

ABSTRACT

The basic theme of this study is that in relation to government international commercial contracts, to which Caribbean governments are parties, the existing jurisdiction and proper law regimes are riddled with uncertainties. Further, that the actual contracting practices, reflected by the relevant terms in these contracts add to the difficulty. These are catalysts for disputes which may be protracted. The result is often the expenditure of scarce financial, time and personnel resources. These are dysfunctions to the very development which the governments usually seek by way of these agreements.

Chapter 1 introduces this study. It affords some background and basic insights into the importance of the study.

In Chapter 2, consideration is given to some problems which exist, even where express choice of jurisdiction and proper law are provided in these contracts.

The fact is that although an express stipulation can alleviate uncertainty and assist predictability, it is not a panacea for all difficulties. There are other policy and drafting considerations which may create difficulties. In part, the theoretical problems are assessed against actual provisions.

This approach is also utilized in Chapter 3, where problems which may arise in the absence of express stipulation are analysed.

It is sometimes thought that an easy solution to these problems is the adoption of a host country approach. This seeks to give jurisdiction in all disputes which arise from these contracts to the courts of the contracting States, whose law shall be the proper law in all circumstances. Chapter 4 therefore looks at a Latin American host country approach. The insights should be instructive to the Commonwealth Caribbean which, like Latin American countries, are developing countries.

Chapter 5 affords consideration to constitutional problems in the context of this study. This is important in the light of the fundamental nature of Caribbean constitutional law.

Chapter 6 considers possible approaches which many be adopted in an attempt to find a solution to these problems. It is proposed, *INTER ALIA*, that Commonwealth Caribbean courts should utilize

(i) adhesion contract principles, and/or

(ii) state interest analysis principles,

to buttress the common law regime in this area.