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## **Some comments on the debate on a constitution of a political union of the Windward Islands in the Eastern Caribbean**

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Some Comments on the Debate on a Constitution of a  
Political Union of the Windward Islands  
in the Eastern Caribbean

by

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St. George's, Grenada  
August 1991

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There appears to be a strong, widespread consensus in the four Windward Islands - Dominica, Grenada, St. Lucia and St. Vincent and the Grenadines - that there should be as soon as possible a political union of these states. The reasons in favour of unification are manifest: Each of the respective islands is a very small entity. In 1989 the population of the islands totalled 444,000<sup>1</sup>. The size of the national markets for goods, services and capital is extremely limited. The unit costs of public administration, social services and economic infrastructure are high. The bargaining power of the individual islands in negotiations with the big economic blocks - USA, EC and others - is rather negligible. In a world in which more and more countries unite in regional organizations - the EC and ASEAN being the most prominent examples - the survival of small states standing on their own is doomed to failure.

So the endeavour of governments, political parties and NGOs in the Windward Islands to establish a political union deserves strong sympathy, encouragement and support, also from the outside world, the more as donor countries and international agencies would prefer to deal with one state instead of four. Though it is deplorable that the responsible politicians in the Leeward Islands at the moment are not prepared to join the uni-

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1 Dominica: 82,000; Grenada: 100,000; St. Lucia: 148,000; St. Vincent and the Grenadines: 114,000. Figures from: C.L. Mitchell: The Economic Performance of the Windward Islands Regional Economy 1980-1989: Short-Term Prospects and Strategy for Development to 1995. Economic Affairs Secretariat, St. John's, Antigua and Barbuda, October 1989.

fication process<sup>2</sup>, it remains to be seen if they will change their minds within some time. Much depends on what will happen in the next future. If the four states will succeed in what they are aiming at, their success story would certainly attract others. The fact alone that the Windward Islands are determined to unite has already raised great attention in the Caribbean environment.

In the meantime the four governments have agreed upon establishing a Regional Constituent Assembly (RCA) as an initial forum for consultation among the peoples of their respective states. This initiative has been welcomed by the public at large, though the Standing Committee of Popular Democratic Parties of the Eastern Caribbean (SCOPE) had in the beginning some reservations concerning certain details of the terms of reference.

The task of the RCA according to the Inter-Governmental Agreement of 14 January, 1991 shall be

- to consider and advise on the question of Windward Islands political union with specific reference to the economic and social viability of the union, the economic cost of union and the external relations and administrative implications of the union;
- to consider and advise on the possible forms of union, that is, whether the proposed union should be a state which is federal, unitary or of some other form;
- to consider and advise on the structure of government and elements of a constitution which would be

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2 Prime Minister V.C. Bird Sr. of Antigua and Barbuda justified his reluctance to any union by the strange argument that his country did not want to be re-colonized.

most appropriate to the union, including the administrative and electoral mechanisms<sup>3</sup>.

The RCA consists of (originally 40, now) 44 delegates, being 11 persons from each island. They are selected from Parliament and political parties (5) and from the private sector, the trade unions, the churches, youth groups, women organizations and the farming community (6). Four meetings have been planned in rotation in each of the Windward Islands: January, February, March and April, 1991. This time-schedule, however, could not be complied with. Until now - August, 1991 - only two sessions were held: the first one from 14-18 January, 1991 in St. Vincent and the Grenadines; the second one from 22-26 April, 1991 in St. Lucia. The next meeting is to be held from 2-6 September, 1991 in Dominica and the fourth and last one is envisaged for January, 1992 in Grenada. The first two sessions dealt with principle matters: discussing the need of a political union as such and debating the type the union shall have.

Though the general support for a political union seems to be quite vigorous, the views of what form and features this union should have, differ considerably. Federal vs. unitarian state, republic vs. monarchy, unicameral vs. bicameral legislature, free or restricted movement of persons and business activities: these are only a few examples of the far-reaching area of conflicting opinions. A solution can only be found, if there is a willingness of the different groups and their representatives to compromise since the decision for a

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3 See Annex to Agreement Establishing a Constituent Regional Assembly of the Windward Islands, sect. 4.

union which the four islands merge in has to surpass high barriers: It requires the amendment of their respective constitution by a bill passed by a qualified majority in Parliament and approved by a referendum<sup>4</sup>.

My contribution to the debate is not a political one. Being an outsider I have to refrain from telling people what they should do. Anyhow, they will know better which solutions are the most appropriate in forming a union. What I can do and will do is trying to clarify legal, i.e. constitutional implications of diverse political options and to give an input from experiences which have been made elsewhere, especially in my home country Germany and in the European Community. What I have to contribute is less by giving self-confident answers but more by asking questions, questions that may open the minds for looking at alternative perspectives. It goes without saying that I cannot cover all the issues which have been disputed so far, but, hopefully, I will deal with the most important ones.

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4    Dominica: three-quarters majority of the members of the House of Assembly and the majority of the votes cast on the referendum (sect. 42 (2) and (3) of the Constitution); Grenada: two-thirds majority of the Representatives and two-thirds majority of the votes in the referendum (sect. 38 (2) and (3) of the Constitution); St. Lucia: three-quarters majority of the members of the House and the majority of the votes in the referendum (sect. 41 of the Constitution); St. Vincent: two-thirds majority of the representatives and two-thirds of the votes in the referendum (sect. 38 (2) and (3) of the Constitution).  
It is strange that constitutions which have been strongly influenced by the United Kingdom require a referendum for their amendment since the British political system is traditionally immune to any plebiscitary elements.

## 2           The Aim

### 2.1           The Future of the Union: Unitarian vs. Federal State

#### 2.1.1        Some General Observations

One of the main controversial issues in the debate on the future union is its form: Should it be a unitarian or a federal state? There is no need of explaining the well-known meaning of those terms. A lot of intellectual energy has been devoted to arguing about the pros and cons of unitarianism and federalism respectively. But instead of absorbing oneself in this abstract dispute about the advantages and disadvantages of rather puristic concepts, it might be more appropriate to choose a pragmatic approach. The question then will be: What can be ruled and governed by the centre of the union without destroying the historical, social and political identities of the four islands? And what can be left to the self-government of the states without endangering the cohesion and efficiency of the union? Even a strong central government, as favoured by the majority of the RCA, does not necessarily imply that each and everything has to be decided upon by the centre; on the contrary, experience from Europe shows that in a strictly centralized state either the peripheries atrophy, losing their vitality, or fight the central power thus threatening the very existence of the whole political fabric. Reversely, it is evident that a union in which the centre is more or less dependent on the good will and cooperation of the states cannot function efficiently; strains and tensions will easily lead to a collapse of the system. So the middle course could be: as many powers as necessary for the well-being of



the union should go to the centre and as many competences as desirable in the interest of the local needs should go to the states. This model - you may call it a federation, a mixed system or whatsoever - has also the benefit of avoiding a radical and costly structural change: If the political and administrative powers would be vested exclusively in the centre, this would entail the establishment of an entirely different system. New governmental and administrative bodies had to be built up: a time-consuming and expensive procedure which inevitably would create frictions and, at least in the beginning, a lack of efficiency of the services to the public. The pragmatic approach could avoid such drawbacks provided that there is a fair distribution of legislative, executive and judiciary powers between the central and the states governments. This balanced solution would also serve the interests of the citizens, since it prevents the concentration of competences in one centre; the horizontal division of powers, supplementing the vertical one, could protect the individual additionally from undue state interference in his or her life. Finally, this mixed political system might encourage other islands of the Eastern Caribbean or the Caribbean at large to join the union, as they need not fear to enter a community which offers them no opportunity of maintaining their own identity. In any case, the constitution of the union, which perceives itself as the nucleus of a broader political entity, should contain an explicit clause giving other states in the Caribbean the right to join it.

## 2.1.2 Conclusions

### 2.1.2.1 Legislation

The constitution of the union has to draw a clear line between legislative powers of the union and of the states<sup>5</sup>. Usually, in a mixed system one distinguishes between exclusive, concurrent and residual competences. The exclusive responsibility of the union could comprise e.g. foreign affairs, defence, customs, immigration and emigration, union citizenship, economy (trade and industry, banking, planning), tertiary education<sup>6</sup>. Concurrent competences could extend a.o. to police, primary and secondary education, tourism, electricity, water supply, sewage, roads. Because of the possibility of overlapping law in the concurrent areas the constitution should provide that union law shall take precedence over state law. Whether there will be a list of subjects exclusive to the states - e.g. cultural affairs, local government - remains to be discussed. In any case, the constitution must provide for the attribution of resi-

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5 Cf. Patrick Emmanuel: The Distribution of Powers and Functions in Federal-Type Countries. A Document Prepared for the Regional Constituent Assembly of the Windward Islands: Meeting in St. Lucia, April 22-25, 1991. This paper gives a useful survey of constitutional distribution of legislative powers in Australia, Canada, India, Nigeria and Switzerland.

6 During the second meeting of the RCA there was a consensus among those favouring a federal-type constitution that legislative powers should be reserved to the central government in the following areas: defence, national security, foreign relations and representation abroad, customs, immigration, economic planning, higher education, audit, aviation, maritime matters, joined purchasing. Cf. Chairman's Summary of the Consensus of the Second Meeting of the RCA. St. Lucia, July 1991, p. 2 f.  
For the distribution of legislative powers concerning taxation cf. 2.1.2.4.

dual subjects which are listed neither as exclusive nor as concurrent. In this context one may draw some lessons from the outside world: In Germany e.g. these matters are reserved to the states, in India to the union; the Canadian constitution reserves to the provinces generally all matters of a mere local or private nature. In the interest of flexibility it might be worth-while reflecting the possibility whether the constitution should open the way for a transfer of legislative powers from the states to the centre and vice versa. For example the constitution could provide that any state or all of them can request central government to take over legislation on a specific matter which originally has been vested in the responsibility of the states<sup>7</sup>.

No matter what type the legislature will have - unicameral or bicameral -, there will be at least a union Assembly, House of Assembly, House of Representatives - however one may call it - which consists of deputies who are elected for a specific term in general, direct, free, equal and secret ballot. The Assembly being the most important institution in the union should reflect in its composition the broad range of political, ideological and social currents and trends of the union electorate as a whole.

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7 Emmanuel (cf. footnote 5, p. 4 f.) quotes a provision of the Australian constitution according to which federal authority extends to 'matters referred to the Parliament of the Commonwealth by the Parliament or Parliaments of any State or States, but so that the Law shall extend only to States by whose Parliament the matter is referred or which afterwards adopt the law'.

Therefore the choice of the electorate system is of utmost importance<sup>8</sup>. Insofar it might be wise to include the principle rules concerning it in the constitution itself<sup>9</sup>. An electoral system based on the principle of simple majority in which the candidate is elected who gains the highest number of votes in his or her constituency (first-past-the-post system), though having the advantage of being easy to administer, implies the danger of being unfair. As experience shows it may happen that a party which has won less than 50 per cent of the votes receives all or almost all seats in Parliament and, reversely, a party with a considerable bulk of the votes, say 30 per cent, is not represented in the House at all. Under such circumstances Parliament would not really mirror the diversity of the electorate. Measured against this, a system based on proportional representation appears to be by far more appropriate. It has, of course, the disadvantage that the dependency of the deputies on their respective party is rather strong:

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8 Cf. Earl Huntley: *The Union of East Caribbean States - Thoughts on a Form*. St. Lucia, May 1988, p. 18, 26 ff.; Patrick Emmanuel: *The Windward Islands: The Electoral System*. April, 1991.

9 The constitutions of the four Windward Islands contain general provisions regarding the method by which Representatives are to be elected to Parliament: Each of the constituencies in which the countries are divided shall return one Representative to the House who shall be directly elected in such a manner as may be prescribed by or under any law (sect. 33 (1) of the Dominica Constitution; sect. 32 (1) of the Grenada Constitution; sect. 33 (1) of the St. Lucia Constitution; sect. 27 (1) of the St. Vincent Constitution). Thus the law could introduce an election procedure based on simple majority (like in Britain) or, if there are three or more candidates, open the way for a second ballot held between the first two candidates (like in France). Up to now in all the four Windward Islands the simple majority system has prevailed.

Without being placed on their party's list they have no chance of being elected. Moreover, if various parties take part in election, this system may lead to a splintering in the composition of Parliament thus endangering the formation of a working majority. This risk, however, could be diminished by determining a minimum percentage of total votes for a party in order to receive seats in Parliament. That is, e.g., the case in Germany and in the Scandinavian countries<sup>10</sup>.

If proportional representation is adopted, it has to be clarified whether the parties present their lists in one single union constituency or in four state constituencies. Whatever decision will be made, it will have important repercussions: One single constituency would favour evidently the development of union-wide party or-

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10 For information purposes it might be interesting to describe a mixed model as it is applied in Germany. It combines elements of proportional representation with those of the simple majority system. Each voter has two votes. With the first he/she chooses a deputy for his/her constituency; the candidate gaining the highest number of votes is elected. By this way half the seats in Parliament are distributed. With the second vote the voter chooses between the lists presented to the electorate by the different parties. The total number of seats a party receives in Parliament is dependent on its percentage of the second votes. If, for example, a party has won 30 per cent of the second votes, it receives 197 of the total of 656 seats; if, to keep to this example, 100 of its candidates have been directly elected in their constituencies, the rest of 97 seats is given the candidates in the party list according to the order determined by the party. In any case, a party must at least receive 5 per cent of the second votes or win three seats in direct election to be represented in Parliament.

This system has proved to be a fair procedure and is now well established in Germany. However, it might be too complicated and expensive for being transferred to the Caribbean.

ganizations and thus contribute to a political mentality focusing on union matters. On the other hand, by preferring four separate island constituencies, one would probably retain the parochial party structure and a political debate concentrating on insular affairs.

Considering the consequences the future electoral system will have for the composition of the union Assembly the designing of this system is not just a technical matter. It is a decision of highest political priority with important constitutional repercussions.

Should the electoral system of the future union be based on some sort of proportional representation, the influence of parties on union, at least on island level will increase considerably, since it is them who present the list of candidates and determine the order in which they are placed. With regard to that it might be commendable to give the parties and their role in forming the political will of the people some thought also in the constitutional debate. The constitution could e.g. provide that parties may be freely established, but that their internal organization shall conform to democratic principles. In any case, it would be in the interest of a fair and open political process to force the parties to account publicly for the sources and use of their funds and for their assets<sup>11</sup>. Whether they should be prohibited from receiving foreign financial support, is also an issue which should be reflected.

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11 This is, e.g., what article 21 (1) of the Basic Law of the Federal Republic of Germany provides.

There has been some discussion about what should be done in case of representatives crossing the floor<sup>12</sup>. There are constitutions which require a member of the house to vacate his or her seat, if he/she resigns from his/her party<sup>13</sup>. The problem with such rulings is that they reinforce the dependence of the deputies on their respective party. This could mean in the end that the Parliamentary group of a party is nothing more than an extended arm of the party's leadership - in contrast to the classic perception of the deputy as being the representative of the whole people, not bound by orders and instructions from anybody and subject only to his conscience<sup>14</sup>. This independence should be maintained. A party should have other means and possibilities to secure the loyalty of the deputies whom it has placed as their candidates.

There has been much debate on the structure of the legislative body: Should it be uni- or bicameral?<sup>15</sup> The unicameral system has the advantage of the legislative procedure being rather quick and smooth. On the other hand, by a bicameral system interests and experiences could be integrated in the legislative debate which otherwise would be too easily neglected. A second chamber could be made up by the Heads of Government of the

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12 Cf. K.D. Anthony: Some Issues Pertaining to the Composition, Powers and Officers of Parliament. March, 1991, p. 9 f.

13 E.g. Trinidad and Tobago where a member of the House is required to vacate his seat if, having been a candidate of a party and elected to the House, he resigns from or is expelled by that party. Cf. also the constitutions of Antigua and Barbuda and of Nigeria. For details: Anthony (footnote 12), p. 9 f.

14 Thus the wording being used in article 38 (1) of the Basic Law of Germany.

15 K.D. Anthony (footnote 12), p. 1 ff.

four islands. The benefit of this solution, apart from being not expensive and easy to realize, would be that it gives the governments of the islands, being responsible for the bulk of administration of union law, a share in the decision-making process of the legislature. Another model could be a second chamber composed entirely or partly of representatives of NGOs: trade unions, business, churches, women and youth organizations etc. But there is the difficult question of what group should be represented and how to guarantee the legitimation of their representatives. A further alternative would be a Senate with Senators directly elected in the four islands. Though such system has been successfully applied in some bigger states (e.g. USA) it might be questionable, whether it is useful for a small union like that of the Windward Islands. It appears rather complicated - since it entails two elections for two different types of people's representation - and it is costly. Finally, one could think of a model in which the first chamber is composed of members directly elected in their constituencies according to the first-past-the-post system and the members of the second chamber being elected simultaneously through party lists on the basis of proportional representation.

It should be clarified by constitutional provision for what period the House is to be elected (4 or 5 years) and under which circumstances and by whom it may be dissolved before the expiry of that term. To prevent an abuse of the power of dissolution its execution should not depend on the discretion of any person (President, Prime Minister), but be bound to specific prerequisites.

There should be provisions in the union constitution concerning the initiative for legislation. One could



imagine three alternative or cumulative possibilities: bills initiated by the Executive, by a certain number of members of the House of Representatives and/or by the second chamber, if there is one. One will have to clarify whether the second chamber should have the right to delay or veto some legislation and under which conditions a veto could be overridden by the first chamber. If the second chamber is composed of the Heads of Government of the islands, it would be appropriate to endow it with a veto power as far as the execution of laws is in the responsibility of their respective governments.

One might also consider the possibility of introducing additional plebiscitary elements in the constitution, as it is the case in some other countries, like Switzerland. If e.g. a popular initiative of a bill is supported by 10 per cent of the electorate and not subsequently passed by Parliament, a referendum could take place to decide upon the bill. In order to prevent demagogic campaigns at the cost of government and other groups of society the plebiscitary instrument should, however, not apply to money-bills. In any case, one has to keep in mind that plebiscites are rather expensive and may therefore be beyond the financial capacity of government.

Insofar as there would be a mixed system in the union - with a division of legislative powers between the centre and the states - the legislatures in the islands could be kept as they are hitherto. However, their law-making powers will be reduced to areas which are not reserved to the union legislature. Some consideration might be given to the question whether the election to the islands Parliaments should coincide with that of the union

Parliament. Practical reasons tell against this possibility, for instance in case one of the legislatures would be dissolved prematurely, i.e. before its normal term of office expires.

#### 2.1.2.2 Executive<sup>16</sup>

The principle function of the Executive will be to execute and enforce the law of the union, to prepare and initiate legislation, to maintain law and order, to provide services and to take responsibility of the foreign affairs. The Executive (or part of it) has also to represent the union, a function which is reserved to the head of state. So the question arises whether he or she should be a representative of Her Majesty (Governor-General) - as at present in Grenada, St. Lucia and St. Vincent - or be an elected person (President) - as it is the case in Dominica -, in other words: whether the union should be a monarchy or a republic. There appears to be a broad consensus in the RCA and the public at large that the union has to be a republic. But this option does not solve all and everything. There remains

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16 See K.D. Anthony: Constitutional Status of the Executive: An Overview. March, 1991. Huntley (footnote 8), p. 14 ff., 24 ff.; Simon C.R. McIntosh: Toward OECS Political Union: Thoughts on a Possible Constitutional Model (no information about year and place of publication). Nicholas J.O. Liverpool: Windward Islands Political Union: A Model of Union with an Executive Head of State and Head of Government. A Paper Prepared for the Meeting of the Regional Constituent Assembly of the Windward Islands to be Held at Roseau, Dominica, September 2-6, 1991; Patrick A.M. Emmanuel: Windward Islands Political Union: The Model of Unitarian Union with separate Head of State and Head of Government (Prime Minister). A Paper Prepared for the Regional Constituent Assembly of the Windward Islands, Meeting at Roseau, Dominica, September 2-6, 1991.

the problem of how the Executive is to be organized: Should the President be just a ceremonial head of state - in this case his or her election by Parliament may suffice - or exert also executive functions - then his/her legitimation would demand rather a direct vote of the people - ? The first alternative would imply a Prime Minister or cabinet system in which the executive powers are vested in the cabinet headed by a Prime Minister with the consequence that the President can act only on advice of the Prime Minister. The President will appoint to the office of Prime Minister a member of the union Assembly who appears to be likely to command the support of the majority of the members of the Assembly<sup>17</sup>. The continuance of the Prime Minister in office will also depend on this prerequisite. (Because of cabinet's dependence on Parliament this executive model is also called the Parliamentary system.) Should the House pass a resolution of no confidence, the President will have to remove the Prime Minister from office<sup>18</sup>. However, to prevent that a purely obstructionist majority could lead to the dismissal of the Prime Minister and his/her cabinet, with the result that the execution of government affairs will be paralyzed, the constitution may provide - similar

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17 Cf. the respective provisions in the constitutions of the Windward Islands, more or less identical with the only difference that in Grenada, St. Lucia and St. Vincent it is the Governor-General who appoints the Prime Minister, while in Dominica it is the President who makes the appointment: Dominica: sect. 59 (2); Grenada: sect. 58 (2); St. Lucia: sect. 60 (2); St. Vincent: sect. 51 (2).

18 Such are the basic provisions in the constitutions of the Windward Islands: Dominica: sect. 59 (6); Grenada: sect. 59 (6a); St. Lucia: sect. 60 (6); St. Vincent: sect. 51 (6).

Germany<sup>19</sup> - that only a constructive no-confidence resolution will entail the removal from office of the Prime Minister. In this case the Parliamentary majority would have to support another candidate whom the President shall appoint.

An open question is whether appointments of a Minister - made by the President on advice of the Prime Minister - should be restricted to Members of Parliament. If the cabinet is to comprise the best qualified men and women in the union, such a restriction to their recruitment may be rather counterproductive.

In a presidential system - the second alternative - the President will be free to appoint and dismiss the cabinet members in his or her own discretion. There are serious arguments which favour the presidential system, since here the Executive is less dependent on Parliament and insofar perhaps able to act more vigorously and efficiently than a cabinet in the Parliamentary system.

The constitution should also regulate the attribution of emergency powers. They are usually vested in the Prime Minister or the cabinet, if the Parliamentary system is adopted, or in the President, if the presidential system is introduced.

There are other issues which have to be clarified, in particular if the presidential system should be favoured: For what term will the President be in office? Usual terms are four, five or seven years. Will an immediate reelection be possible? The answer to this question may depend on the term of office: If it is only four or five years, a reelection could be more accep-

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19 Article 67 (1).

table than in the case of a seven year term. Should the term of office and the election of the President coincide with the term of office and the election of Parliament? Such coincidence appears to be problematic, as the possibility cannot be excluded that the House could be dissolved prematurely. Should the position of Prime Minister be maintained in a presidential system? If there is a strong central government, as favoured by the great majority of the RCA, there seems to be no need for preserving this office. Should there be a constitutional arrangement which guarantees a rotation of office-holders among representatives of the different islands? The counter-argument here could be that such a procedure would rather reinforce centrifugal tendencies instead of mobilizing all the energies for nation-building.

Finally, the constitution must deal with the responsibility for the implementation of union law<sup>20</sup>. As far as foreign affairs, customs, external trade a.o. are concerned, the administration of these matters will be assigned to central government unities. Most of the other areas could be dealt with by the existing administrative units in the islands<sup>21</sup> which could mean that they retain their own public services with possibly different scale and salary structures. The central government, however, should have the right to give instructions in order to secure a harmonious implementation of the union law throughout the islands.

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20 Cf. The Implication for Public Administration of a Windward Islands Political Union (no author named), November, 1990.

21 Thus the proposal of the RCA in its second meeting. Cf. Chairman's Summary (footnote 6), p. 3.

### 2.1.2.3 Judiciary<sup>22</sup>

The structure of the Judiciary may cause the least problems in shaping the union constitution. As soon as the Eastern Caribbean Supreme Court will resume its jurisdiction over Grenada, the OECS court system, including the High Courts in the four islands, could carry on its functions in the union. There remains, however, the question whether there should be in the future one single legal service incorporating also the Magistrates.

### 2.1.2.4 Finance<sup>23</sup>

The financial structure of the future union is one of the most sensitive issues. What form it will have depends to a large degree on what political form the union will have. If it is a purely unitarian state, the power of levying taxes has to be exclusively assigned to the central government which also will collect the taxes and will receive all tax revenues. If the union, however, is a mixed system, the responsibilities for tax legislation, tax collection and tax receipts have to be distributed between the central government and the states (and among the states). In this case, one has to prevent that central government taxes are merely superimposed on the existing tax regimes in the islands. Otherwise overtaxation resulting in tax evasion and tax resistance would be the inevitable outcome. On the other hand, though the states would apply their own taxes, there is the need of a certain uniformity in income, corporate and value-added taxes in order to harmonize the tax conditions for

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22 Cf. N.J.O. Liverpool: The Form and Structure of the Union: The Judiciary. March, 1991.

23 S.St.A. Clarke: Four Issues in Public Sector Financing, November, 1990.

business activities throughout the islands; insofar legislative powers should be included at least in the concurrent competences while the responsibility for taxes on external trade, i.e. in particular customs, should be given exclusively to the central Parliament<sup>24</sup>. It is a matter of calculation, depending on the political structure of the union, how the revenues from centrally legislated taxes (e.g. customs, income, corporate and value-added taxes) are to be distributed between the central government on the one hand and the states on the other.

An issue which has also to be clarified is how to deal with the (external) debts of the existing islands. If the union should take over responsibility for this burden, a previous consolidation of the debts will be a necessary prerequisite.

## 2.2 Protection of Fundamental Rights

The fact that the four Windward Islands constitutions contain each a Bill of Rights does not mean that fundamental rights need not be included in the union constitution. Since the union will be a new state on its own with agencies acting on its behalf, people have to be protected against unlawful interference in their personal liberty and property by central government authorities. Technically, it should be rather easy to iden-

24 At present the tax regimes in the four Windward Islands differ considerably. While Dominica, St. Lucia and St. Vincent derive their revenues from a mix of direct and indirect taxes, Grenada has abandoned income tax and introduced a value-added tax as the main source of public income; it has retained, however, the real property tax and raises also a so-called business levy.

tify and formulate the fundamental rights as to be constitutionally guaranteed. The almost identical Bills of Rights in the existing constitutions of Dominica, Grenada, St. Lucia and St. Vincent could serve as basic material for this purpose.

One of the main difficulties in this context is the question of securing freedom of movement which comprises the right to move freely throughout the union, to reside in any part of it, to enter it and to leave it and to be immune to expulsion from the territory of the union<sup>25</sup>. It means also that any person of any Windward Island will be entitled to work, to do business and to buy land in any other island within the union. It is exactly this perspective which creates irritation in political circles, trade unions and other groups. People fear that an invasion of competitors for jobs, business opportunities and land-purchase will occur. In order to damp these fears it could be wise to introduce a transitional period - with certain restrictions on freedom of movement to be removed only step by step - before giving full access to this right.

The Bills of Right in the constitutions of the Windward Islands, following a more or less identical pattern, contain the classic freedoms: protection of right to life and personal liberty, protection from slavery and forced labour, protection from inhuman treatment, protection from deprivation of property, protection from arbitrary search or entry, freedom of conscience and of expression, freedom of movement, protection from discrimination a.s.o. The constitutions, however, do not gua-

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25 Cf. the almost homonymous wording of the islands constitutions in their respective section 12 (1).



rantee social, cultural and ecological rights, for instance the right to work, the right to a decent dwelling, the right to social security, the right to education, the right of having a non-polluted environment<sup>26</sup>. Whether the constitution of the union should also guarantee this type of rights, will probably be an intensely disputed issue in further discussions. One should, however, consider that social, cultural and ecological rights differ from the classic ones insofar as they are not enforceable by the courts. Moreover, since the government would not be able to fulfil all these rights - going far beyond its limited resources - the constitution would promise more than the government could actually keep. This again would lead to disappointment and frustration, undermine value and virtue of the constitution and endanger the stability of the state as a whole. Therefore the drafters of the constitution might be well advised to exclude this type of fundamental rights from the Bill of Rights. On the other hand, the constitution could certainly oblige government, in the form of an objective duty, to take over social, cultural and ecological responsibilities, leaving the details of realizing this obligation to law passed by Parliament<sup>27</sup>.

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26 There is one interesting exception: sect. 1 lit. d of the Grenada Constitution secures the right to work.

27 An interesting example is the term "social state" or "social government" in the Basic Law of the Federal Republic of Germany which is far more than just a nice word for nothing but is at least a guarantee of a certain minimum standard of social security. The legislature must not pass a bill that contravenes this minimum standard.

### 2.3 The Capital of the Union

For many people the question of where the capital of the union, its political centre, should be will play an important role, though one should not overestimate this issue: Washington, for instance, is the capital of the USA, but New York is by far more influential; Canberra, e.g., being the capital of Australia, cannot outweigh the economic, cultural and also the political standing of Melbourne and Sydney.

Nevertheless, one should try to find a fair solution by which none of the islands feels neglected. For that purpose the seats of various important governmental bodies could be distributed to different island capitals: e.g. the seat of the Executive, of Parliament, of the Public Service Commission, of the Judicial Service Commission. In view of modern communication technology the cooperation of these organs, though locally separated, should not create greater difficulties.

There is no doubt that the unification of the Windward Islands, as desirable as it appears, is rather difficult an endeavour. The RCA most likely will not solve all the problems in just four meetings. Therefore it would be of no surprise, should additional sessions take place. Anyhow, to expect that all the conflicts and diverse opinions can be reduced to a common denominator within a few months is quite unrealistic. If the foundation of the union should be accompanied by the enactment of a full-fledged constitution the unification process will probably last till Doomsday. For that reason it might be commendable to aim at an agreement only on some elementary constitutional issues and to leave all the rest to the further development of the union as a new state. Such an open, flexible constitution, based on a dilatory formal compromise, may pave the way to step by step solutions in the years to come.

What are the elementary provisions this constitution, flexible as it may be, should have as a minimum?

- It should establish a provisional central legislature made up of delegates from the existing island Parliaments, e.g. five per country, according to their political composition.
- It should determine that this legislature is to be replaced after a specific period of time by a freely elected Parliament according to an electoral bill passed by the provisional legislature.
- It should give this union Parliament a minimum of legislative powers, especially on foreign policy, defence, external trade (including customs), immi-

gration and emigration, higher education, aviation and maritime matters.

- It should enable the transfer of legislative powers from one or more island legislatures to the central Parliament.
- It should decide upon the form of government: republic or monarchy.
- It should establish a collective Executive composed of the Heads of Government in the four islands, the post of President (in a republic) or Prime Minister (in a monarchy) rotating yearly among the members of the Executive in the alphabetical order of the states they represent or in any other reasonable order.
- It should empower the Executive to execute and enforce union law, prepare and initiate legislation, take responsibility of foreign affairs, defence a.s.o. and establish a union public service for the matters assigned to the union.
- It should apportion a minimum percentage of the customs revenues to central government as a provisional financial basis for its activities.
- It should include a Bill of Rights similar to that in the existing constitutions of the Windward Islands; initial restrictions on freedom of movement of workers and freedom of establishment could be abolished by progressive stages and by the end of a specific transitional period latest<sup>28</sup>.
- It should contain a provision which gives other OECS states the right to join the union with equal rights and obligations.

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28 Cf. e.g. articles 48 and 52 of the EEC Treaty.

This core constitution had to be adopted or at least to be enabled by constitutional amendments in the four islands, a procedure which requires a bill passed by a qualified majority (two thirds or three quarters) of the members of the respective House and, additionally, approved by the respective electorate in a referendum (partly by two thirds of the votes cast)<sup>29</sup>.

To open the way for a comprehensive constitution this bill could empower the union legislature to amend and complete the core constitution step by step, according to needs and experiences, provided that certain requirements are met, e.g. three-quarters majority of the members of the union Assembly and two-thirds majority of the members of the respective Houses in the four states.

Before starting the formal procedure of unification it might be desirable - as it has been considered already - to consult first the people in the islands giving them the possibility to express their views: whether they want or whether they refuse a union as a sovereign new state in which their hitherto separate sovereign states merge. This could happen in the form of a referendum simultaneously to be held in the different islands. By an overwhelmingly positive result of this plebiscite the unification process would gather further momentum.

In any case there appears to be a strong need of broad discussion in and among all sectors of society. Without making people understand what unification means, without communicating with them and consulting them all efforts and energies of politicians and NGO representatives fighting for unification will be wasted.

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29 For details see footnote 4.