

**COMMUNIQUE OF THE MEETING OF
LAW MINISTERS AND ATTORNEYS GENERAL
OF SMALL COMMONWEALTH JURISDICTIONS**

1. Law Ministers and Attorneys General of Small Commonwealth Jurisdictions met in Kingstown, St Vincent & the Grenadines, on Monday 18 November. The Meeting was chaired by the Honourable Judith Jones-Morgan, Attorney General of St Vincent & the Grenadines, and was attended by Law Ministers or Attorneys General from 24 jurisdictions.

2. The foundation for the discussions at the Meeting was provided by the Coolum Declaration of Commonwealth Heads of Government which recognized the particular vulnerabilities of small states as well as the need for concerted action by the international community to address their special needs. Heads of Government committed the Commonwealth to pursue innovative and practical support mechanisms for small states, and identified a number of key priorities.

COMPETITION LAW

3. The Meeting considered a Commonwealth Draft Model Law on Competition. This draft had already been found of value in the preparation of legislation in particular jurisdictions, and the Meeting agreed to recommend that Law Ministers endorse the Model Law as a useful tool for any country considering the enactment of legislation on this subject.

VULNERABILITY OF SMALL STATES

4. The Meeting recognised the vulnerability of small states to natural and other disasters. Law Ministers and Attorneys General discussed the need for both a sound legislative framework and careful practical preparations. There was concern at the rise in premiums for disaster insurance, and Ministers shared their countries' experiences in dealing with related difficulties in respect of securing adequate cover for aviation-related liabilities in the period following the events of September 11th 2001.

5. The Meeting expressed the hope that the Commonwealth Secretariat could undertake work (perhaps in association with the International Maritime Organisation) on legislation on the protection of coastal resources and the regulation of cruise ship waste disposal and management.

TERRORISM AND THE UNITED STATES PATRIOT ACT

6. In their discussion of the response of the international community to the continuing threat of terrorism, the Meeting expressed appreciation to the Commonwealth Secretariat for the report and draft legislative material on anti-terrorist action and the implementation of Security Council Resolution 1373. The Meeting noted the provisions of recent legislation in the United States of America which authorizes the seizure of, and forfeiture actions in respect of, funds held in correspondent accounts in the United States of foreign banks. The legislation applies United States law to govern the forfeiture of funds corresponding in amount to those deposited in accounts in the foreign bank's own country, whether or not there be any traceable connection between those funds and the funds held in the correspondent account. The foreign bank cannot rely on the innocent owner defence.

7. Another provision authorizes the issue of subpoenas requiring the production of bank records by any foreign bank with a correspondent account in the United States without compliance with any mutual assistance treaty with the foreign country concerned or with the case-law developed as to United States practice in that context. The Meeting recognised the application of the Patriot Act subpoena power could place a bank in a situation of conflicting legal obligations: disclosure of the information sought might be prohibited under national law, while failure to disclose could result under United States law in substantial financial penalties and the loss of the correspondent account relationship. The loss of such relationships can have a significant effect on national economies of small jurisdictions. The Meeting considered that it was imperative that banks operating in their jurisdictions retained their status as correspondent banks, but acknowledged the need for each country to develop an appropriate response which protected the banking system so vital to economic prosperity and development.

THE IMPACT OF GLOBALISATION

8. The Meeting recognised both the positive and negative effects of globalisation. There was a recognition of the importance of participation in global technological developments, but also of the new opportunities for international crime which these developments bring.

9. The growth of knowledge-based industries and the need for some small jurisdictions to encourage the return of skilled nationals living abroad pointed to the desirability of reviewing labour and immigration law (the latter perhaps on a regional basis) to remove obstacles to the strengthening of small states' human resource capacity. Ministers and Attorneys-General recognised the necessity of ensuring that the fragile economies of small jurisdictions were not threatened by the movement of economic migrants from neighbouring countries and acknowledged the benefits of working with relevant international organisations to deal with this issue.

10. The Meeting reiterated the Commonwealth's policy of zero tolerance of corruption, and the importance of protecting the fundamental rights of workers. All these matters could be part of a larger strategy for development which could involve the reform of commercial, company and land laws that can impact on wealth creation.

11. The Meeting considered the issues surrounding the wish by foreign law firms from larger countries to establish practices in small states. There was a recognition of the need to ensure an adequate pool of expertise in the law of the small jurisdiction, an expertise which foreign law firms would not possess. It was important to balance the need to ensure a secure basis for the work of local law firms against the desirability of facilitating access to specialist foreign practitioners in cases of especial difficulty or complexity and the possible enhancement of local legal practice which could follow the admission of some foreign practitioners to certain types of legal work.

12. Ministers and Attorney Generals emphasised the importance of informed participation in the work of OECD so that the special position of small jurisdictions could be better understood. There was appreciation for the work of the Commonwealth Secretariat in OECD matters, notably on the subject of Harmful Tax Competition (where the move by the OECD to treat small states making commitments on this subject as participating partners in their work was welcome) and in the current action in the WTO brought by large countries

concerning the sugar protocol in the Lomé agreement. The Meeting asked that the Commonwealth Secretariat should monitor the work being done in the OECD on the issue of the taxation of e-commerce and provide advice to member countries on developments in this area.

INTERNATIONAL CRIMINAL COURT AND ‘ARTICLE 98 AGREEMENTS’

13. The Meeting noted that 37 Commonwealth member countries have now signed the Statute of the International Criminal Court. A number of countries have already been invited by the United States to enter into agreements designed to prevent the surrender of any United States national (and other named classes of people with association with the US) to the International Criminal Court. The Meeting recognised that these suggested bilateral agreements were inconsistent with Article 98 of the Statute of the Court and expressed its concern over the absence of any commitment by the United States to investigate or prosecute cases falling within proposed non-surrender agreements and their potential effect on existing extradition arrangements. The Meeting recorded its concern that Commonwealth member countries should adopt a common approach on the issue.

FUTURE MEETINGS

14. Law Ministers and Attorneys General of Small Commonwealth Jurisdictions have met in separate session for nearly 20 years, usually in the year following the plenary meetings of Law Ministers. On this occasion, the Secretary-General had asked, due to budgetary considerations, that the Meeting of Law Ministers and Attorneys General of Small Commonwealth Jurisdictions be held back-to back with the main Law Ministers’ Meeting and be limited to less than one day.

15. Ministers and Attorneys General, while acknowledging the need for the Secretariat to be vigilant in its fiscal management, expressed their strong view that this arrangement did not allow an adequate opportunity for the discussion of the special concerns of small jurisdictions, and limited the capacity of the Commonwealth Secretariat to make preparations for the Meeting. After considering a number of options, the Meeting agreed that the best solution would be for the Meeting of Law Ministers and Attorneys General of Small Commonwealth Jurisdictions to be held at the customary point in the three-year cycle but, so long as the Secretariat’s budgetary position so required, that the meeting be held in an appropriate and cost-effective venue in the United Kingdom.

OTHER BUSINESS

16. The Attorney General of one of the dependencies advised the meeting that his Government was to enter into discussions with the member country of the Commonwealth with which it was associated on the possibility of an extended role which might be played through associate membership in the Commonwealth becoming available to dependencies and territories. The meeting took note of this advice and agreed that the question of membership of the Commonwealth was one for consideration by the political leaders of the Association.

APPRECIATION

17. The meeting placed on record its appreciation of the skilful chairmanship provided by the Attorney-General of St Vincent and the Grenadines.

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St Vincent and the Grenadines
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