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## Assessment of the maritime legislative regulatory framework relating to the Jamaica logistics hub with special reference to selected contemporary maritime issues

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**WORLD MARITIME UNIVERSITY**

Malmö, Sweden

**ASSESSMENT OF THE MARITIME LEGISLATIVE AND  
REGULATORY FRAMEWORK RELATING TO THE  
JAMAICA LOGISTICS HUB WITH SPECIAL  
REFERENCE TO SELECTED CONTEMPORARY  
MARITIME ISSUES**

By

**DENIECE MELISSA AIKEN**

**Jamaica**

A dissertation submitted to the World Maritime University in partial

Fulfilment of the requirements for the award of the degree of

**MASTER OF SCIENCE**

**In**

**MARITIME AFFAIRS**

**MARITIME LAW & POLICY**

2014

## DECLARATION

I certify that all the material in this dissertation that is not my own work has been identified, and that no material is included for which a degree has previously been conferred on me.

The contents of this dissertation reflect my own personal views, and are not necessarily endorsed by the University.

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## ACKNOWLEDGEMENTS

I would like to express the deepest appreciation to my donor, BP Shipping, for affording me this rare opportunity to further my studies in Maritime Law, and to experience the wonders of Malmo, Sweden.

I would also like to thank my parents, Vonett and Dervin Aiken, for their unwavering support, love, encouragement and patience. You both have been my source of strength throughout the course of my life.

My gratitude goes to my supervisor, Associate Professor Dr. Aref Fakhry, who has assisted in guiding me through this paper. I would also like to thank Christopher Hoebeke and Anna Volkova of the World Maritime University Library for their invaluable assistance with research and referencing and for their encouraging words throughout. Mr. Hoebeke and Ms. Volkova have demonstrated nothing short of dedication and attention to each student and never failed to convey a spirit of excitement in regard to research and scholarship.

In addition, a special thank you to my host parents in Sweden, Ed and Maria Epstein, who opened their homes to me. Their love and care over the past months have been appreciated. Similarly, I wish to thank my colleagues at the World Maritime University who treated me like a family member and my friends in Jamaica who provided me with reassurance daily. To you I'm forever grateful.

Special thanks to the Board of Directors of the Caribbean Maritime Institute for their support and succour during my time of study. I take this opportunity to mention Dr. Joan Spencer-Ernandez, Dr. Fritz Pinnock and Dr. Ibrahim Ajagunna for their tremendous assistance with my research.

Lastly, but certainly not least, I would like to thank the Heavenly Father for blessing me and seeing me through this MSc course. Without whom, all this would not be possible.

*“Laboris sui praemium receipt” – The worker receives the reward of his labour*

## ABSTRACT

Title of Dissertation: **Assessment of the maritime legislative and regulatory framework relating to the Jamaica Logistics Hub with special reference to selected contemporary maritime issues**

Degree: **MSc**

The Jamaica Logistics Hub is the largest project to be undertaken by the Government of Jamaica for decades. Being strategically linked to the current expansion of the Panama Canal which is scheduled to be completed in 2015, this project emerged as a national project and is considered the centrepiece of Jamaica's maritime strategy. The goal of this initiative is to position Jamaica as a fourth node in the global logistics network to complement Singapore, Dubai and Rotterdam and has tremendous implications for Jamaica's ports and terminals. The project includes activities such as; expansion of the Port of Kingston to receive post-panamax ships, construction of a dry dock at Jackson Bay in Clarendon, installation of bunkering facilities at Cow Bay, near Yallahs, St. Thomas, construction of a cargo and maintenance, repair and operations facility at Vernamfield in Clarendon and development of an economic zone at Caymanas with a direct road link to the Port of Kingston.

Like all other projects of this magnitude, a legal framework is necessary to ensure a seamless transition and continued compliance both at the international level and local level and a detailed legal framework for the Jamaica Logistics Hub remains a mystery. It is necessary that Jamaica lays the proper legal foundations to ensure the success of the project, including but not limited to, international and bilateral trade and investment agreements as well as, an extensive review of all domestic laws relevant to and touching the logistics hub; this may include amendments, repeals and/or introduction of new legislation.

This research analyses the entire blueprint for the Jamaica Logistics Hub and discusses the possible legal implications on an international level and at the municipal level. The research will also include a review of the national legislative frameworks and maritime governance models of Singapore and Hong Kong, and of the existing legislation in Jamaica relevant to the establishment and operation of the Jamaica Logistics Hub. Finally, recommendations are

submitted for the legal framework for this extensive project.

**Keywords: Jamaica Logistic Hub, regulations, Panama Canal, domestic, legal implications, project, policy, framework, construction, Port of Kingston.**

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## LIST OF ABBREVIATIONS

ACP	African, Caribbean and Pacific Group of States
ASEAN	Association of Southeast Asian Nations
BASEL	The Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and Their Disposal
B2B	Business to Business
B2G	Business to Government
BP	British Petroleum
BUNKER	International Convention on Civil Liability for Bunker Oil Pollution Damage
C.I.T.E.S	Convention on International Trade in Endangered Species of Wild Fauna and Flora (Washington Convention)
CARIBCAN	Caribbean-Canada Trade Agreement
CARICOM	Caribbean Community
CARIFORUM	Caribbean subgroup of the African, Caribbean and Pacific Group of States
CBI	Caribbean Basin Initiative
CCJ	Caribbean Court of Justice
CEPA	Closer Economic Partnership Agreement
CFZ	Cazoumar Free Zone
CLC	International Convention on Civil Liability for Oil Pollution Damage
CMI	Caribbean Maritime Institute
COLREG	International Regulations for Preventing Collisions at Sea

CPR	Civil Procedure Rules
CROSQ	CARICOM Regional Organization for Standards and Quality
CSEZ	Caymanas Economic Zone
CSME	Caribbean Single Market and Economy
EC	European Commission
ECLAC	Economic Commission for Latin America and the Caribbean
EDLB	Economic Development and Labour Bureau
EEZ	Exclusive Economic Zone
EPA	European Partnership Agreement
FTAA	Free Trade Area of the Americas
FUND	International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage
G2B	Government to Business
GDP	Gross Domestic Product
GFZ	Garmex Free Zone
GOJ	Government of Jamaica
HKIAC	Hong Kong International Arbitration Centre
HKMAG	Hong Kong Maritime Arbitration Group
ICJ	International Court of Justice
ILO	International Labour Organization
IMC	International Maritime Centre

IMO	International Maritime Organization
INTERVENTION	International Convention Relating to the Intervention on the High Seas in Cases of Oil Pollution Casualties
ISPS	International Ship and Port Facility Security Code
ITLOS	International Tribunal on the Law of the Sea
IUCN	International Union for Conservation of Nature
JDF	Jamaica Defence Force
JET	Jamaica Environmental Trust
JLH	Jamaica Logistics Hub
JLHPC	Jamaica Logistics Hub Policy Committee
JP	Justice of the Peace
KCT	Kingston Container Terminal
KFZ	Kingston Free Zone
KPI	Key performance indicators
LC	Convention on the Prevention of Marine Pollution by Dumping of Wastes and other Matter (London Convention)
LL	International Convention on Load Lines
LLMC	Convention on Limitation of Liability for Maritime Claims
LOGSCOM	Steering Committee on Logistics Development
LOGSCOUNCIL	Logistics Development Council
LPI	Logistics Performance Index
MAJ	Maritime Authority of Jamaica

MARPOL	International Convention for the Prevention of Pollution from Ships
MBFZ	Montego Bay Free Zone
MIC	Hong Kong Maritime Industry Council
MLC	Maritime Labour Convention
MOU	Memorandum of Understanding
MPA	Maritime and Port Authority of Singapore
MPP	Maritime Performing Party
MTI	Ministry of Transport and Industry
MTW	Ministry of Transport and Works
NPC	National Ports Council
OPRC	International Convention on Oil Pollution Preparedness, Response and Cooperation
PAJ	Port Authority of Jamaica
PBPA	Portland Bight Protected Area
PCS	Port Community System
PDC	Hong Kong Port Development Council
PMB	Hong Kong Port and Maritime Board
PSA	Port of Singapore Authority
RCCL	Royal Caribbean Cruise Lines
RM	Resident Magistrate
RR	Rotterdam Rules



SALVAGE	International Convention on Salvage
SAR	International Convention on Maritime Search and Rescue
SEZ	Special Economic Zone
SOLAS	International Convention for the Safety of Life at Sea
SRS	Singapore Registry of Ships
STCW	International Convention on Standards of Training, Certification and Watchkeeping for Seafarers
SUA	Convention for the Suppression of Unlawful Acts Against the Safety of Maritime Navigation
TEU	Twenty-foot equivalent unit
TO	Terminal Operator
TONNAGE	International Convention on Tonnage Measurement of Ships
UK	United Kingdom
UNCLOS	United Nations Convention on the Law of the Sea
UNESCO	United Nations Educational Scientific and Cultural Organization
USA	United States of America
WB	World Bank
WTO	World Trade Organization

## CHAPTER ONE

### 1.0 INTRODUCTION

*"From its central situation as regards the other West Indian islands and the fact of it being in the direct track between Europe, the United States and the Isthmus of Panama, Jamaica furnishes special advantages and conveniences for trade and commerce between these points. When the ship canal uniting the Atlantic and Pacific is completed, Jamaica will undoubtedly be of great strategic importance upon the new trade route<sup>1</sup>."*

### 1.1 Background

The preceding quotation was relevant in the initial construction of the Panama Canal, which opened in 1914 and bears the same importance to date, one hundred years later, with the current expansion of the said Panama Canal, expected to be completed in 2015.

Shipping has been an important factor in the history of Jamaica and an inconspicuous driver of economic growth in the country. Shipping activities in Jamaica date back to the seventeenth century, prior to the great Port Royal earthquake of 1692, when the “real pirates of the Caribbean” were resident in Port Royal, the then capital. Between the years 1655 and 1692, Port Royal grew in popularity and became a major trading area; it grew faster than any English town in the New World. In 1662, there were approximately 740 inhabitants in Port Royal which increased to about 10,000 inhabitants (Hamilton, 2000). The seventeenth century was also an era in which the slave trade was very active and in addition to the slave trade, there were the exports of sugar and raw materials, which soon enabled Port Royal to emerge as the mercantile hub of the Caribbean and the most profitable English port in the Americas.

Due to its flat topography, deep water close to the shore, and safe and protected location, large ships could be accommodated easily and would dock for servicing, loading and unloading, and merchants and sailors established themselves to benefit from the trading opportunities that

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<sup>1</sup> The Handbook of Jamaica: comprising historical, statistical and general information concerning the island compiled from official and other reliable records. (1911) London: Govt. Print. Establishment

existed. There were artisans, tradesmen, captains, slaves and notorious pirates whose businesses all came together in an expansive business and trade network.

### 1.1.1 The Port Royal Earthquake

June 7, 1692 changed the entire nature of shipping in Jamaica. It was reported that sometime after 11:00am on that day, the ground opened up swallowing bodies and buildings and wrecking naval, merchant and fishing fleets. Bones and bodies from uprooted graves were scattered in the harbour and approximately two-thirds of the town immediately sank into the sea, after the main shock. (Gragg, 2000) Figure 1.1 indicates the shoreline before and after the Port Royal Earthquake.



**Figure 1.1 Port Royal before and after the earthquake**

Source: Nautical Archaeology Program, Texas A&M University

Since the 1692 earthquake the town never regained its former glory, and this marked the end of an era of global integration. Subsequently, the focus shifted to Kingston which functioned as a service port. By 1750, Kingston had the only port of any significance, Kingston Harbour, and no less than 14 finger piers had been built along the shoreline, which allowed a large number of vessels to be berthed near the source of the best navigational water, warehouses and stores where the ships' agents and merchants were located. Kingston's growth reflected an increase in mercantile activity as the city grew. One of the great disadvantages of the old finger piers was that a large number of ships were concentrated on a relatively small area of shoreline. This might have been advantageous in a harbour short of deep berths and adequate access routes but it proved a crippling disadvantage to Kingston, whose roads leading to the harbour had not been designed to take this kind of traffic.

On 14<sup>th</sup> February 1966, the first ship, the S.S. United States, docked at Newport West. The Port Authority of Jamaica (PAJ) then sought for the second time to capitalize on Jamaica's geostrategic location to develop a world-class transshipment hub port in Latin America and the Caribbean. The expansion created the capacity of 1,200,000 TEU, propelling the port of Kingston to become the third largest transshipment port in Latin America and the Caribbean, and subsequently the 63rd largest container port in the world in 2002. In 2008, the port of Kingston then became the busiest port in the Caribbean, which maintained to 2011 (*see Table 1.1*) (Pinnock & Ajagunna, 2014). According to ECLAC (2014) the downtrend of container movement in the Latin America and Caribbean region led to the port of Kingston moving to the 6<sup>th</sup> busiest port in the region in 2012 and the 8<sup>th</sup> busiest in 2013. It was this decline, coupled with the stagnant economic growth for Jamaica that led the Government of Jamaica to actively pursue the Jamaica Logistics Hub (JLH) Initiative.

Since becoming independent in 1962, Jamaica has maintained a sturdy and largely relevant legislative framework overall, however, very little has been done to update the national maritime laws. This paper will seek to establish whether Jamaica's current maritime legislative and policy framework is sufficient to address the current and possible matters associated with the JLH Initiative.

**Container Traffic In the Caribbean by Port, 2008–2011 (TEU)**

Rank	Ports	Country	2008	2009	2010	2011	% Change 2011/2010
1	Kingston	Jamaica	1,915,951	1,728,042	1,891,770	1,756,832	-7.10
2	Freeport	The Bahamas	1,702,000	1,297,000	1,125,000	1,116,272	-0.80
3	Port of Spain	Trinidad & Tobago	385,000	401,206	388,960	-	-
4	Point Lisas	Trinidad & Tobago	166,655	164,183	184,257	170,581	-7.40
5	Jarry	Guadeloupe	170,729	142,692	150,534	165,096	9.70
6	Willemstad	Curaçao	102,082	97,913	93,603	-	-
7	Bridgetown	Barbados	87,253	82,832	80,430	77,051	-4.20
8	Philipsburg	St. Maarten	-	68,253	70,862	76,701	8.20
9	Georgetown	Guyana	55,530	52,000	59,850	-	-
10	Oranjestad	Aruba	49,300	51,164	49,558	53,952	8.90
11	Georgetown	Cayman Islands	54,584	51,198	45,649	44,766	-1.90
12	Vieux Fort	St. Lucia	34,255	21,756	21,831	33,047	51.40
13	Castries	St. Lucia	35,977	30,186	30,648	27,295	-10.90
14	St. John	Antigua & Barbuda	35,350	31,332	26,366	21,824	-17.20
15	CPCP	St. Vincent & the Grenadines	11,426	14,704	15,569	15,345	-1.40
16	Long Point Port	St. Kitts & Nevis	2,353	3,002	2,424	3,046	25.70
17	Road Bay Port	Anguilla	-	-	2,863	2,543	-11.20
18	Kingstown	St. Vincent & the Grenadines	5,084	1,534	1,398	1,070	-23.50

**Table 1.1: Container Traffic in the Caribbean by Port, 2008-2011 (TEU)**

Source: ECLAC (2012); Pinnock & Ajagunna (2014)

## 1.2 Research Objectives

The research will seek to fulfill the following key objectives:-

1. Outline the key elements of the Jamaica Logistics Hub Initiative, and the expected advantages for Jamaica.

2. Provide a review of the legislative and judicial structure of Jamaica with specific focus on the maritime legislations and administration of maritime affairs within the country. Comparisons will be made with other locations of major logistics hubs; such as Singapore and Hong Kong. A general overview of the maritime legislation and regulations, in the context of the administration of maritime affairs in these territories will be provided, followed by an analysis and comparisons of how they are administering maritime matters in their territories as it relates to the logistics hub activities.
3. Identify comparative features observed in the case study locations and analyze the fettle of Jamaica's current legislative and maritime framework to address the selected maritime contemporary issues with the establishment of the JLH; outlining the possible problems and shortcomings of the said framework.

### **1.3 Research Questions**

In achieving the above objectives, this research paper shall strive to answer the following questions:-

- Is the current maritime legislative and administrative framework of Jamaica sufficient to address the likely issues associated with the establishment of the Jamaica Logistics Hub?
- What lessons, if any, can Jamaica learn from the maritime legislative and administrative frameworks of the States which have successfully established global logistics hubs?
- What are the possible shortcomings of Jamaica's current maritime legislation in relation to the selected contemporary maritime issues?
- What are the possible changes, if any, that can be made to Jamaica's legal and regulatory framework to sufficiently address the impending JLH initiative?

## 1.4 Jamaica's Geography, Ports and Strategic Location

### 1.4.1 Jamaica's Geography

Jamaica is the third largest of the Caribbean islands with a size of 4,411 square miles. It lies 600 miles south of Florida, 100 miles southwest of Haiti, and 90 miles south of Cuba. (Boske & Leigh, 2001) The island is located in the Caribbean Sea and contains fourteen (14) parishes, as illustrated in Figure 1.2 below.



**Figure 1.2: Map of Jamaica**

Source: <http://www.caribbeanislands.us/jamaica-map.htm>

### 1.4.2 Jamaica's Ports

Jamaica has five (5) main operational ports: the Port of Kingston, Port of Montego Bay, Port of Ocho Rios, Port of Falmouth and Port of Port Antonio. The Port of Kingston is the busiest of the ports, primarily due to its location on the island. The port of Kingston, officially known as the Kingston Container Terminal (KCT) consists of three terminals;



- 1. North Terminal** – consisting of 535 metres of berth, 47 hectares of yard space for stacking containers and 4 super Post-Panamax ship-to-shore gantry cranes
- 2. South Terminal** – consisting of 1,300 metres of berth, 5 post-Panamax gantry cranes, 6 super post-Panamax ship-to-shore gantry cranes and 82 hectares of container storage space
- 3. West Terminal** – consisting of 475 metres of berth, and extension of 65 hectares of container yard and 4 super post-Panamax ship-to-shore gantry cranes

The port of Montego Bay is located in the second city of Jamaica and its facilities include a 2694 square metre cruise ship terminal, 427 metres of berth, 1.2 hectare of yard space for container storage and 1858 squared metres of warehouse. The port of Ocho Rios consists of a bauxite pier and a cruise ship pier. The bauxite pier is 274.3 metres long with a draft of 12.2 metres and can accommodate passenger and cargo vessels and the cruise ship pier has two berths, 222 metres and 274.3 metres in length respectively. The port of Falmouth is fairly new, having had its first ship call in February 2011. The port was constructed to accommodate cruise ships and has gained considerable popularity over the past few years.

### **1.4.3 Jamaica's Strategic Location**

Jamaica is strategically located in the centre of the Caribbean Sea, in close proximity to the Panama Canal and the major ports of North America, South America and the Caribbean. The port of Kingston in Jamaica boasts the world's seventh largest natural harbour and is located at the intersection of two major intermodal trade routes. These attributes contributed to the success of Jamaica in the transshipment of cargo and cruise shipping.

Pinnock & Ajagunna (2014) stated that in 2010, the 20 ports of the Caribbean accounted for 34,968,654 metric tons of cargo. Of this, Jamaica accounted for 26,598,698 metric tons or 76.5 percent of the total volume moved. Transshipment cargo and bauxite accounted for over 80 percent of the volume of cargo moved through Jamaican ports. In 2011, Jamaica was accountable for 80.75 percent of the total cargo volume, while Guadeloupe accounted for 9.3 percent of the 2011 Caribbean total, representing 3,443,234 metric tons.





**Figure 1.3 Jamaica's locational advantage in the global trade network**

Source: Shirley (2013)

Elson (2013) found that Jamaica was strategically located along major shipping routes from Asia to the Middle East as illustrated in Figure 1.3 above.

## 1.5 Scope of Research

This paper will focus on the existing and possible future legal effects of the establishment of the Jamaica Logistics Hub in Jamaica. Like all other projects of this magnitude, a solid legal, regulatory and administrative framework is necessary to ensure a seamless transition and continued compliance both at the international level and local level. The research will attempt to analyze the entire blueprint for the Jamaica Logistics Hub and discuss the possible legal implications both at the international level and at the municipal level. A review of the existing legislation and regulations of existing global logistics hubs is also conducted; these being, Singapore and Hong Kong, and a comparative analysis between Jamaica and these States

discussed. The paper will also suggest recommendations as to how the current maritime legislative and regulatory framework of Jamaica can be improved to meet the needs of the maritime industry, the financial sector and other associated industries.

The dissertation is structured into ten main Chapters; Chapter One being the introduction, in which the research objective, research questions, a brief background to Jamaica's shipping activities and the methodology are outlined. Chapter Two gives a literature review of the discourse and academic writings on logistics hubs, maritime governance, as well as differing maritime and legislative frameworks surrounding the establishment and operation of a global logistics hub. Chapter Three capsulizes the Jamaica Logistics Hub Initiative, outlining the proposed activities involved in the establishment of the hub and planned changes put forward by the Government of Jamaica. An analysis of the maritime legislative and administrative frameworks of Jamaica, both at the international and domestic level are discussed in Chapters Four and Five respectively, and Chapter Six examines the maritime and legislative frameworks of Singapore, and Hong Kong, which constitute the case studies. Chapter Seven considers the possible challenges of Jamaica's current framework and Chapter Eight submits recommendations to overcome the possible challenges identified in the previous chapter. Chapter Nine outlines the summary and conclusion, emphasizing whether the research objectives have been met. The contributions of this research to future study are also illustrated in this chapter. Following the final chapter are the references.

## **1.6 Delimitation**

Jamaica has several ports along its coast; however this study will focus on the Port of Kingston, which handles approximately two-thirds of the vessels visiting Jamaica's ports and 87 percent of the container traffic through the island (PAJ, 2000). The focus is also due to its strategic location and the fact that a majority of the planned operations will be happening in and around that area.

The establishment of a logistics hub will affect the entire transportation sector of Jamaica; that is inland, land, air and sea. However, this paper will not analyze the effects on the air, railway or

road transportation. The core discussion is centred on the maritime sector and marine legislation and regulations.

The analysis of international instruments and treaties are limited to IMO Conventions and those centred around and touching the maritime industry. Likewise, the national legislations reviewed were selected based on the measure of their applicability to marine operations and shipping. The analysis of said legislation will also be probed as it relates to selected contemporary maritime issues.

## **1.7 Methodology**

To achieve the aforementioned objectives, an explorative research was conducted from a number of primary and secondary sources in the form of books, journal articles, peer reviews, and reports. This further involved a dogmatic approach of analysis, looking at various legal instruments including, international and domestic conventions regulations, policies and case law.

Further, an analytical approach was applied concurrently throughout, in that applicable case law and legislation were examined in terms of their scope of applicability and consequently recommendations are made based on the analysis of said regulations in response to the selected maritime contemporary issues. A case study approach was also employed, which involved a scrutiny of the legal and regulatory frameworks of the Singapore and Hong Kong logistics hubs respectively and a further comparison made with that of Jamaica's existing framework.

Data was obtained through the World Maritime University library using a range of physical and electronic sources such as the Beacon, Cambridge Journal, Ebrary, I-Law and Springer eBooks to name a few, as well as internet search engines.

## **CHAPTER TWO**

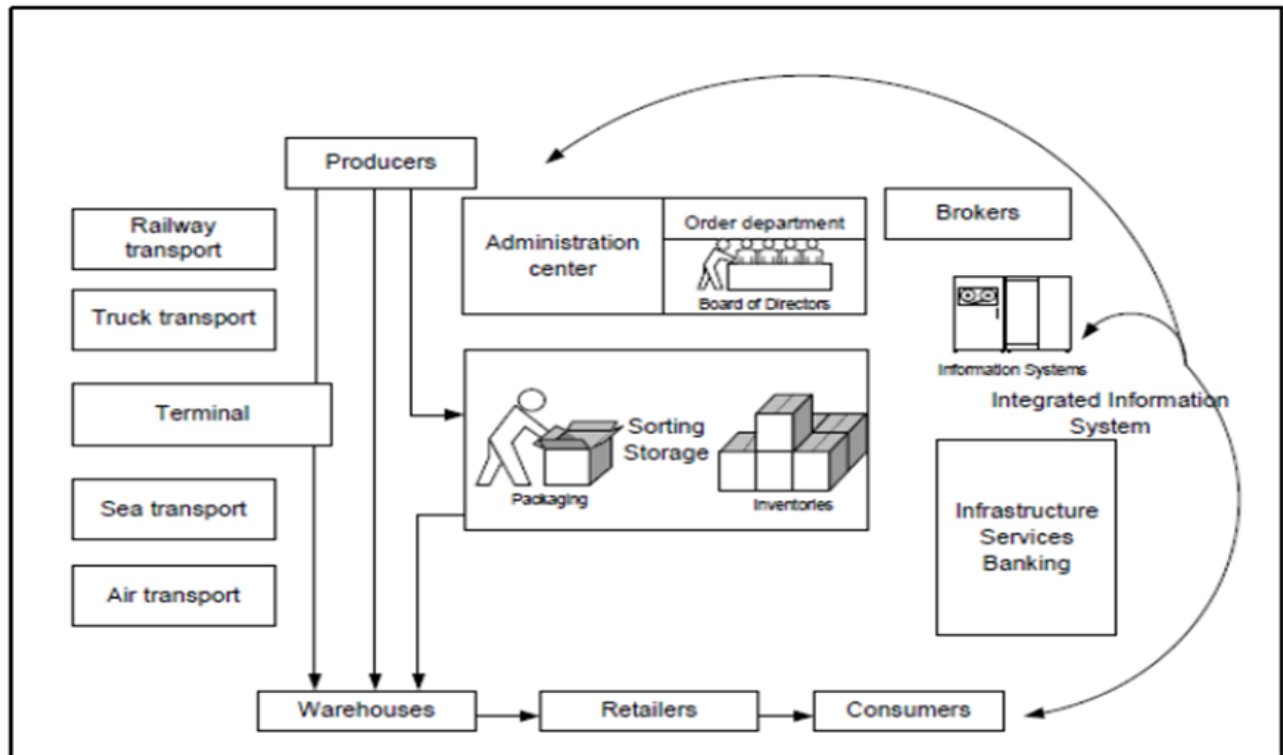
### **2.0 LITERATURE REVIEW**

Logistics has been an emerging area in the global transport sector. According to Tongzon (2004) logistics is expected to grow by 3 to 10 percent per annum promising tremendous economic opportunities for the countries in the ASEAN region. In the midst of these opportunities, several other countries have undertaken concerted efforts to upgrade their infrastructure and technology to get a bigger slice of the market. One of these “several countries” is Jamaica. The country has taken a chance at seizing an opportunity with the expansion of the Panama Canal and hopes to gain a place in the chain of global logistics hubs. To effectuate this master plan, there needs to be an efficient legal system and policies in place. Jamaica will need to put a proper fool-proof system of governance and policies in place which will address most, if not all, of the possible issues and/or incidents that may occur as a result of this grand venture, especially in the maritime industry.

#### **2.1 Defining Logistics Hubs**

While there has been increased talk about “logistics clusters” and “logistics hubs”, many still fail to comprehend what the term really means. Nam & Song (2011) indicate that the hub concept has been often introduced in various terms in accordance with mainly its functionality of storage and transportation, such as logistics centre, logistics zone, freight terminal, distribution centre, warehouse, intermodal terminal, international transport terminal, intermodal transport and so on. They further asserted that there has been no clean cut definition of what a logistics hub is, however, we can be guided by the definition of a logistics centre as the hub of a specific area where all the activities relating to transport, logistics and goods distribution, both for national and international transit, are carried out on a commercial basis, by various operations. (Europlatforms, 2004). Moreover, a logistics centre should be served by a variety of transport methods; roads, rails, sea, inland waterways and air. Munoz and River (2010) defined a hub as a regional cross-docking point, where products from multiple supply sources arrive and are sorted

in accordance to the needs of the destination points. The structure of an ideal logistics hub was put forward by Skowron-Grabowska (2008) and is illustrated in Figure 2.1 below. Specifically, in the context of maritime transport, Song & Panayides (2012) defined a logistics hub as a seaport and hinterland in terms of the spatial boundary where logistics activities are conducted.



**Figure 2.1: Structure of an ideal logistics hub**

Source: Skowron-Grabowska (2008)

An integral component of a logistics hub is the port, and as such, the transformation from a simple cargo-handling facility to a logistics centre, usually begins at the port. According to Rodrigue and Notteboom (2005) ports are identified as playing a core role in the whole maritime world and are taking up more active roles in supply chains. Tongzon (2007) provided nine key determinants of a successful port and logistics hub; port operation efficiency level, cargo handling charges, reliability, port selection preferences of carriers and shippers, the depth of the navigation channel, adaptability of the changing market environment, landside accessibility, product differentiation and government role, including government support and law and

regulations. The ninth determinant, government role and regulations, is of paramount importance. The fact that it was listed last is certainly not an indication of its validity and avoirdupois. In fact, it is suggested that legal and institutional issues be identified before establishing a logistics centre in port areas, and the new logistics-related laws and national strategies should be launched to transform and upgrade ports to the next level of logistics development. Further the Economic and Social Commission for Asia and the Pacific (2002) stated that as to the legal aspects regarding logistics centres, institutional schemes should be made to improve the conditions and simplify the administrative procedures affecting logistics centres, as the existence of an effective institution plays a crucial role in building logistics centres in ports.

## **2.2 Maritime Governance**

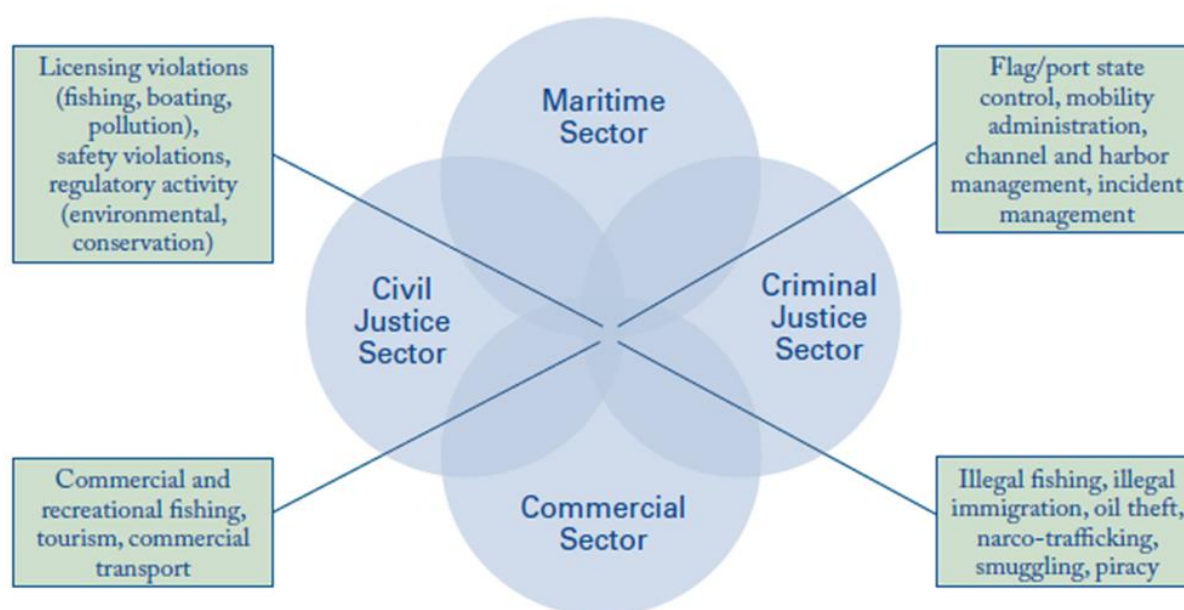
It has been observed in the maritime industry that effective governance and policy making has been presenting numerous issues and consists of several lacunae that have not adequately addressed all the issues. Roe (2013) stated that the maritime sector is also far from immune to governance failures and it is the contention that this in turn has undermined any attempts at coherent and meaningful maritime policy-making. Mukherjee and Brownrigg (2013) outlined the various aspects of shipping from a legal and economic perspective. They stated,

*“... Shipping does not comprise one industry but a number of them... It is a peculiarity of shipping that each sector has its own clear character and style; and that those who work, even for a lifetime in one sector, often have little perception or understanding of others. Equally the sectors may well have different ‘political’ perceptions even in the same country...”*

Likewise, it was asserted that maritime governance derives from an institutional framework with jurisdiction at the international, national, regional and local levels, and that its global reach calls for an international perspective but at the same time, policies need to be effectively applied at the municipal level (McLaughlin, 2010). Similarly Roe (2013) sententiously noted that maritime governance encompasses all aspects of the industry. He expounded that this included all sectors, whether liner, bulk or ferry; all activities inclusive of safety, security, the environment and

efficiency; all locations, from Europe to the United States and from Asia to Africa; and in particular, every part of the jurisdiction and functioning of policy-making and its underlying governance from the international and global to the local and regional, through to the supra-national and national.

The Bureau of Political-Military Affairs (2010) outlined that maritime governance and marine law enforcement can be a cooperative endeavour between national regional, sub-national and private agencies and actors, as depicted Figure 2.2.



**Figure 2.2: The interrelation between the various sectors**

Source: Bureau of Political-Military Affairs (2010)

Correspondingly, the Jamaica logistics hub project will not only affect the ports, but other areas of the maritime industry, both from a public and private sector outlook. As such, the authorities spearheading the project will have to examine all areas and sectors touching and related to the establishment of the logistics hub. Singapore has been a positive example of a state that has successfully established a global logistics hub. Tongzon (2004) states that Singapore is considered very successful in terms of infrastructure development, domestic economic/political environment, incentives for foreign investors and supply chain management strategy. He further states that Singapore has one of the most liberal laws and regulations for foreign investment;

being an open economy with more reliance on foreign capital than any other country in Southeast Asia. Coe (1999) adds that,

*“...At the level of the general electronic commerce environment, largely associated with government policy, Singapore has made significant progress in developing legal frameworks, technical standards and incentive schemes for electronic commerce. In terms of legal frameworks, a major step was the enactment of the Electronic Transactions Act, an Electronic Commerce Policy Committee recommendation, which came into force in July 1998.”*

It is clear that an efficient and strong legal framework is necessary to enable the proper functioning of the upcoming logistics hub. The Hong Kong Logistics Council in its 2008 report illustrated that Hong Kong is often the preferred logistics hub for many international traders because of its clear and transparent legal framework founded on the rule of law and an independent judiciary. A judicial system that operates independently from the executive and legislative branch of Government and makes its own judgments without fear or favour is a key element in the success and continuing attraction of Hong Kong as an ideal base for the administration of business development, investment and trade in the mainland.

According to Hayes (2006), the most important catalyst for the success of a hub is government support, as it guarantees economic incentives for companies, not only those located in the hub but others as well. Pinnock (2014) asserted that one of the main roles of the government in the development of the Logistics Hub is to provide an investment-friendly business climate and to lay the groundwork for Public-Private partnerships (PPPs). It also follows that the way in which the PPP policy employs the various teams through the stages of the process will impact investor activity and government support (Samuda, 2013). As it regards Jamaica, and the suitability of this massive project, Tracey (2014) purported that Jamaica is a prime location for this trade support system because of its geospatial relations. He further outlined particular elements that contributed to this statement; these being Jamaica's geographical location, its good institutions and established regulatory authorities, the State's various ancillary services inclusive of present logistics services and considerable amount of employees currently working within the logistics sector.



Jamaica's logistics hub is a significant and compelling investment opportunity that will be framed by modern legislation and executive policy (Samuda, 2013). Samuda added that an intensive review of the laws must take place at the local level, in that every piece of legislation relevant to the speedy establishment of the hub must be placed under the microscope of value-added change and thereafter revised or repealed as necessary. An extensive review such as that suggested by Samuda (2013) is practical and will aid in securing a smooth transition to economic development and growth. The logistics hub project is expected to also affect the economies of the neighbouring Caribbean states; hence it is vital that a proper policy framework is established from its initial development. In relation to the logistics hub initiative, Samuda (2013) strongly suggest that it is certain that several ports and terminals in the region will be affected, and Caribbean shipping will never be the same.

## **CHAPTER THREE**

### **3.0 THE JAMAICA LOGISTICS HUB INITIATIVE**

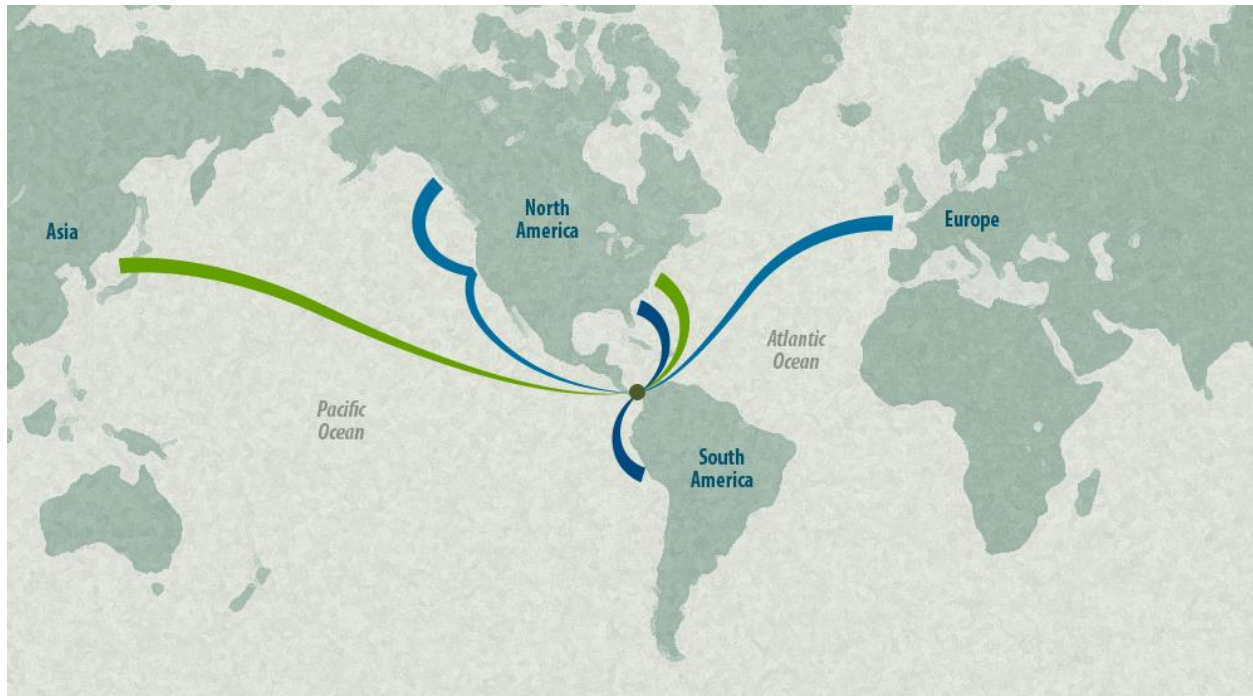
#### **3.1 Panama Canal Expansion Project**

2014 marks the centennial year of the existence of the Panama Canal and Panama has embarked on a new canal expansion project in order to facilitate passage of post-Panamax vessels which are too large to fit in the original design of the Panama Canal. These post-Panamax vessels account for approximately 16% of the world container fleet and account for nearly one half of the total fleet's cargo capacity. (Hricko, 2012). Since the opening of the Panama Canal in 1914, over 9 billion long tons have transited the waterways in the form of over 1 million vessels. Sabonge (2013) outlines that in 2012, 84 million long tons of the approximate total of 218 million long tons that had transited through the Panama Canal correspond to the United States East Coast – East Asia route.

The expansion is hoped to create greater economies of scale in sea transport and accommodate vessels of 49 metres in beam, 15.2 metres in draft and 12,600 20-foot equivalent units (TEU). At present the canal can only accommodate vessels up to 4,400 TEU. Sabonge (2013) further stated, "...the canal is a crossroads for economic activities based on maritime traffic. It enhances the region's export potential by spurring export-dependent economic sectors..." The canal expansion also complements and indirectly encourages logistics development in the rest of Latin America. By increasing their export potential, these countries will be investing more resources in public infrastructure and port terminals. The canal, the international logistics hub and the related services provided by Panama are not only the bedrock of the economy, but also provide a support base for the entire region. As each country increases its logistical capabilities, the region as a whole will improve its competitiveness (Sabonge, 2013).

The Panama Canal functions as not only a gateway for global trade networks, but is vital trade access point for the Americas. Pinnock & Ajagunna (2012) asserted that the prospect for

Caribbean transshipment involvement is integrally tied to the efficiency and competitiveness of the expanded Panama Canal. Figure 3.1 depicts the trade routes channeling through the Panama Canal.



**Figure 3.1 Panama Canal routes**

Source: Georgia Tech Logistics Innovation & Research Centre (2014)

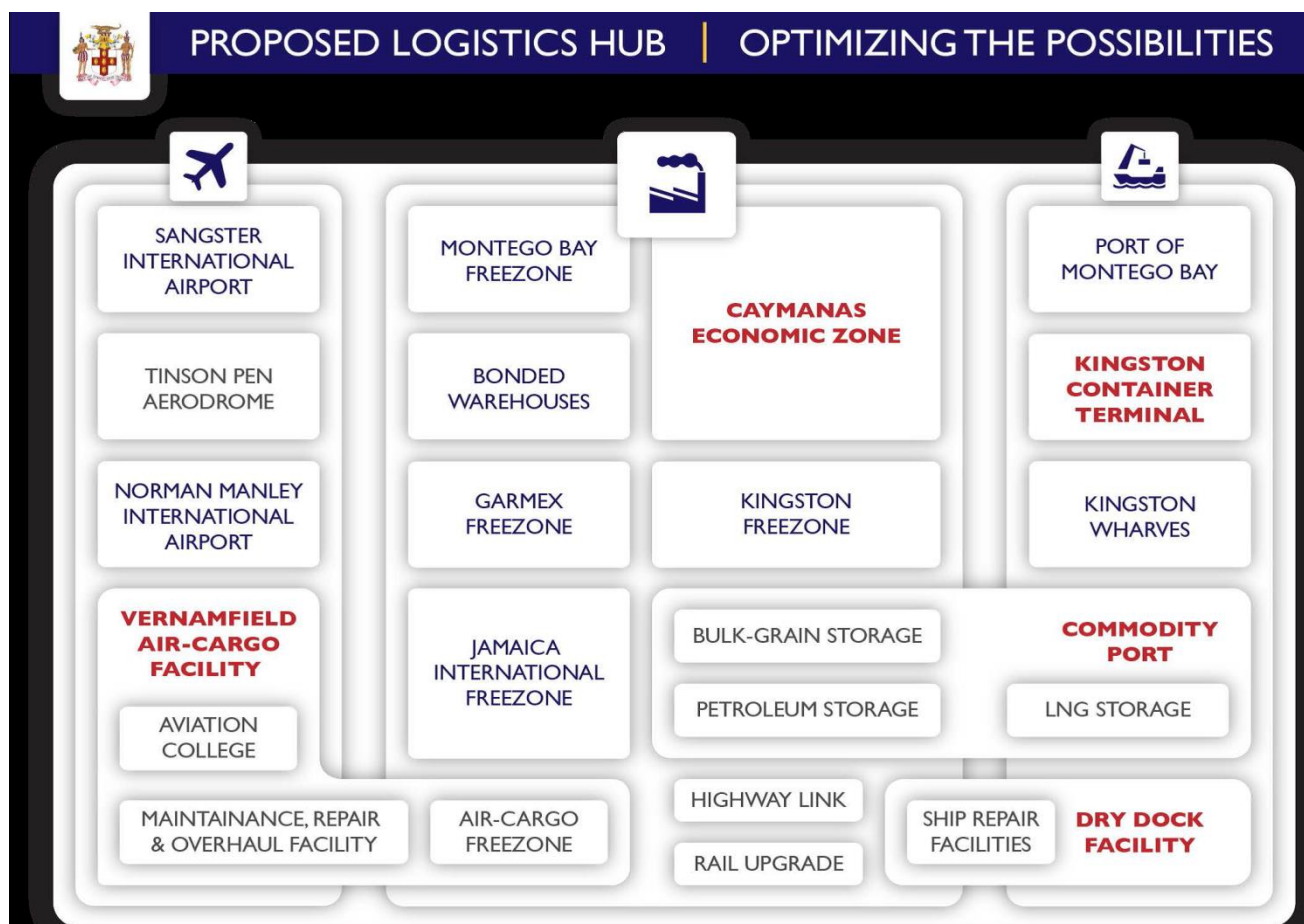
Since the initiation of the expansion project in 2006, many neighbouring States in and around the region, have implemented improvements in their trade facilitation capacities to benefit from the expected increase in traffic. In the United States alone, up to six ports have embarked on structural improvements and administrative upgrades in expectation of the Panama Canal expansion: Port of New Jersey, Port of Baltimore, Port of South Carolina, Port of Savannah, Port of Miami and Port Manatee. Additionally, Caribbean countries have been preparing themselves for the impending increase, such as, Cuba, Trinidad & Tobago, the Bahamas and Jamaica, to name a few. It is anticipated that the expanded capability of the Panama Canal will positively impact the Caribbean shipping industry as the region is positioned to take advantage of this development. (Pinnock & Ajagunna, 2012).

### 3.2 Jamaica's Proposed Transformation

On May 14, 2013, Anthony Hylton, Minister of Industry, Investment and Commerce of Jamaica announced that the Government of Jamaica will embark on a colossal project in the form of the Jamaica Logistics Hub, which is expected to transform the economy of Jamaica over a ten (10) year period. According to Deans (2014), the Jamaica Logistics Hub Initiative is a growth and development strategy with the main goal of positioning Jamaica as a fourth node in the global logistics network to complement Singapore, Dubai and Rotterdam, which has tremendous implications for Jamaica's ports and terminals. The JLH Initiative includes a number of key elements, which are; expansion of the Port of Kingston to receive post-panamax ships, construction of a dry dock at Jackson Bay in Clarendon, installation of bunkering facilities at Cow Bay, near Yallahs, St. Thomas, construction of a cargo and maintenance, repair and operations facility at Vernamfield in Clarendon and development of an economic zone at Caymanas with a direct road link to the Port of Kingston.

Jamaica sits at the intersection of several maritime and aviation routes to the Americas, Europe and Western Africa and businesses located in Jamaica can readily access large commercial markets in North, Central and South America totaling approximately 800 million people. The JLH Initiative is expected to provide businesses with prime opportunities for global partnerships and expansion. (Jamaica Logistics, 2014)

Opportunities offered by the JLH initiative include maritime and air cargo logistics hubs, strategic storage, handling and processing points for bulk commodities, expansive special economic zones facilitating assembly, warehousing, sorting, distribution and other value-added services, particularly for industries catering to time sensitive and high-value cargo. Also aviation-related maintenance, repair and overhaul and ship repair and dry docking, and a robust digital network to support efficient global value chain tracking and tracing, as well as e-commerce operations are all sub-projects in the JLH Initiative. The proposed structure of the JLH is illustrated in Figure 3.2 below.



**Figure 3.2: Proposed Logistics Hub**

Source: Port Authority of Jamaica

The transformation process to be undertaken by Jamaica contains a number of elements, which will be briefly discussed.

### *Kingston Harbour Channel Upgrade*

Kingston boasts the seventh largest natural harbour in the world and consists of an almost landlocked area of water, roughly ten miles long and two miles wide. Much of this water, even close to shore, is deep enough to accommodate large ships. ("Port Authority of Jamaica," 2006) The Harbour serves as a valuable resource for Jamaicans providing port and airport facilities, a

fishing site for thousands of industrial and commercial enterprises, as well as home for many people. Figure 3.2.1 illustrates a map of Jamaica depicting the Kingston Harbour.



**Figure 3.2.1: Kingston Harbour**

Source: <http://jamaicajamaica.yolasite.com/kingston.php>

Despite its vast size, in order to accommodate the expected vessel traffic, the Kingston Harbour will require some remodelling and restructuring. The Government of Jamaica is presently making arrangements to deepen Port Bustamante, the shipping channel and the east channel to accommodate the larger ships traversing the expanded Panama Canal, by way of a dredging exercise. Currently, the Kingston Harbour stands at 14 meters or 46 feet deep and the planned dredging activities are expected to deepen the said harbour to approximately 17 meters or 56 feet in depth.

### *Privatization of Kingston Container Terminal*

Another aspect of the JLH project is the privatization of the Kingston Container Terminal, one of the region's leading container terminals and transshipment ports, which began operations in 1975 at the Port Bustamante. The KCT is owned by the Port Authority of Jamaica (PAJ), but managed



by the KCT Services Limited, and is situated 32 nautical miles off the main trade lanes, which affords vessels minimal route deviations to and from the Panama Canal. ("General Overview," n.d.)



**Figure 3.2.2: Port of Kingston**

Source: KCT Services Limited (2014)

The KCT spans 195 acres and will play an integral part in the development of the Jamaican economy. It is expected to continue as a Port Regulator and the PAJ will continue to own the Port. The PAJ will also be responsible for providing the necessary infrastructure, developing, maintaining and modernizing the infrastructure, but will receive a concession fee from the Terminal Operator (TO). One of the current TOs is the Kingston Wharves Limited (KWL) which operates a terminal just adjoining the Kingston Container Terminal. Three global TOs are expected to bid; Port of Singapore (PSA) Terminal Link Consortium, Dubai Ports World and the China Harbour Engineering Company and China Merchant Holding International Consortium.

The TO will be responsible for capital expenditure for the superstructure and equipment, working capital and spare parts investment, and managing the port operations in a competitive and profitable manner. Figure 3.2.2 is an aerial photograph of the Port of Kingston.

### *Adjustment of Business Shortcomings*

The Government of Jamaica is desirous of establishing a port community system (PCS), which is believed to significantly improve the port operations of the State. PCS is defined as a neutral and open electronic platform enabling intelligent and secure exchange of information between public and private stakeholders in order to improve the competitive position of the sea and air port's communities (Pinnock, 2014).

The PCS will optimise, manage, and automate port and logistics efficiency processes through a single submission of data and connecting transport and logistics chains and will provide to all logistics stakeholders a collaborative platform to manage all their Business to Business (B2B), Business to Government (B2G), and Government to Business (G2B) logistics operations for imports, exports, and trans-shipment.

There are a number of features attributable to a PCS, such as end-to-end transport and logistics chain management, real-time tracking and tracing of all cargo operations, discrepancies management of all cargo data, key performance indicators (KPIs) for all stakeholders, and a secured e-business platform. Pinnock (2014) purported that a PCS is critical for Jamaica's development as a global logistics hub. Figure 3.2.3 outlines the proposed port community system for Jamaica.





**Figure 3.2.3: Port Community System**

Source: Shirley (2013)

### *Other Planned Developments*

There are other projects involved in the JLH initiative. These include the establishment of a dry dock facility at Jackson Bay in Clarendon, the establishment of a bunkering facility at Cow Bay, the construction of a cargo and maintenance, repair and operations facility at Vernamfield, and the development of the Caymanas Zone. Also planned is the creation of a single electronic window to enable efficient cross-border flows of goods, services and people, and the development of special economic zones (SEZs).

### *Special Economic Zones*

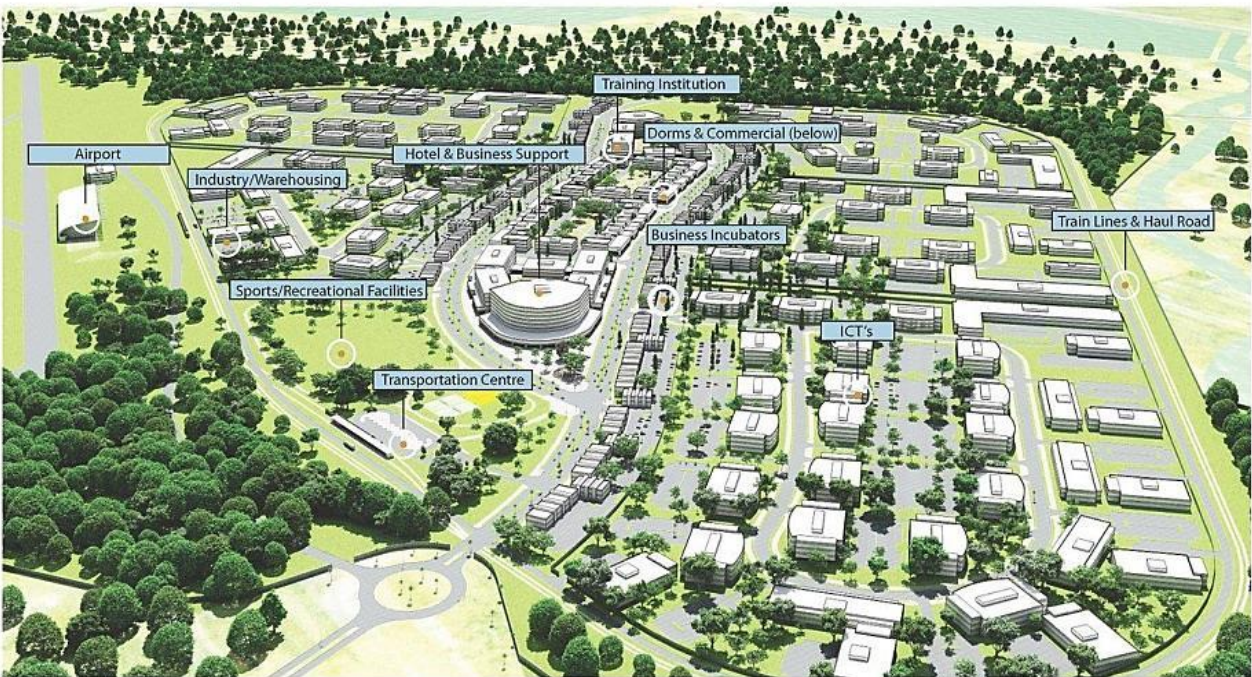
“The successful implementation of the global logistics hub initiative weighs heavily on the development of a Special Economic Zone (SEZ) regime that will replace the existing Free Zone regime with more modern operating rules that are best suited for a competitive, logistics-centric

economy.” (“Jamaica Logistics,” 2014) Hence, the Government of Jamaica aims to successfully implement a SEZ regime that will serve the global logistics industry and function as an example to the region and other logistics-aspiring States.

Jamaica currently has four (4) free zones: Kingston Free Zone (KFZ), Montego Bay Free Zone (MBFZ), Garmex Free Zone (GFZ) and Cazoumar Free Zone (CFZ). The World Bank (1992) defined a free zone as a fenced-in industrial estate specializing in manufacturing for exports that offer firms free trade conditions and a liberal regulatory environment. In 2007, the General Council of the World Trade Organization adopted a decision for the extension of the transition period for the elimination of export subsidy programmes, otherwise known as free zones, in developing countries by the 31<sup>st</sup> December 2015, the latest. Such States were also urged to enact legislation to phase out these said subsidy programmes. There are a number of differences between a free zone and a SEZ, one of which is that a free zone consists of an area where goods are landed, handled and re-exported without the intervention of national customs authorities, except for when the goods are moved directly to customers within the country, while a special economic zone accommodates the same activities but consist of other laws which are more tailored to a free-market than the national laws (MENA-OECD Investment Programme, 2010). So far, Singapore, Dubai, Rotterdam and Panama have all established SEZs, but Jamaica is still to establish SEZs.

Within the plans for the JLH is the establishment of large scale SEZs, designed to promote value-added industries capable of generating employment, export growth, food and energy security and indigenous linkage development. (“Jamaica Logistics,” 2014) It is anticipated that the SEZs will form a part of Jamaica’s economic growth strategy and enhance Jamaica’s role in participating in global value chains, bringing significant investments to the island. Specific plans include the establishment of the Caymanas Economic Zone (CSEZ), which consists of the development of 10,000 acres of land for commercial, residential and recreational purposes and will include activities such as, light manufacturing and assembly, distribution and creative industries, among other things. Figure 3.2.4 depicts the plans for the CEZ development.

## CAYMANAS ECONOMIC ZONE



**Figure 3.2.4: Caymanas Economic Zone**

Source: <http://www.skyscrapercity.com/showthread.php?t=1539098>

Additionally, situated just a few kilometres in distance from the location of the planned CSEZ is the proposed location for the Naggo Head Informatics Park, which will be 100,000 square feet of factory space for information and communication technology businesses. It is also expected that elements within the country's policy, regulatory and legislative framework will be revised or replaced; one such being the enactment of the Special Economic Zone Act and Regulations that will govern the SEZs, as well as the establishment of a Special Economic Zone Authority. The Government of Jamaica plans to introduce a total of sixteen (16) SEZs with the adjacent development of the surrounding areas for recreational activities, and residential and commercial purposes, to capitalize on fiscal growth.

In an effort to ensure the implementation of an efficient and coherent SEZ regime, the government established two (2) committees to oversee the project; the Policy Steering

Committee, with the responsibility of overseeing and guiding the formation of a proper policy framework for the SEZ, and the Enterprise Team, comprised of a number of experts from various fields, to specifically manage the development of the CSEZ and to ensure that its progression is concurrent to the other aspects of the JLH. The Enterprise Team is particularly important as the CSEZ is a critical component of the government's programme to become a value-added and logistic-centred economy. ("Jamaica Logistics", 2014)

The entire JLH project is steered and supervised by a group of experts, referred to as the Jamaica Logistics Task Force (JLTF). The JLTF has been receiving assistance from the Netherlands, Singapore and China with the JLH Initiative. Technical assistance is also promised by the World Bank, which is expected to extend beyond the scope of transshipment to include the development of information and communication technology and manufacturing.

## CHAPTER FOUR

### 4.0 JAMAICA'S INTERNATIONAL LEGISLATIVE AND REGULATORY FRAMEWORK

#### 4.1 Sources of International Law

Article 38(1) of the Statute of the ICJ outlines the main sources of international law. There are:

1. *International conventions, whether general or particular, establishing rules expressly recognized by the contesting states;*
2. *International custom, as evidence of a general practice accepted as law;*
3. *The general principles of law recognized by civilized nations; judicial decisions and teachings of the most highly qualified publicists of the various nations, as subsidiary means for the determination of rules of law* (Churchill and Lowe, 2008)

The law of the sea is considered to be an arm or branch of international law. In fact, Churchill & Lowe (2008) found that the development of the law of the sea is inseparable from the development of international law in general. Despite its small size, Jamaica has made efforts to maintain its position in the international community and has ratified a considerable number of international instruments. One of the most exigent international legal instruments relating to the law of the sea is the UNCLOS and it is noteworthy that Jamaica was the fourth State to ratify this instrument on the 21<sup>st</sup> March 1983 (UNODC, 2013).

The sources outlined in Art. 38 of the ICJ *supra* are comprehensive, but far from imperforate. Mukherjee and Brownrigg (2013) indubitably outlined the aspects of international law that will affect shipping and shipping activities of any State, these being;

1. National (unilateral) regulations or requirements
2. Subsidies (overt or covert)
3. Bilateral, Government-to-Government, arrangements
4. Regional arrangements
5. International agreements and conventions

The aforementioned all affect the shipping and maritime operations of any nation State, and require special attention to be paid to the aforementioned aspects of international law in the pursuance of any changes and/or developments in the State's maritime operations. Within the maritime industry, the IMO conventions stand at the pinnacle of all international instruments. It is, therefore, necessary to review Jamaica's status as it regards IMO conventions.

## **4.2 IMO Conventions**

In the maritime context, Jamaica is party to thirty (30) IMO Conventions, the most recent accession being in November 2013, when Jamaica deposited instruments of accession for the Convention on Maritime Salvage 1989, the Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation 2005 and the Protocol for the Suppression of Unlawful Acts against the Safety of Fixed Platforms located on the Continental Shelf 2005. Table 5.1 outlines the IMO Conventions to which Jamaica has indicated acceptance, approval and/or accession.

From a mere examination of the IMO instruments outlined in Table 4.1, there is an indication that up to October 2013, Jamaica had only been party to selected conventions relating to the marine environment and marine safety, including but not limited to MARPOL 73/78, COLREGS, STCW and SOLAS. Most maritime issues fall under the umbrella sectors of safety, security and the environment, and this is portrayed in the organization's mission statement as outlined in Resolution A.1060(28). Since November of 2013, Jamaica has broadened the scope of its international framework by signing on to particular conventions relating to maritime security. This is certainly a step in the right direction in light of the current logistics hub project. The scope of application of the ratified conventions to selected maritime issues will be discussed in Chapter Eight.

Jamaica is party to 26 International Labour Organization conventions ("Ratifications of ILO Conventions: Ratifications for Jamaica", 2014), which notably does not include the most recent, the Maritime Labour Convention 2006 (MLC). These form part and parcel of the country's international legal framework, but as it relates the maritime industry, the MLC is the major

instrument addressing, among other things, the rights of seafarers and the responsibilities of shipping companies and shipowners.

<b>TREATY</b>	<b>DEPOSIT DATE</b>	<b>DATE OF COUNTRY ENTRY INTO FORCE</b>	<b>TYPE</b>
<b>IMO Convention 48</b>	11/5/1976	11/5/1976	Acceptance
<b>IMO Amendments 91</b>	17/8/2005	7/12/2008	Acceptance
<b>IMO Amendments 93</b>	31/8/1999	7/11/2002	Acceptance
<b>BUNKERS 2001</b>	2/5/2003	21/11/2008	Accession
<b>CLC Protocol 1992</b>	6/6/1997	6/6/1998	Accession
<b>COLREG 1972</b>	30/3/1979	30/3/1979	Accession
<b>FUND Protocol 1992</b>	24/6/1997	24/6/1998	Accession
<b>INTERVENTION 1969</b>	13/3/1991	11/6/1991	Accession
<b>LC 1972</b>	22/3/1991	21/4/1991	Approval
<b>LL 1966</b>	18/8/1982	18/11/1982	Accession
<b>LL Protocol 1988</b>	2/5/2003	2/8/2003	Accession
<b>LLMC 1976</b>	17/8/2005	1/12/2005	Accession
<b>LLMC Protocol 1996</b>	19/8/2005	17/11/2005	Accession
<b>MARPOL Annex I/II</b>	13/3/1991	13/6/1991	Accession
<b>MARPOL Annex III</b>	13/3/1991	1/7/1992	Acceptance
<b>MARPOL Annex IV</b>	13/3/1991	27/9/2003	Acceptance
<b>MARPOL Annex V</b>	13/3/1991	13/6/1991	Acceptance
<b>MARPOL Annex VI</b>	29/5/2008	29/8/2008	Accession
<b>OPRC 1990</b>	8/9/2000	8/12/2000	Accession
<b>SALVAGE 1989</b>	28/11/2013	28/11/2014	Accession
<b>SAR 1979</b>	10/6/1988	10/7/1988	Accession
<b>SOLAS 1974</b>	14/10/1983	14/1/1984	Accession
<b>SOLAS Protocol 1978</b>	17/8/2005	17/11/2005	Accession
<b>SOLAS Protocol 1988</b>	2/5/2003	2/8/2003	Accession
<b>STCW 1978</b>	19/2/1987	19/5/1987	Accession
<b>SUA 1988</b>	17/8/2005	15/11/2005	Accession
<b>SUA Protocol 1988</b>	19/8/2005	17/11/2005	Accession
<b>SUA 2005</b>	28/11/2013	26/2/2014	Accession
<b>SUA Protocol 2005</b>	28/11/2013	26/2/2014	Accession
<b>TONNAGE 1969</b>	8/9/2000	8/12/2000	Accession

**Table 4.1: Status of IMO Conventions – Jamaica**

Source: International Maritime Organization (2014)



### 4.3 Maritime Commercial Conventions

Central to maritime commercial law are the rules governing the bills of lading and the activities involved in trading by sea and the carriage of goods. This is a vital area in the operations of a global logistics hub as the main activity is trade and in particular, global trade. Despite Jamaica's notable ratification of IMO conventions, the State's action to become party to the various maritime commercial conventions has been unimpressive. Currently, Jamaica is party to the International Convention for the Unification of certain rules of law relating to Bills of Lading (Hague Rules) 1924. Other international commercial instruments addressing carriage of goods by sea, to which Jamaica is not a party, are the International Convention on Arrest of Ships 1999, the International Convention on Maritime Liens and Mortgages 1993, the Protocol to Amend the International Convention for the Unification of Certain Rules of Law Relating to Bills of Lading 1968 and the most recent and impending legislation, the United Nations Convention on Contracts for the International Carriage of Goods Wholly or Partly by Sea (Rotterdam Rules) 2008.

The Rotterdam Rules (RR), in particular, may require special attention in a project such as the establishment of a logistics hub. These rules were created with an aim to address the shortcomings of the Hamburg Rules, Hague Rules and the Hague-Visby Rules and also to establish uniform rules to modernize and harmonize the rules that govern international carriage of goods by sea. (Adamsson, 2011)

The major changes introduced by the Rotterdam Rules are in the following areas;

- *Scope of application*, to include door-to-door transport. This provision was drafted to govern all modes of transport, once there is an international sea leg involved, as well as an overall international carriage;
- *Electronic commerce*, which introduced provisions regulating electronic commerce and electronic bills of lading. This aspect was not addressed in the previous Hague, Hague-Visby or Hamburg Rules;
- *Containerization*, addressing the different aspects such as the door-to-door application, the amended carrier's liability *inter alia*;



- *Carrier's liability*, which discusses the carrier's obligation of seaworthiness and extended same for the entire duration of the voyage by sea, as opposed to before and at the beginning of the voyage as in the preceding rules.

The Rotterdam Rules also addressed other maritime issues such as the liability of Maritime Performing Parties (MPP) which extends liability directly to other parties and provides automatic protection to the Carriers' agents provided that they are subject to suit; Controlling Party and right of control, which is the person entitled to exercise control and the Rotterdam Rules specifically acknowledges the identity of the said Party and their right of control; Shipper's obligations, illustrating that the shipper continues to be strictly liable for loss or damage caused by dangerous goods, but bears a fault-based liability for loss or damage caused by its failure to provide necessary information, instructions and documents to the carrier.

Under the Rotterdam Rules the claimant has two years in which to file its action against the carrier before such an action being time-barred. Prior to the Hamburg Rules, the prescribed time for action was one year. The Hamburg Rules extended this period to two years and the RR maintained this extension. Jurisdiction and arbitration were first addressed in the Hamburg Rules and the Rotterdam Rules went further to establish an "opt-in" reservation outlining that only the States that make a declaration to be bound by these chapters will be bound by them. The concept of volume contract was also addressed in the Rotterdam Rules. The rules speak to the freedom of contract which holds that in certain cases, contracting parties should be allowed certain contractual freedoms. It allows shippers of a certain commercial size and those shipping a large quantity of goods in a series of shipments, to negotiate with the carrier for contractual provisions different from the mandatory provisions in the Convention, having regard to the provisions from which no derogation is granted.

The Rotterdam Rules have not yet entered into force and it is not yet certain when they will, however, it does address and introduce a number of elements within the international maritime commercial industry that would be beneficial to Jamaica's proposed initiative. Therefore, monitoring development of the status of ratification, and in particular actions of the major trading States is advisable for Jamaica to develop the JLH in line with the current global trade environment.

#### **4.4 Multilateral and Bilateral Agreements**

Jamaica has also engaged in a number of regional and international agreements, which resulted in the State's attachment to particular institutions and initiatives. The agreements are outlined below.

CARICOM or the Caribbean Community is an organization of 15 Caribbean states with the purpose of promoting economic integration and cooperation among members, ensuring that benefits of integration are equitably distributed and coordinating foreign policy. Through CARICOM came the CARICOM Single Market and Economy (CSME) which was aimed at facilitating the free movement of goods, services, capital and people across the region. Also through CARICOM came the Caribbean Court of Justice (CCJ), an institution charged with the settlement of disputes by way of hearings, mediation and arbitration. The CARICOM Regional Organization for Standards and Quality (CROSQ) was also instituted to facilitate development and harmonization of regional standards in the production of goods and services amongst member states.

Additionally, the Cotonou Economic Partnership Agreement was signed in June 2000, and the agreement provides a timetable for the negotiation of new WTO-compatible Economic Partnership Agreements (EPAs). It was signed between the African, Caribbean and Pacific States (ACP) and the European Union.

The Free Trade Area of the Americas (FTAA) was established to ensure that small economies benefit equally as other parties in CARICOM from trade agreements; while CARIBCAN is a programme introduced by the Government of Canada to facilitate trade and investment with CARICOM member states.

In addition, the Caribbean Basin Initiative (CBI), initially launched through the Caribbean Basin Economic Recovery Act, provides preferential access and trade between the United States and the Caribbean.

Jamaica also signed the Jamaica-U.S. Agreement Concerning Cooperation in Suppressing Illicit Maritime Drug Trafficking (Shiprider Agreement), in an effort to unify efforts to combat drug trafficking, and the Maritime Delimitation treaty between Jamaica and Colombia 1993,

approximating an equidistance line between the countries to be measured from mainland Jamaica and not the small cays nor the archipelagic baselines. Similarly, the 1994 Agreement between Jamaica and Cuba on the delimitation of the Maritime Boundary was established with both States agreeing that the equidistance method be the equitable solution for establishing a delimitation line between the States' EEZs and continental shelves.

Whether to a great extent or to some minute extent, most, if not all, of the regional, multilateral and bilateral agreements to which Jamaica is a party will, somehow be affected by the JLH initiative hence, the State should ensure that the new developments involved in the process do not contravene the provisions, purposes and /or objectives of these agreements to which the state has acquiesced.

In addition to the regional, multilateral and bilateral agreements, Jamaica has a myriad of national legislation and regulations governing its maritime activities, which will be discussed in Chapter Five.

## CHAPTER FIVE

### 5.0 JAMAICA'S DOMESTIC LEGISLATIVE AND REGULATORY FRAMEWORK

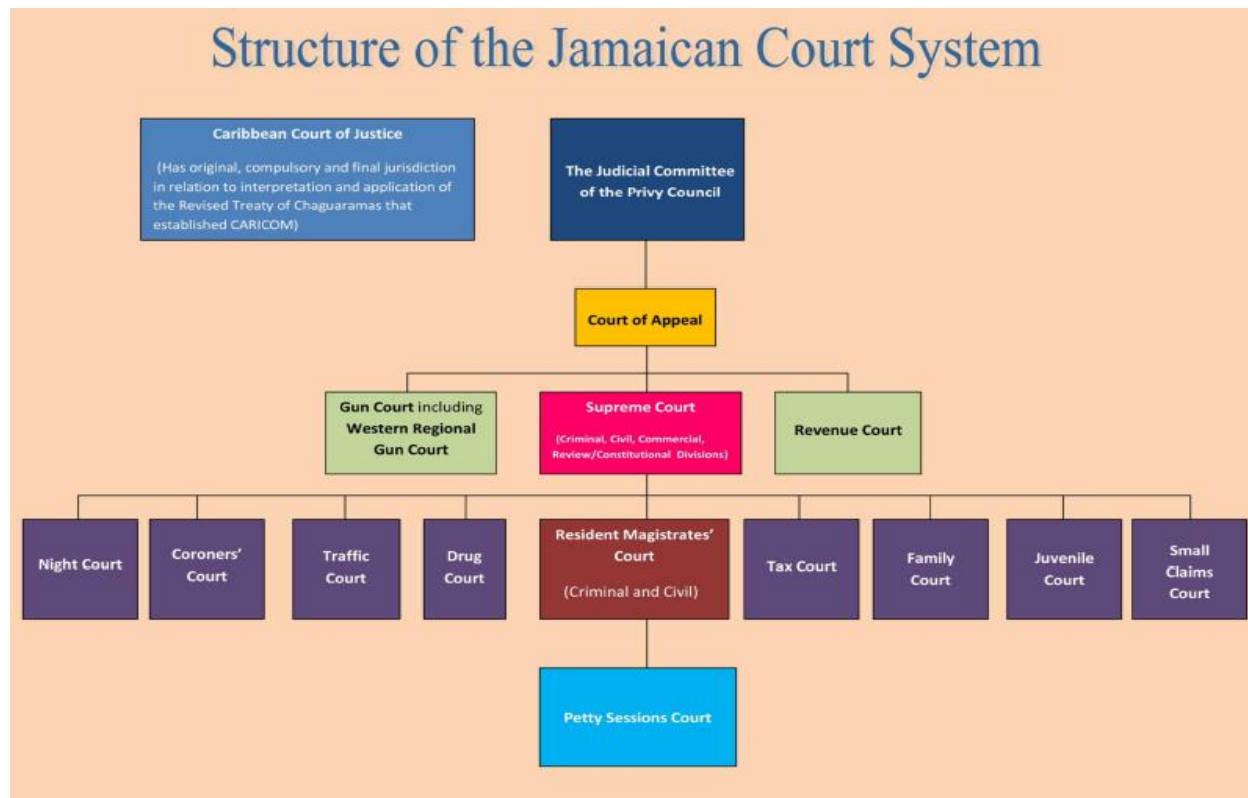
#### 5.1 Brief History of Jamaica's Legal System

Jamaica has a common law legal system and is a member of the Commonwealth Caribbean. This system originated in England from customs and norms, which then became recognized and enforced by decrees and court judgments. As opposed to the other Commonwealth countries which merged their pre-colonial laws with the English law, Jamaica's system is unique due to the fact that it came under the control of the British through battle and use of force. The British victory over the Spanish, resulted in a total eradication of the previously existing system of government and law, and in essence the common law came to Jamaica via the exercise of the Crown's Prerogative in the proclamation of 14 December 1661. (Antoine, 2008)

Being, one of the first conquered colonies, the British battled with uncertainty as to how far its Prerogative or Royal power extended. Nonetheless in 1774, in the case of *Campbell v Hall* [1774] All ER rep 252, Lord Mansfield CJ outlined, “...a country conquered by British arms becomes a dominion of the sovereign in the right of his crown, and therefore, subject to the Parliament of Great Britain...” After Jamaica's independence on August 6, 1962, existing laws were preserved by virtue of s 4(1) of the Constitution of Jamaica and thus the existing regime was saved.

The common law system relies heavily on judicial interpretation and the doctrine of *stare decisis*, where cases are determined based on precedents or previously decided cases in which the facts and issues are substantially the same, subject to the hierarchy of courts (Mercuro, 2007).

## 5.2 Jamaica's Judicial System



**Figure 5.1: Structure of Jamaica's Court System**

Source: Supreme Court of Jamaica (2014)

Jamaica's Judicial System contains five (5) tiers as illustrated in Figure 5.1, the lowest tier being the Petty Sessions Court, which is presided over by a Justice of the Peace (JP). A JP is a person of unquestionable integrity who seeks to promote and protect the rights of individuals and helps to give justice to those persons in a particular community. This position originated in England in 1327 with the enactment of the Justice of the Peace Act and was adopted by Jamaica after colonization. The Ministry of Justice of Jamaica provides supervision for the various processes involved in the appointment of Justices of the Peace and ensures that records are accurately maintained. ("Who Is a Justice of the Peace?," 2014) The office is a voluntary one and there is no requirement for legal training prior to appointment. However, every appointed JP must complete a period of training before he/she is commissioned into office. For a Petty Sessions Court to be properly constituted, a minimum of two JPs must preside.

The next tier of court is the Resident Magistrates' Court; an inferior court of record governed entirely by statute. In this court, Resident Magistrates have the jurisdiction to try cases summarily and on indictment. Sanctions, such as fines and imprisonment are generally imposed, but the levels of sanctions are lower than that which may be imposed in the Supreme Court. Resident Magistrates preside over a range of courts at this level; Coroner's Court, Traffic Court, Drug Court, Tax Court, Family Court, Juvenile Court and Civil Court. The jurisdiction of the Civil Court, prior to 2013, was limited to claims not exceeding Two Hundred and Fifty Thousand Jamaican Dollars (\$250,000.00) or US \$2,200.00, but has now increased for regular civil matters to One Million Jamaican Dollars (\$1,000,000.00) or US \$8,800.00. (Henry, 2013). Appeals from the Resident Magistrates' Court are to the Court of Appeal.

At the third tier is the Supreme Court, the highest first instance court. It is a superior court of record and has unlimited jurisdiction with both inherent and statutory jurisdiction. Courts of equivalent jurisdiction in other countries are generally referred to as "High Courts". The Supreme Court has jurisdiction in Civil, Criminal, Family, Commercial, Succession and Admiralty cases. There are also specialised courts which also exercise superior jurisdiction which are presided over by Supreme Court Judges. These are the High and Circuit Court Divisions of the Gun Court and the Revenue Court. Appeals from the Supreme Court are also made to the Court of Appeal. ("The Court Structure and Hierarchy," 2013)

The court to which all appeals are first referred is the Court of Appeal. It is the fourth tier of the court structure and its procedure is governed by statute. The Court of Appeal has the power to confirm, overturn or vary judgments in any cases in which there are appeals from any of the first-instance courts. The decisions of the Court of Appeal may be subject to appeal to the Judicial Committee of the Privy Council (The Privy Council) in the United Kingdom. The Privy Council is the fifth and highest tier of the Jamaican Court System and technically, the appeal is to the Head of State which is the Sovereign. The Privy Council hears the appeal and makes a recommendation to the Sovereign as to the manner in which the appeal is to be resolved. It may recommend confirmation, overturn or variation of the judgment of the Court of Appeal. Appeals to the Privy Council are restricted to cases of a certain monetary value or where they are of exceptional public importance. The power to refer cases to the Privy Council is allowed under the Jamaican Constitution and Jamaica was among the eight nations, the others being Barbados,

Belize, Dominica, Guyana, St. Lucia, St. Vincent and the Grenadines, and Trinidad and Tobago to ratify a treaty to establish the Caribbean Court of Justice (CCJ). The CCJ settles disputes between the Caribbean Community (CARICOM) Member States and to date, only three (3) of said CARICOM states have replaced the Privy Council with the CCJ: Barbados, Belize and Guyana. The CCJ does not have the competence to hear individual cases on human rights violations, but may apply rules of international law as required. It sits at the fifth tier of the Jamaican Court Structure.

It must be noted that decisions from courts outside of Jamaica are not binding, but may also be referred to as persuasive authority if there is no local case which has settled the point in issue. That said judgments of the various international courts and tribunals such as the International Court of Justice (ICJ) and the International Tribunal on the Law of the Sea (ITLOS), as well as international maritime arbitrations can be considered persuasive authority in matters similar in nature ("The Court Structure and Hierarchy," 2013).

### **5.3 Jamaica's Admiralty Jurisdiction**

Being a former colony of the United Kingdom (UK) and having adopted the basic structure of their legislative system, decisions from the UK, particularly those from the House of Lords, are also very persuasive in Jamaican courts. As is evident in Figure 5.1, there is no separate Admiralty Court in Jamaica, rather an Admiralty Division of the Supreme Court. The Judicature (Supreme Court) Act was passed in Jamaica in 1880 and section 4 of the said Act itemized the Courts which would constitute the Supreme Court of Judicature of Jamaica. Section 4 made no mention of the Admiralty Court.

The matter of admiralty jurisdiction was raised in the recent Jamaican case of **Matcam Marine Limited v Michael Matalon (The registered owner of the Orion Warrior (Formerly Matcam 1) Claim No. A0002/2011 (delivered on October 6, 2011)**, where Counsel for the Defendant raised doubts about the applicability of the Administrative of Justice Act 1956 (UK) to Jamaica. Justice Sykes gave a detailed and instructive response to the lawyer's claim, outlining that the omission in Section 4 is not an indication that admiralty jurisdiction does not exist in Jamaica. He further

gave a two-step process to identifying the admiralty jurisdiction of the Supreme Court of Jamaica. These being;

*“...The first step is that section 2(2) of the Colonial Courts of Admiralty Act of 1890 (UK) shall be read as if the admiralty jurisdiction set out there was substituted with the Admiralty jurisdiction set out in section 1 of the 1956 Act.*

*The second step is that this new reading of the 1890 Act applies to the Supreme Court of Jamaica. Section 1 of the 1956 Act (UK) sets out the admiralty jurisdiction applicable to the Supreme Court of Jamaica...”*

Justice Sykes also mentioned two other Jamaican cases which affirmed that the UK legislation is applicable in Jamaica; **Citadelle Line S.A. v The Owners of Motor Vessel ‘Texana’ (1996) 16 JLR 1** and **DYC Fishing Ltd v The Owners of MV Devin and MV Brice Claim No. 2010 A 00002 (delivered October 8, 2010).**

Presently there are very little cases heard in the Admiralty Division of the Supreme Court of Jamaica but with the JLH initiative, there is a likelihood of increase in volume. While it is accepted in **Matcam v Matalon** *supra* that admiralty jurisdiction does exist in Jamaica, the Supreme Court may benefit from examining the current structure, and considering the establishment of a separate Admiralty court rather than a mere Division of the said court, based on the number of matters being brought before the courts as the project progresses.

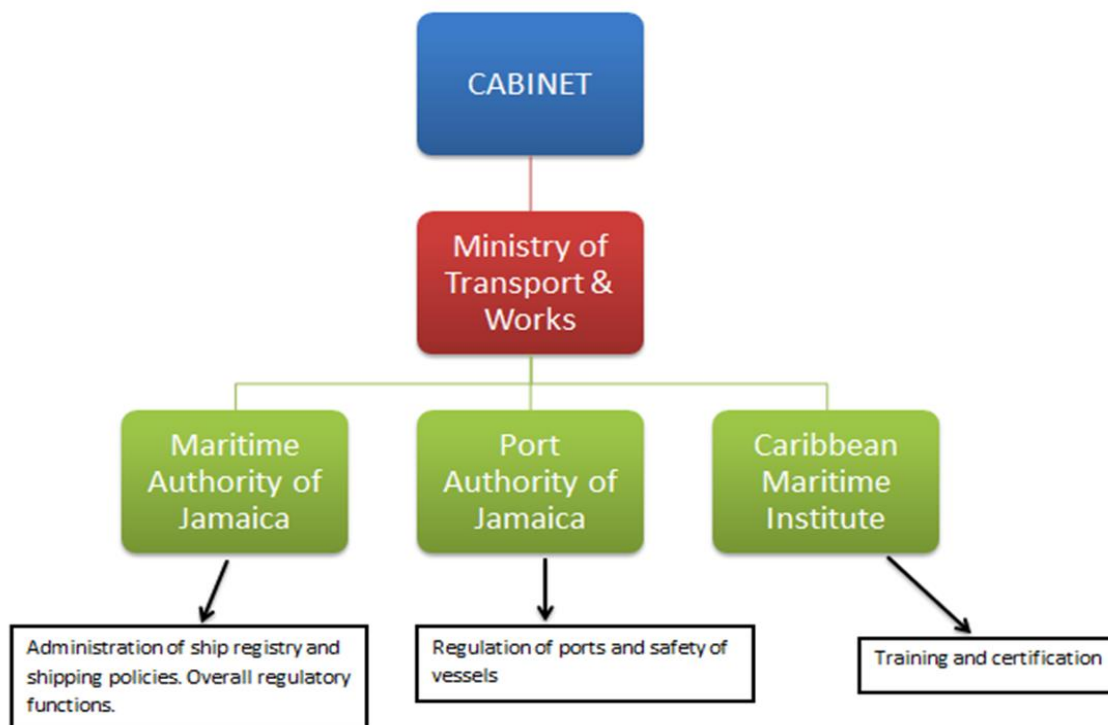
## **5.4 Jamaica’s Maritime Governance**

Maritime operations in Jamaica are managed by the Ministry of Transport and Works, which was established to provide a safe and efficient transportation system, and the building and maintenance of high infrastructural works including roads. There are three main government agencies responsible for the maritime operations in Jamaica; the Maritime Authority of Jamaica (MAJ), Port Authority of Jamaica (PAJ) and the Caribbean Maritime Institute (CMI).



The MAJ was established to implement the provisions of the Shipping Act of Jamaica 1998, with an objective to pursue the development of shipping and to regulate matters relating to shipping and seafarers. Additionally, the shipping registry of Jamaica is the responsibility of the maritime authority, along with the inspection of ships for the purposes of maritime safety and prevention of marine pollution. The PAJ is responsible for the regulation and development of Jamaica's ports. Its functions include regulating the use of all port facilities in a port, providing and operating such port facilities and other services as the Minister may require, giving recommendations to the Minister from time to time regarding measures necessary to maintain or improve port facilities, operating facilities owned by, or leased to the Authority and maintaining and improving port facilities vested in the Authority (MHTWW, 2014).

CMI is the premier maritime training institution in the Caribbean and is considered the region's centre of excellence for the training of professional seafarers and personnel in the shipping, logistics and supply chain management sectors (MHTWW, 2014). Figure 5.2 below is a simplified illustration of maritime governance in Jamaica.



**Figure 5.2: Maritime governance structure of Jamaica**

Source: Ministry of Transport and Works of Jamaica (2013)

## **5.5 Jamaica's Domestic Laws**

There are a number of statutes that apply to maritime operations in Jamaica, some directly and others indirectly, but all applicable depending on the nature of the situations.

### **5.5.1 Maritime Security Laws**

Maritime security is one of the main areas of concern in the international maritime community, and concerns matters such as piracy, armed robbery, terrorism and other transnational crimes such as drug, arms and human trafficking.

Particularly in the Caribbean region, transnational crime continues to be a major issue, and in an effort to address this problem, Jamaica introduced the Maritime Drug Trafficking (Suppression) Act in 1999. This Act introduced the provisions of the United Nations Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances 1988 and established a Central Authority with the power to conduct law enforcement operations for the prevention, detention and suppression of illicit traffic in drugs. Of noted importance is the fact that the Maritime Drug Trafficking (Suppression) Act 1999 accommodates treaties and bilateral agreements relating to illicit traffic in drugs. Section 18 of the 1999 Act allows for aircrafts or vessels to follow foreign vessels into Jamaica's territorial waters, under special circumstances, in order to maintain contact with or investigate, board and search the vessel. Additionally, section 21 of the said 1999 Act establishes jurisdiction of Jamaican courts in situations outside of Jamaica's waters where the vessel in question is registered in Jamaica and/or the alleged offender is a Jamaican national or found in Jamaica.

Another local instrument is the Port Authority (Port Management and Security) By-Laws 2005 which implements Chapter X-2 of the International Convention on the Safety of Life at Sea (SOLAS) 1974, as amended, which further incorporates the ISPS Code addressing port facilities.

Piracy is not a major issue in the Caribbean area but nonetheless, should not be ignored. It is possibly one of the oldest maritime crimes and certainly one of the most feared, as it endangers the crew, the shipowner, the cargo owner, the charterer, the Flag State and even the coastal State depending on the location of the incident.

Jamaica, in particular, is flanked by North, Central and South America, as well as other Caribbean countries. In 2013, seventeen vessels were attacked in South American waters, while since 2014, attacks were reported in Grenada, Dominica, Panama, Martinique, St. Martin and St. Lucia (World Cruising Club Limited, n.d., *Reports on Acts of Piracy and Armed Robbery Against Ships*, 2013). With the expected upsurge in vessel traffic, it seems highly probable that more attention will be directed in the neighbouring and territorial waters of Jamaica hence, a solid regulatory framework is required to tackle such matters.

It is noteworthy that there is no national legislation in Jamaica adequately addressing piracy which raises some concern considering Jamaica's history with piracy and associated activities, and is a matter of great concern with the establishment of the JLH.

### **5.5.2 Maritime Environmental Laws**

Being totally surrounded by water and with the extended area of territorial waters due to its archipelagic status, as declared in section 3 of the Maritime Areas Act of Jamaica; it is of particular importance that Jamaica enacts laws to protect its marine environment.

Jamaica possesses a varied and irregular coastline which consists of various coastal features such as harbours, beaches, mangrove swamps and coral reefs, which contribute to the economic well-being of the country mainly through tourism. ("Coastal and Marine Resources Management," n.d.) Proper management of the country's coastline and marine resources is addressed under the Beach Control Act 1956. Section 7 of this Act speaks to the Minister's power to declare protected areas and prohibit activity within the area having regard to the Harbours Act, Shipping Act, Pilotage Act, Fishing Industry Act and the Exclusive Economic Zone (EEZ) Act. The Act is

currently being reviewed to address more contemporary issues, which is a good indication of the government's attention to protection of the State's marine environment.

The management, conservation and protection of the natural resources of Jamaica fall under the Natural Resources Conservation Authority Act 1991. Section 9 of the said Act creates a Ministerial discretion to declare parts of or the entire island a 'prescribed area', in which specified activities require a permit, and for which activities an environmental impact assessment may be required. Subsequently, pursuant to the Section 9, the Natural Resources (Prescribed Areas) (Prohibition of Categories of Enterprise, Construction and Development) Order, 1996 and the Permits & Licensing Regulations were passed. The Order provides that the entire island of Jamaica is a prescribed area and lists specified categories of enterprise, construction or development that require a permit, and also addresses Sewage and Trade Effluent discharges as well as air emissions.

The Watersheds Protection Act 1963 provides for the protection of watersheds and areas adjoining watersheds, as well as, promotes the conservation of water resources. Jamaica is considered to be one watershed, but for management purposes is divided into smaller units. Similarly, the Wild Life Protection Act 1945 (as amended in 1991) protects specified species of fauna, while the Fishing Industry Act 1975, administered by the Fisheries Division of the Ministry of Agriculture, protects and conserves the marine resources in Jamaica through the issuance of licenses for temporary and/or permanent fishing activities.

The Aquaculture, Inland, Marine Products and By-Products (Inspection, Licensing and Export) Act 1999 addresses the inspection and certification of various categories of products and by-products intended for export. The main objective of the Act is to advance public health and safety standards however, it includes the monitoring of the hygienic and sanitary conditions of vessels engaged in the processing of aquaculture, inland and marine products and their by-products.

Jamaica's compliance with its obligations under the Convention on International Trade in Endangered Species (C.I.T.E.S) of Wild Flora and Fauna are fulfilled under its Endangered Species (Protection, Conservation and Regulation of Trade) Act 2000. This involves the protection, conservation and management of endangered species, wild flora and fauna of Jamaica

and other countries by regulating the exportation of specimens that are or are derived from indigenous Jamaican animals or plants. The link to the maritime industry falls under section 2 of the Act where an “authorized officer” is defined to include, among others; a Fisheries Inspector appointed under the Fishing Industry Act, a Marine Officer under the EEZ Act and the Maritime Areas Act, and any Inspector under the Aquaculture, Inland, Marine Products and By-Products (Inspection, Licensing and Export) Act 1999.

The Maritime Areas Act and the EEZ Act refer to the delimitation of Jamaica’s maritime zones in line with the provisions of UNCLOS and the Shipping Act 1998 sets out the legal framework for administration of ship registration, seafarers’ welfare, safety, wrecks, salvage, casualty investigation and other related matters. It establishes the Maritime Authority of Jamaica and incorporates the primary international treaties governing the safety of life at sea and provides for the inspection of foreign ships calling at Jamaican ports, with contains certain restrictions related to the commercial operation of foreign flag ships in Jamaican waters. This Act also incorporates the provisions of a number of ILO and IMO Conventions to which Jamaica is a party.

The Petroleum Act 1979 (as amended in 2006) declares all petroleum existing in its natural state in strata in Jamaica, including petroleum on the seabed and subsoil of the State’s territorial sea, continental shelf and exclusive economic zone, property of the State; and for the purposes of the jurisdiction of any court in Jamaica, any such maritime extension shall be treated as if it were located in the parish in which proceedings are brought.

The most recent introduction to the environmental regulatory framework is the Draft Shipping (Pollution Prevention and Control) Bill, which is expected to incorporate a number of International Conventions dealing with the prevention of pollution, response to pollution incidents and compensation for pollution damage. The Bill had specifically incorporated provisions from CLC, the FUND Convention and the Bunkers Convention regarding issues of civil liability and compensation.

### **5.5.3 Maritime Labour Laws**

Laws that touch and surround the regulation of labour in Jamaica's maritime industry include the Factories Act 1943 which regulates the registration of factories and equipment and the approval of plans for the construction of new factories and the health and safety conditions required to be maintained. Additionally the Immigration Restriction (Commonwealth Citizens) Act, 1945 governs the control of the employment of foreigners, while the Labour Relations and Industrial Disputes Act, 1975 (as amended in 2010), coupled with the associated Regulations regulates the industrial relations in Jamaica.

The Caribbean Maritime Institute Act, 1993 establishes the country's only maritime training institution, the Caribbean Maritime Institute, to deliver training for the shipping industry.

Labour laws are somewhat few compared to the other sectors, which is interesting to note considering Jamaica's role in the training of seafarers in the Caribbean region.

### **5.5.4 Maritime Commercial Laws**

The national laws that govern trade and trade relations, particularly in the maritime context are the Income Tax Act, 1955, which outlines regulations of the State's income tax requirements, the Customs Act, 1955, which addresses matters regarding licenses of customs brokers and their duties are addressed in this Act, with a view to ensuring that standards are being maintained; and the Fair Competition Act 1993 which was established to prohibit anticompetitive conduct, and established the Fair Trading Commission, a body that investigates the actions of enterprises that may result in an abuse of an enterprise's dominant position in the market. The Customs Duties (Dumping and Subsidies) Act 1999 establishes rules relating to the determination of fair market price and material and injury arising from the dumping of goods, while the Export Industry Encouragement Act, 1956 provides fiscal incentives to companies involved in export activities.

The Jamaica Export Free Zone Act 1982 addresses the legal framework for prescribed export activities that may be carried out in a free zone and the establishment of single-entry free zones

are also prescribed therein. In addition the Carriage of Goods Act 1889 addresses the rules governing bills of lading and maritime commercial activities, and the Bill of Lading Act 1855 enables consignees and other lawful holders of bills of lading to sue under the contract evidenced by the Bill of Lading.

The Cargo Preference Act 1979 requires specific cargo to be carried by ships owner, chartered and operated by the Government of Jamaica. This legislation has not been applied for many years as the Government of Jamaica no longer owns ships.

A more modern legislation, the Shipping (Local Trade) Regulations 2006 provide for conditions under which foreign ships can operate within Jamaica's territorial waters.

All these regulations create the maritime commercial law framework of Jamaica and it will be necessary to review these as the JLH initiative progresses.

## **5.6 Other Relevant Legislation**

Other relevant legislation include the Harbours Act 1874 that establishes the position of the Harbour Master and regulates the movement of ships within the declared harbours of Jamaica. This Act also contains provisions on the maintenance of aids to navigation. Additionally, the Wharfage Act 1895 governs the rights and duties of a wharfinger, who is defined under section 2 as the person in occupation of any public wharf and carrying on the business of landing, receiving and otherwise dealing with thereat the goods of other people. The said Act sets the wharfage rates for goods that pass through the ports. The Act also sets out the duties of wharfingers in relation to the receipt, delivery and storage of goods. Under the Act, a wharfinger is required to erect and maintain adequate sheds or other places of security for storing. Matters relating to free storage periods and penal rates for the storage of goods beyond the statutory free period are also addressed under the Act. The Act also provides for the Port Authority and wharfinger to set rates for loading, unloading, movement, receiving and delivery of containers or other service of whatever nature rendered in connection with that wharf in relation to containers.

The Harbour Fees Act 1927 provides for the payment of fees by ships to the Collector of Customs, on behalf of the Port Authority, for maintaining the harbour. Under the Act, certain vessels are exempted from paying fees (for example, government ships, pleasure craft, and vessels in distress), and the Quarantine Act 1951 regulates the prevention of the spread of any infection by means of a ship. Quarantine officers have the power to inspect ships to determine whether the cargo may be discharged, as well as the power to detain or send it to a port which the officer thinks can address the presence of a communicable disease on board. Also addressing the matter of health is the Public Health Act 1985, which regulates the prevention of communicable diseases. The definition of ‘premises’ under the Act is all-embracing and includes warehouses, factories, port facilities and ships in so far as issues affecting public health are concerned.

With regards to the regulations of the ports, the Port Authority Act 1972 established the Port Authority of Jamaica with a mandate for regulation and development of port facilities and the maintenance of ship channels and navigation aids. The Port Authority is charged with the regulation of the use of all facilities in a port. Port facilities are defined as facilities for, inter alia, dry-docking, berthing, loading and unloading of goods, carriage of passengers, and warehousing. The Port Authority may also operate port facilities vested in the Authority and may, under the direction of the responsible Minister; operate port facilities which are not vested in the Port Authority. Also, the Port Authority (Compulsory Towage) (Harbour of Kingston) Directions 1994 regulates the provision of towage services in the port of Kingston, while the Pilotage Act 1975 Act regulates the pilotage service, which adds to the safety of vessels calling at Jamaican ports and devolves the administration of the service to the Port Authority of Jamaica.

## **5.7 Summary of Chapter Five**

The aforementioned legislation, regulations and agreements are those particularly applicable, to a great extent or paradoxically with very minuscule effect to the maritime industry and the associated operations. A detailed analysis on the efficacy of these regulations as it relates to the JLH initiative will be discussed in Chapter Seven.



## **CHAPTER SIX**

### **6.0 CASE STUDIES**

#### **6.1 Case Study 1 –Singapore**

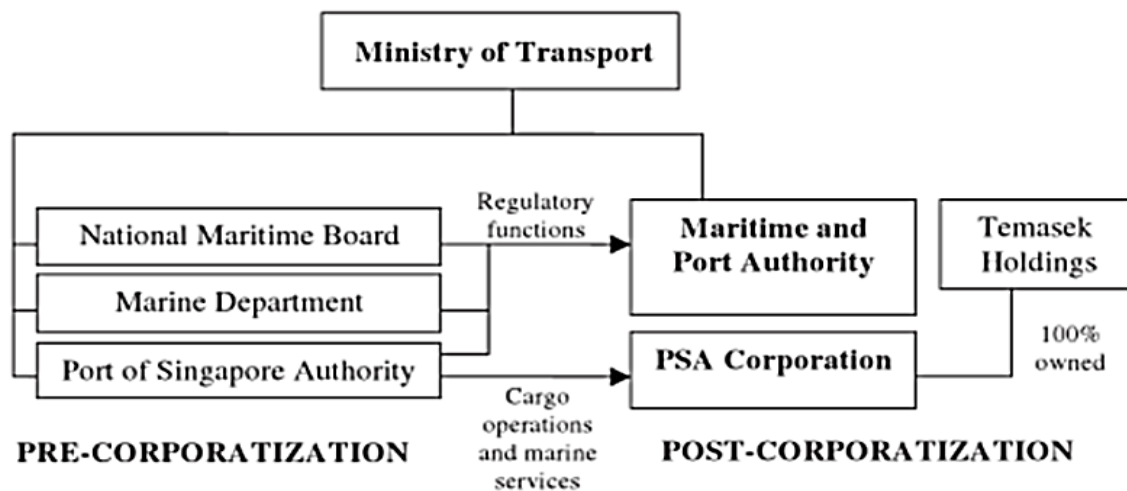
Singapore gained independence in 1958 and is located on the southern end of the Malay Peninsula. Shortly after gaining independence, the State suffered some blows to its economy. Shortly after, the State embarked on a project to save its economy through restructuring its transportation industry. The share of the transport and communication sector of Singapore in GDP in 2007 was 14.6% with a real growth of 8.8% in the previous five (5) years (WB, 2009). Singapore is described as having world-class seaports and airports, excellent infrastructure, an efficient telecommunication network, a pro-business environment, intensive use of information technology, wide-ranging logistics capabilities, as well as a skilled and professional workforce. The combination of these factors has helped Singapore to become a modern hub of international trade and a base of operations for a large number of multinational and regional companies (Economic and Social Commission for Asia and the Pacific, 2002).

##### **6.1.1 Singapore's Maritime Governance**

As Singapore transformed into the fifth best performing logistics hub worldwide out of 160 in the World Bank 2014 Logistics Performance Index (LPI), the State underwent a governance transformation that incontestably contributed to the success of the logistics hub. Prior to 1996, port regulations and cargo operations were managed by three (3) agencies:

1. The National Maritime Board, which overlooked matters relating the training of seafarers;
2. The Port of Singapore Authority, which handled matters relating to cargo operations and port regulations; and
3. The Maritime Department, a department in the Ministry of Transport that overlooked the ship registry.

In 1995, the Government of Singapore made a bold move and enacted the Merchant Shipping Act, which was then revised in 2006 to become the Maritime and Port Authority of Singapore Act. This new legislation combined the regulatory functions of the three (3) abovementioned agencies and separated them from the commercial and marine activities. As illustrated by Figure 6.1, the Maritime and Port Authority of Singapore (MPA) adopted management and administration of the Port of Singapore through the regulation of the essential port and marine services and facilities, while the operational aspects of the terminal businesses and other commercial activities became the responsibility of the PSA Corporation, an entity of Temasek Holdings, the investment company of the Singapore Government.



**Figure 6.1 Structural changes to the governance of the Port of Singapore**

Source: Brooks & Cullinane (2007)

The MPA falls under the purview of the Ministry of Transport and the major policy decisions are made at the ministerial level, in close consultation with the members of the maritime community, including the Singapore Shipping Association and the Singapore Maritime Foundation. Brooks & Cullinane (2007) found that the benefit of this arrangement is that policies are formulated with a strong focus on their relevance and importance to the commercial needs of the maritime community. The MPA is headed by a Chief Executive who oversees the daily operations and in turn reports to the Board of Directors, which is chaired by the Permanent Secretary of the Ministry of Trade and Industry (MTI) and its functions include;

### **1) Regulating and licensing port and marine services and facilities**

The MPA discharges Singapore's roles as flag and port State by ensuring that the regulations are current and that the State remains compliant and adherent to the IMO conventions and other international instruments to which Singapore is party. The MPA is also responsible for issuing licences to cargo-handling operators and these licenses extend to the provision of pilotage and towage services.

### **2) Protecting the marine environment and ensuring navigational safety and maritime security**

The MPA is also responsible for, *inter alia*, the management of vessel movements, prevention of marine accidents, oil spill prevention and working with other Singapore governmental agencies and the private sector in the implementation of the necessary security measures.

### **3) Managing Singapore's merchant fleet**

The Singapore Registry of Ships (SRS) is responsible for the registration of ships sailing under the Singapore flag, while the MPA is responsible for promoting and marketing the SRS. MPA promotes the Singapore registry as a high-quality, attractive register through targeting shipowners and providing support services to the shipping community.

### **4) Working with various government agencies and industry partners to develop and promote Singapore as a leading port and International Maritime Centre (IMC)**

MPA is also responsible for assessing industry trends and developing strategies aimed at identifying new business opportunities, and applying the appropriate port planning to maintain a high status in the industry. Attracting local participation, foreign investments and enhancing the breadth and depth of services being offered are also duties of the MPA.

### **5) Safeguarding Singapore's maritime interests in the international arena**

The MPA serves as the de facto advisor on maritime related matters to the Government of Singapore, which includes management of foreign relations and building networks with important maritime countries and international organizations such as the IMO.

### **6.1.2 Singapore's National Maritime Laws**

To date, Singapore is party to thirty-one (31) IMO Conventions, inclusive of SOLAS, MARPOL and STCW. Apart from the main maritime instrument, the MPA Act, the Government of Singapore also enacted a cadre of national maritime laws, to safeguard the State's interests with the establishment of the Singapore logistics hub. These are the Maritime Offences Act, which gives effect to the provisions of the Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation and addresses matters of piracy, hijacking of ships and other maritime security matters; the Merchant Shipping (Civil Liability and Compensation for Bunker Oil Pollution) Act 2008 and Merchant Shipping (Civil Liability and Compensation for Oil Pollution) (Compulsory Insurance) Regulations, addressing oil pollution and issues of liability.

The Prevention of Pollution of the Sea Act 1999 and its associated regulations are other national instruments that deal with pollution of the sea in Singapore. These regulations are the Prevention of Pollution of the Sea (Air) Regulations 2005, Prevention of Pollution of the Sea (Composition of Offences) Regulations 2001, Prevention of Pollution of the Sea (Garbage) Regulations 2001, Prevention of Pollution of the Sea (Hazardous and Noxious Substances Pollution Preparedness, Response and Co-operation) Regulations 2004, Prevention of Pollution of the Sea (Noxious Liquid Substances in Bulk) Regulations 2006, Prevention of Pollution of the Sea (Oil Pollution Preparedness, Response and Co-operation) Regulations 2001, Prevention of Pollution of the Sea (Oil) Regulations 2006, Prevention of Pollution of the Sea (Reception facilities and garbage facilities) Regulations 2001, Prevention of Pollution of the Sea (Reporting of Pollution Incidents) Regulations 2001, and the Prevention of Pollution of the Sea (Sewage) Regulations 2005.

Other national regulations include the MSA Notification 1 (Exemption under Section 222), MSA Notification 3 (Authorisation to extend expired certificates), MSA Notification 4 (Exemptions of Govt and PSA vessels), MSA Notification 5 (Notice under Section 14(5)), MSA Order 1 (MS (Limitation of Liability)(Sing \$ equivalents)), MSA Rule 1 (MS (Shipping Casualties, appeals and rehearings)), MSA Rule 2 (MS (Court of Survey)), MSA Rule 3 (MS (Transit of Cattle by Sea)), MSA Rule 4 (MS (Survey of Passenger Steamers)), MSA Rule 5 (MS (Staff Transfer)) and the Merchant Shipping (Training, Certification and Manning) Regulations, all of which

speak to certifications, liabilities, casualties and judicial proceedings amongst other maritime issues.

The most recent instrument is the Merchant Shipping (Maritime Labour Convention) Act 2014, which was enacted following the entry into force of the Maritime Labour Convention 2006. It must be noted that a vast amount of Singapore's national maritime laws are current, dating back to about 2004, which suggest that the laws are compliant and contemporaneous. The amount of regulations can be attributed to Singapore's legal system, which is a common law system. This type of system indicates that when the State ratifies an international instrument, it will have to enact a separate domestic law to give effect to the terms of the said international instrument, unless said instrument is declared as self-executing.

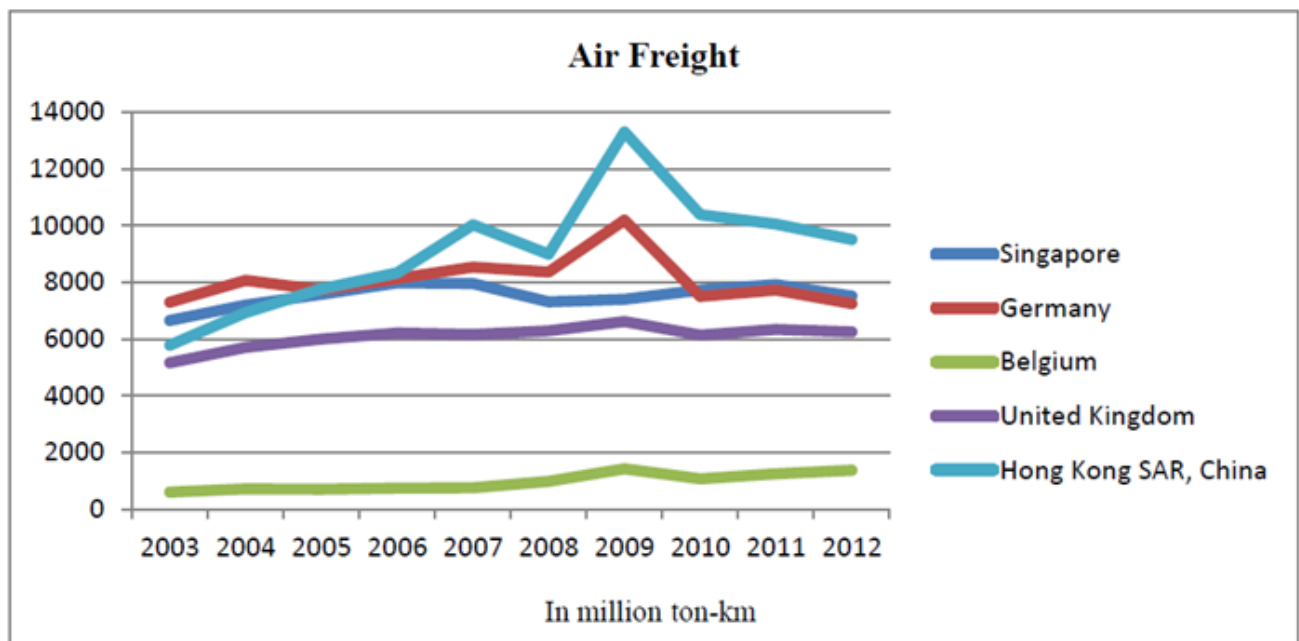
Singapore's shipping law in particular, covers the areas of carriage of goods by sea, admiralty law and merchant shipping legislation. The Carriage of Goods by Sea Act and the Bills of Lading Act, form the body of the law on carriage by sea. The primary legislation on admiralty law and jurisdiction is the High Court (Admiralty Jurisdiction) Act of Singapore which is modelled after the UK Administration of Justice Act 1956. An amendment to this statute came into effect on 1 April 2004 permitting arrest of demise chartered vessel.

There have been a number of cases heard in Singapore as a result of international conflicts in or related to shipping operations. The notable impressive maritime regulations of Singapore and its expeditious judicial system resulted in recent judgments in cases such as *The "STX Mumbai"* [2014] SGHC 122 and the *Pacific Marine & Shipbuilding Pte Ltd v Xin Ming Hua Pte Ltd* [2014] SGHC 102.

The government sector is important for the formulation and implementation of appropriate policies, but it needs the private sector to carry out and translate the overall policy direction into action. Thus, a good partnership between the government and the private sector is an important ingredient to the success of a logistics hub strategy. Based on Singapore's experience, the government of Singapore has always been pro-active and supportive to the logistics providers by providing world-class infrastructure and a broad range of logistics solutions and services including the establishment of efficient customs procedures and pro-business environment (Tongzon, 2004).

## 6.2 Case Study 2 –Hong Kong

The world class infrastructure and free port status are significant ingredients in Hong Kong's enduring success as a leading logistics hub. (Millar, n.d.) Hong Kong currently stands at number 15 on the Logistics Performance Index 2014 and boasts one of the best cargo airports and one of the largest container seaports worldwide. Figure 6.2 depicts the air freight statistics for the years 2003 to 2012, with Hong Kong's performance surpassing that of the other major logistics States.



**Figure 6.2: Air Freight Statistics 2003-2012**

Source: Arvis et al. (2014)

Government involvement in the transformation process can be attributable to its boast-worthy success in the global logistics sector. An examination of the maritime governance is vital to fully appreciate the notability of policy and regulation to the success of the global trade operations.

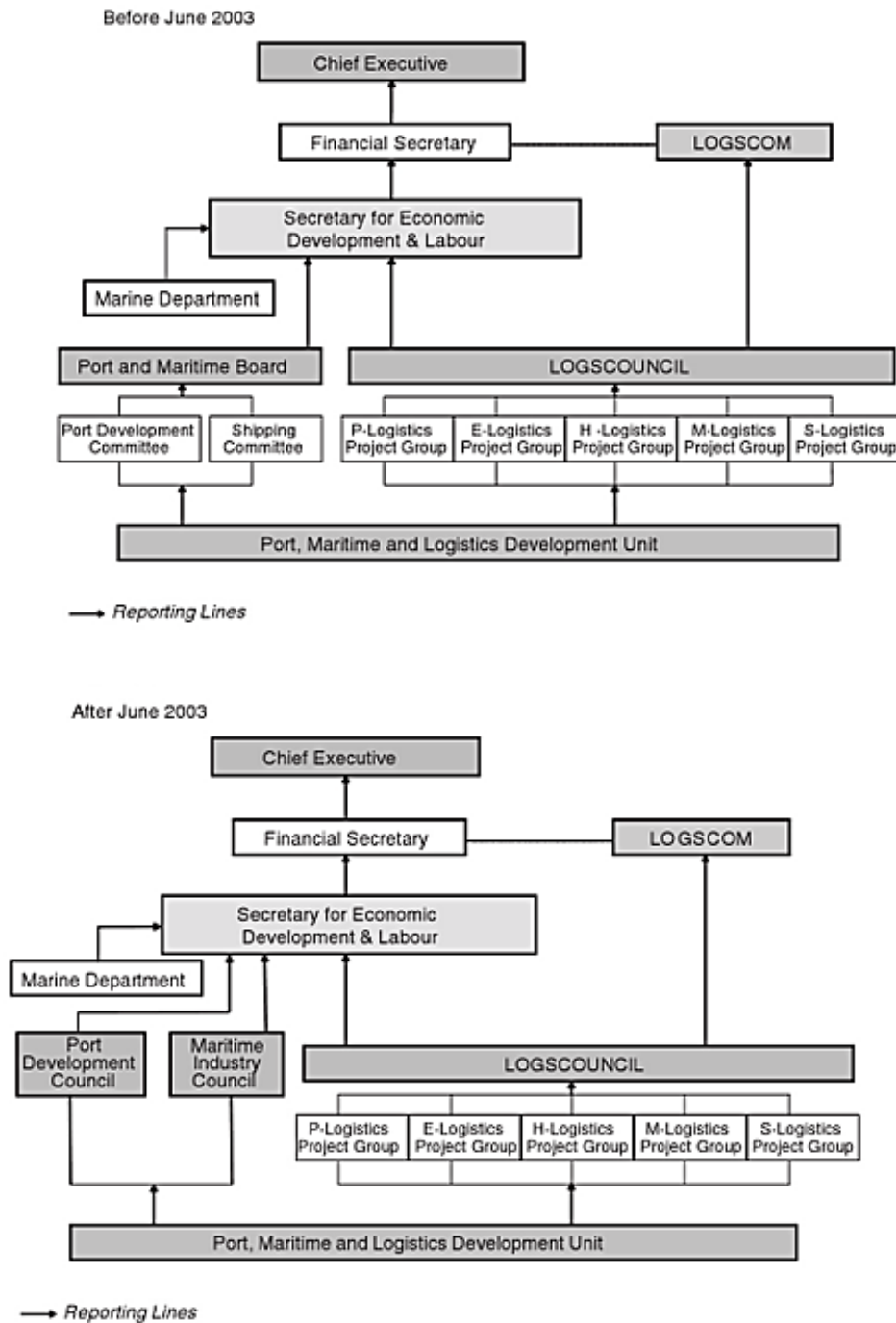
### 6.2.1 Hong Kong's Maritime Governance

The Transport Department, the Civil Aviation Department and the Marine Department are the three (3) government agencies directly involved in the governance of transportation in Hong Kong. The Transport Department is directly responsible to the Secretary for the Environment, Transport & Works, while the Civil Aviation and Marine Departments report to the Secretary for Economic Development and Labour, which heads the Economic Development and Labour Bureau (EDLB). The EDLB and the Marine Department are responsible for Hong Kong's maritime matters. The Marine Department is headed by the Director of Marine, and provides a number of major services such as, vessel traffic, pilotage, hydrographic office, dangerous goods, maritime search and rescue and mooring buoys.

June 2003 marked a significant transformation in the maritime governance in Hong Kong. The then, Hong Kong Port and Maritime Board (PMB) became two (2) separate bodies; the Hong Kong Maritime Industry Council (MIC) and the Hong Kong Port Development Council (PDC) (*see Figure 6.3*). The MIC assumed responsibilities for the promotion of Hong Kong as an International Maritime Centre and the development of the maritime industry, provision of advice to the government on the formulation of measures and initiatives, and to assist the government to promote the Hong Kong Shipping Register and the development of human resources for the maritime cluster. In 2001 the Logistics Development Council (LOGSCOUNCIL) was formed to further promote Hong Kong as a key logistics hub. Although its focus is wider than the MIC and PDC, it performs an important role in representing stakeholders from the sector.

The PDC, on the other hand, was created to provide advice to the government on port development strategies and port planning, including the development of terminal facilities and to assist in the promotion of Hong Kong as a regional hub port and a leading world container port.

Unlike many other countries, Hong Kong does not have a port authority. Most of the port facilities are privately owned and operated with minimal interference from the government, whose role is limited to undertaking long-term strategic planning and to provide the necessary support infrastructure.



**Figure 6.3 Hong Kong's maritime governance structure before and after 2003**

Source: Brooks and Cullinane (2007)



### **6.2.2 Hong Kong's National Maritime Laws**

Hong Kong was a British Dependent Territory before 1 July 1997. The legal system was based on that in England and the laws of both jurisdictions were similar and often identical. The People's Republic of China resumed the exercise of sovereignty over Hong Kong on 1 July 1997. Hong Kong has become a Special Administrative Region ('SAR') directly under the Central People's Government and is recognised as an inalienable part of the People's Republic of China. The Basic Law is the constitutional document for the Hong Kong SAR. It sets out the new constitutional order of 'one country, two systems', 'a high degree of autonomy' and 'Hong Kong People ruling Hong Kong'.

Despite the fact that Mainland China is a civil law jurisdiction, Article 8 of the Basic Law of China states that the laws previously in force in Hong Kong, that is, the common law, rules of equity, ordinances, subordinate legislation and customary law shall be maintained, except for any that contravene the Basic Law, and subject to any amendment by the legislature of the Hong Kong SAR. Maritime law is the law which is applied by the Admiralty Jurisdiction of the High Court in Hong Kong by legislation, or has been adopted by the court by decision, tradition and principle. (Chan, Ng, & Wong, 2002)

Hong Kong's port law is to be found in the Shipping and Port Control Ordinance. This piece of legislation encapsulates all the major topics under the maritime and transport law of Hong Kong. It is a go-to document for all maritime needs covering matters of safety and security to mooring of vessels, and even pollution of the sea. Under section 56 of the Ordinance, the Secretary for Transport and Housing may declare any area of the waters of Hong Kong to be a port. Other provisions of the Ordinance give permission to the Director of Marine with respect to port facilities, to refuse a vessel entry or departure from Hong Kong, provide for inspections, outline pollution offences, reporting and defences and deal generally with other practical port-related issues such as port dues.

In addition to the Shipping and Port Control Ordinance, Hong Kong is subject to the Closer Economic Partnership Agreement (CEPA). CEPA is an agreement between the Mainland China

and Hong Kong designed to improve trade and business integration. Article 1 of the main text provides that the strengthening of trade and investment cooperation between the two sides will be achieved by progressively reducing tariffs, progressively achieving liberalization of trade in services through reduction or elimination of substantially all discriminatory measures and promoting trade and investment facilitation. Other business services related to the shipping sector are permitted under CEPA, including liberal policies for freight forwarding agencies. Supplements to the main text have extended benefits and advantages to other businesses within the maritime sector.

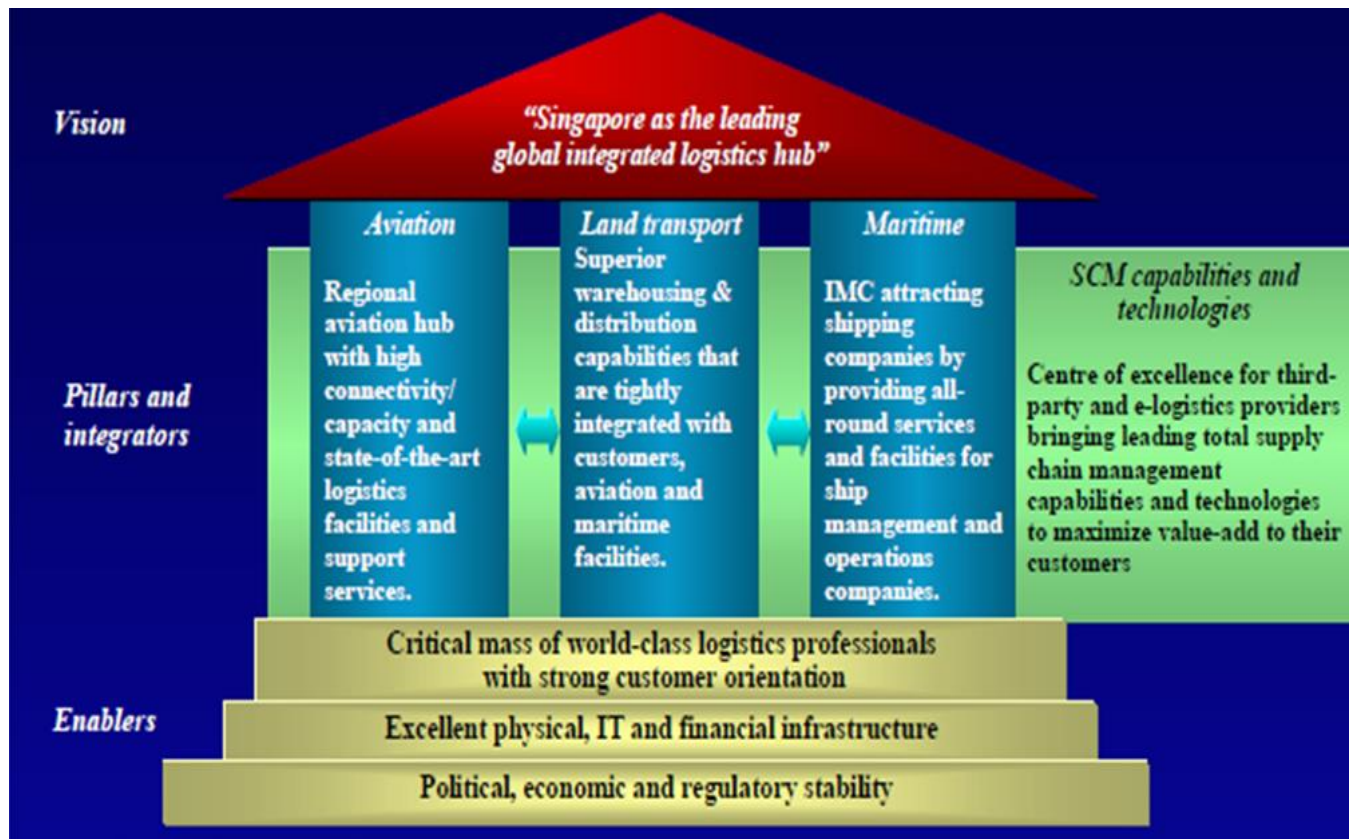
Hong Kong is currently party to 36 IMO Conventions, and the Ordinance gives effect to all the matters addressed in these conventions. Maritime arbitration is an important element in the development of a logistics hub. Singapore and Hong Kong have been described as the leading arbitration jurisdictions in the Asia-Pacific. The Hong Kong International Arbitration Centre (HKIAC) established the Hong Kong Maritime Arbitration Group (HKMAG) in 2000. The HKMAG maintains a register of experienced maritime arbitrators and is a response to growing demand from the industry. The HKIAC, on the other hand, handled 624 dispute resolution matters in 2010 and 291 were arbitration matters. Of the arbitration matters, most were commercial disputes, 17 per cent of which were maritime related. A new Arbitration Ordinance was passed by the Legislative Council on 11 November 2010 and entered into force on 1 June 2011 which aimed to reduce the costs of arbitration through a number of measures including reduced judicial intervention and incorporating maximum recoverable limits for fees and costs.

In spite of the fact that Hong Kong did not institute the traditional port authority to oversee and regulate port operations, the logistics hub has been largely successful and competitive in the global trade arena. The success however, could not have been realized without the structural and policy changes implemented by the Government in 2003.

## CHAPTER SEVEN

### 7.0 ANALYSIS OF SELECTED MARITIME CONTEMPORARY ISSUES

It goes without question that a successful project requires the establishment of a solid foundation and in a major venture like the JLH, such a foundation is a solid and efficient regulatory and policy framework. With the development of the Singapore logistics hub, as indicated in Figure 7.1, it was identified that political, economic and regulatory stability was a vital enabler to ensure the success of the venture.



**Figure 7.1: Vision for Singapore logistics hub**

Source: ERC Logistics Working Group

Having reviewed the legislative frameworks of Jamaica, Singapore and Hong Kong, the question still remains: Is the current maritime legislative and administrative framework of Jamaica

sufficient to address the likely issues associated with the establishment of the Jamaica Logistics Hub?

The framework of Jamaica will be examined in light of selected maritime issues; trafficking, pollution, carriage of goods and maritime labour, amongst other pertinent matters.

## 7.1 Trafficking

“It's not just Jamaica that's on alert. The central Caribbean as a whole seems to be coming back into favour with transnational drug cartels, with authorities reporting sharp increases in cocaine seizures and scrambling resources to contain the apparent surge.” (Gordts, 2013) The preceding quote recapitulates the situation within the Caribbean region at present. Drug trafficking has been a long standing issue for Caribbean states that has affected the growth of their economies for centuries. As depicted in Figure 7.2, there are a number of drug trafficking routes within the Caribbean.



**Figure 7.2: Main Caribbean drug-trafficking routes**

Source: "Full Circle," ( 2014)

With specific reference to Jamaica, illegal drugs are transported to the island via go-fast speedboats from Venezuela, and are transported from Jamaica via yachts, mules, cargo vessels, cruise ships and/or go-fast speedboats (*See Figure 7.2*). This indicates that the illegal substances are transported by sea which ultimately affects the maritime operations and regulatory activities of the State.

The United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances 1988 is one of the main international instruments addressing illegal trafficking of drugs. Jamaica became a party to this convention on 2<sup>nd</sup> December 1995, and the State's national framework consists of the Dangerous Drugs Act, which is a piece of legislation addressing the general activities related to selected illegal drugs and the associated penalties. The Maritime Drug Trafficking (Suppression) Act delves further into illegal drug trafficking and addresses the transport of same by sea, as well as the establishment of patrols and law enforcement. The Jamaica Defence Force (JDF) Coast Guard conducts all patrol and search and rescue operations in Jamaica's territorial waters. The Maritime Drug Trafficking (Suppression) Act goes further to address bilateral agreements between Jamaica and other States and allows for cooperation in the fight against illicit drug trafficking.

Despite these initiatives, drug trafficking continues to be a major issue in Jamaica's waters and in the neighbouring regions. Gordts (2013) stated,

*“Drugs are also concealed in commercial cargo. Big container ships call at transshipment ports such as Kingston in Jamaica or Freeport on Grand Bahama. In the Dominican Republic only one port, Caucedo, is certified under the Container Security Initiative that allows United States’ officials to examine cargoes. Smaller vessels of a few hundred tonnes chug from the mainland to the Dutch islands of Aruba or Curaçao, or from Guyana to the eastern Caribbean.”*

With the anticipated increase in vessel traffic in Jamaican waters, it is apparent that drug trafficking will continue to be a major source of concern for the country. The legislative framework exists but its effect is not as strong as desired or required.

## 7.2 Pollution

The *Torrey Canyon* 1967 propelled marine pollution to becoming an area of concern for years. In addition to concerns about the oceans and the living organisms and natural resources therein, pollution is such a major matter because of the extensive costs associated with marine pollution. Marine pollution, in essence, is the contamination of the natural water ecosystems by alien substances. It can be by organic pollution in the form of sewage, petroleum hydrocarbons and oil, particles, sediments, solid wastes, noise, heat and even by invasive species, and can be classified into three categories; intentional, operational and accidental. Intentional marine pollution includes activities such as ballast water exchanges, and discharges from ships into the ocean; operational marine pollution involves, among other things, seepage from the land at ports and other shipping facilities; and accidental marine pollution includes oil spills from ships whether the ship has been involved in a collision or not.

In addition to being a major transshipment country, Jamaica has very active cruise ship traffic within its waters. This is profitable for the State but also doubles the risk of a major marine incident occurring in its territorial sea and/or EEZ. Schmidt (2000) reported that pollution from mega cruise liners continue to be a major challenge for many local cruise tourism destinations.

One of the largest oil pollution accidents to date is the BP oil spill in the Gulf of Mexico. The incident involved the explosion of an offshore oil rig in the deep-water horizon in 2010 and resulted in the death of eleven workers on the rig and the spillage of over 205 million gallons of crude oil in the Gulf. The spill impacted the coastlines of Louisiana, Alabama, Mississippi and Florida, all states in the USA. Lying just 712 miles away from Florida, Jamaica's vulnerability is even more evident. Jamaica is party to the MARPOL Convention, the CLC and the FUND 1992, however to date there is no national legislation addressing the matter of pollution from vessels. As mentioned in Chapter 5, the Draft Shipping (Pollution Prevention and Control) Bill was introduced, but is yet to be enacted. Considering Jamaica's present susceptibility regarding pollution and the present JLH Initiative, the current legislation on pollution is highly insufficient to address vessel pollution.

### 7.3 Carriage of Goods

Central to any logistics hub initiative is carriage of goods by air, land and/or sea. Jamaica is a transshipment country with most of its maritime commercial activity surrounding the transshipment of cargo. It is safe to say that the nature of maritime commercial law has changed with time with regulations and international legislation evolving to meet the needs of the growing and dynamic industry.

Jamaica is currently party to the Hague Rules, which established carrier liability for the seaworthiness of ships at the beginning of the voyage, and the duty of care of the said carrier, with a few exceptions; These include nautical fault, perils of the sea, and third party fault. The Hague Rules have undergone further revisions, through the introduction of a Protocol in 1968, otherwise known as the Hague-Visby Rules and following that, the carrier's liability was revisited in a new convention called the Hamburg Rules in 1978. The Rotterdam Rules, established in 2008 aim to address further advancements in the maritime commercial sector, like electronic bills of lading and multimodal transportation, as well as the creation of liability on particular parties involved in the carriage.

Jamaica's current Bill of Lading Act allows for lawful holders of valid bills of lading to take legal action for damage suffered under the contract. The legislation was passed in the nineteenth century and as such does not address more modern forms of bills of lading, such as electronic bills of lading. The Cargo Preference Act, on the other hand, requires specific cargo to be carried by ships owned, chartered and operated by the Government of Jamaica. This legislation has not been applied for many years as the Government of Jamaica no longer owns ships. In essence, this law proves obsolete and it has no applicability in present times.

It is also interesting to note that the Carriage of Goods Act of Jamaica does incorporate the different modes of transportation, being on land and by sea, however, the liabilities of the carrier and associated persons are not mentioned therein. This leaves cause for concern especially within the operations of the JLH. How will the courts be guided to handle issues regarding



damage to goods for instance, considering Jamaica's failure to ratify more modern maritime commercial regulations, as well as, the inadequacy of national laws relating to carriage of goods?

## **7.4 Maritime Labour**

In August 2013, the minimum working and living standard for all seafarers working on ships and flying the flags of State parties were established in the Maritime Labour Convention (MLC) 2006. The MLC 2006 is an ILO convention aimed at, among other things, protecting the economic interests of seafarers. Surprisingly, despite being a nation that trains and certifies seafarers not only from Jamaica, but also from the Latin American and Caribbean region, Jamaica has not ratified the MLC 2006.

Ratifying countries represent more than 50% of the world seafarers and more than 75% of the world gross tonnage. ("Basic Facts on the Maritime Labour Convention 2006," 2013) Entry into force of the MLC 2006 will occur 12 months after ratification and this will introduce new requirements, for example, certification; a Maritime Labour Certificate and a Declaration of Maritime Labour Compliance are required to be carried on board at all times, and all vessels are subject to inspection and possible seizure if the standards are not complied with. Interesting to note is that the Convention also entails the concept of "no more favourable treatment", in that despite having not ratified the convention, ships from non-ratifying states will be subject to the convention when calling at ports of State parties.

Jamaica has a small registry of fourteen (14) vessels in total, all foreign owned. The owners are from Denmark, Germany and Greece respectively ("Jamaica Merchant Marine," 2014). Despite the size of its registry, and considering the current ratification statistics of the MLC, it is possible that Jamaica may come face to face with the MLC 2006 at some point; and why not sooner than later?

According to Mukherjee (n.d.), the predominant interest in Jamaica has been in the field of maritime education and training, with the Caribbean Maritime Institute, previously known as the Jamaica Maritime Institute, being well known throughout the region. This reputation has caused



Jamaica to emanate as a significant crew supplying country in the Latin America and Caribbean region. As a State that trains seafarers, ratification is not only right, it is vital. This action will not only send a signal to the international community, but will also indicate to the very seafarers that are being trained that the State is concerned about their welfare, and is interested in keeping with the international standard as it regards training, certification, manning and maritime labour in general.

Jamaica's domestic labour laws are limited in their scope of maritime application. The Immigration Restriction (Commonwealth Citizens) Act consists of two main sections, one which allows for a Notice to a Prohibited Immigrant to be served to prohibited immigrants and master of vessel and the other which gives a right to the master of a vessel to apply to the Resident Magistrate Court in Jamaica for a warrant to convey a prohibited immigrant back on the vessel. The Labour Relations and Industrial Disputes Act, on the other hand, does not specifically refer to marine workers or employees in the maritime industry, but generally applied only to unionized workers. The Act was amended to extend its application to non-unionized persons in 2010 and the jurisdiction of the Supreme Court in matters of unjustifiable dismissal was sonorously illustrated by Justice K. Anderson in *Calvin Cameron v Security Administrators Ltd [2007] HCV 02271*.

This limited scope of application is cause for concern and is one which policy makers and the government will need to consider.

## **7.5 Goat Islands**

An investment proposal was submitted by China Harbour Engineering Company (CHEC) to establish a transshipment port and an industrial and commercial economic zone on the Goat Islands and the lands north of the islands in the Old Harbour Bay area. The investment which values approximately US \$1.5 billion is promised to positively impact the growth of the Jamaican economy. Nonetheless, the Memorandum of Understanding (MOU) between the GOJ and CHEC for the said investment has raised concerns and became the subject of a national controversy. This is largely due to the protected status of the area. The Goat Islands, consisting

of the Great Goat Island and the Little Goat Island, form a part of the Portland Bight Protected Area (PBPA), which received its protected status under the Natural Resources Conservation Authority Act 1991. The main features of the Goat Islands are the dry limestone forest, mangrove wetlands, coastal vegetation assemblage on sand, brackish water bodies, sea grass bed and reef slope. (Port Authority of Jamaica, 2013) Additionally, the Little Goat Island was developed during World War II by the United States as a naval station, which included an airstrip, barracks, a power plant, fuel storage facilities and a water treatment system. Figure 7.3 is an aerial illustration of the Goat Islands.



**Figure 7.3: Aerial view of the Goat Islands**

Source: Google Earth

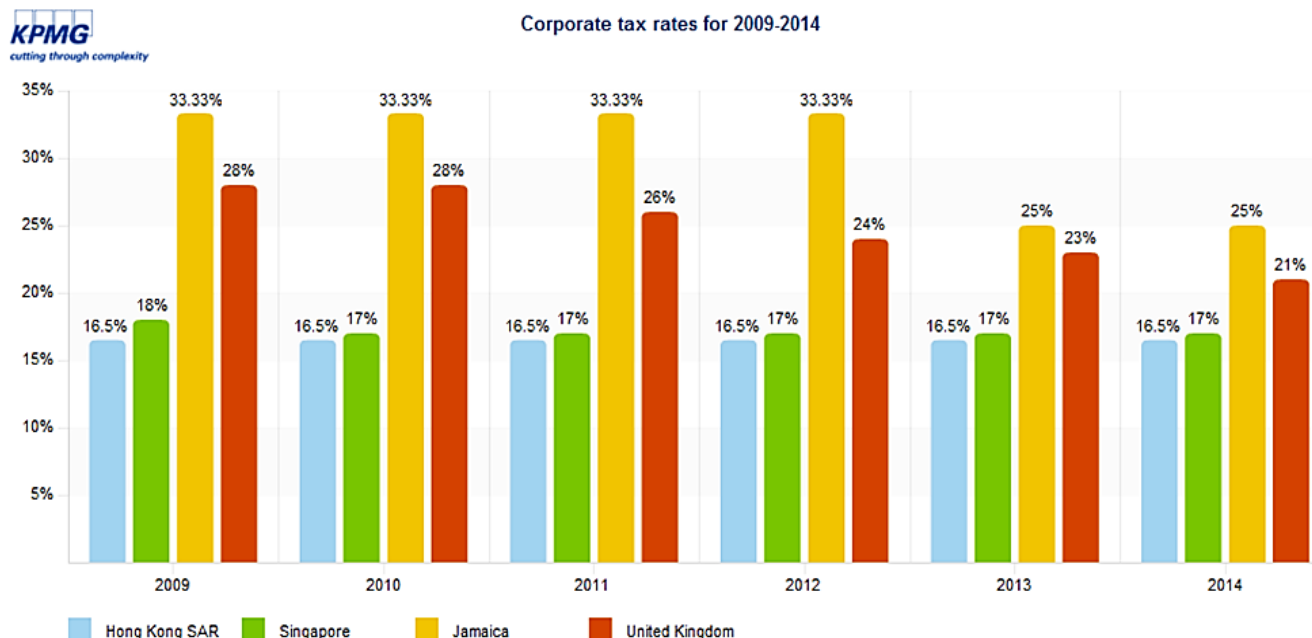
The Port Authority of Jamaica (2013) noted that the PBPA did not fall under any of the categories of the International Union for the Conservation of Nature (IUCN). Additionally, Moore (2014) pointed out that the PBPA was under consideration as a UNESCO Biosphere Reserve until 2013, when the GOJ retracted their proposal indicating that there was an ominous change of plans. Despite the retraction, a number of organizations, such as the Jamaica Environmental Trust (JET), maintain that the CHEC project is in contravention of the law. The

GOJ however, insists that they will carry on with the project in an effort to gain fiscal benefits for the State, and this was potently expressed by Dr. Omar Davies, Minister of Transport and Works, who stated, “...let me make it unambiguously clear. For a host of reasons, we are serious about implementing this project.” (Henry, 2014)

## 7.6 Tax Structure

A major element of any logistics hub is that of investments and more specifically, foreign investments. A probable deterrent of said investment, however, is high tax rates. It is a given that a favourable tax environment will attract investors to the State. A review was conducted of the corporate tax rates in Jamaica from 2009 to 2014 and compared with those of Singapore, Hong Kong and the United Kingdom. The findings are clearly illustrated in Figure 7.4.

In each year, Jamaica’s tax rate surpassed the other locations with a rate of 33.33% from 2009 to 2012, and this rate was reduced by  $\frac{1}{4}$  of the said rate to 25% in 2013 and 2014. The United Kingdom also had rates ranging from 28% to 21% over the period, while Singapore and Hong Kong have rates below 20%. Of noticeable importance is the fact that the corporate tax rate of Hong Kong has remained at a constant 16.5% over the period and that indicates some form of stability and reliability, which in turn makes the location attractive for investments.



**Figure 7.4 Corporate tax rates for 2009-2014**

Source: KPMG International Cooperative (2014)

Taxation in shipping is considered to be a vital driver of economic growth. In fact, according to Maritime UK (2012), a 2011 study by Oxford Economists concluded that the implementation of the tonnage tax has delivered significant benefits to the UK economy, in that the estimated contribution of tonnage tax to the UK gross domestic product is two-thirds more than it would have been otherwise.

The local regulations that affect tax and investments as it regards the JLH are the Income Tax Act, Customs Act, Jamaica Export Free Zone Act and the Shipping (Local Trade) Regulations. As outlined in Chapter 4, Jamaica instituted a number of free zones which, under the Jamaica Export Free Zone Act, allows for no tax to be levied on profits, and exemption from customs duties on imports and exports, provided that 85% or more of the exports are destined outside of CARICOM. These free zones are being phased into SEZs, which is a commendable move by the GOJ. Special regard must be had however, to the altitudinous tax rates currently in place in Jamaica as this may well be the determining factor between huge success in foreign investments or conversely a massive faux pas.

## 7.7 Summary of Chapter 7

Having examined selected major maritime issues, and Jamaica's current structure, it is evident that the State has to make some considerations regarding its maritime regulatory and legislative framework. A colossal project like the JLH should be carefully thought through and all aspects touching and relating to the said project should be considered, reconstructed or demolished as the case may be.

Jamaica has a functional legal framework, as adopted from the British through colonization but the maritime sector leaves much to be desired. Currently, the only court in Jamaica designated to handle maritime matters is the Admiralty Division of the Supreme Court of Jamaica and Part 70 of the Civil Procedure Rules (CPR), which sets out the procedures for making a claim to the Supreme Court of Jamaica. It must be noted, however, that Part 70 only speaks to claims *in rem*.

Singapore and London both have internationally approved maritime arbitration institutions. Arbitration is a major element in the maritime industry and is the preferred choice for the settlement of disputes as it is much more expeditious and does not involve negative publicity for the parties involved. In Jamaica, there are certified arbitrators who are members of the Caribbean Branch of the Chartered Institute of Arbitrators, as well as local arbitrators at the Jamaica Dispute Resolution Foundation. In 2013, it was noted by the Minister of Justice that the Jamaican courts were experiencing a backlog of over 400,000 cases, with just over 200,000 at the Resident Magistrate level ("RM Court Backlog Passes 200,000 Mark", 2013). This overwhelming backlog is a matter that requires urgent attention. Shipowners, cargo owners, crew and other persons involved in a single voyage enterprise, as well as investors and shipping companies require expeditious and efficient court systems and/or dispute settlement systems so as to avoid any extensive delay in their operations. Jamaica's current alternate dispute resolution system has been tasked with assisting with this backlog, but the State still has some way to go before overcoming this mass of incomplete cases.

In light of the aforementioned, the State has much to do before being considered ready to fully engulf in the operations of the JLH. The following chapter proposes recommendations that the GOJ may consider to align the State with the major logistics countries.

## **CHAPTER EIGHT**

### **8.0 RECOMMENDATIONS AND CONCLUSION**

It must be noted that a considerable amount of Jamaica's domestic laws have been in existence for a number of years without any amendments, some being enacted even prior to the independence of Jamaica. In order to achieve a state of readiness to manage and regulate the JLH, Jamaica will have to review its maritime judicial and regulatory policies and examine their effectiveness and expanse. National shipping policy is correlated to the State's economic policy and has two aspects, these being foreign and domestic. Shipping policies can be further separated into two main groups; those concerned with safety, security and the environment and those with commercial issues. Alderton (2008) identified major points that should be borne in mind by policy makers. The first is that a port is a major national interface between a country and the outside world and as such, it is a vital element in the national economy, which is an expensive capital investment and requires long-term commitment. Secondly, a port cannot exist in a vacuum and should be the focal point of a national transport system with access to rails, roads and airports, so as to attract businesses and industries and become an area of commercial activity. It must be noted also that it will also attract tourists and undesirable elements such as terrorists, drug smugglers and be a constant concern for environmentalists. Thirdly, the evolution of ports may result in changes in locations and development of other areas.

In light of the aforementioned points, the following are submitted to the Government of Jamaica and their associate policy makers as recommended actions to be taken into consideration while the JLH is underway, so as to produce an efficient system that functions at a high local standard and an impressive international standard. The recommendations will be made based on the selected maritime issues discussed in Chapter 7 herein.

## 8.1 Maritime Safety and Security

As mentioned in the previous chapter, Jamaica's regulations on maritime safety and security appear insufficient to tackle some of the current maritime issues that exist today. It is noteworthy that Jamaica has been active in its efforts to repress the issue of illegal drug trafficking through the enactment of laws such as the Money Laundering Act, Drug Offences (Forfeiture of Proceeds) Act, Mutual Assistance (Criminal Matters) Act and the Drug Court (Treatment and Rehabilitation of Offenders) Act. The most recent legislation to combat financial crime is the Proceeds of Crime Act 2007, as amended in 2013, which replaced the Money Laundering Act (MLA). Despite being nowhere short of relevant legislation, the quandary that is illicit drug trafficking still exists in Jamaica and the Caribbean. This could be attributable to a number of problems including but not limited to enforcement and compliance.

Griffiths (1997) stated that according to the West Indian Commission; "nothing poses greater threat to civil society in Caribbean countries than the drug problem; nothing exemplifies the powerlessness of regional governments more." (as cited in "The Drug Trade and Jamaica's National Security," n.d.) Drug trafficking is a major problem because it encapsulates and/or facilitates other national and transnational crimes. In fact, it is believed that drug trafficking provides established channels and systems for moving all types of illegal imports, such as guns and the funds to purchase them (Boxhill et al, 2007). As such, it is feasible that the prevalence of drug trafficking can lead to the upsurge of other transnational and international crimes such as piracy.

The merchant marine fleet of Jamaica is considerably small, but it is expected that the JLH will attract more shipowners to register their vessels within the State. That said, it is necessary to have proper laws in place to protect these vessels and proper guidelines for prosecution should any incident occur involving a Jamaican registered vessel. Interestingly, Jamaica had enacted the Terrorism Prevention Act prior to its ratification of the SUA convention and Protocol, and the said Act contains two provisions incorporating what constitutes an offence under the SUA convention and Protocol, however this is far from sufficient to satisfy its requirements under Article 94 of UNCLOS and under the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances 1988.

Singapore has had an excellent record in keeping the problem of piracy to nil in its own territorial waters (Beckman, Grundy-Warr, & Forbes, 1994). With the development of its logistics hub, Singapore enacted both the Singapore Armed Forces Act and the Maritime Offences Act in 2000 and 2003 respectively, which have regulated the State's maritime security operations and have contributed to the country's success as a logistics centre.

In light of the aforementioned, it is therefore recommended that a National Maritime Security Plan be implemented to institute suitable policy and regulations on security issues while the JLH continues to develop. This plan should include the participation of sufficiently trained members of the judiciary, maritime lawyers and maritime administrators to ensure the establishment of a sound framework that will perform at an international standard and conform with the relevant IMO conventions to which Jamaica is a party such as SOLAS, ISPS Code, UNCLOS and more recently SUA.

## **8.2 Marine Environment**

The expected increase in vessel traffic will also increase Jamaica's vulnerability to marine pollution. Whether it is intentional, accidental or operational, the State will face greater risk to its territorial waters and EEZ. Marine pollution has been occurring in states that stand in close proximity to Jamaica and this has contributed to the vulnerability of the State. The State is party to MARPOL, CLC, FUND, the BASEL convention, OPRC and is a member of the Caribbean MOU which cooperates in Port State Control procedures. Jamaica's international participation is clearly felt but the country still needs to enact suitable domestic marine pollution legislation to safeguard its citizens and investors.

Despite the broad scope of the Natural Resources Conservation Authority Act and the very slight reference to vessel source pollution in the Harbours Act, the national framework on the prevention of pollution from ships in Jamaica appears insufficient to satisfy its duties under the relevant international regulations. To address this matter, it may benefit the government to consider attaching some priority to the Draft Bill on pollution as part and parcel of the JLH



establishment so as to have proper laws in place when the vast operations and activities begin to hit Jamaica's waters.

### **8.3 Enforcement and Implementation**

An excellent policy which lacks enforcement and control is obviously useless. (Alderton, 2008) The Government of Jamaica must ensure that the policies implemented at the national or international level are maintained and enforced to bring about the desired result. This includes, to a large extent, addressing the judicial system and clearing the paralyzing backlog that currently exists within the court system. It may prove beneficial to establish a separate National Admiralty and Marine Court to handle all marine related disputes, such as those for breach of charterparties, arrest of vessels, marine pollution, marine salvage, piracy and other crimes on board vessels, among others. This will require increased awareness and education of maritime legal professionals within Jamaica, so as to produce internationally competent marine judges and lawyers to try and argue cases. Coupled with the suggested admiralty court is an expansion of the current national alternate dispute resolution facilities to try facilitating maritime arbitrations, borrowing from the structures and functioning of the arbitration centres in Singapore and London. These institutions will certainly aid in propelling Jamaica to becoming the desired fourth node in the global logistics network.

### **8.4 Regulatory Committee**

Implementation of the previously mentioned suggestions is no simple task but should not be approached disjointly. The Government of Jamaica may benefit from establishing a specialized group of persons, in the form of a Jamaica Logistics Hub Policy Committee (JLHPC), tasked with conducting a full review of existing relevant legislation and proposing the introduction of new legislation, regulations and/or policies, where necessary. The JLHPC will also work in collaboration with the appointed Policy Steering Committee, as mentioned in Chapter 3, to establish the SEZs and the relevant policies to govern the activities in these SEZs; as well as,

perform a stringent review of the tax policies, regulations and rates and structure the system so as to invite and attract foreign and local investors. In addition, it may suit the State to introduce tertiary level and post-graduate maritime law courses at the Caribbean Maritime Institute and the other tertiary institutions to train more maritime legal professionals to take advantage of the imminent activities of the JLH. The JLHPC will also be responsible for the preparation of periodic reports and constant monitoring of the JLH process, reviewing the regulations where appropriate, and the management of shifting from a personality-based to an objective-based processing system, calling for a consistent standard which can only be met through alignment with global quality systems (Pinnock & Ajagunna, 2012).

This Committee should entail the most highly trained maritime legal professionals, maritime executives and administrators, and consultants; and should include Government personnel, business owners, ship owners and other influential persons within the industry. Given that these considerations are acknowledged and acted upon, the JLH promises reap great economic and social benefits for the country and place Jamaica in high regard in the global shipping and trade network.

## **8.5 Conclusion**

The need for a light-handed, flexible and clear legislative and regulatory framework has been cited as critical elements of a successful logistics services sector. The quality of the regulatory framework for the attraction and support of logistics services is critical to the development of the sector, and achieving the balance of enforcing internationally acceptable standards while increasing competitiveness is a challenge for most countries, not the least being Jamaica (Pinnock and Ajagunna, 2012). In order for the true potential of the JLH to be realized and felt, Jamaica needs to ensure that it has a well-structured, efficient and relevant maritime legislative and regulatory framework. This will take some time to implement, but will be well worth it in the end with real benefits to be gained when fully instituted. According to Mukherjee & Brownrigg (2013), any governmental action which is protectionist or restrictive, tends to erode free competition in terms of price, cargo availability and the ability to trade and limit the

freedom of exporters and importers to choose their service-providers or is too rigid in nature can only lead to disaster.

The Jamaica Logistics Hub will not only affect the shipping industry and economy of Jamaica, but will also promise benefits for the neighbouring Caribbean States, and the North, Central and South American countries. Jamaica currently stands at number 70 on the 2014 World Bank Logistics Performance Index, placing third amongst the Caribbean countries, with Bahamas at number 66 and the Dominican Republic at number 69. (World Bank, 2014) The JLH Initiative, if properly implemented, promises to bring vast economic gain to the country through the increase of cargo and vessel traffic, increased foreign direct investments and the creation of thousands of job opportunities.

Jamaica has ratified a considerable number of international instruments, and in particular, maritime international conventions, but on its own, this proves insufficient. These international laws cannot take effect unless there has been proper implementation and enforcement by the ratifying States at the municipal or domestic level. Ironically, the World Maritime Day Theme of this year, 2014, is “IMO Conventions: Effective Implementation”, and this distinctly indicates the need for effective implementation of the IMO conventions by States at the local level. In the words of the IMO Secretary-General, Mr. Kofi Sekimizu,

“The adoption of an IMO convention cannot be the end of a process. A conference is held, the text agreed, there are handshakes all round. But it’s not the end of the process. It should be just the end of the beginning. Because an IMO convention is only worthwhile and meaningful if it is effectively and universally implemented” (”IMO Secretary-General Launches 2014 World Maritime Day Theme: “IMO Conventions: Effective Implementation”, 2014).

Jamaica has secured a plan that can change the fate of the country for decades and result in an overwhelming success, but failure to review its current maritime legal and regulatory framework could result in one of the most costly blunders in the State’s history.

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