

ASSOCIATION OF CARIBBEAN STATES (ACS)

23RD MEETING OF THE SPECIAL COMMITTEE ON SUSTAINABLE TOURISM AND 1ST PREPARATORY MEETING OF THE 3RD MEETING OF MINISTERS OF TOURISM OF THE GREATER CARIBBEAN (TMM-3)

Managua, Nicaragua, June 28th-29th, 2012

OBSERVATIONS FROM THE ACS SECRETARIAT REGARDING THE ASSOCIATION OF CARIBBEAN CRUISE SHIP DESTINATIONS (ACCD) DIALOGUE

I. Introduction

The establishment of the Association of Caribbean Cruise Ship Destinations (ACCD) has been proposed to take the form of either an autonomous international organisation or a sub-entity of the Association of Caribbean States (ACS) as was previously done with the Caribbean Sea Commission (CSC). In order to make a determination as to the manner in which this organisation will be created, it is necessary to examine the processes involved in achieving the execution of both systems; the implications of each process and the possible advantages and disadvantages thereof.

The objective has been to establish The Association of Caribbean Cruise Ship Destinations (ACCD) 'as a mechanism for cooperation through Regional Dialogue among governmental and non-governmental agencies in keeping with Member States of the Association of Caribbean States, who operate in this important tourism sector¹.' Within this context the area of impact for the work of the ACCD has been identified as the "Greater Caribbean."

- The term *Greater Caribbean*

The term "Greater Caribbean", has been defined as "the entire Basin: all islands including The Bahamas, and the entire littoral including Mexico, all of Central America, Panama, Colombia, Venezuela, Guyana, Suriname and French Guiana."² This term has been conceptualised to³ convey the aims of unifying the Caribbean Region, making reference to its common historical, social and cultural background:

¹ Overall Project Brief: Phase I – Program of Support and Strengthening of the Ad –Hoc Working Group for the Establishment of the Association of Caribbean Cruise Ship Destinations (ACCD-WG), Annex D, Rapporteur's Report of the 2nd Meeting of the AD Hoc Working Group for the Establishment of the Association of Caribbean Cruise Ship Destinations (ACCD –WG-2), La Antigua Guatemala, Guatemala, September 2-3, 2010.,

² Girvan, Norman. *Cooperation in the Greater Caribbean. The Role of the Association of Caribbean State*. Kingston: Ian Randle Publishers, 2006. p. 6

³ Dossier: *Asociación de Estados del Caribe. Cuadernos Integración en América Latina*. Facultad Latinoamericana de Ciencias Sociales (Secretaría General). Ed. Josette Altmann; comp. Tatiana Beirute. -1a ed- San José, Costa Rica.

The Greater Caribbean. The Greater Caribbean Zone of Co-operation was established in recognition of the common geographic space shared by our States, Countries and Territories, and the common interests and objectives derived there from. The Greater Caribbean Zone of Co-operation consists of joint actions in the priority areas of the ACS, namely, Trade, Sustainable Tourism, Transport and Natural Disasters.⁴

Former Secretary General of the ACS, Professor Norman Girvan explains that said concept reflects a meaningful geo-economic or geopolitical force whose institutional expression is the Association of Caribbean States.⁵

The Greater Caribbean has therefore been placed as the focal point for the work of the ACS. Consequently the work of the ACS within the area of Sustainable Tourism is also directed at the Greater Caribbean region. This is highlighted within the Convention Establishing the Sustainable Tourism Zone of the Caribbean (STZC Convention). The preamble of the STZC Convention:

"Tak[es] into consideration that Tourism constitutes the main economic activity for most countries of the region referred to as the Greater Caribbean, and that it represents in itself, a significant factor in foreign exchange earnings, economic and social development."⁶

The proposed ACCD therefore seeks to maintain the focus of its work within the ambit of the Greater Caribbean as has been the progression of the ACS. The issue for determination however, surrounds the form that this new entity shall take.

II. The Process and Progress towards the establishment of the ACCD

As part of the process to explore the establishment of the ACCD, it was agreed "to create an Ad Hoc Working Group (ACCD-WG) to advance the concept and framework for the institutionalization of the ACCD through preparing the Draft Statutes, Strategic Operational Plan, Funding Plan and schedule to be followed for the creation of the Association. There have been three meetings of the ACCD-WG to date, whose efforts has focused on finalising these formative documents which will inform the legal and operational framework, and also directing the next steps to be taken in this process.

The most recent meeting, the ACCD-WG-3 was held in Managua, Nicaragua June 15th-16th, 2011. This meeting which preceded the Twenty-second Meeting of the Special Committee on Sustainable Tourism (SCST-22), served as a preparatory process to finalise the ACCD-WG submission in the Agenda of the SCST-22. Both meetings supported the premise that the ACCD will not be established as a new regional organization, but as an initiative within the parameters of the ACS in the same manner as the Caribbean Sea Commission (CSC). It was also agreed that there was need for further consultation and subsequent meetings to resolve issues related

⁴ *Idem*, p. 12

⁵ *Idem*

⁶ Done in December 12, 2001 (Not yet entered into force).

to funding of the Association, membership fees, the structure and bodies of the ACCD and their respective functions, and other organizational aspects, in order to expedite the formal establishment of the Association.

As a matter of advancing towards the establishment of the Association, the meeting considered the main issues regarding the establishment of the ACCD as follows:

1. Rationale of the organization: There was consensus on the purpose of the ACCD. It was agreed that it will be an association linked to the ACS and include other non-ACS member countries and/or territories.
2. Name: The meeting was asked to consider the suggestion to change the name of the Association to include reference to Central America in the Title. It was agreed that the Ad-Hoc Working group would consider including reference to the 'Greater Caribbean Region' in the title to be consistent with ACS terminology.
3. Timeframe for establishment: The Meeting emphasized the need to expedite the process to establish the ACCD, with the intent to have the ACCD operational by year's end (2011).
4. ACCD AD Hoc Working Group: As it relates to including countries that are not members of the ACS, and the inclusion of the private sector in the tourism industry for membership, it was agreed that the Ad Hoc Working group would be tasked to come up with a creative way to address these and other related organizational aspects.

III. Establishment procedures for the ACCD to become a legal entity and its relationship/link to the ACS

Two types of constructs have been identified as options for the establishment of the ACCD. The first is that of an autonomous organisation, while the second proposes the creation of an organisation under the umbrella of the ACS as was done with the Caribbean Sea Commission (CSC).

Option A. ACCD as an Autonomous Organisation

International Organisation defined

An international organisation is defined as "an international legal entity created by a multilateral treaty, with international legal personality, and principally with states as members"⁷. Consequently the essential components of an autonomous organisation will include:

- creation by a treaty;
- evidence that it has International legal personality;
- evidence that it is subject to international law and therefore has the capacity to conclude treaties with other subjects of international law;
- its negotiation and conclusion within an international organisation or at a conference convened by an international organisation.

⁷ Aust, Anthony, *Modern Treaty Law and Practice*, (2007) Cambridge University Press.

The ACCD would therefore first need to be established by a treaty which would be its *constituent instrument*. Whether a particular instrument is in fact a treaty within the above definition is determined via an examination of its elements.⁸

The Constituent Instrument

Article 2 (1) (a) of The Vienna Convention on the Law of Treaties of 1969, stipulates that a “treaty means an international agreement concluded between States in written form and governed by international law, whether embodied in a single instrument or in two or more related instruments and whatever its particular designation”.

In this regard, where the agreement is concluded among states, it takes on an international character. Within international law, an international organisation would also have a legal personality that is separate from its members. Such an organisation will be subject to the principles of international law, with rights and duties under the law, inclusive of the ability to enter into treaties with other subjects of international law such as member states, non-member states or other international organisations.

The constituent instrument may provide that the organisation shall have international legal personality. ‘International legal personality may also be inferred from the purpose of the organisation, the powers given it by its members and its practice.’⁹ However it has been noted that ‘perhaps the most important factor is the attitude of states generally; if they regard the organization as having international legal personality, it has it.’¹⁰

Other distinctive features of international organisations include the fact that they:

- are typically financed by the members;
- have permanent secretariats;
- possess two main organs which include an assembly, in which all members are entitled to sit (usually with one vote each), and an executive body (often with restricted membership).

Bearing this in mind, the draft Statute of the ACCD can be applied in order to constitute the Association as an international organisation given the fact that its provisions embody the components of a document seeking to establish an international organisation.

On the issue of the title of the constituent instrument, it has become the normative practice to designate the document that establishes an international organisation with the nomenclatures of: Convention, Charter, Covenant, Pact, Constitution or Treaty. The title of a treaty consists of two elements: the designation and its purpose. What is noted however, is that the ‘name does not determine the status of the instrument; what is decisive is whether the negotiating states intend the instrument to be binding in international law.’¹¹ Caution is nevertheless advised to ensure that there is a distinction made between treaties and MOUs and that this distinction should therefore be reflected in the name of the instrument. Thus, it has been advised that

⁸ Thirlway, H, ‘The Law and Procedure of the International Court of Justice’ (1991) BYIL 45.

⁹ Aust *supra* at note 8.

¹⁰ *ibid.*

¹¹ *ibid*

'[f]or treaties, unequivocal terms, such as Agreement, Convention and Treaty, should be used whenever possible.'¹²

Once negotiations are complete, the procedure for the establishment of the ACCD as an international organisation would therefore start with the drafting of the instrument that will constitute it and the consequent adoption of the text.

The process for establishment

Adoption 'is the first decisive stage in the conclusion of a treaty. This is the formal act by which the form and content of the treaty are settled. The act of adoption does not amount to consent to be bound by the treaty. This can be done at an international conference through the vote of two thirds of the Member States present and voting,¹³ unless, by the same majority there is a decision to apply a different rule.¹⁴ The other means of adoption is by the consent of the writing out of the text by the Member States¹⁵.¹⁶ Following this 'the text has to be authenticated' and 'thereafter, states can express their consent to be bound by the treaty.'¹⁷

Authentication is the process of establishing the final text and consists of a formal indication that a document contains the 'authentic and definitive'¹⁸ text. Authentication is done by an act or a procedure. 'For a multilateral treaty, a formal procedure of adoption followed by authentication is important.' Article 10 of the Vienna Convention provides that the text of a treaty is established as authentic and definitive by such procedure as may be provided for in the text or agreed upon by the states participating in its drawing up. In the absence of such procedure, authentication is by signature, signature *ad referendum* or initialing of the text or the Final Act incorporating the text. 'It is common practice for a treaty adopted within an international organisation to be authenticated by the adoption of a resolution by an organ of the organisation, such as an assembly of the member states, or by an act of authentication performed by a duly authorised authority of the organisation, such as the president of the assembly or the chief executive officer.'¹⁹

Consent to be bound

Article 11 of the Vienna Convention,²⁰ indicates the diverse means by which the parties to a treaty may express its consent to be bound; it can be expressed by signature, exchange of instruments constituting a treaty, ratification, acceptance, approval or accession or by other means if so agreed. The Vienna Convention discusses the various methods by which a state can express its consent.

¹² *ibid*

¹³ Article 9 Adoption of the Text, Vienna Convention on the Law of Treaties
http://untreaty.un.org/ilc/texts/instruments/english/conventions/1_1_1969.pdf

¹⁴ Article 9(2) Vienna Convention,

¹⁵ Vienna Convention on Law of the Treaties 1969 Article 6 "Every State possesses the capacity to conclude treaties."

¹⁶ Article 2(1) (e)

¹⁷ Part II, Section 1 of the Convention.

¹⁸ Article 10 Vienna Convention

¹⁹ Aust *supra* at note 8.

²⁰ Vienna Convention on the Law of the Treaties done at Vienna on 23 May 1969
http://untreaty.un.org/ilc/texts/instruments/english/conventions/1_1_1969.pdf

- Consent expressed by signature (Article 12)

The parties can express their consent by the definitive. This will only be possible if the constitutions of the participants do not require prior approval of the treaty, and there is no need for new legislation. Article 12 of the Vienna Convention provides that signature expresses consent to be bound when:

- a) The treaty so provides;
- b) It is otherwise established that the negotiating states were so agreed; or
- c) The intention of a state that signature should express its consent is apparent from the full powers of its representative or was expressed during the negotiations..

- Consent expressed by an exchange of instruments (Article 13)

The parties can indicate their consent when the instruments provide that their exchange will give that effect or if it is otherwise established that those States were agreed that the exchange of instruments will have that effect.

- Consent expressed by ratification, acceptance or approval (Article 14)

These means of consent follow the same conditions: when this mode of consent is conveyed by way of the content of the treaty. Ratification consists of (1) the execution of an instrument of ratification by the executive and (2) its lodging with the depositary. Consent to be bound can be expressed by 'acceptance' or 'approval' under similar conditions to those which apply to ratification. There is no substantive difference between acceptance or approval and ratification. It is now common for multilateral treaties to provide that signature shall be 'subject to ratification, acceptance or approval'. The rules applicable to ratification apply equally to acceptance or approval and unless the treaty provides otherwise, acceptance and approval have the same legal effect as ratification.

- Consent expressed by accession (Article 15)

A state does not have a right to accede unless the treaty so provides or the parties agree to it.

- Consent expressed by the exchange of instruments of ratification, acceptance, approval or accession (Article 16)

A State is bound to the treaty by the exchange, among the contracting parties, of the instruments of ratification, acceptance, approval or accession, by its deposit within the depositary or by their notification to the contracting States or the depositary.

- Consent to be bound by part of a treaty and choice of differing provisions (Article 17)

The consent of a State to be bound by part of a treaty is effective only if the treaty so permits or other contracting States so agree. Moreover, the consent of a State which permits a choice between differing provisions is effective only if it is made clear to which of the provisions the consent relates.

Regarding the reservations and the entry into force of the treaty or the nomenclature designated to the instrument that will constitute the ACCD, it must be reflected in the text under the approval of the Member States. In practice, it has been demonstrated to include in the text the non acceptance of reservations to avoid legal complications of the Member States with their domestic law.

Entry into Force

When a treaty has entered into force, it binds only those states which have consented to be bound by it. A treaty enters into force in such manner and on such date as provided for in the treaty or as the negotiating states may agree.²¹ In the case of multilateral treaties, it is usual to provide that the date of entry into force will be a specified number of days, weeks or months following the deposit of the last instrument of ratification which is needed to bring the treaty into force. The period may be of any length but the normal range is from thirty days to twelve months.

Institutional Arrangements

The draft Statute of the ACCD will set up the Association with its own purposes, rules, governing bodies and budget among other elements but with the undeniable linkage with the ACS from which it has emerged. This close connection is reflected as per the political endorsement that will be granted through the automatic adhesion of the Member States of the ACS to the ACCD Membership.²²

'Each international organization has its own provisions on membership. These usually involve a decision on an application for membership being taken by a specified majority of the members of a certain organ or organs of the organisation'.²³ Thus, in the case of the ACCD, its constituent instrument will need to articulate the intent with regard to its membership composition.

A proposal has been made to include non-participants of its creating body within the membership of the ACCD, however, consideration must be given to the confusion this creates in terms of the overall intent of both organisations.

The time frame for the establishment of the ACCD depends on the promptness of the drafting to settle it, as well as the approval of the Member States through any of the abovementioned eligible methods of endorsement. The drafting generates low cost fees and administrative expenditures to be paid by ACCD.

Although a recommendation is to station the headquarters of the ACCD at the ACS, this cannot be automatic. As an autonomous international organization, this new institution will require a separate agreement that speaks to its headquarters. Where this is to be situated in the Republic of Trinidad and Tobago, an Agreement between the ACCD and the Government of Trinidad and

²¹ Article 24(1)

²² Draft Statutes ACCD Article 6.1 "Full Membership is afforded to all Cruise Ship Destinations within member states of the Association of Caribbean States (ACS)".

²³ Aust *supra* at note 8.

Tobago, would be a requirement. A similar modus will be required to address the grant of privileges and immunities.

Organisation registered before the United Nations

A treaty cannot be registered until it is in force.²⁴

Article 102(1) of the UN Charter requires that 'every treaty and every international agreement' entered into by any Member of the United Nations after the Charter comes into force be registered with the Secretariat as soon as possible, and then published by it.'

The Treaty should include the following: a certifying statement; the date on which the Treaty was concluded; mode of entry into force of the Treaty; parties involved in the agreement as well as the languages in which the Treaty was published, among other information. Particular attention should be paid to the annexes and other attachments that must be sent with the Treaty as omission of such can cause undue delays in the process. (See Checklist at Appendix 1).

The procedure will be executed by the Treaty Section of the Office of Legal Affairs of the United Nations Secretariat by following the course of action of the Legal Counsel LA 41 TR/230/Registration and Publication Requirements/2010 (Appendix 1):

-Registration and publication requirements

With a view to assisting Member States in the preparation of their submissions in accordance with Article 102 of the Charter of the United Nations, the Treaty Section has prepared the attached document which lists the various registration and publication requirements. It would be greatly appreciated if Member States could use the list as a reference to ensure the completeness of their submissions. It is noted that a certifying statement should accompany all submissions, a model of which is also attached.

-Translations

Efforts continue to reduce the production time further for publication of the United Nations Treaty Series (UNTS). The attention of Member States is drawn to General Assembly resolutions A/RES/482 (V) of 12 December 1950 and A/RES/54/28 of 17 November 1999, addressing the question of translations. Paragraph 6 of the latter resolution, the General Assembly "...urges States and international organizations, in particular, depositaries, to continue assisting the Secretariat in its efforts to expedite the registration of treaties and their publication by providing it with paper copied of treaties, as well as electronic copies, including maps, for registration and whenever possible, translation of treaties in English or French². These views are also reflected in General Assembly resolutions A/RES/52/153 and A/RES/53/100. Formal our courtesy translations in English and French provided by a State submitting treaties and other international agreements for registration, would clearly contribute to cost savings, enhance efficiency and expedite the registration and publication processes.

²⁴ 859 UNTS xii: Resolution 97(i) adopted by the General Assembly, 14 December 1946, as modified by Resolutions 364 (B) (iv), 482(v) and 33/141 A, adopted by the General Assembly on 1 December 1949, 12 December 1959 and 18 December 1978 respectively. See also Aust, *Modern Treaty Law and Practice* supra.

-Submission in electronic format

Member States when submitting treaties for registration to the Secretariat, are strongly encouraged to "provide, when available, a copy of the text of any treaty in disk or other electronic format..." as requested in paragraph 8 of the General Assembly resolution A/RES/53/100 of 8 December 1998 (see also A/RES/52/153 and A/RES/54/28). The preferred media for this purpose are USB-stick, (CD-Rom) or e-mail attachment.

Treaties submitted should be in Microsoft Word (except Microsoft Word 1997), PDF format, or as a text file (the generic ASCII text) or image format (TIFF). Electronic copies should be accessible using the Microsoft Windows operating system (Windows 2000, XP).

Each treaty submitted in electronic format for registration should also be accompanied by one certified, true copy on paper in accordance with the General Assembly regulations to give effect to Article 102 of the Charter of the United Nations. The certifying statement accompanying such a submission must state that both the electronic copy and the paper copy of the treaty are true and complete. The paper copy must be machine readable and legible for use by the optical character recognition mechanism employed in the desktop publishing process, and must be clean, sharp, with clear character definition. It is reminded that the submission of treaties in electronic format greatly contributes to cost saving, enhance efficiency and expedite the registration and publication processes. All electronic submissions by e-mail should be transmitted to the following address: treatyregistration@un.org

Member States which are not in a position to submit treaties in electronic format should continue to submit one certified true copy and two additional copies on paper, as required under article 5(2) of the General Assembly regulations to give effect to Article 102 of the Charter.

The time frame of the aforementioned process in which the Treaty will be processed is contingent on the man power (staff) available to process the said document; treaties are dealt with sequentially. Article 102 of the Charter of the United Nations provides that treaties and international agreements "shall as soon as possible be registered with the Secretariat". The procedure to register a treaty within the UN does not attract any fees²⁵.

Option B. ACCD as an Organism linked to the ACS

The **second option** proposed for the establishment of the ACCD is as a sub-entity of the ACS that is **patterned after the Caribbean Sea Commission (CSC)**. The ACCD can be established as an organism reliant upon the ACS whose activities shall fall under the authority of the Ministerial Council. This structure would also facilitate the management of financial resources and in turn, can be administered by the Special Fund. A fuller appreciation of this structure can be developed through an examination of the Caribbean Sea Commission; its objectives; experiences, successes and challenges.

²⁵ Information provided by Mr. Keiichiro Okimoto, Associate Legal Officer, Treaty Section, Office of Legal Affairs, United Nations Secretariat.

The Caribbean Sea Commission

The CSC was established in 2006, under the auspices of the ACS and via Ministerial Council Agreement 6/06, entitled 'Creation of the Follow-up Commission for the Caribbean Sea Initiative'. The aim was to create a structured mechanism through which work to gain international recognition for the Caribbean Sea as a special area within the context of sustainable development could be pursued. The Statutes of the CSC are consistent with the Convention Establishing the Association of Caribbean States and its structure follows a similar constitution to the ACS, facilitating the implementation of the Caribbean Sea Initiative and acceptance by its Members.

A **governance structure** was established for the CSC, inclusive of a Bureau, Budget Committee and three sub-Commissions: technical and scientific, governance and legal. Their key function is to acquire and synthesise information relevant to ocean governance in the Wider Caribbean Region (WCR). The CSC comprises of a number of national representatives and expert members and reports directly to the ACS Ministerial Council. It is also envisioned that a Secretariat be established as the main conduit through which the work of the Commission could be facilitated.

The direct link of the CSC with the ACS has produced **advantages** such as; the recognition of the Commission at a regional level; the political endorsement of the Member States, Associate Members and Observers of the ACS; as well as the support of the Secretariat of the ACS in the development of activities by facilitating CSC Meetings.

The success of the CSC's activities has been reflected through the publication of UNGA Resolutions since 1998 of which the last Resolution A/C.2/65/L.46 has recognised the role of the ACS in the consolidation of cooperation within the Greater Caribbean Region through the CSC, calling for international support from the United Nations system and the multilateral financial institutions.²⁶

Despite its successes however, the CSC has encountered **challenges** in fulfilling its mandate. These challenges include the inability to:

- ❖ elaborate the special area designation that is being sought;
- ❖ fully operationalise the Executive and supporting structures of the CSC; and
- ❖ outline clearly a focused work programme, with a budget and a relevant resource mobilisation strategy.

On the issue of resources, to date the resources of the Commission are largely extra-budgetary since it has obtained financing from donors such as South Korea, Turkey and Finland. In its Report to the 17th Ministerial Council, the Chair of the CSC made the observation that the CSC 'cannot operate on the basis of extra-budgetary funds only' and that this 'is not a sustainable way for the Commission to conduct its affairs'. The Chair noted that depending 'on donor and philanthropic resources will require the Commission to maintain a high resource mobilisation drive, which on its own, can be a costly exercise.' In addressing this concern, the recommendation that other methods of funding such as membership contributions may have to be considered.

²⁶ Resolution A/C.2/65/L.46 "Towards the sustainable development of the Caribbean Sea for present and future generations". United Nations. General Assembly. Sixty fifth session. 15 November 2010, p 5

Another **area of concern** that arises within the parameters of this proposed structure as exemplified by the CSC is the issue of operationalisation. While the CSC has been able to achieve various milestones, it has not been able to achieve full operationalisation and remains without the installment of both the Legal sub-commission and the Budget Committee. The failure of the membership to propel these organs of the structure has impeded the full operationalisation of the Commission as originally envisioned.

The issues of funding and operationalisation however are both tied to the issue of direction. There must be a consensus on the work to be done and to this extent a Work Programme for the ACCD ought to be finalised and be used as input for a Plan of Action. This process will facilitate focus in the form of clear goals and objectives in alignment with milestones and a defined budget.

Process for establishment – ACCD

At the 2nd Meeting of the Ad Hoc Working Group for the Establishment of the Association of Caribbean Cruise Ship Destinations (ACCD-WG-2), the Chairman of the Ad Hoc WG, Minister Mario Salinas suggests “that the functioning of the Constitution and Internal Regulations of the ACCD should be consistent with the mechanisms and procedures of the ACS, since it is the body through which actions of the ACCD will be channeled.”²⁷

This proposal is in alignment with the concept of the ACCD being established as a project managed under the auspices of the Ministerial Council of the ACS.

The endorsement of the Ministerial Council will be required where such an avenue is taken and this endorsement ought to be reflected in the ACCD Statutes, as was the case with the CSC through the Operating Statutes and Rules of Procedure of the Caribbean Sea Commission.

The proposal will need to be channeled through the Special Committee for Sustainable Tourism and presented at the Intersessional Preparatory Meeting for its consideration. Once this is done, it then has to be presented at the Annual Regular Meeting of the Ministerial Council for its deliberation and approval, since the Ministerial Council is the main authority and policy making organ of the ACS.²⁸

The ACCD project has already been endorsed by the Ministerial Council through Agreements No. 4/10²⁹ No. 3/11³⁰ and No. 12/12³¹, which mandate the Association to support its

²⁷ Rapporteur’s Report 2nd Meeting of the Ad Hoc Working Group for the Establishment of the Association of Caribbean Cruise Ship Destinations (ACCD-WG-2). La Antigua Guatemala, Guatemala, September 2nd-3rd, 2010. p. 5.

²⁸ Articles VIII and IX of the Convention Establishing the Association of Caribbean States, Ministerial Agreements 7/95, 9/95, 16/96

²⁹ Agreement Endorsing the Recommendations of the First Meeting of the Ad-Hoc Working Group for the Establishment of the Association of Caribbean Cruise Ship Destinations (ACCD-WG-1), Managua, Nicaragua, December 10, 2009. Fifteenth Ordinary Meeting of the Ministerial Council. Cartagena, Colombia, January 22, 2010

³⁰ Agreement Endorsing the Advancements made by the Ad-Hoc Working Group for the Establishment of the Association of Caribbean Cruise Ship Destinations (ACCD -WG) in the Establishment of The Association of Caribbean Cruise Ship Destinations (ACCD-WG-2). Sixteenth Ordinary Meeting of the Ministerial Council Port of Spain, Trinidad and Tobago, January 28th, 2011.

establishment and its institutionalisation under the auspices of the Special Committee for Sustainable Tourism.

The time frame is contingent on the drafting and preparation of documentation, as well as the attendance of the Annual Meeting of the Ministerial Council for its approval. The drafting generates low cost fees and administrative expenditures which are already covered by the Special Fund.

Institutional Arrangements

Within this context, where the proposal is for the ACCD to be established in a similar manner as that of the CSC, funds would be derived from the Special Fund as is currently done with the CSC. The issue of funding from the experiences of the CSC ought to be taken into consideration.³² This requires the development and implementation of resource mobilisation strategies. In the same vein the ACCD will be required through its management mechanism to engineer the mobilisation of funding.

Regarding the ACCD Membership, the Draft Statutes have considered the automatic adhesion of the Member States of the ACS to the ACCD Membership (*ut supra p. 2*), but also allowing countries and institutions which are non-members of the ACS to apply for Membership within the ACCD.

IV. Conclusion and Considerations in regard to options A and B

In giving consideration to the options of establishing the ACCD as an autonomous international organization or as a sub-body of the ACS, the challenges must also be taken into account. There are several areas of concern that are brought to the fore in this regard. These are discussed below.

Funding and Participation

In the area of funding, the primary concern is with regard to ensuring that resources can be mobilised to secure the sustainability of the ACCD. The CSC, from which the ACCD is proposed to take its pattern, has been successful in obtaining funding. Such funding however, to date has been “largely extra-budgetary” given the fact that financial resources are driven by the contribution of donors. The recommendation has been that emphasis be placed on the contribution of Member States.

As an autonomous organization, once the institution is established, the governing body will need to ensure that the budgetary provisions can be energised to finance the operation. As an autonomous institution, funding will be the responsibility of the mechanism of the ACCD alone.

³¹ Recommendations to Facilitate the Advancements of the AD-Hoc Working group for the Establishment of the Association of Cruise Ship Destinations (ACCD-WG). Seventeenth Ordinary Meeting of the Ministerial Council, Port of Spain, Trinidad and Tobago, February 10, 2012.

³² Special Fund of the Association of Caribbean States

Headquarters

The ACCD as a sub-entity of the ACS can be situated within the organisation. However, the practicality of this option must be considered in terms whether the space and resources are in fact available to accommodate this approach.

As an autonomous organisation, housing becomes more difficult given the fact that the ACS holds an Agreement with Trinidad and Tobago in order to have its headquarters within that territory. As a new institution a similar procedure will need to be adopted. The same will apply to the grant of privileges and immunities.

Structure of the Secretariat of the ACCD

The composition of the Secretariat of the ACCD will be determinant upon the administrative needs of the organisation and be determined by its regulatory body. Article 12, of the draft statute outlines the initial structure of the ACCD to comprise a Director, a Research Assistant and a Secretary. Where this is deemed sufficient to drive the initial objectives of the Association the composition can stand and be adjusted upon the approval of the regulatory body and the administrative procedures that have been implemented to address such issues. In the case of the organisation being founded as a sub-entity of the ACS this structure will also need to take into account the resources that are available within the ACS to accommodate its functions.

As an autonomous institution, the initial resources will need to be identified before activating the organisation to ensure that its functions are operationalised and do not remain paper objectives.

Membership and voting

The ACCD is proposed to include ACS members as well as non-ACS members. As an autonomous body this is feasible and can be accommodated via the provisions of the constituent instrument.

Two scenarios are proposed re voting rights.

- a) A membership whereby each Member State has a vote before the General Assembly in spite of the fact that each Member has several cruise destinations ,which offers an equal and easy system to proceed when the decisions need to be taken.

The Draft Statute, Section 7, Rights and Obligations of Members, supports this scenario. Article 7.2 provides that:

“Only Full and Associate Members may vote or exercise an active or passive voting right. However, in the event where one state or country has more than one Cruise Ship Destination, the country or state has only one vote”.

The alternative system suggests an approach whereby:

- b) each cruise destination of each Member State can have a vote before the General Assembly. This system will grant each destination of the Member States the opportunity to voice their concerns, however it is a more complex approach and will need to be decided in conjunction with the fees to be applied as well as the manner in which membership will be granted.

However, as a sub-entity of the ACS the implication here is that there will be a conflict between the intent of the parent organisation as to membership and that of the sub-organisation, where members of the sub group are not members of the parent.

"When it comes to deciding on membership, the point of departure is that each and every organization will have its own rules on the matter."³³The manner in which entities such as states and private sector organisations, are admitted to the ACCD ought therefore to be specified within its constituent instrument. As a sub-entity of the ACS the manner in which entities are permitted to participate should coincide with the philosophy of the parent organization.

The Convention Establishing the ACS (the Convention) makes provision for Members, Associate Members and Observers. Article IV (1) of the Convention stipulates that "Membership of the Association shall be open to the States of the Caribbean listed in Annex I". This category of member has "the right to participate and to vote at meetings". Provision is then made for the acceptance of Associate Members identified within Annex II of the Convention (Article IV (2)). Such members "have the right to intervene in discussions and vote at meetings" "on matters which affect them directly, falling within their constitutional competence".

The ACS also makes provision for Observers as per Article V of the Convention. Ministerial Council Agreement 4/95 provides the conditions for participation of Observers. Part II, Article 6 D and E provide that such status can be granted to:

"D. Other States, Countries and Territories that apply and are accepted by the Ministerial Council, considering the possibility of their technical, scientific and economic cooperation to the development programs and projects agreed by the Association.

E. Other applying Organizations that are accepted by the Ministerial Council."

Part III, Article 7 of the Agreement addresses the issue of **voting** in the following manner:

"Observers may participate, with right to speak and without the right to vote, in the open meetings of the Ministerial Council when invited by the Ministerial Council".

Article 8 provides that:

"Observers may participate, with **right to speak**, in the open meetings of the Special committees which analyse projects and initiatives to which the Observers provide technical and financial cooperation or in which they have a substantial interest."

³³ Klabbers, Jan, *An Introduction to International Institutional Law*, (2009) 2nd ed. Cambridge University Press: United Kingdom

On the issue of **contributions** Article 9 stipulates that:

“Financial contributions by Observers to the Special Fund, other Funds and Programs which may be set up, shall be used for the benefit of the Member States and Associated Members. Contributions could also take the form of technical assistance.”

The Convention also speaks to the recognition of Social Partners by vesting the Ministerial Council with the power to:

“Determine the Social Partners which it recognizes and accepts and define their roles”.

The grant of membership to organizations within this category is governed by Agreements 5/95 and 12/97.

On the issue of private sector entities practice has been to facilitate a category of “partial” or “affiliate” members.³⁴ The World Tourism Organization, for instance includes “commercial bodies” (public or private) into the category of affiliate members³⁵. A similar category is provided for within the European Forest Institute (EFI). The EFI by virtue of the Convention on the European Forest Institute³⁶ makes provision for Members, Associate and Affiliate, with the latter being granted to non-European institutions. Within this structure the organization is funded via the membership fees of Associate and Affiliate Members and the voluntary contributions of Full Members. Affiliate Members do not participate in the decision making process.

The category of partial membership has also been applied to admit non-Members to full membership of certain organs without being a member of the parent organization³⁷. This is particularly so where “[f]or political reasons not all States can be Members of the organization”³⁸.

The draft Statute of the ACCD contemplates the manner in which membership will be granted within Article 6. Prospective members that are neither Full nor Associate and not covered by the Observer status, are covered in Article 6.4 as follows:

“Other Organizations that represent the Cruise Industry or can make a significant contribution to the work of the Association may become Observer Members if their candidature is approved by the General Assembly by a majority of two-thirds of the Full Membership, which must represent two thirds of the Full Membership.”

³⁴ Supra.

³⁵ Article 7(4) Statutes of the World Tourism Organization, Adopted by the Extraordinary General Assembly of IUOTO held at Mexico City, 17-28 September 1970 and entered into force 2nd January 1975. Article 25 of the Statute prescribes that the organization will be financed by its Full, Associate and Affiliate Members. In accordance with an agreed scale of assessment

³⁶ Done at Joensuu, Finland, 28 August 2003.

³⁷ For example within the United Nations.

³⁸ Schermers, H.G. and Blokker, Niels, *International Institutional Law*, (2003) 4th edn, Leiden.

This is a formula than can be applied to the ACCD as a sub-entity of the ACS. Consideration can also be given to adding the categories of partial or affiliate membership to encapsulate specific types of entities such as corporate bodies. In this regard, such membership can be granted in the same manner as prescribed for Observer membership with the distinction being the type of entity being considered.

On the issue of contributions to be paid such can be calculated utilizing the ACS formula. As discussed above³⁹ in relation to the CSC experience, membership fees are a critical consideration for sustainability. Thus one option would be to include a fee structure in which all categories of member contribute in this manner.

A further consideration therefore would be as to the rights that would be afforded to members. The governing bodies of organizations usually comprise Full and Associate Members as provided for in the ACCD draft Statute (Article 7). This can be maintained.

Consequently membership within the ACCD as a sub-entity of the ACS can be maintained in alignment with the Draft Statute so that there are three categories of member or the categories can be expanded to distinguish commercial entities and other prospective members. The voting rights can be maintained within the ambit of the Full and Associate Members.

As it pertains to membership fees, the structure can encompass all categories of member or function in like manner to the CSC whereby funding is based on voluntary contributions.

³⁹ Supra page 5.

ANNEX A

EXTRACT FROM THE OPERATING STATUTE AND RULES OF PROCEDURE OF THE CARIBBEAN SEA COMMISSION

Rule 15 Membership

1. Consistent with the Ministerial Council Agreement No. 6/06, the Commission shall comprise:
 - (i) National Delegations of Members and Associate Members
 - (ii) The Secretary-General of the Association
 - (iii) The Economic Commission for Latin America and the Caribbean
 - (iv) Three (3) experts, including representatives of the Technical Advisory Group (TAG), appointed by the Secretary-General, after consultation with Members and Associate Members as well as relevant stakeholders. These persons and institutions shall have internationally or regionally recognized competence in the areas within the Commission's remit and shall serve for two years. They may be re-appointed for a second term.
2. The Secretariat shall serve as Rapporteur for the Commission and shall co-ordinate its activities, in collaboration with the UN ECLAC or any other designated entity.
3. The Commission shall be presided over by a Chair who shall be assisted by two Vice- Chairs. The Chair and Vice-Chair shall be elected from among national delegations for a period of two (2) years and shall be eligible for re-election once.

Rule 16 Confidentiality

Subject to their responsibilities to the Commission, members of the Commission shall not disclose, even after the termination of their functions, any industrial secret, proprietary data or confidential matters of the Members or Associate Members , which may have been brought to the attention of the Commission, or any other confidential information coming to their knowledge by reason of their membership on the Commission.

Rule 17 Consultations

In the exercise of its functions, the Commission may, when appropriate, consult any competent organ of the Members or Associate Members of the Association; any competent organ of the United Nations or of its specialized agencies; any regional or international organizations, or any regional or international non-governmental organizations with competence in the subject-matter falling within the mandate of the Commission. Consultations with non-governmental organizations shall be subject to consensus from interested Member States or Associate Members

III. OFFICERS

Rule 18 **Election and term of Chair**

1. The Commission shall elect a Chair and two Vice-Chairs from among national delegations in its membership.
2. The Chair and the Vice-Chair shall be elected for a term of two years and shall be eligible for re-election once.

Rule 19 **Acting Chair**

In the absence of the Chair, one of the Vice-Chairs shall take the place of the Chair. If the Chair ceases to hold office pursuant to rule 21, one of the Vice-Chairs shall take the Chair place until the election of a new Chair.

Rule 20 **Replacement of the Chair**

If the Chair ceases to be able to carry the functions or ceases to be a member of the Commission, a new Chair shall be elected for the remainder of the term.

STRUCTURE OF THE CARIBBEAN SEA COMMISSION (CSC)

