture.[27] European colonial powers, in their quest for South America's natural resources, interfered with different communities that had distinct value systems. The friction between different ideologies and the violent path to importation of European values, particularly civil law

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WORLD T. 351, 353 (2007). De Melo argues that first attempts for substantial regional integration in the world started n the early 1990s, citing MERCOSUR as an example. *Id.*

[22] Dr. Richard Bernal, Jamaica's Ambassador to the United States in the 1990s, provides a summary of those approaches. Dr. Bernal argues that these paradigms have in common the view of a world divided between central, developed, northern nations and peripheral, dependent, underdeveloped southern nations. *See* Bernal, *supra* note 18, at 699-700.

[23] Baker, *supra* note 16, at 318.

[24] Taylor, *supra* note 8, at 871.

[25] *Id.* at 872.

[26] Baker, *supra* note 16, at 318.

[27] *Id.* at 311. Baker emphasizes that South America is one of the most diverse continents although it has usually been perceived as having a homogenous Hispanic culture. Indeed, it is a continent in which the four major cultures (Hispanic, French, African and British) coexist with numerous indigenous cultures (such as the Aztec, Araucanian, Incan, and Mayan).

and Christianity, have resulted in long lasting distrust between the European and South American societies. This friction and distrust gave rise to nationalistic ideologies in the newly independent states.[28] Thus, some of the South American countries used regional integration as a means of ensuring the functional sovereignty of their own cultural, legal and institutional frameworks over those of their former colonizers from Spain and Portugal. Accordingly, they wanted integration that would preserve this "diversity motif."[29]

Finally, despite their desire to distance themselves from their colonial heritage, the countries in South America and the Caribbean have chosen to model the institutional framework for their regional integration after that of the European Community ("EC"). The tables below highlight the similarities and differences between the EC and the forms of integration implemented in the four RTAs.

Table 1. Overview of integration

Regional Trade Agreement	Members	Institutional Framework
Central American Common Market (CACM) - 1960; Central American Integration System (SICA) - 1991	Guatemala, El Salvador, Nicaragua, Honduras, Costa Rica, Panama	The Central American Economic Council, the Executive Council, the Permanent Secretariat and the Central American Court of Justice (introduced by SICA)
Andean Community - 1969	Bolivia, Colombia, Ecuador, Peru (*Chile moved in 1976 from a member to an associate member; Venezuela joined in 1973 but left in 2006 to join MERCOSUR)	The Presidential Council, the Council of Foreign Ministers, the Commission, the General Secretariat, the Parliament and the Court of Justice

[28] Baker, *supra* note 16, at 318.
[29] *Id.* at 311-12.

Caribbean Community and Common Market (CARICOM) – 1973	Antigua & Barbuda, Barbados, Belize, Grenada, Guyana, Haiti (did not sign the agreement on the establishment of the Court), Jamaica, St. Kitts & Nevis, St. Lucia, Suriname, Trinidad & Tobago, Dominica and St. Vincent & the Grenadines	The Common Market Council, the Conference of Heads of Governments and the Caribbean Court of Justice (since 2001)
Southern Common Market (MERCOSUR) - 1991	Argentina, Brazil, Paraguay, Uruguay (Venezuela joined in 2006; Bolivia, Colombia, Chile, Ecuador and Peru are associate members)	The Common Market Council, the Common Market Group, the Trade Commission (since 1994), the Permanent Review Tribunal (since 2004)

A) The Central American Common Market ("CACM")

The first economic integration of the region included in this study is the CACM. The turbulent history of the CACM exemplifies the aforementioned premise regarding the influence of the "diversity motif" on the effectiveness of regional integration in South America. The CACM was established in 1960 by Guatemala, El Salvador and Nicaragua (Honduras joined in 1962, Costa Rica in 1963 and Panama has been an observer in certain areas).[30] It managed to boost economic development by establishing duty free status for all trade within the region. However, over the years, trade between CACM members has declined due to political and ideological differences, such as the nationalistic leaders' lack of political will to give up economic sovereignty in order to achieve deeper regional integration.[31]

The CACM founding document, the General Treaty on Central American Economic Integration ("General Treaty"), specified that the goal

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[30] *See* Caribbean Trade Reference Center Home Page, http://ctrc.sice.oas.org/SICA/bkgrd_e.asp (last visited Apr. 20, 2008).

[31] Bernal, *supra* note 18, at 689. The political instability of its member states in the 1970s and the 1980s was mainly due to the war between Honduras and El Salvador.

of the integration was to create a common market and a customs union like that of the EC.[32] However, it did not specify how these goals were to be achieved or which institutions should ensure progress towards them. The text was also unclear as to who would ensure the member states' compliance with treaty provisions. A Permanent Secretariat now exists to ensure that member states execute the General Treaty and additional agreements. The Central American Economic Council (composed of the Ministers of Economic Affairs of the CACM contracting parties) and the Executive Council (consisting of one titular official and one alternate appointed by each contracting party) seem to be the main supranational bodies.[33] The power of these Councils to bind member states was severely limited by the way in which the scope of the power is determined. Even though the General Treaty provided that the two institutions should reach decisions by majority vote,[34] it did not expressly state that such decisions should be binding on member states. This disconnect seriously undermined the supremacy of the General Treaty's communitarian law.[35] The only reference to dispute resolution is in Article XXVI, which recommends that member states attempt to resolve disputes amicably among themselves and provides for submission of the disputes to a panel of three arbitrators, should such amicable resolution prove unviable.

In July 1991 the member states attempted to re-vitalize the common market. Together with Panama, they created the Tegucigalpa Protocol to the Charter Establishing the Organization of Central American States ("Tegucigalpa Protocol"), a new institutional framework for the Central American Integration System ("SICA").[36] SICA was to be an "economic and political community which seeks to promote the integration of Central America" and has the fundamental objective of building a region of "peace, freedom, democracy and development."[37] Despite all of this, CACM/SICA

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[32] General Treaty on Central American Economic Integration art. I, Dec. 13, 1960, 455 UNTS 3 [hereafter General Treaty].

[33] *Id.* arts. XX, XXI.

[34] *Id*. art. XXI.

[35] Garcia, *supra* note 8, at 376.

[36] Tegucigalpa Protocol to the Charter of the Organization of Central American States, Dec. 13, 1991, *available at* http://www.sice.oas.org/Trade/sica/PDF/TegProtODECA91_e.pdf [hereafter Tegucigalpa Protocol].

[37] *Id.* art. 1, art. 3. Augusto Vela Mena, President of the Central American Parliament, explains the rationale behind the recent economic integration of the region accordingly:

> In the Central American case, the idea of promoting or achieving integration - both economic and political – not only has historical geopolitical roots but also derives from the current situation of international political and economic relations, which require countries to be highly competitive, both fundamentally in terms of world trade, finances, technology and production and also in other

neglected to make significant changes with respect to the powers of its institutions and laws. The most significant institutional change introduced by the Protocol was the creation of the Central American Court of Justice.[38] The Protocol established the Court to resolve "any dispute concerning the implementation or interpretation of the provisions of this Protocol"[39] but only three of the six state signatories have accepted its jurisdiction: El Salvador, Honduras and Nicaragua.[40] The Protocol mandates that the decisions of the Council of Ministers shall be binding on all member states, but recognizes that such decisions "may be applied only to those member states which have not objected to them."[41] In other words, the binding effect of the communitarian law is significantly limited. The Protocol of Amendment to Article 35 of the Tegucigalpa Protocol was enacted in 2002, and subsequently amended by Resolutions 106-2003, 111-2003 and 170-2006.[42] It imposed an additional limit by depriving the Court of its jurisdiction in commercial matters and providing instead for such jurisdiction, including arbitration, to rest with the DRM established by the Council of Ministers of Economic Integration.[43]

B) The Andean Community

Bolivia, Colombia, Chile, Ecuador and Peru established the Agreement

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> areas closely related to the development process of the world economy, namely globalization.

Augusto Vela Mena, *Towards the Central American Community in* EUROPEAN COMMISSION, THE INTEGRATION PROCESS IN CENTRAL AMERICA AND THE ROLE OF THE EUROPEAN UNION 35, 35 (2003). *See* SICA, Home Page, http://www.SICA.int (last visited Apr. 20, 2008).

[38] Tegucigalpa Protocol, *supra* note 36, art. 12.

[39] *Id.* art. 35.

[40] *See* Corte Centroamericana de Justicia, Antecedentes de la Corte Centroamericana de Justicia, http://www.ccj.org.ni/Antecendetes.html (last visited Apr. 20, 2008) [hereafter Antecedentes de la Corte].

[41] *Id.* art. 22.

[42] Amendment of Tegucigalpa Protocol to the Charter of the Organization of Central American States, http://www.sice.oas.org/Trade/sica/PDF/EnmProtTegaODECA02.pdf (last visited Apr. 20, 2008) [hereafter Amendment of Tegucigalpa Protocol]. The Resolutions are available in Spanish at http://www.sieca.org.gt/site/Enlaces.aspx?ID=002002 (last visited Apr. 20, 2008).

[43] Amendment of Tegucigalpa Protocol, *supra* note 42. For a detailed analysis of the amendment and the institutional reform affecting the Central American Court of Justice, see Rafael Chamorro Mora, *Central American Economic Integration and Institutional Reform*, EC.EUROPA.EU, http://ec.europa.eu/comm/external_relations/ca/doc/integen_1203.pdf. SICA, *Solution Mechanisms for Central American Economic Disputes*, Res. 170-2006 (2002), *available at* http://www.SICA. .org.gt/site/VisorDOcs.aspx?IDDOC=cache/17990000001460/17990000001460.swf (last visited Feb. 26, 2008).

on Andean Subregional Integration ("Cartagena Agreement") in 1969.[44] The Andean Community draws its fundamental character from the concept that the application of political, social and economic integration processes can transform a simple customs union into a vehicle for achieving economic development and greater solidarity amongst its member states.[45] The Andean Community is an ambitious project that endured several difficult periods.[46] It dealt with international financial crises in addition to many political differences and tensions that could not be resolved within its institutional framework.[47]

The Andean Community aimed to create a customs union with multiple objectives.[48] First, it intended to gradually eliminate all tariff barriers and quantitative restrictions on goods traded within the Andean Community.[49] Secondly, it sought to promote sectoral industrial development programs as a means of achieving a higher level of economic development.[50] Ultimately, the goal became the creation of a common Andean Pact policy related to foreign investment and intellectual property rights.[51]

To ensure the achievement of these objectives, the Cartagena Agreement established a set of institutions similar to, but not yet as powerful

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[44] Andean Subregional Integration Agreement, May 26, 1969, 8 I.L.M. 910. Note that Chile withdrew from the Andean Community in 1976 and is an associate member at the moment. Available online June 25, 2003, http://www.sice.oas.org/trade/JUNAC/Decisiones/dec563e.asp [hereafter Cartagena Agreement].

[45] As previously mentioned, the Andean Community has four members: Bolivia, Colombia, Ecuador and Peru in addition to two observers: Mexico and Panama. Venezuela joined in 1973 but left in 2006 to join MERCOSUR. Panama joined in 1995 but only as an observer. *See* Andean Community, Home Page, http://www.comunidadandina.org/ingles/who.htm (last visited Apr. 5, 2008). By enacting a Common External Tariff in 1999 the Andean Community moved from a FTA toward a CU with the goal of liberalizing services by 2005. *See* Maria Angelica Espinosa, *The Andean Community: Reaching Out to Bolivar's Dream*, 7 LAW & BUS. REV. AM. 329, 336 (2001).

[46] Chile withdrew in 1976; Ecuador and Peru went to "war" in 1981; Peru's participation was interrupted from 1992 to 1997. Espinosa also points out that the decision-making process was too slow, that the member states breached their obligations to the community too often, and that some countries – like Bolivia – simply did not get involved in the affairs of the Community. *Supra* note 45.

[47] *Id*.

[48] Maria Alejandra Rodriguez Lemmo claims that the Andean Pact "was a direct response to the frustration felt regarding the shortcomings of the Latin Free Trade Area" that started in 1960 among the Spanish speaking republics of South America, including the Portuguese speaking country of Brazil. *See* Maria Alejandra Rodriguez Lemmo, *Study of Selected International Dispute Resolution Regimes, With an Analysis of the Decisions of the Court of Justice of the Andean Community*, 19 ARIZONA J. INT'L & COMP. L. 863, 902 (2002).

[49] Cartagena Agreement, *supra* note 44, art. 72.

[50] *Id*.

[51] Lemmo, *supra* note 48, at 904-03.

as, the EC institutions.[52] The Presidential Council, the highest body of the Andean Community, provides direction to the other institutions and bodies. The Council of Foreign Ministers is the executive body in charge of implementation of laws, and the Community Commission is the legislative body. The General Secretariat is the technical body in charge of the organization of meetings. The Andean Parliament consists of parliamentary representatives from member states' parliaments and has a consultative function in the legislative process.[53] A separate treaty in 1979 established the Cartagena Agreement's Court of Justice.[54] It has broad jurisdiction to interpret all of the Andean Treaty norms and laws and to decide all disputes arising out of claims by member states, the institutions of the Community and, in certain situations, by private parties.[55]

In the 1980s and the 1990s, the Andean Community enacted a series of protocols amending the original agreements in order to provide for increased participation by member states and various sectors of civil society,[56] to enable closer scrutiny of the common institutions,[57] and to add new chapters to the Cartagena Agreement broadening the jurisdiction of the common institutions.[58] Decisions of the Council of Foreign Ministers, the law-making and supervisory body, must be made by consensus.[59] However, these decisions become binding on the member states and are enforceable by the Court of Justice of the Andean Community.[60] In addition, the scope of communitarian law and of the Andean Community Court of Justice was

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[52] Article VI of the Cartagena Agreement establishes other institutions such as the Business Advisory Council, Labour Advisory Council, and the Andean Development Corporation, but they are not the most important for the functioning of the Community. *Supra* note 44.

[53] *Id*.

[54] Treaty Creating the Court of Justice of the Cartagena Agreement, art. 19-33, Mar. 10, 1996, http://www.comunidadandina.org/ingles/normativa/ande_trie2.htm [hereafter Andean Court Treaty].

[55] *Id.*

[56] The Quito Protocol 1987, *available at* http://www.comunidadandina.org/ingles/quienes/events.htm. *See also*, Project on International Courts and Tribunals Website, Court of Justice of the Andean Community, http://www.pict-pcti.org/courts/TJAC.html (last visited Apr. 20, 2008).

[57] The Trujillo Protocol 1996, achieved this goal by establishing the Andean Presidential Council as the supreme administrative organ and the Andean Council of Foreign Ministers and the law-making and supervisory body. Espinosa, *supra* note 45, at 333.

[58] The Sucre Protocol, June 25, 1997, *available at* http://www.comunidadandina.org/ingles/normativa/ande_trie4.htm. The three new chapters are foreign affairs, trade in services and associate members. *See* Andean Community, Who Are We?, http://www.comunidadandina.org/ingles/quienes/brief.htm (last visited Feb. 26, 2008).

[59] Cartagena Agreement, *supra* note 44, at arts. 17, 20(f).

[60] Andean Court Treaty, *supra* note 54, at arts. 2-3, art. 17.

broadened by the Cochabamba Protocol of 1996.[61] Thus, the Andean Community has made significant efforts throughout the past decade to reinforce its legal system based on the principles of supremacy and direct applicability of its communitarian law.[62]

C) Caribbean Community and Common Market ("CARICOM")

Inspired by the model of the EC and with the goal of creating a common market, CARICOM integrated the markets of twelve Caribbean countries in 1973 and 1974.[63] The Treaty of Chaguaramas ("CARICOM Treaty"), first signed by Barbados, Jamaica, Guyana and Trinidad & Tobago, came into effect on August 1, 1973.[64] In 1974 eight Caribbean territories (Antigua, British Honduras now Belize, Dominica, Grenada, St. Lucia, Montserrat, St. Kitts & Nevis, and St. Vincent) joined CARICOM.[65] The Bahamas became a member of CARICOM in 1983.[66] Prior to this addition, all of the member states were from the English speaking Caribbean. CARICOM grew again in 1995, adding Suriname and, in 2002, adding Haiti as the first French speaking member state.[67]

CARICOM's goal at inception was "economic integration of the member states" in the form of "a common market regime," with aims including coordination of the foreign policies of its member states and functional cooperation in certain common services and activities.[68] However, despite its ambitious political and economic internationalist program, CARICOM's founding treaty provided for a modest institutional framework consisting of only two bodies.[69] The Common Market Council's executive body consists of one minister of government designated by each of the member states.[70] The Conference of Heads of Government is CARICOM's major decision-making and consultative body, consisting of

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[61] Espinosa, *supra* note 45, at 334.

[62] Andean Court Treaty, *supra* note 54, arts. 2-4.

[63] *See* History of the Caribbean Community (CARICOM), http://www.caricom.org/jsp/community/history.jsp?menu=community (last visited Apr. 14, 2008).

[64] Treaty Establishing the Caribbean Community, *opened for signature* July 4, 1973, 946 U.N.T.S. 17, 12 I.L.M. 1033 (entered into force Aug. 1, 1973) [hereafter Treaty of Chaguaramas].

[65] *See supra* note 63.

[66] *Id*.

[67] *Id*.

[68] Treaty of Chaguaramas, *supra* note 64, art. 4(a)(c)(c). The revised Treaty enhanced the sub-region into the market based on the free movement of capital, goods, services and people across national borders.

[69] *Id.* ch. II, arts. 6 -12.

[70] *Id*. arts. 5-7.

the heads of government of member states.[71] It is noteworthy, though, that the CARICOM Treaty explicitly empowers the two institutions to make decisions that are binding on member states and stipulates that the member states have an obligation to ensure compliance with those decisions.[72] Despite the wide supranational powers of its institutions, this RTA was unable to prevent or mitigate the serious economic and financial crisis in the 1980s. Similarly, it could not complete its implementation in the 1990s of a common external tariff system.

In an attempt to strengthen the integration and enhance compliance with the community law, CARICOM established the Caribbean Court of Justice ("CCJ") on February 14, 2001 by the Agreement Establishing the Caribbean Court of Justice.[73] The CCJ was inaugurated on April 16, 2005 and has already made several decisions.[74] It is a unique tribunal in public international law in that it has two main functions: first, it provides interpretation and application of the CARICOM Treaty; second, it acts as an appellate court in both civil and criminal cases from the courts of the member states.[75] However, as this article will demonstrate in the next part, those changes have produced only a limited effect, mainly because the member states seem to be reluctant to ratify the changes and enable the system to function fully.

D) Southern Common Market ("MERCOSUR")

Argentina, Brazil, Paraguay, and Uruguay established the Southern Common Market ("MERCOSUR") on March 26, 1991 by signing the Treaty of Asuncion, creating the biggest trade bloc in South America.[76] Venezuela

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[71] *Id*. art. 6.

[72] *Id.* art. 5. Article 5 provides for the binding power of the decisions of the Council and the Conference when they are made unanimously. In addition, the Council may make decisions by majority vote.

[73] Agreement Establishing Caribbean Court of Justice, Feb. 14, 2001, *available at* http://www.caribbeancourtofjustice.org/courtadministration/ccj_agreement.pdf [hereafter Caribbean Court Agreement].

[74] *See* Caribbean Court of Justice, Home Page, http://www.caribbeancourtofjustice.org (last visited Feb. 23, 2008). For judgments see Caribbean Court of Justice, Judgments, http://www.caribbeancourtofjustice.org/judgments.html (nine judgments reported by Feb. 23, 2008).

[75] Caribbean Court Agreement, *supra* note 73, art. XII, art. XXV (establishing jurisdiction of the Court in contentious proceedings and the appellate jurisdiction of the Court, respectively). Haiti and Montserrat have not signed the Agreement so the court is in fact functioning as the appellate court for CACM common law countries.

[76] Treaty Establishing a Common Market Between the Argentine Republic, the Federal Republic of Brazil, the Republic of Paraguay and the Eastern Republic of Uruguay, Mar. 26, 1991, 30 I.L.M. 1041 [hereafter Treaty of Asuncion].

joined in July 2006.[77] MERCOSUR's goal was to establish a customs union and common market among its members.[78] It was initially modeled after the EC as a market with full mobility throughout its member states of goods, services, financial services and workers.[79] In addition, the member states agreed to coordinate their policies in the areas of "foreign trade, agriculture, industry, fiscal and monetary matters, foreign exchange and capital, services, customs, transport and communications" and "to ensure proper competition between the states parties."[80] The Treaty also provided for the harmonization of laws in the relevant areas, the establishment of a common external tariff, and the adoption of a common trade policy in relation to third countries or groups of third countries.[81]

The decision-making functions of this RTA rest with the Council and the Common Market Group.[82] The Common Market Group consists of four members from each state, each representative of that state's ministries of foreign affairs and economics.[83] It is MERCOSUR's major executive body and performs a function similar to that of the Commission in the EC. As such, it initiates measures to be adopted by the Council, monitors compliance by member states with those measures, and ensures enforcement of the Council's decisions.[84] Like the Council of Ministers in the EC, MERCOSUR's Council consists of the Ministers of Foreign Affairs and Economics of the member states.[85] It is the chief decision-making body as well as the institution that provides political leadership to MERCOSUR.[86] Unlike the European model, however, MERCOSUR institutions have

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[77] *See Venezuela Gains Mercosur Entry, Deepening Relations*, BLOOMBERG.COM, *available at* http://www.bilaterals.org/article.php3?id_article=3227 (last visited Apr. 20, 2008).

[78] Treaty of Asuncion, *supra* note 76, at arts. 1-2.

[79] *Id.* art. 1:

> The States Parties hereby decide to establish a common market, which shall be in place by 31 December 1994 and shall be called the "common market of the southern cone" (MERCOSUR).
>
> This common market shall involve: The free movement of goods, services and factors of production between countries through, inter alia, the elimination of customs duties and non-tariff restrictions on the movement of goods, and any other equivalent measures . . . .

[80] *Id.*

[81] *Id.*

[82] *Id*. arts. 10, 13.

[83] *Id.* art. 14.

[84] Treaty of Asuncion*, supra* note 76, art. 13.

[85] *Id*. art. 11.

[86] *Id*. art. 10.

surprisingly little power over member states because they can only reach decisions by consensus and the enforcement of those decisions is at the absolute discretion of the member states, which are responsible for incorporating MERCOSUR decisions into their legal systems.[87] Nevertheless, decisions of the MERCOSUR Council and the Common Market Group are binding on the member states when made. This gives some (although very limited) supremacy to communitarian law over the domestic laws of the member states. The requirement for consensual decision-making signals the lack of political commitment by the four member states to deeper integration and reflects their unwillingness to give up their political sovereignty for the potential economic benefits.[88]

Both of the main MERCOSUR bodies lack the supranational character of the EC Commission because their members are in fact the representatives of the governments of the four member states.[89] This reinforces the argument that the integration is political in nature. In 1994, the Protocol of Ouro Preto established the Trade Commission as a new body to assist the Common Market Group in implementing MERCOSUR's common trade policy but that has not improved the RTA's supranationality.[90] Elaborate dispute resolution provisions were first set out in 1993 in the Protocol of Brasilia but were repealed by the 2003 Protocol of Olivos, which came into force in 2004.[91] The Protocol of Olivos has now been incorporated into the national legislation of all of the member states except Venezuela, which only recently joined.[92] The Protocols of Brasilia and Olivos provide for direct negotiations as the first step to resolve disputes between member states and arbitration as the second step.[93] Thus, the DRM of MERCOSUR is not modeled after the European Court of Justice ("ECJ"). The main difference between the DRM structures set out in the two Protocols will be discussed in

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[87] Taylor, *supra* note 8, at 868 (referring to arts. 37-40 of the Protocol of Ouro Perto to the Treaty of Asuncion).

[88] Thus, Taylor claims that MERCOSUR has been designed to "achieve economic integration through political integration rather than through institutionalism. " *Id.* at 867, 878.

[89] Treaty of Asuncion, *supra* note 76, arts. 11-14.

[90] Protocol of Ouro Preto arts 16-21, Dec. 17, 1994, *available at* http://www.sice.oas.org/trade/mrcsr/ourop/ourop_e.asp.

[91] For MERCOSUR official documents see Legal Framework of the Common Market of the Southern Cone, http://www.sice.oas.org/Mercosur/instmt_e.asp (last visited Apr. 20, 2008). Only some documents are available in English, while majority of documents is available in Spanish and Portuguese. For English translation of the Protocol of Brasilia see Protocol of Brasilia for the Solution of Controversies, MERCOSUR/CMC/DEC. No. 01/91, *available at* http://www.sice.oas.org/trade/mrcsrs/decisions/dec3703p.asp (last visited Apr. 20, 2008), and for the English version of the Protocol of Olivos, Feb. 18, 2002, see 42 I.L.M.2.

[92] American Society of International Law, International Law in Brief, http://www.asil.org/ilib/ilib0509.htm (last visited Apr. 20, 2008).

[93] Brasilia Protocol, art. 2 and the Protocol of Olivos, art.4, *supra* note 91.

the next part of this article.

E) *Conclusion*

The above mentioned RTAs created four regional blocs, each with a different scope of economic integration in Latin America and Caribbean, without proposing any means of coordination of the established trading systems. Consequently, companies attempting to export goods outside of their host region need to know numerous rules and disciplines applicable to their transactions and to comply with different standards related to their products. The web of laws and standards increases legal uncertainty and costs of transactions between RTAs, while simultaneously decreasing uncertainty and transaction costs within each RTA. It is noteworthy that MERCOSUR is the only asymmetric regional bloc, with Brazil as its political and economic leader. The other three RTAs are fairly symmetrical in terms of member states' economic and political capacities. These other three attempt to maintain the balance of power by preserving consensus in the decision-making process. Consequently, these RTAs created common institutions with limited law-making powers. The next section analyzes limitations of the dispute settlement procedures established by the four RTAs.

III. TRENDS IN DISPUTE RESOLUTION IN THE REGION

DRMs enhance the legitimacy of the RTAs and their legal rules by providing an authentic, uniform source of interpretation of the rules and norms of international treaties that establish RTAs and facilitating consistent compliance with the treaties.[94] DRMs are, therefore, an important tool to increase the likelihood that the integration will be successfully implemented and will be permanent. Prior sections of this article have emphasized that the level of political commitment to regionalism varies from state to state. The degree of variance is determined by the "actual or perceived conflict between national and regional objectives."[95] Additionally, the level of commitment to integration in each of the four RTAs influences the extent to which its institutional systems develop. In the case of the South American and Caribbean states, it seems that they have the ambition to achieve deep economic integration but prefer to use political or diplomatic cooperation,

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[94] *See e.g.*, THOMAS M. FRANCK, THE POWER of LEGITIMACY AMONG NATIONS (1990).

[95] Fernardo Rueda-Junquera, European Integration Model: Lessons for the Central American Common Market, The Jean Monnet Chair Lecture 13 (Feb. 2006), University of Miami, Florida (on file with the author).

rather than well-structured institutionalism, as the means to this end.[96]

Despite the aforementioned mistrust of international law, all of the countries which are members of the four RTAs included in this study are also members of the WTO and of the Statute of the ICJ.[97] That means that all of them have accepted the WTO Dispute Settlement Understanding compulsory jurisdiction, and that some of them (Barbados, Costa Rica, Dominican Republic, Honduras, Nicaragua, Panama, Paraguay, Peru, Suriname and Uruguay) accepted the compulsory jurisdiction of the ICJ.[98] Due to their membership in multiple organizations, and the acceptance of compulsory jurisdiction of different fora, certain inter-state disputes involving the same states and the same issues could end up being heard before two tribunals.

In brief, four RTAs developed DRMs that differ in their structure and scope of jurisdiction. Three of them (CACM, the Andean Community and CARICOM) created permanent courts, while MERCOSUR and 2006 SICA Protocol introduced arbitral tribunals. All three courts were initially modeled after the ECJ to decide on interpretation and application of the treaties and the laws created by the institutions of the communities, and to rule on the validity of the acts of the institutions.[99] However their jurisdiction has changed significantly over the past 15 years, as discussed below. On the other hand, DRMs established by MERCOSUR and SICA are inspired by the North American Free Trade Agreement and WTO models of dispute settlement procedure. They are based on arbitration-like procedure suitable for resolution of state-to-state trade disputes.

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[96] *See* Taylor, *supra* note 8, at 867-68 (arguing that the lack of institutional structure in Latin American countries is in sharp contrast with their attempt to organize those communities on the basis of the EC model, which proved to be successful primarily due to strong and well-developed supranational institutions).

[97] See World Trade Organization, Members and Observers, http://www.wto.org/english/thewto_e/whatis_e/tif_e/org6_e.htm (last visited Apr. 20, 2008) and International Court of Justice, States Entitled to Appear Before the Court, http://www.icj-cij.org/jurisdiction/index.php?p1=5&p2=1&p3=1&sp3=a (last visited Apr. 20, 2008).

[98] International Court of Justice, Declarations Recognizing the Jurisdiction of the Court as Compulsory, http://www.icj-cij.org/jurisdiction/index.php?p1=5&p2=1&p3=3 (last visited Apr. 20, 2008) [hereafter Declarations Recognizing Jurisdiction].

[99] *See supra* Section II.A-C.

Table 2: Overview of DRMs Features*

DRMs Features	**CACM (Central American Court of Justice and trade related DRMs)**	**Andean Community (Court of Justice)**	**CARICOM (Caribbean Court of Justice)**	**MERCOSUR (ad hoc tribunal and PRT)**
Scope of Jurisdiction	- Interpretation and application of CACM laws - New 2002 Court jurisdiction-validity of the SICA decisions, to rule on members' non-compliance with the treaties, to resolve disputes between different branches of governments of member states; complaints of individuals against member states; new DRMs for trade disputes in Resolution 170-2006	- Preliminary rulings on interpretation of Andean laws - The validity of decisions of the community institutions - Cases of member states' non-compliance with Andean laws, - Actions against community institutions for failure to act	- Dual Function: 1. As an international court deciding on interpretation and application of the treaty; 2. As a national court/member states' final appellate body in civil and criminal cases	- Interpretation and application of the treaty

DRMs Features	**CACM (Central American Court of Justice and trade related DRMs)**	**Andean Community (Court of Justice)**	**CARICOM (Caribbean Court of Justice)**	**MERCOSUR (ad hoc tribunal and PRT)**
Standing for private parties	Not in general , but the 2002 Court could decide on individuals' complaints against member states	Yes, if relevant act affects a private party's subjective rights or legitimate interests	Yes, when the court acts as a final appellate body in civil and criminal cases	Yes, but only indirectly through National Sections of the Common Market Group
Supremacy of community laws	Yes	Yes	Yes	Yes
Provisions on relations with other for a/concurrent jurisdiction	No in the General Treaty; Yes (exclusion of concurrent jurisdiction clause) in Resolution 170-2006	No	No	Yes, exclusion of concurrent jurisdiction (parties have the right to choose fora but their choice is final)
Enforcement of court/tribunal decisions	The General Treaty has no provisions on enforcement; Resolution 170-2006 provides for suspension of treaty benefits	Suspension of treaty benefits	Suspension of treaty benefits	The Olivos Protocol provides for compensatory measures or suspension of benefits for non-compliance with PRT's decisions
Direct effect of community law	No	Yes	Yes	No

*This table has been developed by this author by incorporating the most important features of DRMs as discussed by several authors cited in this article: Slaughter, Schneider, Romano, and Kwan and Marceau.

A) DRM of the CACM/SICA

As previously explained, the General Treaty contains only one provision related to the resolution of disputes arising out of the interpretation and application of CACM laws. Article XXVI of the General Treaty provides for a three-step DRM, the use of which is mandatory for the settlement of disputes between member states.[100] Private parties do not have the right to use the DRM for their claims, and the CACM law does not have direct effect, but member states are required to try to settle any dispute amicably.[101] If member states fail to settle their dispute by direct negotiation, they must attempt to reach agreement through the CACM main governing bodies – the Executive Council and the Central American Economic Council.[102] Finally, if a dispute remains unresolved, it has to be referred to an *ad hoc* arbitration tribunal consisting of three arbitrators.[103] The arbitrators are chosen by the Secretary General of the CACM from the list of arbitrators proposed to the Secretariat by the member states.[104] The decision of the arbitral tribunal is final and binding but the Treaty does not contain any provisions for the enforcement of an arbitral decision in the event of a state's failure to comply with the decision.[105] The General Treaty makes no reference to the DRM of GATT, leaving open the possibility for the concurrent jurisdiction of the two fora.

When the CACM member states and Panama created SICA in April 1993, they provided for the establishment of a permanent court: the Central

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[100] General Treaty, *supra* note 32, art. XXVI:

> The Signatory States agree to settle amicably, in the spirit of this Treaty, and through the Executive Council or the Central American Economic Council, as the case may be, any differences which may arise regarding the interpretation or application of any of its provisions. If agreement cannot be reached, they shall submit the matter to arbitration. For the purpose of constituting the arbitration tribunal, each Contracting Party shall propose to the General Secretariat of the Organization of Central American States the names of three magistrates from its Supreme Court of Justice. From the complete list of candidates, the Secretary-General of the Organization of Central American States and the Government representatives in the Organization shall select, by drawing lots, one arbitrator for each Contracting party, no two of them may be nationals of the same State. The award of the arbitration tribunal shall require the concurring votes of not less than three members, and shall have the affect of *res judicata* for all the Contracting Parties so far as it contains any ruling concerning the interpretation or application of the provisions of this Treaty.

[101] *Id*.

[102] *Id*.

[103] *Id*.

[104] *Id*.

[105] *See* General Treaty, *supra* note 32.

American Court of Justice.[106] The Tegucigalpa Protocol was signed by all of the member states but, as mentioned earlier, only El Salvador, Honduras and Nicaragua ratified in 1994.[107] Accordingly, the Court's jurisdiction is limited to half of its member states.[108] The Court made seventy-nine decisions from 1994 to 2006.[109] According to its Statute, the Court sits in Managua and consists of one permanent and one substitute judge nominated by each member state and appointed for a period of ten years.[110]

This new DRM has broad jurisdiction: to resolve disputes that may arise among the member states (except for territorial or border disputes).[111] It has the power to decide on the validity of decisions made by the SICA institutional bodies and to declare an institutional non-compliance with the provisions of the Tegucigalpa Protocol and the treaties.[112] It can rule on SICA member states' non-compliance with the Tegucigalpa Protocol and the treaties.[113] The new DRM can also offer advisory opinions to the Supreme Courts of the SICA member states on any matter and to all other Central American courts on the interpretation and application of all SICA obligations.[114] Additionally, it has the jurisdiction to offer advisory opinions to the SICA institutional bodies regarding the interpretation and application of the Protocol and the treaties in order to resolve disputes that may arise among and between the different branches of government within a SICA member state.[115] Finally, it can render decisions on complaints brought by individuals against any SICA institutions whose actions have affected them and render decisions on the complaints of individuals against their member states regarding national legislation that contradicts the state's overall SICA

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106 Tegucigalpa Protocol, *supra* note 36.

107 *Id*.

108 For a detailed analysis of the structure, jurisdiction, and case law of the Central American Court of Justice, see Thomas Andrew O'Keefe, *The Central American Integration System (S.I.C.A.) at the Dawn of a New Century: Will the Central American Isthmus Finally Be Able to Achieve Economic and Political Unity?*, 13 FLA. J. INT'L LAW 243 (2001).

109 *See* Corte Centroamericana de Justicia, Consultas y Demandas, http://www.ccj.org.ni/Sentencias.html (last visited Apr. 20, 2008). In 2003, Rafael Chamorro Mora, then President of the Central American Court of Justice, reported that the Court had "heard twenty consultative cases and forty one disputes and delivered over one hundred decisions" during the first eight years of its operation. Mora, *supra* note 43, at 42.

110 Corte Centroamericana de Justicia, Estatuo de la Corte Centroamericana de Justicia *available at* http://www.ccj.org.ni/estatuto.htm (last visited Apr. 20, 2008) [hereafter Statute of the Court].

111 However, even these disputes could be resolved by the Court if all of the member states involved in the dispute agree.

112 *Supra* note 110, arts. 22-23.

113 *Id.* art. 22.

114 *Id.* art. 24.

115 *See* O'Keefe, *supra* note 108, at 252.

obligations.[116] Thus, the Statute confers to individuals the right to bring claims against their own states and against the SICA institutions. In addition to the aforementioned and mainly compulsory jurisdictions, the Court has a consultative jurisdiction to "resolve disputes that may arise between a SICA member state and a non-member state" and to act as an arbitral tribunal in any matter that all of the parties to the disputes specifically request the Court to resolve.[117]

Although the nature of the institutional structure and the effect of the community law remains intergovernmental rather than supranational, the Central American Court of Justice still has jurisdiction to make rulings as the supreme administrative court in disputes among and between different branches of government of its member states.[118] In the circumstances, and since the relevant article of the Statute (Article 48) would apply without reservation or exception to the member states, it is less surprising that half of the member states have decided not to ratify the Tegucigalpa Protocol. As previously mentioned, Nicaragua was one of the three CACM/SICA members that did ratify it.[119] In 2005, the President of Nicaragua brought an action before the Court charging the National Assembly of Nicaragua with acting contrary to the norms of SICA and Organization of Central American States ("ODECA") and the positive and constitutional law of Nicaragua.[120] The alleged violation was a result of the reforms to the Nicaraguan law that extended the powers of the National Assembly to the detriment of the executive power of the President.[121] The Court confirmed its jurisdiction to deal with the dispute between two different institutions of the Member States on the basis of the Tegucigalpa Protocol that established the Court.[122] Upon discussing several sources of law, including the Nicaraguan Constitution and SICA community law, the Court accepted the arguments of the claimant President of Nicaragua.[123] It specified that the division of powers is essential to democracy, which is a fundamental part of the community laws stated in ODECA.[124] Even though the Statute states that decisions made by the Court are binding on member states, neither the Statute nor the Tegucigalpa Protocol addresses the issue of enforcement of the Court's

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[116] *Id.*

[117] *See id*. at 253.

[118] *Id*.

[119] *See* Antecedentes de la Corte, *supra* note 40.

[120] *See* Corte Centroamericana de Justicia, Resolne 69, http://www.ccj.org.ni/resolnes/94-05/Resol69.pdf (last visited Apr. 15, 2008).

[121] *Id*.

[122] *Id*.

[123] *Id*.

[124] *Id.*

decisions.[125]

The chances of competing jurisdictions of the SICA court and the ICJ resulting in multiple proceedings are slim. Costa Rica, Honduras, and Nicaragua are among the seventy-four states that recognized the compulsory jurisdiction of the ICJ.[126] However, due to the fact that the SICA court cannot resolve the territorial disputes of its members,[127] the subject matter of the two do not overlap. All of the SICA members are members of the WTO and recognized the compulsory jurisdiction of the WTO tribunals.[128] Until the 2006 Resolution, there was the possibility of the SICA court and the WTO having competing jurisdictions. Thomas O'Keefe, President of Mercosur Consulting Group, Ltd., reports that the 1999 dispute between Honduras and Nicaragua over Honduras's agreement with Colombia triggered a new dispute and a claim by Honduras that a Nicaraguan duty affecting Honduran goods was imposed in violation of SICA obligations.[129] In both disputes the SICA Court issued preliminary orders, which the parties to the disputes did not obey.[130] In March 2000, the Honduras-Nicaragua dispute regarding imposed duty came before the WTO tribunal.[131] Two other disputes involving Honduras as a complainant came before WTO panels, but in those cases the CACM/SICA DRM was not initiated.[132] Those disputes involved the Dominican Republic, an associate member of SICA.[133] In addition, Costa Rica – a full member of CACM/SICA – and the Dominican Republic once used the WTO mechanism to resolve a trade dispute.[134]

Out of the recognition that the broad jurisdiction of the Court and the lack of clarity regarding its relationship to other international tribunals are obstacles to its effectiveness and acceptance in all of the member states, came a draft proposal for a Central American Treaty for the Solution of

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[125] Tegucigalpa Protocol, *supra* note 36; Statute of the Court, *supra* note 110.

[126] Antecedentes de la Corte, *supra* note 40.

[127] Statute of the Court, *supra* note 110, art. 22.

[128] *See* World Trade Organization, Members and Observers, http://www.wto.org/english/thewto_e/whatis_e/tif_e/org6_e.htm (last visited Apr. 20, 2008).

[129] *See* O'Keefe, *supra* note 108, at 255.

[130] *Id*.

[131] Request for Consultations by Honduras, *Nicaragua – Measures Affecting Imports from Honduras and Columbia,* WT/ DS201 (June 6, 2000). *See* O'Keefe, *supra* note 108, at 255.

[132] Request for Consultations by Honduras, *Dominican Republic – Measures Affecting the Importation of Cigarettes*, WT/DS300 (Aug. 28, 2003); Appellate Body Report, *Dominican Republic – Measures Affecting the Importation and Internal Sale of Cigarettes,* WT/DS302 (May 12, 2004).

[133] *Id*.

[134] Request for Consultations by Costa Rica, *Dominican Republic – Foreign Exchange Fee Accepting Imports from Costa Rica,*WT/DS333 (Jan. 9, 2007).

Trade Disputes in 1999.[135] The proposal was to transform the Court into a DRM similar to the one utilized by MERCOSUR.[136] As previously mentioned, the reforms started with the 2002 Protocol of Amendment to Article 35 of the Tegucigalpa Protocol, which established a new and separate DRM for resolution of disputes "arising in the economic integration sub-system."[137] This theme continued through 2003 and 2006, when Article 4 of Resolution 170-2006 allowed for the parties to decide whether to resolve their dispute before the WTO tribunal or to use the SICA mechanism.[138] The choice of forum is irrevocable and establishes the exclusive jurisdiction of the chosen tribunal. Since its establishment, this mechanism has been used in fifteen cases.[139] Ten cases were settled in consultations, two with the intervention of the Council of Ministers and only one in arbitration.[140] Two cases were in a consultation phase at the time of writing this article.[141]

B) *The DRM of the Andean Community*

The Andean Community institutional framework is modeled on the institutional structure of the EC.[142] Accordingly, it consists of the Presidential Council, the Council of Ministers of Foreign Affairs, the Commission, the Court of Justice and the General Secretariat.[143] The

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[135] See, O'Keefe, *supra* note 108, at 254.

[136] *Id.*

[137] Amendment of Tegucigalpa Protocol, *supra* note 43:

> Any disagreement arising in the economic integration sub-system as a result of intra-regional trade relations shall be subjected to the dispute settlement system established by the Council of Ministers of Economic Integration, which will contain an alternate method for trade dispute settlement, including arbitration. Non-fulfillment of such award shall entail suspension of the benefits in a amount equivalent to those not obtained as established therein.

See also Resolution 170-2006, "Mechanism for Resolution of Commercial Disputes in Central America," *supra* note 43.

[138] *Id. See also* Mechanism for Resolution of Commercial Disputes in Central America, Resolution 170-2006, July 28, 2006, *available at* http://www.sieca.org.gt/site/VisorDocs.aspx?IDDOC=Cache/17990000000393/17990000000393.swf.

[139] See data available at Corte Centroamericana de Justicia, Consultas y Demandas, http://www.ccj.org.ni/Sentencias.html (last visited Apr. 20, 2008).

[140] *Id*.

[141] *Id*.

[142] *Compare* Consolidated Versions of the Treaty on European Union and of the Treaty Establishing European Community arts. 183-248, Dec. 29, 2006, 2006 O.J. (C 321) 1, *available at* http://eur-lex.europa.eu/LexUriServ/site/en/oj/2006/ce321/ce32120061229en00010331.pdf [hereafter EC Treaty] *with* Cartagena Agreement, *supra* note 44, arts. 5-43.

[143] Cartagena Agreement, *supra* note 44, art. 6.

decisions and the resolutions of the Council of Ministers of Foreign Affairs and the Commission are binding on all member states from the moment of enactment.[144] Moreover, the decisions of the Council of Ministers or the Commission, as well as the resolutions of the General Secretariat, are directly applicable to all member states from the date of publication in the Official Gazette of the Agreement.[145] The Court first emerged in 1979 as the Court of Justice of the Cartagena Agreement.[146] In 1996, the Trujillo Protocol renamed it the "Court of Justice of the Andean Community."[147] It was then reorganized by the Treaty Creating the Court of Justice of the Cartagena Agreement (as modified by the Protocol of Cochabamba).[148] The supranational structure and the jurisdiction of the ECJ have influenced the creation of the Andean Court of Justice, which consists of five judges, each nationals of member states, who are independent and are each appointed unanimously by the Plenipotentiary Representatives for a six-year term.[149] The Council of Foreign Ministers can create the position of Advocate General, with a role similar to that of the Advocate General in the European Court of Justice.[150]

The Andean Court of Justice has compulsory jurisdiction to issue prejudgment interpretations of the provisions of the Andean legal system;[151] to decide on the validity of decisions of the Council of Foreign Ministers, and the Commission and on the validity of resolutions of the Secretariat; to decide cases of member states' non-compliance with treaty obligations; and to decide on actions against the Andean Community institutions for failure to act.[152] In addition, the Court decides staff cases and is empowered to act as an arbitration tribunal when states opt for arbitration as a dispute resolution method.[153] Member states, other institutions, and also private parties (but only if the relevant act affects a private party's subjective rights or legitimate interests) may file actions for annulment of the acts of institutions of the Andean Community.[154] Actions to declare non-

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[144] Lemmo, *supra* note 48, at 906.

[145] Cartagena Agreement, *supra* note 44, art. 3.

[146] For an overview of the Court's history, see Project on International Courts and Tribunals, Court of Justice of the Andean Community, http://www.pict-pcti.org/courts/TJAC.html (last visited Apr. 20, 2008).

[147] *See* Andean Court Treaty, *supra* note 54, arts. 5-16.

[148] Cartagena Agreement*, supra* note 44, art. 3.

[149] *Id*. arts. 6-8

[150] *Id*. art. 6.

[151] This procedure is similar to preliminary rulings of the ECJ as established in Article 234 of the Treaty Establishing the European Community. *Supra* note 141.

[152] *See* Cartagena Agreement, *supra* note 44, arts. 17-40.

[153] *Id.* art. 38.

[154] *Id.* art. 19.

compliance or breach of treaty obligations may be filed by member states, the General Secretariat, and individuals whose rights are affected by a member state's non-compliance.[155] The Treaty explicitly provides that decisions issued by the Court in actions for non-compliance have direct effect,[156] and that further non-compliance with the decisions of the Court could result in restrictions or suspension in whole or in part of the benefits obtained by the member states at fault.[157] All of the Court's rulings and arbitration awards, as well as the arbitration awards of the General Secretariat are directly applicable in the member states; they do not require official approval or exequatur (homologation) in order to be enforced by national courts.[158]

The Court has been very active, making more than 400 decisions in the period from 1996 to 2002, and more than 700 decisions from 2003 to 2004; mostly in pre-judicial interpretation proceedings.[159] These interpretations are important means of ensuring uniform application and interpretation of Andean Community law in all member states. The relatively coherent structure of the Court, its broad jurisdiction, and the direct effect of its decisions are the primary factors that make the Court one of the most important institutions of the Andean Community in enhancing the process of regional integration.

Despite the fact that the Andean treaties do not make reference to the ICJ, the chances of multiple proceedings before the Andean Community Court of Justice and the ICJ are very small due to the fact that Peru is the only member of the Community which recognizes the compulsory jurisdiction of the ICJ;[160] and because the subject matter jurisdictions of the tribunals do not overlap.[161] Even though there is the potential for concurrent jurisdiction of the Andean Community Court of Justice and the WTO panels (due to the fact that the Andean Community's treaty provides for the mandatory jurisdiction of its Court and does not refer at all to the WTO), no

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[155] *Id.* art. 25.

[156] *Id.* art. 30. "A verdict of noncompliance issued by the Court, in the cases envisaged in Article 25, shall constitute legal and sufficient grounds for the party to ask the national judge for compensation for any damages or loss that may be due." *Id.*

[157] *Id.* art. 27.

[158] Cartagena Agreement, *supra* note 44, art. 41.

[159] For the report on cases from 1996-2002 see Lemmo, *supra* note 48, at 909-10. For review of the decisions made from 2003-2007 see Andean Community Website, Procedimientos y Solucion de Controversias de la Can, http://www.comunidadandina.org/canprocedimientosinternet/procedimientos.aspx (decisions and data are available only in Spanish) (last visited Apr. 20, 2008). For example, in 2004, the court made only four decisions on actions for breach of the law of the Andean Community, only one decision in an action for invalidity and it made 152 pre-judicial interpretations of the Treaty. *Id.*

[160] *See* Declarations Recognizing Jurisdiction, *supra* note 98.

[161] *See* Andean Court Treaty, *supra* note 54, arts. 17-31.

disputes between members of the Andean Community have been adjudicated in both fora. There has been one dispute between a member and an observer of the Andean Community, which was heard only by the WTO panel.[162] On the other hand, there have been several disputes between Chile and present members of the Andean Community, but in those cases the Andean Community's DRM could not have been invoked because Chile was no longer a member.[163]

On July 13, 2006 the Court made a significant ruling in a non-compliance case concerning Venezuela's April 2006 departure from the Andean Community to join MERCOSUR.[164] The General Secretariat of the Community initiated the action for non-compliance against Venezuela for not granting national tax treatment for products originating in other member states. Venezuela had already renounced the Cartagena Agreement and argued that it had thus immediately ended its rights and obligations as a member state of the Andean Community.[165] The Court upheld Venezuela's argument that with its renunciation of the Cartagena Agreement, the tribunal of the Andean Community lost jurisdiction to hear the non-compliance case.[166]

C) The DRM of CARICOM

A number of factors underlie the creation of CARICOM's institutional framework, including its unique court,[167] created in 2001 with the dual function of interpreting and applying treaty provisions as the regional (thus, international) court on the one hand, and acting as a national court and its

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[162] Request for Consultations by Panama, *Columbia – Customs Measures on Importation of Certain Goods from Panama*, WT/DS348/1 (July 20, 2006) (Panama complainant and an observer, and Colombia as respondent and a member).

[163] Request for Consultations by Chile – *Ecuador definitive safeguard measures on imports of medium density fibreboard*, WT/DS303/1 (Chile complainant, and Ecuador respondent and a member), Request for Consultations by Chile, *Peru – Taxes on Cigarettes*, WT/ DS227 (Mar. 1, 2001) and Request for Consultations by Chile, *Peru – Tax Treatment on Certain Imported Products,* WT/DS255 (Apr. 22, 2002). Request for Consultations by Columbia, *Chile – Safeguard Measures on Sugar*, WT/ DS228 (Mar. 15, 2001). Request for Consultations by Columbia, *Chile – Safeguard Measures and Modification of Schedules Regarding Sugar*, WT/ DS230 (Apr. 17, 2001) (Colombia complainant and a member, and Chile respondent and a former member).

[164] Proceso 2-AI-2006, no. TJCA-AI-007. For a review of the decision see the Andean Community Website, Acciones de Incumplimiento at http://www.comunidadandina.org/anprocedimientosinternet/DetalleExpediente1.aspx?IdExp=8008&IdProced=7&CodExp=TJCA-AI-007 (available only in Spanish) (last visited Apr. 20, 2008).

[165] *Id*.

[166] *Id*.

[167] As previously mentioned the Caribbean Court of Justice was inaugurated in 2005.

member states' final appellate court, on the other hand.[168] Thus, dual function reflects two objectives of the establishment of the CARICOM court. First, there was a desire to develop indigenous Caribbean jurisprudence. Additionally there was the aim of gaining complete political independence from Britain, including an end to appeals to the Judicial Committee of the Privy Council in England.[169] The Caribbean Court of Justice ("CCJ") could thus act as either an international or a national court, depending on the subject matter being heard. For appeals in civil and criminal cases, the CCJ acts as the national court of the last instance.[170] But, when it interprets the RTA or hears disputes arising under the RTA, it functions as an international court.[171]

The CCJ was established by an agreement signed by Antigua & Barbuda, Barbados, Belize, Grenada, Guyana, Jamaica, St. Kitts & Nevis, St. Lucia, Suriname and Trinidad & Tobago in 2001.[172] Dominica and St. Vincent & the Grenadines signed the Agreement in 2003, and the CCJ became operative in 2005.[173] A majority vote of the members of the Regional Judicial and Legal Services Commission appoints or removes nine judges.[174] At least three judges shall have expertise in international law including international trade law.[175] A person is qualified to be appointed to be a judge if she/he has not less than five years of experience as a judge in a national court of jurisdiction in civil and criminal matters,[176] or has been

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[168] Caribbean Court Agreement, *supra* note 73, arts. XI-XXIV, XXV. Articles XI through XXIV discuss original jurisdiction of the court, and refer to the original function of the Court when it decides disputes between the states CARICOM members, that is, when the Court acts as an international (regional) court. *Id.* Article XXV discusses appellate jurisdiction and refers to the appellate function of the Court as a final superior court when it decides disputes arising out of appeals of national courts' decisions in civil and criminal matters. *Id.*

[169] Note that only Commonwealth Caribbean countries signed the treaty that established the CCJ. Honorable Sir Simmons argues that the creation of the CCJ, considering the colonial past of the region and lust for both legal and psychological sovereignty and independence, is central to "the self-respect, self-confidence, and self-definition of Commonwealth Caribbean people." *See* Sir David Simmons*, Caribbean Court of Justice: A Unique Institution of Caribbean Creativity,* 29 NOVA L. REV. 171, 182 (2005); *see also* DUKE POLLARD, THE CARIBBEAN COURT OF JUSTICE: CLOSING THE CIRCLE OF INDEPENDENCE (Kingston: Ian Randle Publishers, 2004) and Leonard Birdsong, *The Formation of the Caribbean Court of Justice: The Sunset of British Colonial Rule in the English Speaking Caribbean,* 36 U. MIAMI INTER-AM. L. REV. 197 (2005).

[170] Caribbean Court Agreement, *supra* note 73, art. XXV .

[171] *Id.* arts. XI-XXIV.

[172] Caribbean Court of Justice, Home Page, http://www.caribbeancourtofjustice.org/ (last visited Apr. 20, 2008).

[173] *Id*.

[174] Caribbean Court Agreement, *supra* note 73, art. IV(1)(7).

[175] *Id.* arts. IV(1), XII(1).

[176] *Id.* art. IV(10)(a).

practicing or teaching law in a member state of CARICOM or in some part of the British Commonwealth for not less than fifteen years.[177] An appointed judge shall hold office until she/he is seventy-two.[178]

The CCJ's dual function[179] as an international tribunal and as a final appellate domestic court reveals at least two motives behind the CARICOM's plan to establish such a DRM: to enhance economic integration and to ensure the judicial independence and sovereignty of its member states from their former colonizers.[180] In addition, in order to ensure the CCJ's independence from national governments and politics, the member states also provided for a unique funding scheme for the CCJ in the form of a trust fund established with one hundred million U.S. dollars borrowed by the member states from the Caribbean Development Bank.[181]

The CCJ has compulsory[182] and exclusive "original" jurisdiction to decide disputes involving the interpretation and application of the Treaty of Chaguaramas, to hear disputes between the member states themselves, and to hear disputes between any member state and the Caribbean Community.[183] It also has jurisdiction to hear cases referred from national courts or tribunals of member states brought before it upon application by nationals.[184] Thus private parties do have limited access to the CCJ where the Treaty of Chaguaramas confers a right directly on an individual or mandates that a member state ensures that the right is conferred upon individuals.[185] The CCJ exercises original jurisdiction not only with respect to the Treaty of Chaguaramas and other community law but also, where necessary, with respect to international law and equity.[186] In order to ensure the consistency and certainty of community law as well as uniformity in the interpretation of the Treaty of Chaguaramas, the Agreement on Establishment of the Caribbean Court of Justice determines that its judgments shall constitute *stare decisis*.[187]

Municipal or appellate jurisdiction of the CCJ is based on the English

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[177] *Id*. art. IV(10)(b).

[178] *Id*. art. IX(3).

[179] The Court also developed two sets of procedural rules to govern two different jurisdictions. *See* Caribbean Court of Justice Website, Rules, http://www.caribbeancourtofjustice.org/rules.html (last visited Apr. 23, 2008).

[180] Karen Bravo, *CARICOM, the Myth of Sovereignty, and Aspirational Economic Integration*, 31 N.C.J. INT'L L. & COM. REG. 145, 192 (2005).

[181] Simmons, *supra* note 169, at 196.

[182] Caribbean Court Agreement, *supra* note 73, art. XVI(1).

[183] *Id.* art. XII(1).

[184] *Id*. art. XII(1)(d).

[185] *Id.* arts. XII(1)(d) and XXIV.

[186] *Id*. art. XVII.

[187] *Id.* art. XXII.

common law model and the doctrine of *stare decisis* operating as a substitute for appeals to the Privy Council.[188] The CCJ exercises this jurisdiction in deciding appeals from decisions of the courts of appeal of the member states in civil and criminal matters. It is noteworthy that most of the CARICOM member states and signatories to the Agreement Establishing the Court are English-speaking common law countries, but the two member states of Suriname and Haiti are civil law countries.[189] Because both civil and common law traditions are present in the region, the Regional Judicial and Legal Services Commission is obliged to take into consideration knowledge and practice of civil law jurisprudence when appointing judges.[190]

The CCJ has delivered nine judgments since its inauguration in 2005 and acted as a national final appellate court in all nine.[191] Five cases were appeals from decisions of the Court of Appeal of Barbados and four came on appeal from the Court of Appeal of Guyana.[192] The first two of the appeals from Barbados arose out of murder convictions that could trigger the death penalty and helped to reopen the death penalty debate that had surrounded the formation of the CCJ.[193] In one of those two cases, the CCJ dismissed leave to appeal.[194] In the other, the CCJ upheld the judgment of the Court of Appeal to commute the death sentences of two convicted murderers.[195] The CCJ has not yet made a decision exercising its original jurisdiction.

Finally, the Agreement on the Establishment of the Caribbean Court of

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[188] Caribbean Court Agreement, *supra* note 73, art.XXV.

[189] Suriname is a former Dutch colony that inherited Dutch language and civil law tradition. Haiti is another civil law jurisdiction with French as an official language.

[190] Caribbean Court Agreement*, supra* note 73, art. IV(1).

[191] *See* Caribbean Court of Justice Website, Judgments, http://www.caribbeancourtofjustice.org/judgments.html (last visited Feb. 23, 2008).

[192] Only these two countries have passed domestic legislation that allows the Caribbean Court of Justice to be the final appellate opportunity for domestic civil and criminal matters. *See* Bravo, *supra* note 180, at 191. For the complete data on cases decided by the CCJ see Caribbean Court of Justice, Judgments, *supra* note 191.

[193] The third case from Barbados was an appeal against an order in an action for defamation. Barbados Rediffusion Services Ltd. v. Mirchandani, et al., (Barb.) CCJ CV 1 (C.A. 2005), *available at* http://www.caribbeancourtofjustice.org/judgments/Mirchandani%20appeal%20judgment.pdf. Many authors pointed to the possibility of re-establishing the death penalty in the CARICOM member states by creating a new superior regional court (the CCJ) that would be independent from judicial opinions and decisions of the Privy Council, whose 1993 judgment in *Pratt v. Attorney General for Jamaica*, Privy Council Appeal No. 10 (1993), commuted the Jamaican court's death penalty to life in prison. *See* Bravo, *supra* note 180; s*ee, e.g.,* Birdsong, *supra* note 96.

[194] Cadogan v. The Queen, (Barb.) CCJ AL 6 (C.A. 2006), *available at* http://www.caribbeancourtofjustice.org/judgments/al6_2006/al6_2006.pdf.

[195] Attorney Gen. v. Ricardo Boyce, (Barb.) CCJ CV 2 (C.A. 2006), *available at* http://www.caribbeancourtofjustice.org/judgments/cv2_2005/judgment/3.%20Judgment_%20President_Hon_Justice_Saunders.pdf.

Justice mandates that all member states, community institutions, or persons to whom a judgment delivered within its original jurisdiction applies shall comply with the judgment.[196] It also provides that all member states shall "take all the necessary steps, including the enactment of legislation" to ensure that "any judgment, decree, order or sentence of the Court given in the exercise of its jurisdiction shall be enforced by all courts and authorities" of the member state "as if it were a judgment, decree" or "order of sentence of a superior court" of that member state.[197] However, the Agreement is silent on a possible case of non-compliance with this obligation as well as on the relationship between the Court and other international tribunals, such as the ICJ and the WTO DRMs. The subject-matter jurisdictions of the ICJ and CCJ are hardly overlapping. Barbados (which also fully accepted the CCJ's dual jurisdiction) and Suriname are the only two CARICOM member states that recognized the compulsory jurisdiction of the ICJ.[198] It is more likely for the CCJ and the WTO tribunal to seize jurisdiction in the same international trade dispute. However, that has not yet occurred, and the members of CARICOM have never used the WTO mechanisms to resolve trade disputes among themselves.

D) The DRM of MERCOSUR

When Brazil, Argentina, Uruguay and Paraguay created the Southern Common Market in 1991 through the Treaty of Asuncion, they decided that all disputes between member states regarding the interpretation and application of the Treaty would be resolved through a three-step DRM.[199] First, member states were to try to resolve their dispute by direct negotiation.[200] Second, if direct negotiations failed, the dispute would be placed before the Common Market Group that consisted of four official members representing each of the member states.[201] Finally, if the Common Market Group could not decide the issue, it would be resolved by the Common Market Council, the body consisting of the Ministers of Foreign Affairs of each member state.[202] Consequently, the resulting DRM was largely diplomatic and possessed weak enforcement mechanisms.

In 1993, the Brasilia Protocol modified the system for the settlement of disputes established by the Treaty of Asuncion in order to ensure a more

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196 Caribbean Court Agreement*, supra* note 73, art. XV.

197 *Id*. art. XXVI.

198 *See* Declarations Recognizing Jurisdiction, *supra* note 98.

199 Treaty of Asuncion, *supra* note 76, annex. III.

200 *Id*. art.1.

201 *Id*.

202 *Id*.

structured and adjudicative procedure.[203] The modified DRM had limited jurisdictional scope, as it could only facilitate the resolution of inconsistencies in the interpretation and application of the Treaty in addition to cases of non-compliance with decisions of the Common Market Council and the Common Market Group.[204] However, the DRM could not be used to resolve disputes between member states and MERCOSUR institutions, disputes between the MERCOSUR institutions themselves, or staff cases. The Brasilia Protocol provided for two separate procedures: one to govern disputes between the member states and another to govern disputes between private parties and member states.[205] It granted private parties indirect access to the MERCOSUR DRM by enabling them to bring actions against affirmative actions of the member states through the National Sections of the Common Market Group.[206] If the National Section refused to proceed with a private claim, the claim would move to the next stage, but if the National Section agreed to proceed, then the dispute would come before the Common Market Group as the second stage of the DRM.[207] If the Common Market Group failed to resolve the dispute, it would advance to arbitration.[208] However private parties would not appear independently at arbitration, but instead through their member state supporting the claim.[209]

The procedure for the resolution of disputes between member states was organized in three stages.[210] Similar to the original DRM of the Treaty of Asuncion, the dispute was first to be resolved by the member states themselves through direct negotiation.[211] Only if the member states could not reach a resolution would the dispute then transfer to the Common Market Group.[212] If that institution failed to make recommendations, an *ad hoc* tribunal would be established.[213] Each member state party to the dispute would designate one arbitrator and the third arbitratory would be chosen

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[203] Brasilia Protocol, *supra* note 91.

[204] *Id.* art. 1.

[205] *Id.* arts. 1, 25-32.

[206] *Id.* arts. 25-32. The National Sections of the Common Market Group are simply the members of the Common Market Group appointed by a given member state to represent that particular nation. For more on the Common Market Group see Southern Common Market, MERCOURSOUR, Institutional Structure http://www.itcilo.it/english/actrav/telearn/global/ilo/blokit/mercosur.htm#Institutional%20structure (last visited Apr. 20, 2008).

[207] Brasilia Protocol, *supra* note 91, arts. 27-28.

[208] *Id*. art. 7.

[209] *Id*. art. 30.

[210] *Id*. arts 2-8.

[211] *Id.* arts. 2-3.

[212] *Id.* arts. 4-6.

[213] Brasilia Protocol, *supra* note 91, art. 7.

through common agreement[214] or drawn by lottery from the reserve list of arbitrators if no agreement could be reached.[215] The tribunal would decide on its procedural rules and be granted powers to order interim measures and to make final and binding decisions. Similar to the ECJ, the tribunal would make one decision with no concurring or dissenting opinions,[216] and failure of the member states to comply with the ruling would result in temporary suspension of preferential tariffs and concessions.[217] The Tribunal would decide disputes based on the Treaty of Asuncion, its other treaty agreements, the decisions of the Common Market Council, resolutions of the Common Market Group, the principles of international law and also, if the parties agreed, on the basis of equity or *ex equo et bono*.[218] From 1999 to 2003, ten decisions were made under the Brasilia Protocol and all were enforced or complied with voluntarily by modifying the existing legislation of the member state.[219]

The case law analysis to follow will demonstrate that the *ad hoc* tribunals referred to earlier MERCOSUR awards as precedents, but that there was no consistency in referring to international law (including the EC law and ECJ judgments) when interpreting and applying the law of MERCOSUR.[220] Since the first three awards were rendered, there have been attempts to improve the DRM by strengthening its enforcement mechanisms, reducing the opportunity for forum shopping, and adding a provision to prohibit the concurrent jurisdiction of MERCOSUR and other fora (which was jeopardizing the DRM's efficiency).[221] This resulted in the repeal of the Brasilia Protocol in 2002 by the Olivos Protocol, which came into force in January 2004.[222]

In brief, the Olivos Protocol modified the DRM established by the Brasilia Protocol in several ways but it preserved two previously developed

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[214] *Id.* arts. 8-9. Each member state would designate ten arbitrators to be kept on a reserve list. *Id.* art. 10.

[215] *Id.* art. 12.

[216] *Id.* art. 20.

[217] *Id.* art. 23.

[218] *Id.* art 19.

[219] Raul Emilio Vinuesa, *The Mercosur Settlement of Disputes System,* 5 THE LAW AND PRACTICE OF INT'L COURTS AND TRIBUNALS 77, 86-87 (2006).

[220] *See also* Raul Emilio Vinuesa, *Enforcement of Mercosur Arbitration Awards Within the Domestic Legal Orders of Member States,* 40 TEXAS INT'L L. J. 425, 433-34 (2005).

[221] In 2001, the MERCOSUR tribunal made a decision in Brazil's claim against Argentina in regards to Argentinean antidumping measures affecting the import of Brazilian whole chickens The tribunal made a decision in favour of Argentina, which prompted the Brazilian claim to the WTO tribunal in 2003. *See* WTO, Argentina – Definitive Anti-Dumping Duties on Poultry from Brazil, http://www.wto.org/english/tratop_e/dispu_e/cases_e/ds241_e.htm (last visited Apr. 14, 2008).

[222] Protocol of Olivos, *supra* note 91.

sets of separate proceedings. The Olivos Protocol:

> 1. Provides for the creation of a Tribunal of Permanent Revision;
>
> 2. Implements mechanisms that regulate compensatory measures available to a member state party to demand compliance with an arbitral award;
>
> 3. Creates procedural norms inspired by the WTO model, such as those determining that the object of the controversy must be limited to the complaint and defence presented before the *ad hoc* tribunal;
>
> 4. Provides for an optional intervention of the Common Market Group;
>
> 5. Permits parties choice between the WTO and the MERCOSUR mechanisms;
>
> 6. Gives a greater possibility of complaints from private parties.[223]

It also makes the dispute settlement process less lengthy and complex by making the second stage, or involvement of the Common Market Group, optional.[224]

The Permanent Review Tribunal was established in 2004 to ensure certainty and consistency in the interpretation of MERCOSUR laws.[225] If direct negotiations fail and the Common Market Group does not make a recommendation, an *ad hoc* tribunal is established to render a decision.[226] The ruling is subject to review by the Permanent Review Tribunal consisting of five arbitrators (one appointed by each member state) who are available on a permanent basis.[227] This Tribunal considers only questions of law, and its decisions are final[228] and binding on the states party to the disputes.[229]

Just as the Brasilia Protocol had done, the Olivos Protocol determines

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[223] Eliane M.Octavio Martins, *Sistematica de Solucao de Controversias do Mercosul: O Protocolo de Brasilia e o Protocolo de Olivos*, PROLAM/USP, *available at* http://www.usp.br/prolam/downloads/2006_1_4.pdf (last visited Apr. 23, 2008).

[224] Protocol of Olivos, *supra* note 91, art. 6.

[225] *Id*. art. 17.

[226] *Id*. art. 9(1).

[227] *Id*. art. 18.

[228] *Id.* art. 22.

[229] *Id.* art. 26.

that the applicable law for the *ad hoc* tribunal and the permanent Review Tribunal is "the Treaty of Asuncion, the Protocol of Ouro Preto, the protocols and agreements executed within the framework of the Treaty of Asuncion, the decisions of the Common Market Council" as well as "the applicable principles and provisions of international law."[230] Again, if the parties so agree, the tribunal (*ad hoc* or the Permanent Review Tribunal) can decide the dispute *ex aequo et bono*.[231] The member states can also decide to go straight to the Permanent Review Tribunal after direct negotiations fail to resolve their dispute, thus avoiding procedure before the *ad hoc* tribunal.[232]

In disputes between a member state and a private party, the main change introduced by the Olivos Protocol is that the National Section that has admitted the claim of a private party must participate in consultations with the National Section of the Common Market Group of the state party charged with the violation of the MERCOSUR law.[233] As before, private parties have access to the DRM only indirectly, through the National Section.[234] In the event of non-compliance with the decision of the Permanent Review Tribunal, the only sanctions provided in the Olivos Protocol are compensatory measures or the suspension of benefits available under the Treaty of Asuncion.[235]

The first decision of the Permanent Review Tribunal was made December 20, 2005, on appeal from an October 2005 decision by an *ad hoc* tribunal concerning Argentina's prohibition of the import of Uruguayan remodeled tires.[236] The *ad hoc* arbitration found that the Argentinean import prohibition was justified and ruled that free commerce, the main principle of the common market, could be limited because of environmental concerns. In other words, environmental concerns can give rise to an exception to free trade.[237] The Permanent Review Tribunal found, however, that the *ad hoc* tribunal erred in its decision.[238] Referring to the case law of the ECJ,[239] the

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[230] Protocol of Olivos, *supra* note 91, art. 34(1).

[231] *Id.* art. 34(2).

[232] *Id.* art. 23.

[233] *Id.* art. 41.

[234] *Id.* arts. 39-41.

[235] *Id.* arts. 23-31.

[236] LAUDO Nº 01/2005, *available at* http://www.mercosur.int/msweb/principal/contenido.asp. The three arbitrators deciding the case in the Permanent Review Tribunal were Nicolas Eduardo Becerra from Argentina, Ricardo Olivera from Uruguay, and Wilfrido Fernandez from Paraguay. *Id.*

[237] *Id*.

[238] *Id*.

[239] Case C-320/03, Comm'n. v. Austria. Case C-320/03, Comm'n. v. F.R.G. Case C-463/01, Radlberger Getränkegesellschaft mbH & Co. Case C-309/02, S. Spitz KG v. Land

Permanent Review Tribunal held that such exceptions must be interpreted in a restrictive manner and considering whether the particular measure is effectively restrictive to free commerce, whether it has a discriminatory character, whether the measure is justifiable, and whether the measure is proportionate to the level of environmental risk involved.[240] Following these criteria, the Permanent Review Tribunal found that the exceptional measures were disproportionate and that the *ad hoc* tribunal erred in making its decision on the precautionary principle by relying on a theory that lacked scientific certainty. The Permanent Review Tribunal also confirmed that Argentina had to modify the law that prohibited importing tires originating from Uruguay.

However, on May 3, 2007, Argentina petitioned the Permanent Review Tribunal, claiming that compensatory measures taken by Uruguay after Argentina allegedly failed to comply with the 2005 Permanent Review Tribunal decision were disproportionate.[241] In its first decision regarding the proportionality of compensatory measures arising from non-compliance with the Permanent Review Tribunal's decision, the Tribunal established a formula to evaluate proportionality on the basis of economic harm to the parties and institutional harm to MERCOSUR due to member states' refusal to comply with decisions of tribunal.[242] The Permanent Review Tribunal then held that the measures taken by Uruguay were proportional.[243]

On September 6, 2006, the *ad hoc* tribunal issued an award in proceedings governed by the Olivos Protocol.[244] Uruguay had complained that the failure of Argentina to adopt measures that would prevent road blocks and protests in response to the construction of two paper mills on the border between the two countries constituted an obstacle to the free movement of goods and services and, accordingly, violated the Treaty of Asuncion and WTO obligations.[245] In other words, the tribunal was to deal with a controversial issue of possible conflicts between trade and human rights rules. Interestingly, Uruguay supported its claim by referring to an ECJ case, *Commission v. France,*[246] where France was found responsible for establishing the free movement of goods and services in the case of a road blockage. Argentina's response cited another ECJ case, *Eugen*

Baden-Württemberg. Case C-104/75, De Peijper. Case C-120/78, Cassis de Dijon.

[240] *Id*.

[241] *Id*.

[242] *Id*.

[243] *Id*.

[244] The SICE Laudos Arbitrales: Argentina v. Uruguay, *available at* http://www.mrree.gub.uy/mrree/Prensa/Laudo_Tribunal_AD_HOC.pdf (last visited Apr. 20, 2008).

[245] *Id.*

[246] Case C-265/95, Comm'n. v. Fr.

Schmidberger, Internationale Transporte und Planzüge v. Austria,[247] in which it was found that human rights could justify a state's non-interference with blockages by private parties. However, the *ad hoc* tribunal did not refer to the ECJ case law in its decision, but instead relied on the Preamble to the 1948 American Declaration on the Rights and Duties of Man in finding that the right to protest was not absolute and needed to be limited for the benefit of the exercise of other rights.[248] In rejecting the ECJ case law, the tribunal held that the cases referred to by Uruguay and Argentina were based on very different facts from those of the case in hand.[249] In addition, the tribunal also remarked that the EU's supranational character is very different from the intergovernmental nature of MERCOSUR, making ECJ case law irrelevant.[250] In conclusion, the *ad hoc* tribunal found that, even though the government of Argentina did not act in bad faith, its actions were not compatible with MERCOSUR treaty obligations.[251]

However, before the tribunal made its decision, Argentina had brought an action against Uruguay at the ICJ alleging Uruguay's construction of two paper mills on the border between the two countries violated the 1975 Statute of the River Uruguay, a treaty signed between Argentina and Uruguay.[252] On July 13, 2006 the ICJ decided that it could not order provisional measures of suspension of the construction of the mills and, thus, rejected Argentina's claim.[253] On November 29, 2006, after the first ICJ order was issued, Uruguay submitted a request for the indication of provisional measures on the grounds that the blockade had not been removed by Argentina since mid-November and that Uruguay was suffering "enormous economic damages."[254] On January 23, 2007 the ICJ issued an order that the circumstances presented to the Court were "not such as to require the exercise of its power under Article 41 of the [ICJ] Statute to indicate provisional measures."[255] It remains to be seen whether Argentina will appeal the decision of the *ad hoc* tribunal of MERCOSUR to the Permanent Review Tribunal. However, it is instructive to note that this was

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[247] Case C-112/00, Schmidberger v. Fr.

[248] *Supra* note 243.

[249] *Id.*

[250] *Id.*

[251] *Id.*

[252] Statute of the River Uruguay, 1982 1295 UNTS 340.

[253] Pulp Mills on the River Uruguay (Arg v. Uru.) 2006 I.C.J. 135, (July 13), *available at* http://www.icj-cij.org/docket/files/135/11235.pdf. Note that the ICJ voted 14:1 to dismiss the claim of Argentina. The only dissenting opinion was from the judge appointed by Argentina. *Id.*

[254] *Id.*

[255] *See* Pulp Mills on the River Uruguay (Arg v. Uru.) 2007 I.C.J. 135, (Jan 13), *available at* http://www.icj-cij.org/docket/files/135/13615.pdf.

not a case of concurrent jurisdiction of the ICJ and the MERCOSUR tribunal, and that the subject-matter jurisdictions of the two tribunals do not overlap. In addition, Paraguay and Uruguay are the only MERCOSUR members that recognize the compulsory jurisdiction of the ICJ.[256]

Members of MERCOSUR have been involved in several disputes before the WTO tribunal, but because Article 1 of the Olivos Protocol explicitly permits the parties to a dispute to choose between its own DRM and that of the WTO, these were not cases of concurrent jurisdiction. The further stipulation in the Olivos Protocol that the parties' choice of forum is irrevocable makes it unlikely that any cases of concurrent jurisdiction will occur. It should be noted, however, that members of MERCOSUR have been involved in disputes before the WTO against each other,[257] their associate members[258] and observers[259] more often than any other countries in the South America and the Caribbean. This is likely due to the fact that they are more often involved in trade amongst one another, and that they are bigger and financially more capable of carrying on WTO proceedings.

E) Conclusion

In sum, four RTAs created their own DRMs in order to resolve disputes arising out of interpretation and application of the treaties. The preference is

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[256] *See* Declarations Recognizing Jurisdiction, *supra* note 98.

[257] Request for Consultations by Argentina, *Brazil – Anti-Dumping Measures on Imports of Certain Resins from Argentina,* WT/DS355 (Dec. 26, 2006). Request for Consultations by Brazil, *Argentina – Transitional Safeguard Measures on Certain Import of Woven Fabric Products of Cotton and Cotton Mixtures Originating in Brazil*, WT/DS190 (Feb. 11, 2000). Panel Report, *Argentina – Definitive Anti-Dumping Duties on Poultry from Brazil*, WT/DS241 (Apr. 22, 2003).

[258] Panel Report, *Chile – Price Band System and Safeguard Measures Relating to Certain Agricultural Products*, WT/DS207 (Oct. 5, 2000). Request for Consultations by Argentina, *Chile – Provisional Safeguard Measure on Mixtures of Edible Oils*, WT/DS226 (Feb. 19, 2001). Request for Consultations by Argentina, *Chile – Definitive Safeguard Measure on Imports of Fructose*, WT/DS278 (Dec. 20, 2002). Request for Consultations by Argentina, *Chile – Provisional Safeguard Measure on Certain Milk Products,* WT/DS351 (Oct. 25, 2006). Request for Consultations by Argentina, *Chile – Definitive Safeguard Measures on Certain Milk Products*, WT/DS356 (Dec. 28, 2006) (Argentina complainant and Chile respondent and an associate member). Request for Consultations by Brazil, *Peru – Countervailing Duty Investigation against Imports of Buses from Brazil,* WT/DS112 (Dec. 23, 1997) (Brazil complainant and Peru as an observer). Chile, an observer, was a complainant in a number of cases involving MERCOSUR members states as respondents. Panel Report, Argentina – *Definitive Safeguard Measure on Imports of Preserved Peaches,* WT/DS238 (Feb. 14, 2003) (Chile and Argentina). Requests for Consultations by Chile, *Uruguay – Tax Treatment on Certain Products*, WT/DS261 (June 18, 2002).

[259] Request for Consultations by Brazil, *Mexico – Provisional Anti-Dumping Measure on Electric Transformers*, WT/DS216 (Dec. 20, 2000) (Brazil as complainant and Mexico as respondent and an observer in MERCOSUR).

to create permanent institutions for dispute settlement and the choice of institution varies between the court and the permanent arbitration. Two RTAs (the Andean Community and CARICOM) established very broad jurisdiction of their courts in order to strengthen legitimacy of their internal legal and political systems. Their courts perform the role of the highest courts in administrative and constitutional matters (Andean Court of Justice), and criminal and civil matters (CCJ) for their member states.

Only two of the regional treaties (SICA 2006 Protocol and MERCOSUR) attempt to resolve the issue of overlapping jurisdiction between the regional and multilateral, universal fora over the same subject matter. Their solution is similar: member states have a choice of forum. Individual parties, on the other hand, have a limited right to participate in the dispute settlement process under all four RTAs and their protocols. Their participation is excluded from the WTO dispute settlement process. CARICOM member states have never been involved in the WTO dispute settlement process nor have they ever used their own DRM to resolve state-to-state trade disputes. Others, like MERCOSUR member states have used both mechanisms more often, but the issue of concurrent jurisdiction has not arisen yet. In general, DRMs in all four RTAs are still "works in progress" and it is difficult to evaluate their case law as a body of a coherent precedents.

IV. CONCLUSIONS

As previously stated, it is possible to discern two trends in the evolution of international trade dispute settlement: the increasing judicialization of the DRM and the establishment of compulsory rather than consultative jurisdiction of international tribunals. The development of RTAs in South America and the Caribbean and their DRMs seems to confirm these tendencies. Indeed, in the 1990s all four of the Communities included in the study – CACM/SICA, the Andean Community, CARICOM and MERCOSUR – opted for the establishment of adjudicative DRMs (courts or arbitration) to supplement direct negotiations that failed to lead to agreement.

The broad jurisdiction of some of the courts could be attributed, as in the case of CACM, to a desire to re-establish confidence in the judicial system following failure of the system in its member states. And in the case of CARICOM, the broad jurisdiction could be characterized as a means of ensuring judicial independence in the form of freedom from monitoring by the judiciary of former colonizers. However these courts have still not been fully utilized by the member states, primarily because the constitutional framework of many of the states prevents international tribunals from acting as a superior court. For this reason, some member states in the RTAs

analyzed in this article opted out of international agreements upon the establishment of such tribunals. In the case of CACM/SICA, some member states subsequently established separate DRMs for resolution of commercial disputes.

As the jurisdiction of WTO bodies, along with regional courts and tribunals, broadens, the possibility of overlapping and conflicting jurisdiction seems to increase. Given the fact that the four treaties included in this study are primarily focused on trade among member states that are also WTO members, it is encouraging that two RTAs (the 2006 modified SICA and MERCOSUR treaties) refer to the WTO dispute settlement mechanism and attempt to avoid jurisdictional overlap. The other two DRMs analyzed do not avert the anxieties among legal scholars regarding the increasing prospects of conflicting jurisdictions of international tribunals. It will be interesting to see how member states of SICA and MERCOSUR will decide on the choice of forum when such a situation arises. One possible theory is that the complexity of the dispute and its political and economic impact on the region as a whole, the potential length of the dispute settlement process and the associated costs, and the efficiency of remedies provided in the regional DRMs and the WTO DSU will determine the choice.

In sum, all of the communities analyzed in this article have made efforts to create a supranational DRM, while ensuring that other institutions remain intergovernmental. Thus it is possible to conclude, despite the suggestions made by some scholars, that the desired deep scope of economic integration seemingly calls for the establishment of a strong institutional structure of a supranational character that is capable of creating directly effective decisions. It appears that political constraints, the diversity motif and the myth of sovereignty, have led the member states in a different direction and have resulted in the creation of intergovernmental structures with relatively weak enforcement mechanisms. In other words, although some DRMs have been modified to provide better support of the integration, the effectiveness of those modified DRMs will still depend on political will and a commitment to integration and community law. It will take a great deal of will and commitment to establish stronger institutionalization and to implement monitoring and enforcement mechanisms, as was done in the European integration that has inspired the integration processes still emerging in South America and the Caribbean.