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Freedom of Movement in the Caribbean Community

Keywords

Freedom of Movement, Aliens, Citizenship

FREEDOM OF MOVEMENT IN THE CARIBBEAN COMMUNITY

DANIEL C. TURACK*

A. *Movement of Persons Among the English-speaking Caribbean Countries Before 1970*

International law provides that all states, as an incident of sovereignty, have the right to restrict the entry of aliens into their territory. Basically, all countries recognize the need to control the entry of foreigners and, in the case of British Caribbean territories, such control has operated vis-à-vis citizens of other British Caribbean countries for a long time.¹ Although many "British subjects"² at one time had preferential admission to the territory of some Commonwealth countries, the practice has been severely curtailed along with the use of this term of status.³ It is also true to say that the United Kingdom's open door policy on freedom of movement from all parts of the Commonwealth which existed before passage of the Commonwealth Immigrants Act, 1962⁴ did not find a coun-

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1. See, e.g., P.R. & R. 304, 412 of 1967; 90, 91, 130 of 1968 (Jamaica); STAT. R. & O. 1967 No. 49 (Grenada) (cancelling a prohibited classes order); Guyana Citizenship Act 1967, No. 14; Guyana Notice 245A of 1967; L.N. 148 of 1967 (Barbados), as cited in [1968] ANNUAL SURVEY OF COMMONWEALTH LAW 141 n.17 (H. Wade & H. Cryer eds. 1969). With respect to the immigration control of Barbados over U.K. citizens, see the discussion of *Roger Seymour v. Chief Immigration Officer* in Leacock, *Prohibited Immigrants and Illegal Entrants under Barbados and United Kingdom Immigration Laws*, 23 INT'L & COMP. L.Q. 160 (1974).

2. With respect to the meaning of the term "British subject" and who it encompasses, see J. FAWCETT, *THE BRITISH COMMONWEALTH IN INTERNATIONAL LAW* 182-86 (1963) and Clute, *Nationality and Citizenship*, in *THE INTERNATIONAL LAW STANDARD AND COMMONWEALTH DEVELOPMENTS* 100 (R. Wilson ed. 1966).

3. Indeed, the British Nationality Act, 1948 speaks of the term "British subject" but does not define it. One recent commentator has aptly said:

[F]rom the point of United Kingdom law, no satisfactory definition is possible without taking account of the combined effect of all Commonwealth legislation in the matter. The terms 'British subject' and 'Commonwealth citizen' are also declared to have the same meaning, but again their meaning is only comprehensible in the light of internal law provisions governing citizenship of the United Kingdom and Colonies and of independent Commonwealth countries respectively.

G. GOODWIN-GILL, *INTERNATIONAL LAW AND THE MOVEMENT OF PERSONS BETWEEN STATES* 12-13 (1978).

4. 10 & 11 Eliz. 2, ch. 21 (1962). Prior to the British Parliament's passage of this legislation, citizens of the United Kingdom, Crown colonies and all other British subjects had a common law right to enter the United Kingdom and remain there indefinitely. These na-

terpart in the Caribbean. The common law right of entry into the United Kingdom⁶ and Colonies prior to 1962 had been displaced much earlier in the Caribbean territories by legislation involving immigration, the deportation of British subjects and the expulsion of undesirable persons.⁶ Any doubt as to whether a citizen of the United Kingdom and Colonies had the right to enter and reside in one of the British dependent territories was resolved in *Thornton v. The Police*,⁷ an appeal from Fiji in 1962 to the Judicial Committee of the Privy Council. The issue in the case was whether an English journalist was deportable from Fiji under the Fiji Immigration Ordinance in contravention of the British Nationality Act, 1948. In upholding the colonial legislation and finding it not to be in contravention of the British Act, the Judicial Committee acknowledged with approval the words of Justice Hammett from the colonial court:

It is submitted that all citizens of the United Kingdom and colonies have, by virtue of the British Nationality Act, 1948, the free and unfettered right to enter and reside in any place in the United Kingdom and colonies. I have examined the British Nationality Act, 1948, with some care and I can find no provisions in it to this effect. This statute merely governs the status of persons and does not lay down what rights of movement or residence are granted by or attach to that status. . . . I know of no provision in the British Nationality Act, 1948, which precludes either the United Kingdom or any of the colonies from enacting such legislation they chose [sic] to regulate and control the entry into their territory or residence therein of persons whatever their status may be. . . .⁸

Moreover, a passport legally issued to a citizen of the United Kingdom and Colonies in one Commonwealth territory does not provide any right of entry or sojourn in the territory of another Commonwealth country. The case of *Regina v. Secretary of State for Home Department, Ex parte Bhurosah*⁹ is illustrative of this point. At issue was whether citizens of the United Kingdom and Colonies from Mauritius, possessing legally issued British passports, could enter the United Kingdom. Despite the watermarks in the passports showing "United Kingdom of Great Britain and Northern Ireland" and the cautionary note, "This passport remains the property of Her Majesty's Government in the United Kingdom and may

tionality classifications and distinctions are discussed in J. EVANS, IMMIGRATION LAW 21-38 (1976). See also *Director of Public Prosecutions v. Bhagwan*, [1972] A.C. 60.

5. This right has been traced back to at least early Norman times in Turack, *Freedom of Movement: The Right of a United Kingdom Citizen to Leave His Country*, 31 OHIO ST. L.J. 247 (1970).

6. See Patchett, *English Law in the West Indies: A Conference Report*, 12 INT'L & COMP. L.Q. 922, 954 (1963); British Institute of International and Comparative Law, *Law in the West Indies: Some Recent Trends* 41 (Special Publ. No. 12, London 1966). With respect to deportation, see the unreported case of *Anthony v. Roberts*, Antigua Civil Suit No. 71 (1973), discussed in F. PHILLIPS, *FREEDOM IN THE CARIBBEAN* 148 (1977).

7. [1962] A.C. 339.

8. *Id.* at 342.

9. [1968] 1 Q.B. 266.

be withdrawn at any time," the British Court of Appeal held that the bearers did not hold the requisite U.K. passports issued by the Government of the United Kingdom for admission to the United Kingdom.¹⁰

Beginning in 1949 and continuing through the succeeding years, a more liberal policy on the mobility of persons in the Caribbean was discussed within a proposed federal system involving the British West Indies colonies. Although the envisaged federal system eventually came to fruition in the form of the West Indies Federation, by the time of its demise on May 31, 1962, no discernible changes had occurred from the previous restrictive nature of territorial legislation.¹¹

A number of the smaller British Caribbean colonies¹² became Associated States with the United Kingdom under the West Indies Act 1967¹³ whereby they ceased to be colonies, and the United Kingdom's Parliament and Her Majesty in Council could legislate for them in such matters as external affairs, nationality and citizenship.¹⁴ Although the inhabitants of the six Associated States were entitled to be recognized as citizens of the United Kingdom, Associated States and Colonies,¹⁵ no provision was made for greater freedom of mobility for these citizens into territories of other Associated States or the United Kingdom.¹⁶ However, the territorial

10. Subsequent limits on the right of entry into the United Kingdom of its nationals are discussed in Hepple, *Commonwealth Immigrants Act, 1968*, 31 MOD. L. REV. 424 (1968). See also G. GOODWIN-GILL, *supra* note 3, at 101-22; Williams, *British Passports and the Right to Travel*, 23 INT'L & COMP. L.Q. 642 (1974).

11. For a brief discussion of the attempts to reduce restrictions on mobility, see Patchett, *supra* note 6, at 958. The reasons for the failure of the West Indies Federation are examined in Springer, *Federation in the Caribbean: An Attempt That Failed*, in *THE AFTERMATH OF SOVEREIGNTY* 189 (D. Lowenthal & L. Comitas eds. 1973) and Wooding, *The Failure of the West Indies Federation*, 5 MELB. U.L. REV. 257 (1966).

12. Those are Grenada, St. Lucia, St. Vincent, Dominica, Antigua and St. Kitts-Nevis-Anguilla.

13. The West Indies Act 1967, ch. 4, reprinted in 4 HALSBURY'S STATUTES OF ENGLAND 610 (3d ed. 1968) [hereinafter cited as 4 HALSBURY'S STATUTES]. A brief account of the arrangements are outlined in [1966] ANNUAL SURVEY OF COMMONWEALTH LAW 8-9 (H. Wade, B. Lillywhite & H. Cryer eds. 1967) and [1967] ANNUAL SURVEY OF COMMONWEALTH LAW 9-11, 709-11 (H. Wade & H. Cryer eds. 1968). A constitutional analysis, excellent background and the ramifications of the formation of the Associated States are found in Gilmore, *Legal Perspectives on Associated Statehood in the Eastern Caribbean*, 19 VA. J. INT'L L. 489 (1979). See also Broderick, *Associated Statehood—A New Form of Decolonisation*, 17 INT'L & COMP. L.Q. 368 (1968).

14. 4 HALSBURY'S STATUTES § 2, at 612. Furthermore, section 5(3) envisaged possible separate citizenship for each state in its constitution, if and when the statehood in association with the United Kingdom was terminated. On February 7, 1974, Grenada was the first of the six Associated States to become independent by the Grenada Termination of Association Order, 1973 (STAT. INST. 1973 No. 2157). The Grenada Citizenship Act, 1974, No. 37 of 1974, followed and has since been replaced by the Grenada Citizenship Act, 1976, No. 12 of 1976.

15. 4 HALSBURY'S STATUTES section 12(2), at 619, states: "A citizen of the United Kingdom and Colonies may, if on the grounds of his connection with an associated state he so desires, be known as a citizen of the United Kingdom, Associated States and Colonies."

16. See note 10 *supra*.

governments of the Associated States, with concurrence of the United Kingdom, were entrusted to "negotiate and conclude either bilateral or multilateral agreements with other countries relating to emigration and emigrant labour schemes."¹⁷

In consonance with the desire to expand Caribbean regional economic integration and functional cooperation, eleven Caribbean states, Associated States and British colonies formed the Caribbean Free Trade Association (CARIFTA) in 1968.¹⁸ The CARIFTA Treaty envisages freedom of establishment in article 20. The right to establishment refers to the right of an individual to enter another territory and pursue some economic enterprise¹⁹ there. Establishment is complementary to freedom of mobility of those going from one CARIFTA member's territory to another²⁰ and is unique in that its ambit of access is defined in terms of "persons belonging to another Member Territory."²¹

17. See Report of the Antigua Constitutional Conference, CMND. No. 2963, Annex D, at 2(g)(1966); Report of the Windward Islands Constitutional Conference, CMND. No. 3021, Annex D, at 2(g)(1966); Report of the St. Kitts-Nevis-Anguilla Constitutional Conference, CMND. No. 3031, Annex D, at 2(g)(1966), cited in Gilmore, *supra* note 13, at 536 n.336. See also H. GEISER, P. ALLEYNE & C. GAJRAJ, *LEGAL PROBLEMS OF CARIBBEAN INTEGRATION* 22-26 (1976) [hereinafter cited as H. GEISER]; Broderick, *supra* note 13, at 375.

18. Agreement Establishing the Caribbean Free Trade Association (CARIFTA), reprinted in 7 I.L.M. 935 (1968) [hereinafter cited as CARIFTA Treaty]. The founding members—Antigua, Barbados, Guyana, Trinidad and Tobago—signed the Agreement in Antigua on April 30, 1968, and it entered into force the next day. Dominica, Grenada, St. Kitts-Nevis-Anguilla, St. Lucia and St. Vincent joined on July 1, 1968. Belize became a member in May 1971. For a brief discussion of the legal relations between CARIFTA and the Caribbean Community (CARICOM), see H. GEISER, *supra* note 17, at 52-55.

19. "Economic enterprises" are defined in article 20(6)(b) of the CARIFTA Treaty as "any type of economic enterprises for production of or commerce in goods which are of Area origin, whether conducted by individuals or through agencies, branches or companies or other legal persons." CARIFTA Treaty, *supra* note 18, at 951.

20. Article 20 reads in relevant part:

[1] Each Member Territory recognises that restrictions on the establishment and operation of economic enterprises therein by persons belonging to other Member Territories should not be applied, through accord to such persons of treatment which is less favourable than that accorded in such matters to persons belonging to that Member Territory, in such a way as to frustrate the benefits expected from such removal or absence of duties and quantitative restrictions as is required by this Agreement.

(2) Member Territories shall not apply new restrictions in such a way that they conflict with the principle set out in paragraph 1 of this Article.

.....
 (5) Nothing in this Article shall prevent the adoption and enforcement by a Member Territory of measures for the control of entry, residence, activity and departure of persons where such measures are justified by reasons of public order, public health or morality, or national security of that Member Territory.

CARIFTA Treaty, *supra* note 18, at 950.

21. Article 20(6) regards a person as belonging to a member territory if such person:

(i) is a citizen of that Territory;

(ii) has a connection with that Territory of a kind which entitles him to be regarded as belonging to, or, if it be so expressed, as being a native of, the

At about the same time CARIFTA was formed, seven British colonies or former British dependencies that were eastern Caribbean islands established a common market which came into effect on July 15, 1968.²² One of the main features of the Eastern Caribbean Common Market Agreement was a "phased removal of obstacles to the freedom of movement of persons within the Common Market."²³

B. *The Emergence of CARICOM*

With the aim of encouraging greater understanding among the peoples of the Caribbean and in recognition of their common heritage and culture, participants at the Seventh Conference of Heads of Government of Commonwealth Countries, meeting in 1972 at Chaguaramas, Trinidad, determined that they would explore the possible relaxation of travel barriers between their countries. A resolution was adopted authorizing a committee of the ministers responsible for immigration in the region to study the feasibility of greater freedom of movement and to submit recommendations to the member governments.²⁴

The next major development occurred on July 4, 1973, with the signing at Chaguaramas of the Treaty Establishing the Caribbean Community (CARICOM).²⁵ Basically, the Treaty comprises two distinct parts: The first part covers aspects of functional cooperation and foreign policy coordination to attain efficient operation of certain common services and to promote greater understanding among the Caribbean Commonwealth peoples; the second part is a Common Market Annex outlining aspects of economic integration in the Commonwealth Caribbean.²⁶ Article 18 of the

Territory for the purposes of such laws thereof relating to immigration as are for the time being in force; or

(iii) is a company or other legal person constituted in the Member Territory in conformity with the law thereof and which that Territory regards as belonging to it, provided that such company or other legal person has been formed for gainful purposes and has its registered office and central administration, and carries on substantial activity, within the Area.

CARIFTA Treaty, *supra* note 18, at 951.

22. The East Caribbean Common Market Agreement was signed on June 11, 1968 by Antigua, Dominica, Grenada, St. Kitts-Nevis-Anguilla, St. Lucia and St. Vincent. Montserrat was a later signatory.

23. Quoted in Simmonds, *International Economic Organisations in Central and Latin America and the Caribbean: Regionalism and Sub-Regionalism in the Integration Process*, 19 INT'L & COMP. L.Q. 376, 390 n.56 (1970). Although CARIFTA ceased to exist on May 1, 1974, the Eastern Caribbean Common Market continued to function after CARICOM became operative. See H. GEISER, *supra* note 17, at 190. The Treaty entered into force on August 1, 1973.

24. See Caribbean Community Secretariat, *The Caribbean Community: A Guide* 58 (1973).

25. Treaty Establishing the Caribbean Community, July 4, 1973, ___U.N.T.S.___, Doc. No. 13489, reprinted in 12 I.L.M. 1033 (1973) [hereinafter cited as CARICOM Treaty]; also reprinted in H. GEISER, *supra* note 17, at 190. The Treaty entered into force on August 1, 1973.

26. For an analysis of the Treaty and projections on its likely success, see H. GEISER,

Treaty calls for member states to cooperate in certain specified areas listed in the Schedule to the Treaty which include "[t]ravel within the region."²⁷ However, the Caribbean Common Market Annex to the Treaty states quite categorically that a member state is under no obligation to permit unrestricted entry of nationals or residents of other member states into its territory.²⁸ At the same time, though, in addition to further language virtually identical to article 20 of the CARIFTA Treaty,²⁹ article 36 provides that member states are to extend "preferential treatment" to persons belonging to other member states over persons belonging to states outside the Common Market, where the "provision of services" is concerned.³⁰ This approach of a qualified freedom of movement stems from the fact that all the nations of CARICOM are relatively underdeveloped and overpopulated, with unemployment problems and diminished opportunities for emigration.³¹

Perhaps the most cogent reason for the exclusion of open immigration in the Annex is the magnetic attraction of workers from the less developed countries seeking better employment opportunities into the more developed countries³² which are not themselves free of unemployment

note 17 *supra*; O'Connell, *The Caribbean Community: Economic Integration in the Commonwealth Caribbean*, 11 J. INT'L L. & ECON. 35 (1976). The changeover from CARIFTA to CARICOM is also briefly outlined in Simmonds, *The Caribbean Economic Community: A New Venture in Regional Integration*, 23 INT'L & COMP. L.Q. 453 (1974).

27. See CARICOM Treaty, *supra* note 25, at 1078.

28. Article 38 of the Annex provides: "Nothing in this Treaty shall be construed as requiring, or imposing any obligation on, a Member State to grant freedom of movement to persons into its territory whether or not such persons are nationals of other Member States of the Common Market." CARICOM Treaty, *supra* note 25, at 1063.

The policy set forth in this article contrasts sharply with European Common Market policy which encourages immigration to the other member states. On the free movement of labor, establishment and the right to provide services in the European Economic Community, see D. TURACK, *THE PASSPORT IN INTERNATIONAL LAW* 103-13 (1972). See generally T. HARTLEY, *EEC IMMIGRATION LAW* (1978).

29. See notes 19-21 *supra*.

30. Article 36(2) notes that "services" shall be considered to mean: "services for remuneration provided that they are not governed by provisions relating to trade, the right of establishment or movement of capital and includes, in particular, activities of an industrial or commercial character, artisan activities and activities of the professions, excluding activities of employed persons." CARICOM Treaty, *supra* note 25, at 1063.

31. See *Economic and Political Future of the Caribbean: Hearings Before the Subcomm. on Inter-American Affairs of the House Comm. on Foreign Affairs*, 96th Cong., 1st Sess. 10 (1979) (statement of John A. Bushnell, Deputy Assistant Secretary of State, Bureau of Inter-American Affairs). See also *Special Central American Economic Assistance: Hearing and Markup Before the House Comm. on Foreign Affairs*, 96th Cong., 1st Sess. on H.R. 5954, H.R. Con. Res. 219 & 221, at 40 (1980).

32. Commentators considering CARICOM tend to divide its membership into either the more developed countries (Barbados, Guyana, Jamaica, Trinidad and Tobago) or the less developed countries (Antigua, Belize, Dominica, Grenada, Montserrat, St. Lucia, St. Vincent and St. Kitts-Nevis-Anguilla). See, e.g., Axline, *Integration and Development in the Commonwealth Caribbean: The Politics of Regional Negotiations*, 32 INT'L ORGANIZATION 953 (1978).

difficulties.³³ On the other hand, there is nothing prohibitive in the Treaty or Annex against two or more member countries concluding an arrangement for the free flow of labor specifically or for any other purpose. An arrangement of this nature has in fact emerged and will be discussed below.

C. *Constitutional and Legislative Provisions*

Both constitutional and legislative provisions pertaining to freedom of movement do not vary greatly among the member countries of CARICOM. In the Constitution of Guyana, for example, the protection of fundamental rights and freedoms includes freedom of movement in explicit terms.³⁴ However, constitutional preservation of the right of freedom of movement is defined narrowly. In 1968, the Court of Appeals of West Indies Associated States in *Margetson v. Attorney General*³⁵ decided that Antiguan constitutional provisions,³⁶ comparable to those of Guyana, did not confer a right on a Commonwealth citizen from the neighboring island of Montserrat to land and take up residence in Antigua.

Legislation controlling movement of persons in the English-speaking Caribbean countries is usually found in statutes covering immigration, deportation and the expulsion of undesirable persons. The executive exercises wide powers and it appears that the individual who does not belong to the particular territory has few safeguards. The Guyanese practice, which began before 1970 and is currently operative, illustrates the application of these laws. Under the Immigration Act,³⁷ all persons not belong-

33. The indigenous work force of each CARICOM member is regarded as a national asset needed to develop the particular member's resources; hence the absence of a common labor market as is found in the European Economic Community. Were it otherwise, a significant migration of labor from the less developed members to those more developed would likely occur. O'Connell, *supra* note 26, at 52-53.

34. Article 14(1) states: "No person shall be deprived of his freedom of movement, that is to say, the right to move freely throughout Guyana, . . . the right to enter Guyana, the right to leave Guyana and immunity from expulsion from Guyana." Guyana Independence Order 1966 (STAT. INST. 1966 No. 575), reprinted in 5 CONSTITUTIONS OF THE COUNTRIES OF THE WORLD (A. Blaustein & G. Flanz eds. 1975) [hereinafter cited as 5 CONSTITUTIONS]. Exceptions to the prohibition of section 1 are permitted by subsequent sections provided they are made under the authority of law.

While Guyana became an independent state in 1966, the Constitution of the territories of St. Christopher, Nevis and Anguilla (which are not yet independent) illustrates constitutional protection of freedom of movement similar to that of Guyana. See St. Christopher, Nevis and Anguilla Constitution Order 1967 (STAT. INST. 1967 No. 228), reprinted in 3 CONSTITUTIONS OF DEPENDENCIES AND SPECIAL SOVEREIGNTIES (A. Blaustein & E. Blaustein eds. 1975) [hereinafter cited as 3 CONSTITUTIONS]. In December 1980, Anguilla separated from the Associated State now known as St. Kitts-Nevis to become a British dependency with a British governor.

35. [1968] 12 West Indian Reports (W.I.R.) 469.

36. See Antigua Constitution Order 1967 (STAT. INST. 1967 No. 225), reprinted in 3 CONSTITUTIONS, note 34 *supra*.

37. LAWS OF GUYANA, Immigration Act (1973), ch. 14:02 [hereinafter cited as Immigration Act].

ing to Guyana are subject to immigration control. A person is deemed to belong to Guyana if he is a citizen of Guyana or a dependent of any such citizen.³⁸ Guyanese citizenship is outlined in considerable detail in the Constitution of Guyana.³⁹ Certain categories of persons are considered prohibited immigrants and may be denied entry into Guyana unless executive dispensation is authorized. Such persons include, for example, the "mentally deficient," epileptics, sufferers of communicable diseases such as leprosy, prostitutes, convicts, or virtually anyone specified as "undesirable" in an order of the Minister.⁴⁰

According to the Immigration Act, any person who enters Guyana at any time from a place outside Guyana is an immigrant⁴¹ and must possess a valid national passport, certificate of identity, travel permit or other document establishing the identity and national status of the bearer. The executive may require a Guyana consular visa and may impose conditions, restrictions, limitations or exceptions regarding entry into Guyana.⁴² Furthermore, the executive may also impose restrictions on the right to leave Guyana on any person or class of persons if it is necessary to do so in the interests of defense, public safety, public order, public morality, public health or for the purpose of preventing the subversion of democratic institutions in Guyana.⁴³

A person can also request entry into Guyana for temporary purposes, for a period not exceeding three months, and may be admitted into the country if (1) he is a passenger in transit; (2) a visitor; or (3) there for medical treatment, employment, trade or business or other purpose of a temporary nature.⁴⁴ The President of Guyana also has the absolute discretion to prohibit the entry of any alien into the country.⁴⁵ Special exemption from the passport requirement exists for citizens of Canada and the United States who possess a return travel ticket, do not intend to remain in Guyana beyond three months from the date of entry, and can satisfy the Guyanese immigration officer of their citizenship.⁴⁶

Legislative provision is made for the removal of undesirable noncitizens from Guyana in the Expulsion of Undesirables Act.⁴⁷ An "undesirable person," who is defined as "any person other than a citizen of

38. *Id.* § 2(3).

39. §§ 21-29, Guyana Independence Order 1966 (STAT. INST. 1966 No. 575), reprinted in 5 CONSTITUTIONS, note 34 *supra*.

40. Immigration Act, §§ 3(1)-(3).

41. *Id.* § 2.

42. *Id.* § 5.

43. *Id.* § 6(1).

44. *Id.* § 12(1).

45. *Id.* § 38. The Minister of Immigration has the same absolute discretion to prohibit the entry of an alien under the Alien (Immigration and Registration) Act (1973), LAWS OF GUYANA, ch. 14:03, section 4(1).

46. LAWS OF GUYANA, Immigration (Passports) Order (1977), ch. 14:02, Subsidiary Legislation.

47. LAWS OF GUYANA, Expulsion of Undesirables Act (1973), ch. 14:05.

Guyana, in respect of whom the President deems it conducive to the public good to make an expulsion order," can be prohibited from entering the country, caused to leave the country or apprehended and deported.⁴⁸ When an individual has an expulsion order made out against him, that person may make representations in writing to the President setting forth reasons for noncompliance with or nonenforcement of the order. On receipt of these representations, the President is obliged to inquire into them and render a decision with all due dispatch.⁴⁹ The President may at any time revoke an expulsion order absolutely or suspend its operation subject to such conditions as he may think fit.⁵⁰

D. *The Emergence of the Caribbean Common Travel Document*

As noted above, neither the CARICOM Treaty nor its Annex precludes a member state from concluding agreements involving the mobility of its national labor force to the territory of a receptive host. Such an arrangement emerged during June 1972 when the Premiers of Grenada, St. Lucia and St. Vincent met at Petit, St. Vincent and concluded an oral agreement for the purpose of promoting greater harmony among their peoples. The substantive provisions of the Petit St. Vincent Initiative Agreement⁵¹ which entered into force on August 1, 1972 provide that:

(1) In order to eliminate barriers to better communication and association among the States: and without prejudice to, or frustration of the constitutional aspiration [sic] of any such State, there shall be effective August 1, 1972, complete freedom of movement among the States of persons belonging to; or being permanent residents of; or accepted visitors of any of these States.

(2) Persons belonging to any of these States shall not be subject to any restrictions in their right to work in any of these States.

(3) Persons belonging to any of these States shall not be subject to any restrictions in their right to hold land in any of these States.

...⁵²

Implementation of the Petit St. Vincent Initiative Agreement soon followed in the legislatures of the participating territories. In Grenada, for example, the Immigration Restriction (Amendment) Act, 1972 was passed to remove prohibited alien status from persons belonging to St. Lucia and St. Vincent (as defined in their respective constitutions), persons who by any law in force in either territory were permanent residents of the territory, and bona fide visitors to St. Lucia or St. Vincent who left the re-

48. *Id.* §§ 2-4.

49. *Id.* § 5. For application of the procedure under the Expulsion of Undesirables Act and its relationship to article 14 of the Constitution of Guyana, see *Brandt v. A.-G. of Guyana & C.A. Austin*, [1971] 17 W.I.R. 448.

50. Expulsion of Undesirables Act, § 12(2).

51. The Agreement had not been published as of May 1981.

52. Letter from Ms. Monica Joseph, Attorney General of St. Vincent, to the author (June 8, 1973).

spective territory to visit Grenada.⁵³

During November 1973, the ministers responsible for immigration of the members of CARICOM met in Barbados and agreed that nationals of member states should be permitted to travel within the region on a common travel document. During the inaugural meeting of the Conference of Heads of Government of CARICOM held at St. Castries, St. Lucia on July 15, 1974, the concept of a common travel document was approved and it was agreed that a common immigration card⁵⁴ for use by CARICOM nationals travelling within the region be adopted. The governments of Barbados and Guyana gave further impetus to the reduction of travel restrictions by announcing that they would recognize and accept Identification/Registration Cards issued by any CARICOM member to its nationals as a valid travel document.⁵⁵

At the time of this writing not all of the members of CARICOM have inaugurated the system for freer movement of Commonwealth Caribbean nationals. In addition, no agreement has apparently been reached as to a uniform format for either the common travel document or an International Embarkation/Disembarkation (E/D) Card. Nevertheless, significant progress has been achieved.

Barbados

On August 21, 1975 the Minister of Legal Affairs for Barbados, in the exercise of his powers, amended the immigration regulations⁵⁶ to provide for the Barbados International E/D Card. At the same time, provision was made for the issuance of an Inter-Caribbean Travel Document.⁵⁷ Five days later, the Minister issued an order revoking the need for a visa by any citizen of a CARICOM member or person who

has connection with such State of a kind which entitles him to be regarded as belonging to, or, if it be so expressed, as being a native or resident of that State . . . and who is in possession of a valid Inter-Caribbean Travel Document issued by the Government of any such Member State.⁵⁸

53. Immigration Restriction (Amendment) Act, 1972, § 3. In St. Vincent, the Agreement was implemented by the Aliens (Land-Holding Regulation) (Commonwealth Caribbean Territories) Order, 1972 (STAT. R. & O. 1972 No. 22); in St. Lucia, by the Immigration (Grenada and St. Lucia) Non-Prohibited Class Regulations, 1972 (STAT. R. & O. 1972 No. 23).

54. The prototype was based on the International Immigration Embarkation/Disembarkation (E/D) Card used by Trinidad and Tobago.

55. See Orrego-Vicuña & Tolosa, *Latin American Economic Integration*, 6 LAW. AM. 802, 825 (1974).

56. The Immigration (Amendment) Regulations, 1975 (STAT. INST. 1975 No. 249) (Barbados). For a short comment on Barbadian immigration policy before this time, see Leacock, note 1 *supra*.

57. The Passports and Travel Documents (Fees) Order, 1975 (STAT. INST. 1975 No. 243) (Barbados).

58. The Immigration (Visa Requirements and Passports) (Amendment) Order, 1975

St. Vincent

Although the Inter-Caribbean Travel Document and International E/D Card were adopted by St. Vincent on July 7, 1975, no regulations covering the issuance and recognition of the Document and Card were issued at this time.

Belize

By virtue of the Immigration (Amendment) Regulations, 1976,⁵⁹ made by the Minister of Home Affairs and Health on February 9, 1976, provision was made for adoption and recognition of the Inter-Caribbean Travel Document.

Dominica

An International E/D Card has been issued in Dominica and recognized since March 3, 1970 by virtue of the Immigration (Restriction) (Amendment) Regulations, 1970.⁶⁰ The Inter-Commonwealth Caribbean Travel Document, as it is called in Dominica, is issued under the authority of the Ministry of Home Affairs by the Police Division. Although there are no regulations governing the issuance or recognition of the Document, it is in fact issued and recognized by immigration officials in Dominica.⁶¹

Montserrat

The Inter-Commonwealth Caribbean Travel Document is now issued and recognized by the government of Montserrat. Use of the Document was introduced "administratively rather than legally."⁶²

St. Kitts-Nevis-Anguilla

Ingress into and egress from St. Christopher, Nevis and Anguilla is governed by the Immigration and Passport Act of 1947.⁶³ In recognition of these islands' participation in the Caribbean Community, the Government enacted a regulation⁶⁴ during 1976 which provided for lower fees for

(STAT. INST. 1975 No. 195) (Barbados).

59. STAT. INST. 1976 No. 14 (Belize).

60. STAT. R. & O. 1970 No. 7 (Dominica).

61. This may be inferred from the express designation on the front cover of the Document: "To be produced on demand to any Immigration Officer or Member of the Police Force."

62. Letters from Mr. George Cabey, Permanent Secretary for Manpower and Administration, Montserrat, to the author (Feb. 5, 1976).

63. Revised Laws of St. Christopher, Nevis and Anguilla, ch. 45, supplemented by Immigration and Passport Regulations, 1947 (STAT. R. & O. 1947 No. 14) issued under section 33 of the Act.

64. Immigration and Passport (Amendment) Regulations, 1976 (STAT. R. & O. 1976 No. 56).

the issuance of work permits to citizens of CARICOM countries. Work permits for non-CARICOM citizens cost substantially more. Furthermore, the International E/D Card is issued and recognized by the Government. Although Anguilla issues a "Caribbean Travel Permit" as well, it is usually only used for emergency purposes, and Anguillans normally travel with a passport issued by the passport officer, valid for travel throughout the Caribbean.

E. *Official Travel Document of CARICOM*

The Caribbean Community Secretariat, located in Georgetown, Guyana, is the principal administrative organ of CARICOM. When it becomes necessary for international officers of CARICOM to travel, they do so with the aid of a CARICOM travel document. Although draft regulations concerning the document have been prepared by the Secretariat, they have not been the subject of any official consideration or approval. Indeed, the necessary Protocol on the Privileges and Immunities of CARICOM has not as yet been agreed upon by the member states. Consequently, arrangements governing the use of the travel document are not finalized.

Despite the absence of any formal agreement and regulations,⁶⁵ de facto arrangements are in operation. A CARICOM travel document is issued by the Secretary-General of CARICOM and is valid for an officer's term of duty. It must be returned at the conclusion of such term, the date of which is entered on the document. It may be renewed by the Secretary-General without the addition of any stamp from the local (Guyanese) immigration authorities. The bearer must return the document to the Secretariat's safekeeping at the conclusion of each trip on which it is used. Regional immigration authorities in practice accept the document as indication of the officer's official status in the Secretariat and always allow the bearer privileges equivalent to those held by persons in the diplomatic service, in the areas of immigration clearance, customs and departure tax exemptions.⁶⁶

F. *Conclusions*

Freedom of movement among the British Caribbean territories did not exist during the late colonial period nor does it fully exist now. Whatever common law right of entry may have existed in the past has been displaced by constitutional provisions and legislative enactments which accord highly discretionary authority to each government's officials

65. The absence of any formal agreement has not prevented officials of other regional international organizations from being issued with similar travel documents for use in official travel, such as the "Official Travel Document of the Organization of American States." See D. TURACK, *supra* note 28, at 182.

66. Letter from Professor Keith Patchett of the CARICOM Secretariat to the author (June 23, 1978). The status of the CARICOM Travel Document had not changed as of May 1981.

to restrict the movement of persons into and out of their respective countries.

Although high unemployment and disparities in economic development among the member states of CARICOM may well account for the general reluctance to allow unrestricted freedom of movement as between them, the Petit St. Vincent Initiative Agreement marks an explicit attempt to unqualifiedly eliminate all barriers to Caribbean Commonwealth travel. However, while intergovernmental cooperation concerning the free mobility of persons is prevalent and travel among CARICOM member states is encouraged, special immigration treatment has not been forthcoming on a wide scale. The freedom of establishment provisions of the CARICOM Treaty are purposely weak and allow the prospective host country the necessary latitude to curtail any significant influx of nationals from other CARICOM members. Thus, further relaxation of restrictions on migration must await future developments.

