



2023 PARIS

Newsletter

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Interview with Dr Chantal Ononaiwu

*Trade Policy and Legal Specialist,
CARICOM Secretariat
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1) You are the Trade Policy & Legal Specialist at the Caribbean Community (CARICOM) Secretariat. Please describe the key features of your function.

A common external trade policy is a core element of economic integration in CARICOM, a regional organization established almost five decades ago.

As a member of the team in the CARICOM Secretariat which coordinates the Community's pursuit of its external trade policy, I support CARICOM's formulation of positions for bilateral and multilateral trade negotiations and have served as a negotiator for the Community in its external trade negotiations. I also provide expert policy and legal advice to CARICOM and its Member States on international trade and investment issues, including the interpretation of and consistency of States' measures with CARICOM's preferential trade agreements and the law of the World Trade Organization (WTO).

In addition, I have represented the Community in disputes concerning the interpretation and application of the Revised Treaty of Chaguaramas, the constituent treaty of CARICOM, before the Caribbean Court of Justice.

2) What important shift(s) have you observed in the landscape of international trade and investment law in the time you have practised in that field?

A significant shift that I have observed is the more concerted pursuit of international trade and investment agreements that are oriented towards sustainable development. In the WTO, Members recently concluded an agreement that prohibits subsidies to illegal, unreported and unregulated fishing, the fishing of overfished stocks and unregulated fishing on the high seas.



They also committed to continue negotiations towards a comprehensive agreement addressing subsidies that contribute to overcapacity and overfishing (which represent the lion's share of global fisheries subsidies). The fisheries subsidies agreement demonstrates that the WTO can set trade rules which further sustainable development goals. Under the rubric of structured discussions on trade and environmental sustainability, many WTO Members are exploring how trade and trade policy can support the achievement of environmental and climate goals. The move towards sustainable development-friendly trade agreements has also been evident in regional trade agreements, whether through the identification of sustainable development as the object or purpose of the agreements, the preservation of policy space to pursue important public policy objectives or mechanisms for cooperation between the parties in areas that contribute to development. Take, for example, the CARIFORUM-EU Economic Partnership Agreement, which was deliberately crafted as a trade partnership for sustainable development, or the Agreement establishing the African Continental Free Trade Area which aims to promote sustainable and inclusive socio-economic development, gender equality and structural transformation of the parties.

There has also been a noticeable shift towards international investment agreements that are sustainable development-oriented. The newer generation of investment treaties and model treaties seek to attain a greater balance between protection of the public interest and investment protection. Such reform of international investment law is also noticeable in multilateral processes. For instance, the United Nations Working Group on the issue of human rights and transnational corporations and other business enterprises recommended last year that States ensure the compatibility of investment agreements with their human rights obligations. These trends towards crafting international trade and investment agreements that support sustainable development should be deepened and accelerated in the future. They reflect the realization that trade and investment are not ends in themselves but should further the development of present and future generations.

3) The 150th anniversary of the ILA is an occasion to think about international law for the future. In your opinion, what is an urgent reform that the international society needs?

While the developments identified above are positive, we are also witnessing deficits in multilateralism and concerted global action. There is an urgent need for strengthened and more effective multilateral cooperation to tackle global challenges such as the climate crisis, environmental degradation and poverty.

WHITE PAPER – MIGRATION

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3 questions to Thibaut Fleury Graff



1) | The issue of international migrations is regularly in the news, and their constant increase over the last decade is often highlighted. What is the reality of this phenomenon?

There is no doubt that international migrations, a generic term that encompasses any phenomenon involving the movement of a person from their country of origin to another country in order to settle there for a certain period of time, whatever the reason for this movement, has been on the increase since the Second World War. It is estimated that there are now more than 280 million international migrants, up from around 85 million in the 1970s. It is also true that between 2010 and 2020, the increase was more significant, and that the Covid-19 pandemic ultimately affected this

phenomenon only marginally. It is expected that the increase will continue in the years to come.

On the other hand, the public debate around the issue of migration tends to obscure the fact that the increase in the number of international migrants is concomitant with the increase in the world population. The share of international migrants in this population remains very low - around 3.5% today, compared to around 2.5% in the 1970s. Moreover, international migrants are too often equated with "refugees", a term that refers to a specific legal category reserved for those fleeing persecution on certain grounds. In the majority of cases, however, migration is for other reasons, such as work and family.

2) You speak of a "legal category". What exactly is the role of international law in migration?

International law remains fragmented and piecemeal on this issue. While the definition and status of refugees have been set out since [in the Geneva Convention](#) of 1951, as amended by the [New York Protocol](#) of 1967, and while some conventions adopted within the framework of the International Labour Organisation confer a specific status upon migrant workers, there is no legally binding universal instrument establishing a specific regime for international migrants in general. This regime is therefore made up of scattered texts: international conventions on human rights, regional conventions on free movement, bilateral agreements on migration controls, etc. All of these forms what can be called "international migration law", which was recently enriched in 2018 by the first two universal - but non-binding - instruments in this field: the [Pact for Safe, Orderly and Regular Migration](#) and the [Global Compact for Refugees](#).

The first part of [our White paper](#) is precisely intended to present, in a synthetic manner, all these sources as well as the main principles that emerge from them - first and foremost, in addition to the right to be received in the country of one's choice, the right for a foreigner not to be turned back to a territory where he or she would risk his or her life or freedom.

3) In light of the research and interviews you conducted for this White Paper, what challenges will international migration law face in the coming years?

There are many challenges. The persons interviewed, whether they are lawyers or not, specialists of migration or simply interested in this issue, often point out the weaknesses of international law in this area. Even if they note a number of recent positive developments - such as the adoption of the two Pacts in 2018, or the temporary protection in Europe for Ukrainians fleeing Russian aggression... - they regret that the purpose of State cooperation is too often to control rather than to support migration. They are surprised by the absence of specialised international jurisdictions. They deplore a vague regulation and public opinion that is often suspicious of migrants, which breeds a ground for hateful and populist discourse. The weak international legal understanding of environmental migration is also often noted.

These are all challenges that need to be addressed in the coming years in order to achieve a legal framework for international migration, which is indispensable for preserving world peace. We are happy to participate in the exchanges that will take place in 2023 on the occasion of the ILA's 150th anniversary, not only during the webinar that will discuss the White Paper on Migration on 19 October 2023, but also in June 2023, for example, through the panel on cooperation.

News: News from the Intergovernmental Conference on Marine Biodiversity By Gabriele Wanli, Former Director of the Division for Ocean Affairs and the Law of the Sea, Office of Legal Affairs, United Nations

The Intergovernmental Conference on an international legally binding instrument under the United Nations Convention on the Law of the Sea on the conservation and sustainable use of marine biological diversity of areas beyond national jurisdiction, held its fifth session from 15 to 26 August 2022 at UN Headquarters. Despite substantial progress, the Conference could not conclude its work and adopt a new agreement and the UN General Assembly will be requested to authorize the convening of a resumed fifth session.

Preceded by a Preparatory Committee (2016-2017) and an Ad hoc Open-ended Informal Working Group established in 2004, the Conference has since 2018 focused its work on the conservation and sustainable use of marine biological diversity of areas beyond national jurisdiction, in particular, together and as a whole, marine genetic resources (MGRs), including questions on the sharing of benefits, measures such as area-based management tools (ABMTs), including marine protected areas (MPAs), environmental impact assessments (EIAs) and capacity-building and the transfer of marine technology (CBTMT). The negotiations have been complex due, for example, to divergent views on the legal status of MGRs, and due to the requirement to not undermine existing relevant legal instruments and frameworks and relevant global, regional and sectoral bodies (IFBs), an issue of particular relevance for ABMTs, including MPAs, and EIAs.

Going forward the Conference will need to continue consideration of some of the general principles and approaches, monetary benefit-sharing arising from activities with respect to MGRs, intellectual property rights, decision-making with respect to ABMTs, including MPAs, the scope of the obligation to conduct an EIA, the relationship between the agreement and EIA processes under IFBs, the role of the Conference of the Parties in relation to EIAs, the nature of the obligation relating to CBTMT, sources of funding, and procedures for the settlement of disputes, amongst other issues.

Publication of 8 white papers

The ADI/ILA 2023 team has the pleasure to inform you that the following White Papers are now published on our website :

[Anthropocene](#)

[Digital Challenges](#)

[Food/Agriculture](#)

[Global Governance and multilateralism](#)

[Intellectual Property](#)

[Investment](#)

[Migration](#)

[Taxation](#)

<https://www.ilaparis2023.org/>

The Newsletter ADI/ILA 2023 n°10 will be released in October 2022.