

# Comparative balance of border regulations in four neighboring Caribbean countries

## Balance comparativo de la normatividad sobre fronteras en cuatro países colindantes del Caribe

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### Abstract

This article seeks to investigate whether there is a potential for border integration among four adjoining Caribbean countries: Colombia, Nicaragua, Panama and Costa Rica. The discussion is part of the “cross-border” concept and the integration of subnational entities in two or more nation states, with particular emphasis on the role played by the societies that inhabit border regions. A comparative analysis model is used to assess border regulations in each country’s various territorial levels based on relevant legal elements, autonomous processes and decentralization. The article concludes that the more modern each country’s border regulations and constitutional, political and administrative reforms are, the greater the likelihood of cross-border integration. Colombia and Nicaragua have the highest potential for integrating their borders, whereas Panama and Costa Rica have the lowest potential.

Keywords: border regulations, administrative legal system, border integration, cooperation, Caribbean region.

### Resumen

El artículo busca indagar si existen potencialidades para la integración fronteriza entre cuatro países colindantes del Caribe: Colombia, Nicaragua, Panamá y Costa Rica. Se enmarca la discusión en el concepto de lo “transfronterizo” y de la integración entre entidades subnacionales de dos o más Estados nación, haciendo especial énfasis en el papel jugado por las sociedades que habitan los territorios fronterizos. Se utiliza un modelo comparativo de análisis de la reglamentación sobre fronteras en los distintos niveles terri-

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toriales de cada país, a partir de los elementos jurídicos relevantes, los procesos autonómicos y la descentralización, para concluir que entre más modernas han sido las normativas fronterizas y las reformas constitucionales, políticas y administrativas en cada uno de los países, mayores son sus posibilidades para la integración transfronteriza. Colombia y Nicaragua cuentan con la potencialidad más alta, mientras Panamá y Costa Rica evidenciaron una precaria potencialidad para la integración de sus fronteras.

Palabras clave: normatividad fronteriza, ordenamientos jurídico administrativos, integración transfronteriza, cooperación, región Caribe.

## Introduction<sup>2</sup>

Despite the existence of various initiatives for regional integration and cooperation among the so-called Greater Caribbean countries,<sup>3</sup> it can be argued that along most of these countries' maritime borders, cross-border integration strategies that go beyond the rigid framework of the nation state and the purely territorial conception of such borders have not yet been consolidated. The difficulty in achieving integration policies that consistently articulate cross-border dynamics based on the needs of local actors, in both territorial and maritime contexts, shows the limited role that has been given to "grassroots" integration compared to the set of initiatives that continue to evolve from the centers of nation states' power.<sup>4</sup>

There is an entire sociocultural and environmental unit formed by the territories and maritime areas surrounding much of the Western Caribbean among countries such as Colombia, Nicaragua, Costa Rica and Panama.<sup>5</sup> This unit is represented by the configuration of coastal territories and populations: the municipalities of Bluefields, Puerto Cabezas and Corn Island in Nicaragua; Limón and Cahuita in Costa Rica; Bocas del Toro and Colón in Panama; and the Archipelago Department of San Andrés, Providencia and Santa Catalina in Colombia. These territories experienced similar settlement dynamics after the English colonization of the Western Caribbean (Sandner, 2003) that began in the sixteenth century and, along with the formation of slave and indigenous societies in the

<sup>2</sup> This article is related to the research project titled "La integración fronteriza y la vecindad entre Colombia y los países del Gran Caribe: estrategias para la construcción de una Región de Integración Transfronteriza." The project is led by the Universidad Nacional de Colombia in the Caribbean.

<sup>3</sup> From a geographical and cultural perspective, the Greater Caribbean is known as the group of islands and territorial states belonging to the Association of Caribbean States (ACS). The ACS is composed of members of the Caribbean Community (CARICOM), the five Central American countries (Nicaragua, Guatemala, Costa Rica, Honduras, and El Salvador) and Mexico, Colombia, Venezuela, Panama and Cuba. CARICOM consists of plenary members (Antigua and Barbuda, Bahamas, Barbados, Belize, Dominica, Granada, Guyana, Haiti, Jamaica, Montserrat, Saint Lucia, Saint Kitts and Nevis, Saint Vincent and the Grenadines, Suriname, Trinidad and Tobago), associate members (Anguilla, Bermuda, the Cayman Islands, Turks and Caicos and the British Virgin Islands) and observing members (Aruba, Dutch Antilles, Colombia, Mexico, Puerto Rico, the Dominican Republic and Venezuela).

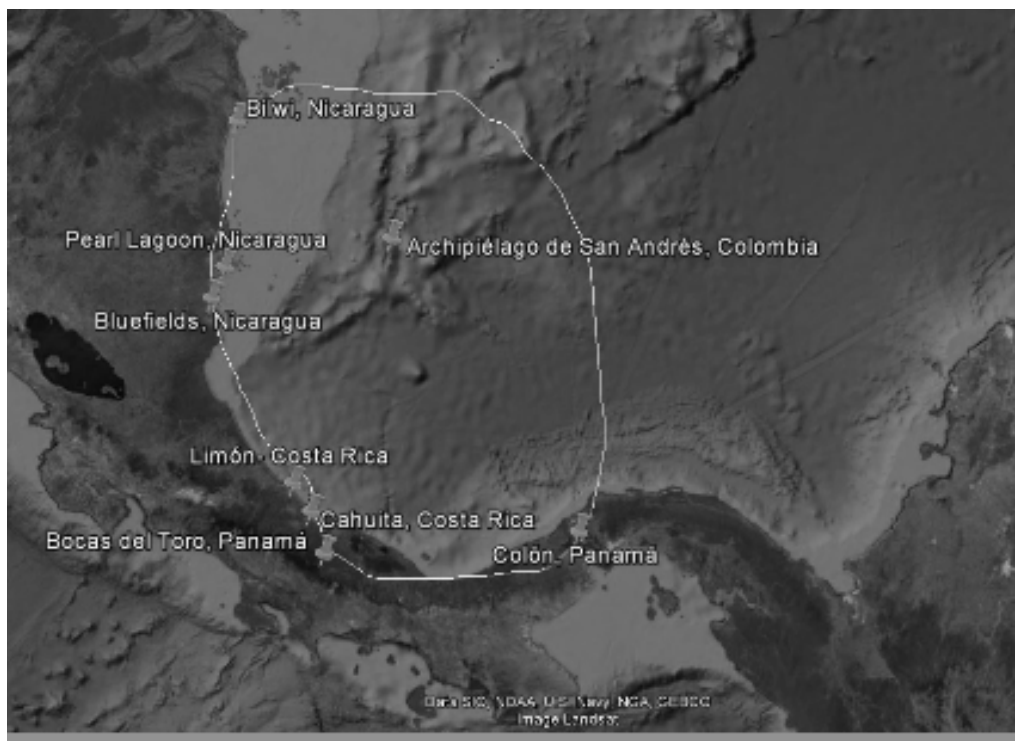
<sup>4</sup> A study representative of this problem in Central America can be found in Centro Studi di Politica Internazionale (CESPI, 2011).

<sup>5</sup> Four representative countries in the Greater Caribbean (Colombia, Nicaragua, Panama and Costa Rica) were chosen for this study both because they form part of the integration situation of the area that is known geographically as the Western Caribbean (Sandner, 2003) and because all of them share a border with Colombia, given the geospatial location of San Andrés, Providencia and Santa Catalina. In these territories, strong networks of population, economic and sociocultural exchanges have historically been developed and could be consolidated in cross-border regional integration processes.

area, produced a common “Creole” language, livelihoods, and shared dining and cultural customs that survive today. These territories have also experienced several binational communities and families located on either side of the border because of the dynamics of exchange, diasporas and informal mobility in the region.

After the beginning of the consolidation process of Central American states in the nineteenth century, these territories and their cultures became part of the national dynamics of the legal and territorial administration, which were fragmented and dependent on dissimilar models of state organization. In recent times, this situation has challenged border societies’ ability to harmonize integration and cooperation projects that respond to the logics of exchange in this geographical (as shown in Figure 1) and sociocultural unit.

**Figure 1: Demarcation of the border area based on surrounding populations in Colombia, Panama, Costa Rica and Nicaragua in the Caribbean**



Source: Prepared by authors on map from Google Earth.

Recently, the International Court of Justice’s ruling in the maritime and territorial dispute between Colombia and Nicaragua<sup>6</sup> revealed the absence of cooperative instruments that would allow institutions and border societies to appropriate their surroundings to ensure the co-management of resources that hundreds of families, fishermen and various

<sup>6</sup> In 2001, Nicaragua presented a complaint to the International Court of Justice (ICJ) in The Hague against Colombia for possession of the archipelago of San Andrés, Providencia and Santa Catalina and definition of the marine boundaries between the two countries. In 2007, the Court ruled in favor of Colombia regarding the possession of the territorial formations of the archipelago; in 2012, however, the Court defined a new maritime boundary in favor of Nicaragua, causing both a diplomatic crisis between the two countries and a legitimacy vacuum in the archipelago with respect to the Colombian government.

social groups depend on, given their close and indivisible relationship with the sea. This situation of regional fragmentation has been accentuated by ignorance and a lack of harmonization among the regulatory and institutional instruments that could demarcate local border entities in each country and locality with sufficient autonomy to deploy integration and cooperation strategies beyond their borders with the Caribbean Sea.

To overcome the rigid frameworks of state relations and provide local actors with tools for regional integration, a review of the regulatory and political-administrative bases of each country must be performed to identify localities' potential obstacles and possibilities, based on their legal and territorial configuration, related to the formulation and implementation of integration policies that favor the needs and dynamics of border societies in the Caribbean region.

In this article, we intend to show that Caribbean border territories belonging to the four countries selected for comparative analysis (Colombia, Nicaragua, Panama and Costa Rica) have dissimilar levels of potential for cross-border integration. Their legal and territorial capacity to establish cross-border integration policies depends on the greater or lesser development of legal and administrative standards and systems in the national, local and border contexts, which would enable the mobilization of resources and their use by social actors and politicians interested in achieving integration.

A qualitative and comparative methodology was used to develop the study in which the legal elements and territorial systems were reviewed at different levels (national, local and border) for each of the countries studied, with special emphasis on legislation pertaining to border issues, regulations of territorial autonomy and special regulations conducive to achieving cross-border integration. Based on the review, analytical matrices were created that yielded various results, which will be presented in detail in the comparative sections.

In the first part, a brief theoretical perspective is offered on border integration as a framework of reference to address the case proposed here. Second, the article focuses on the comparative process (based on the regulatory research conducted in each country) that yields results on the legal and administrative potential and constraints that could either allow or prevent the implementation of cross-border integration actions. Finally, some thoughts and recommendations are offered regarding the consolidation of an integration policy among the border territories in the Caribbean.

## Conceptualizing the “cross-border”

“Cross-border regions”<sup>7</sup> can be defined as territorial units composed of subnational units of two or more nation states built from specific physical forms of spatial innovation (infrastructure) or constructed from institutional frameworks or ties with communities on both sides of the border. Common interests and attractive opportunities cause these communities to cooperate despite their potential differences (Buursink, 2001, p. 17;

<sup>7</sup> Buursink's (2001, pp. 15-17) exercise related to the definition of the relationships between local levels is noteworthy. First, that author discusses the initial concept of “twin cities” and initiates an explanation of the conceptual evolution regarding twin cities (i.e., a city that grew to be similar to its adjacent city); sister cities (i.e., cities with a voluntary relationship but no contiguous territorial ties); neighboring cities (...), companion cities (i.e., cities that lack similarities but are located close together); international border cities (i.e., cities that evoke agglomeration instead of flow). Through this review, the author concludes that the most complex definition is that of cross-border cities because they imply flow, the possibility of closeness or distance, the agency capacity of the actors in both cities and cultural ties or differences, in addition to sharing mutual activities.

Jessop, 2003, p. 188; Söderbaum, 2005, p. 92).<sup>8</sup> As seen in the definition, the forms of building a cross-border region do not necessarily correspond to a single process within that geographical area. Instead, there are five ways in which these micro-regions are constructed, namely, physical-geographical, cultural, economic, political and areas of planning and management (Söderbaum, 2005, p. 93).

Meanwhile, in the context of a theoretical debate between a geoeconomic model<sup>9</sup> and a territorial design model<sup>10</sup> of cross-border regions, Sohn (2014, p. 593) defends the hypothesis that both regions and cross-border integration are not generated either solely by the overflow of the state border or because they share a common history on either side of the border; instead, this phenomenon seems contingent and tied to the agency capacity of regional and local actors to take advantage of the cross-border context in which they are immersed. Thus, the author agrees with Buursink (2001, p. 17), who claims that cooperation and integration require parties to want to resolve common problems; this attitude is not necessarily the result of the adjacent nature of two local territories but of parties' will to act.

Therefore, we can say that cross-border integration and the construction of regions is a process that not only requires material factors (proximity and spatial potentials) but also involves non-tangible elements (identities and a common sense of belonging) that crystallize in the parties' decision to cooperate to promote joint projects that can be beneficial and enable the mobilization of the abovementioned resources towards a common goal. In other words, the decision rests on the local authorities involved, and therefore, revising the local authorities' powers to make these decisions is crucial to the formulation of a cross-border integration project among Caribbean countries.

A review of national legal systems to account for the possibilities that are open to the local spaces in question enables identification of the tools held by local actors to act in their border areas. It is vital to give a legal basis to possible cross-border activities, which can formalize the ties and relationships among these actors in an area susceptible to dispute, generating suspicion by national authorities. A review of the regulations at various levels of the national order will enable us to see the limits and possibilities for actors to influence and determine the creation of a cross-border integration region in the Greater Caribbean.

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<sup>8</sup> In the particular case of the Colombian border with its Caribbean neighbors, we must conduct a theoretical and practical exploration of the possibility of a cross-border region, with a special emphasis on this case's maritime character. However, although there are documented experiences with cross-border integration regions in the maritime context, as in the case of the English Channel between England and France (Church and Reid, 1999) or the Black Sea (Stelmakh, s.f.), there is no in-depth theory about the particularities of cross-border integration in a maritime environment.

<sup>9</sup> This model is based on a generation of value supported by the mobilization of the border as an economic space, presenting a strong and functional division of the area for production and a purely instrumental cooperation for investment with high rates of growth, which does not solve the possible disparities among the regions that compose the cross-border area because it does not involve territorial convergence (Sohn, 2014, pp. 593, 597-599).

<sup>10</sup> This model emphasizes the convergence of both sides of the border through a process of hybridization and innovation that requires recognition of the border area based on territorial-symbolic imagery. In this model, the fundamental aspects are not material or tangible, e.g., confidence among local actors on each side of the border, a sense of belonging, perceptions of others and the consolidation of symbolic activities that strengthen cultural-social flow and identification and erode the national-border barrier (Sohn, 2014, pp. 599-600), Grimson (2003, pp.13-24), Lugo (2003, pp. 63-86), Sahlin (2000).

## Legal-regulatory exploration: Tools for actors in the formation of a Cross-Border Integration Region in the Caribbean

For the comparative analysis proposed in this paper, we must review what each country's legal system provides to local actors, who (as we have seen) are the primary agents of the integration process along borders. Although the actual dynamics of decentralization may or may not be in-depth, allowing levels of autonomy at the local levels, the regulations can be a meeting point for the development of actions that will strengthen cross-border integration processes.

That said, this review focused on the legal elements relevant to a cross-border integration region. To this end, at the national level, each country's constitution and laws related to foreign policy will be reviewed, where each country's vision of integration and the border are delineated, such as the role of the national level in the international projection of its local authorities through the Ministry of Foreign Affairs.

At the border level, rules regulating the country's borders will be reviewed in a search for special border arrangements, the opportunity to initiate dialogues with similar local authorities and other exceptional aspects of these border areas.

Finally, the laws at the local level will be reviewed, with the powers of the municipalities broken down to look for elements of autonomy, including the signing of agreements, proposed bills and special legislation within the studied territories.

Here, we are interested in determining which countries offer their local border authorities the greatest ability to project themselves internationally so that the actors can both recognize the options provided by the legal system and build a strategy for achieving cross-border integration. Thus, the measurement of potential will be based on the indicators set forth in Tables 1, 2 and 3.

**Table 1: Variables and indicators for the national environment**

Type of regulation	Elements to measure potential	Weight of the potential
At the national level.	Constitutional mention of special border regimes.	High potential: has three elements.
	Mentions that the Ministry of Foreign Affairs will assist local levels.	Medium potential: has at least two elements.
	Ministry of Foreign Affairs is a participant in border policies.	Low potential: has one or no elements.

Source: Developed by authors.



**Table 2: Variables and indicators for the border environment**

Type of regulation	Elements to measure potential	Weight of the potential
At the border level.	Has a law for the borders.	High potential: has three elements.
	Establishes special regulations for border municipalities.	Medium potential: has at least two elements.
	The concept of border goes beyond a defense-sovereigntist view.	Low potential: has one or no elements.

Source: Developed by authors.

**Table 3: Variables and indicators for the local environment**

Type of regulation	Elements to measure potential	Weight of the potential
At the local level.	There are legal tools that project non-border municipalities internationally.	High potential: has three elements.
	There are regulations that give autonomy to the local authorities studied.	Medium potential: has at least two elements.
	Local authorities have the ability to draft bills for the national parliament.	Low potential: has one or no elements.

Source: Developed by authors.

## Variables and indicators by level

### *The national level*

In our analysis of national-level regulations (see Table 4), both the constitution and the laws governing the studied countries' foreign policy, were reviewed. Colombia's 1991 constitution includes several articles that provide a special regime for border territories. Thus, the Colombian Constitution indicates the following possibilities: (1) cooperation and integration agreements with neighboring entities in other countries to promote development; (2) the departments' searches for financial support for the development of their border areas; (3) special rules for border territories; and (4) the delegation of exclusively national powers to the departments in special economic or cultural circumstances. These elements are supported by Articles 227, 289, 300 (numeral 2), 302 and 337.

**Table 4: Potential at the national level**

Indicator/Country	Colombia	Nicaragua	Panama	Costa Rica
Constitutional mention of special border regimes.	Constitution: Articles 227, 289, 300 (paragraph 2), 302 and 337.	Does not apply.	Does not apply.	Does not apply.
Mentions of the Ministry of Foreign Affairs' provision of assistance to local levels.	Decree 3355 (2009): Article 3 (paragraphs 8, 9, 10 and 15).	Law No. 358 (2000): Article 4 (paragraphs 8, 10 and 11).	Does not apply.	Does not apply.
Mention of the Ministry of Foreign Affairs as a participant in border policies and exchanges.	Decree 3355 (2009): Article 3 (paragraphs 9 and 10). Law 191 (1995). Article 7 (paragraph 3). Decree 1030 (2014): Article 2 (paragraphs 1 and 2).	Law No. 358 (2000): Article 4 (paragraphs 10 and 11). Law 749 (2010): Article 29. Decree 6 (2011): Article 21.	Law 28 (1999): Article 3 (paragraph 5).	Does not apply.

Source: Developed by authors.

With respect to foreign policy, at the policy level it is worth examining the role of the Ministries of Foreign Affairs in the international affairs of lower levels of government and their participation in border areas. In Colombia, Decree 3355 (2009) governs the Ministry of Foreign Affairs. It is noteworthy that the Ministry articulates international actions in various areas (economic, cultural, commercial, political, etc.) not only at all levels of the State but also for individuals, all without losing sight of the national interest. This is important because it shows that the Ministry is included in the external engagement process of various national and territorial entities, which is consistent with the idea of the previous concept concerning the agreements and treaties that will be signed and their participation in the negotiation process with other national or local authorities. These elements are supported in Article 3 (paragraphs 8, 9, 10 and 15) of the Decree.

In the case of Nicaragua, Law No. 358 (2000) regulates foreign policy. This law is noteworthy in that an office is mandated to actively participate in all efforts related to regional integration processes, the promotion of cultural relations and the encouragement to create twin municipalities. It is noteworthy that in the legislation, the Nicaraguan Ministry of Foreign Affairs is more than a passive actor; indeed, it not only appears to promote integration and outreach activities but also invites cultural exchanges important given the socio-cultural similarities between the countries studied. This observation is supported in Article 4 (paragraphs 8, 10 and 11) of the Law.

Panama's foreign policy is established in Law 28 (1999). It is important to note Article 3, paragraph 5, which states that the Ministry of Foreign Affairs should coordinate with relevant government entities with respect to not only the country's borders and boundaries but also issues relating to border areas, although the regulatory decrees do not indicate how this coordination should take place. In addition, paragraph 4 of Article 3 indicates that it is the Ministry's role to coordinate and participate in making agreements and treaties with other government institutions, thus raising the question of whether the this section refers to national entities or if the treaty-making power can revert to local institutions.

In the case of Costa Rica, the Ministry of Foreign Affairs does not participate with other local authorities at the international level because there is no clear mechanism for such entities to work internationally, as will be seen below. Costa Rica's only participation



in border issues is stipulated in Decree 19561 (1990 and thereafter), Article 8 (section G), which determines that it will administer the agreements and treaties that demarcate the country's borders. Neither Organic Law 3008 (1962) nor decrees 19561 (1990), 36271 (2010) or 38435 (2014) provide additional clues about the elements of interest with respect to the creation of a Cross-Border Integration Region.

### *The border level*

We have mentioned that this variable will take into account aspects such as the existence of a law or regulation exclusively for borders, the formation of special regulations for border municipalities or departments and a more integrationist view, instead of a defense-sovereignist view, of the border (see Table 5).

**Table 5: Potential of the border environment**

Indicator/ Country	Colombia	Nicaragua	Panama	Costa Rica
Has a law for borders.	Law 191 (1995).	Law 749 (2010).	Decree Law 8 (2208).	Does not apply.
Establishes a special regulation for border municipalities.	Constitution: Articles 227, 289, 300 (paragraph 2), 302 and 337. Law 1551 (2012): Article 193. Law 1454 (2011): Article 3 (paragraph 4).	Law 749 (2010): Articles 6 (paragraph 3), 29, 30. Decree 6 (2011), article 21.	Does not apply.	Does not apply.
The concept of border goes beyond a defense-sovereignist view.	Integrationist view.	Integrationist view.	Defense-sovereignist view.	Defense-sovereignist view.

Source: Developed by authors.

The Colombian case broadly shows the three aspects in Law 191 (1995) (also known as the Law of the Borders). This law establishes the elements through which specific aspects of cross-border integration can be achieved, such as the provision of services and the development of economic and social activities. In addition to its classifications (including Border Zones, Special Units of Border Development and Border Integration Zones), which are more complementary than exclusive, the Act establishes the possibility of achieving cooperation agreements with local authorities in neighboring countries, with the support of the Ministry of Foreign Affairs (Minexteriores) and the national government.<sup>11</sup> This provision is found in Articles 2 (paragraph 5), 4 (paragraphs A, B and C), 6, 7 (paragraph 3) and 32. It is also complemented by Decree 1030 (2014) in Articles 1, 2 (paragraphs 1 and 2) and 5 (paragraph 2), which provide that the Ministry of Foreign Relations (Ministerio de Relaciones Exteriores-Minexteriores) takes the lead in these

<sup>11</sup> That notwithstanding, we should not forget that the law's implementation has been criticized. For example, Lizarazo and de Lombardae (1998, p. 51) state as follows:

There are a number of provisions governing the matter, but in practice there has not been a concrete result in areas that were identified as the law's objectives: Promoting the integration processes from the border areas and accelerating the political and social development of the subregions.

border areas. This provision shows that the border issue should have an outward focus and that border integration is established as a social, political, technical and financial priority. Still, the decree leaves local authorities without capacity because they are on unequal footing when establishing border policies and actions, which are much more robust in Law 191 (1995).

Nicaragua has Law 749 (2010), also known as the Law on the Legal Regime of Borders. In this law, the border area is articulated, and Article 6 (paragraph 3) establishes the area's special regime within the legal system. It is important to note that Article 29 provides that the possibility of twinning agreements is mandated both by border municipalities that have counterparts in neighboring states and by the country's Minexteriores. Article 30 indicates that another fundamental aspect is the power of indigenous peoples and Afro-descendants to achieve cooperation agreements in international legal instruments, provided national interests are neglected. The Law of the Legal Regime of the Borders therefore shows an inclination to externalize the municipalities in the border areas while stressing ethnic minorities' historical cultural ties. The regulations established in Decree 6 (2011) give the Ministry of Foreign Affairs the role of monitoring the process and mandate the executive to seek agreements with neighboring countries to guarantee people's ease of movement in border areas that have indigenous peoples; this provision is fundamental to allowing people to take advantage of the existing links among Afro-Caribbean communities in the Greater Caribbean. Thus, Nicaragua also meets the three criteria established herein for the border area, showing the area's potential for achieving cross-border integration through legal tools at this level.

The case of Panama is quite different because it fails to move beyond a purely sovereigntist conception of the border and does not give any tools to entities located in the border areas. Although Decree 8 (2008) is the only special regulation regarding borders, this decree refers to a National Border Service led by Panamanian police and the Ministry of Government and Justice, which is in charge of the protection of territories, public order and the prevention of criminal acts that violate the country's sovereignty. The only cooperation tool that the country has beyond the border is given to the central government in article 22 (paragraph 9). Because the border is directed by both Panama's Ministry of Government and its police, border areas themselves are not granted authority. This is a good example of the correlation with a decentralization process that has not been fully developed and that has gaps (Chacón, 2014).

The case of Costa Rica features a similar dynamic because although that country does not have any border regulations, it does have Law 7410 (1994), also known as the General Law of Police, which mandates monitoring the land and sea borders and preserving the integrity of the territory, thus hinting at a containment view of the border instead of an integrationist view.

### *The local level*

Finally, at the local level, we have attempted to account for the regulatory elements of local authorities (municipalities, departments, regions) in their capacity to influence the national level through laws that may be proposed by such authorities, their membership in special regimes within the legal system, and whether the laws that govern them have tools to project the local entities internationally (Table 6).

**Table 6: Potential for the local environment**

Indicator/Country	Colombia	Nicaragua	Panama	Costa Rica
Legal tools project (non-border) municipalities internationally.	Does not apply.	Law 40 (1988) and modifications in Laws 261 (1997) and 792 (2012): Article 28 (paragraph 11). Article 24 (paragraph 27).	Does not apply.	Law 7794 (1998): Article 4 (paragraph F).
Regulations give autonomy to the local authorities studied.	Law 47 (1993): Article 4 (paragraph G). Article 4 (paragraph J). Article 10 (paragraph F). Article 13 (paragraph F).	Law 28 (1987): Article 8 (paragraph 7). Decree 3584 (2003): Article 22 (paragraph C). Article 5 (paragraphs G, F).	Law 18 (1948).	Does not apply.
Laws have the ability to draft bills for the national parliament.	Law 134 (1994): Article 28.	Law No. 40: Article 28 (paragraph 2).	Does not apply.	Law 7794 (1998): Article 13 (paragraph J).

Source: Developed by authors.

In Colombia, we must first note that there are no clear legal tools within the laws pertaining to municipalities (Law 136, 1994; Law 1551, 2012; Law 1454, 2011) that allow municipalities to be internationally projected, except for municipalities on the border, for which the integrationist view is emphasized in Law 191 (1995). Even so, the tool to formulate bills is contained in Article 28 of Law 134 (1994), also known as the Citizen Participation Law, which contains certain conditions and limitations that sometimes withhold the scope and power of this possibility.<sup>12</sup> There is also a regulation that permits the Archipelago Department of San Andrés, Providencia and Santa Catalina to exercise some degree of autonomous management<sup>13</sup>: Law 47 (1993) establishes special regulations for that department. Law 47 allows for the possibility of advancing cooperation and integration agreements with local authorities from other countries, as we have seen established in cases involving land borders. Law 47 also mandates protection of the Raizal culture (including developing that culture and protecting its language and heritage), which is essential because its sociocultural origin is the livelihood of the affected municipalities. These two elements are described in Article 4 (paragraphs G, J) and Articles 10 and 13 (paragraph F in both).

<sup>12</sup> This article establishes those conditions, which are explained here in further depth:

To promote the initiative, it must have the support of 0.5% of citizens registered in the respective electoral census, constitute a committee of promoters and choose a spokesperson. With the above fulfilled, the initiative is registered (in the form of an article) to the National Civil Registry, which reviews the application and delivers a form that must obtain, within a period of 6 months, the support of 5% of citizens registered in the respective electoral census. If this is achieved, the bill is submitted to the respective corporation, which studies it according to the rules in Article 163 of the Constitution. The spokesperson should be summoned and heard in the meetings at which the bill is pending. The topics that can be regulated based on this mechanism are limited by the Constitution and the Law. A bill cannot be presented on topics such as: development plans; international relations; fiscal and tax issues; granting amnesties or pardons; preservation and restoration of public order; wage and benefits of public employees, etc.; thematic limitations that are expressly stated in Articles 154 of the Constitution and 29 of Law 134 of 1994 (Echeverri, 2010, p. 69).

<sup>13</sup> Although San Andrés, Providencia and Santa Catalina are part of the national border framework, the legislation does not fully support this idea because the Law of Borders excludes the islands from this article. Still, Law 915 (2004), the Ministry of Foreign Affairs' documents and Border Plan for Prosperity program and the most recent document of the National Council for Economic and Social Policy (Consejo Nacional de Política Económica y Social-CONPES) that refers to the borders (CONPES 3805 de 2014) all include the Archipelago Department in the border areas permitted to have special policies in this regard.

The case of Nicaragua is special because at the regional level, the country fulfills the three elements proposed in this article. First, the municipal legislation established in Law 40 (1988) and its amendments (Laws 261, 1997 and 792, 2012) gives the City Council the power to discuss and approve of the city's international relations, including twinning to achieve cooperation agreements and technical and financial assistance as set forth in Article 28 (paragraph 11). According to Article 34 (paragraph 27), the Mayor has the power to propose these twinning relationships. In addition, the municipal councils can generate bills on issues that fall within their jurisdiction but that have an impact at the national level. This gives municipal councils proactive tools against the central government, a power that is supported in Article 28 (paragraph 2) of the Act and Article 140 (paragraph 3) of the Constitution.

Finally, for the Nicaraguan case, we must note the regulations of both the North and South Atlantic Autonomous Regions. Law 28 (1987), also known as the Autonomy Statute of the two Regions of the Atlantic Coast of Nicaragua and its Regulatory Decree 384 (2003), provides several tools that are relevant to this study. On the one hand, the regions have a legislative power that is supported by Article 140 of the Constitution and Article 5 (paragraph F) of the regulation. The regions must also be considered by the Ministry of Foreign Affairs when undertaking diplomatic missions in Caribbean countries, as stated in Article 22 (paragraph C) of the Regulatory Decree. Finally, the regions have a mandate to seek traditional exchange with nations and peoples of the Caribbean, thus giving them some leeway in the search for cross-border agreements, as supported by Article 5 (paragraph G) of the Decree.

In the case of Panama, Colón—which was established as a free zone in Decree 18 (1948), as supplemented by Law 25 (1992) and Law 54 (1998)—is a special case. In this special legislation, tax and tariff exemptions are established for companies and products because of their proximity to the Panama Canal, which carries a large flow of goods through the territory. The law does not imply any international projection; instead, it is simply a commercial regulation that takes advantage of the municipality's strategic location. Furthermore, the municipality is given no legal tools for either international projection or the ability to draft bills for the national parliament.

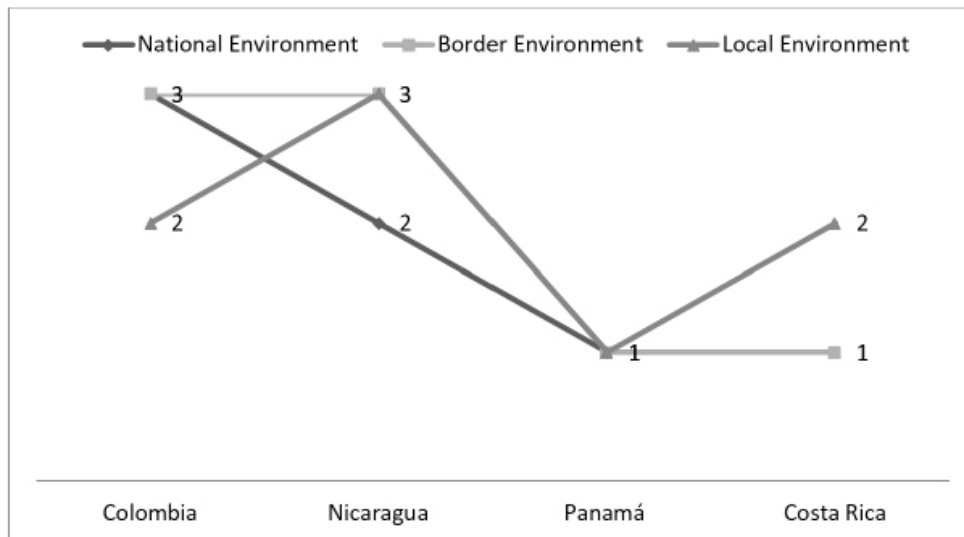
Costa Rica also has few local elements that are of interest to this study. In Law 7794 (1998), also known as the Municipal Code, Article 4 (paragraph F) establishes the possibility of achieving pacts or agreements with national or foreign entities to allow the city to achieve compliance with its duties, although no mechanism for doing so is provided. In addition, Article 13 (paragraph J) states that the municipality may propose legislative bills necessary for its development, thus allowing local authorities to enjoy some level of national impact.

## Comparison

It is telling that Colombia and Nicaragua are the countries that provide their local authorities with the most power to conclude cross-border agreements. According to the selected variables, these two countries offer regulatory abilities to local actors to develop outreach strategies beyond their national borders. Panama and Costa Rica have weaker regulations for achieving such agreements, although in the case of Costa Rica, the power to draft bills could overcome the more circumscribed power of local authorities on the border to achieve cross-border agreements (see Table 6).

It is noteworthy that the more recent constitutions are more developed in terms of borders, municipal autonomy and cross-border perspectives. For example, the more developed constitutions were introduced in 1991 and 1987 (Colombia and Nicaragua), whereas the least developed were introduced in 1949 and 1972 (Costa Rica and Panama). Thus, the legal developments of these constitutions will be more or less developed, an issue that is demonstrated in the measurement of potential, as shown in Figure 2.

**Figure 2: Comparative potential by country**



Note: 1) Low potential, 2) Average potential, 3) High potential.

Source: Developed by authors.

Another important point is that there are special rules for two of the studied border areas. Colombia and Nicaragua provide special powers to both San Andrés and the Autonomous Regions of the Atlantic (where Bilwi, Bluefields, and Corn Island are located) because of those areas' historical particularities, which was not the past with the other countries and their Afro-Panamanian and Afro-Costa Rican communities. We should consider, however, that despite the greater potential for these territories' border projection toward the Caribbean, many of the border development plans and policies implemented by nation states in these areas have tended to favor an "inward" development of the border; there has been insufficient use of regulatory tools for integration aiming for "outward" development.<sup>14</sup>

The sovereigntist conception of Costa Rican and Panamanian borders can be explained in the former case by the tension between Costa Rica and Nicaragua because the land border is very permeable and has generated bilateral conflicts between the two states. In the latter case, Panama is watchful of its seas because of narcotics trafficking and the difficulty in ensuring the safety of the Darién Gap. Arguably, these countries have preferred sovereignty to border development. Possible agreements in light of this low potential and security issues would depend on police cooperation with the two countries.

<sup>14</sup> In Colombia, a review of the most recent CONPES 3805 (2014) for the borders shows a wide array of "inward" border policies, including issues with infrastructure, public services, health, and others. Article 9 of the Nicaraguan Borders Law also shows the (inward) functions of its Commission for the Border Territory. In its 2009 plan, Costa Rica's El MIDEPLAN exclusively addresses internal affairs, not international projection.

Significantly, there are at least two countries with a high potential in this regard, which may create a process that subsequently could be linked to territorial authorities in other countries, given a sample of successful experiences. Actors from both Colombia and Nicaragua have a useful legal space for identifying cross-border agreements that may have repercussions in the Greater Caribbean region (see Table 7).

## Conclusion

The situation of inter-state boundaries and political conflicts in the Western Caribbean has highlighted the need to identify strategies that enable social and political actors in the region's border territories to develop integration actions as a method of overcoming the purely sovereigntist views that nation states have traditionally implemented in these territories. Examination of the region's legal and territorial systems can identify elements (beyond the ideological or political divisions of those in power) that can be exploited in the long term for the construction of a Region of Cross-Border Integration that flexibly articulates the needs for the interaction and complementarity of a Caribbean society that forms a distinct cultural unit.

We have seen throughout the article that not only the territorial and political configuration but also the legal context are relevant in areas in which local actors are imbued and where there are margins of action that can enable the conclusion of cross-border agreements. Further analysis should review of decentralization processes in the four countries, which generally can be regarded as incomplete processes either because of failed implementation or because very little decentralization legislation has been passed (Chacón, 2014).

**Table 7: Overview of the potential by country and comparison**

Indicator/ Variable	High Potential	Medium Potential	Low Potential
National level	<b>Colombia:</b> supported by the Constitution: Articles 227, 289, 300 (paragraph 2), 302 and 337. Decree 3355 (2009): Article 3 (paragraphs 8, 9, 10 and 15). Law 191 (1995): Article 7 (paragraph 3). Decree 1030 (2014): Article 2 and paragraphs 1 and 2.	<b>Nicaragua:</b> Supported by Law No. 358 (2000): Article 4 (paragraphs 8, 10 and 11). Law 749 (2010): Article 29. Decree 6 (2011): Article 21.	<b>Panama:</b> Supported in Law 28 (1999): Article 3 (paragraph 5).  <b>Costa Rica:</b> does not have regulations relating to the variables.
Border level	<b>Colombia:</b> Supported by Law 191 (1995), Constitution: Articles 227, 289, 300 (paragraph 2), 302 and 337. Law 1551 (2012): Article 193. Law 1454 (2011): Article 3 (paragraph 4). Integrationist view.  <b>Nicaragua:</b> Supported by Law 749 (2010): Articles 6 (paragraph 3), 29, 30. Decree 6 (2011), Article 21. Integrationist view.		<b>Panama:</b> Supported by Decree 8 (2008). Sovereigntist view.  <b>Costa Rica:</b> Sovereigntist view.
Local level	<b>Nicaragua:</b> Supported by Law No. 40 (1988) and amendments in Laws 261 (1997) and 792 (2012): Article 28 (paragraph 11). Article 34 (paragraph 27). Article 28 (paragraph 2).	<b>Costa Rica:</b> Supported by Law 7794 (1998): Article 4 (paragraph F). Article 13 (paragraph J).  <b>Colombia:</b> Supported by Law 47 (1993): Article 4 (paragraph G). Article 4 (paragraph J). Article 10 (paragraph F). Article 13 (paragraph F). Law 134 (1994): Article 28.	<b>Panama:</b> Supported in Decree 18 (1948).

Source: Developed by authors.



Likewise, one must consider that the border territories of the studied countries form a largely marginalized corridor from a social and economic perspective with respect to the core dynamics of development in the various nation states. This situation implies an urgent need to resolve underlying structural problems, which could become the main challenge for the establishment of effective long-term institutional practices to achieve border integration.

Notwithstanding the foregoing, legal elements could be the tools that actors mobilize to achieve cross-border integration. The existence of legislative initiatives in the four countries, for example, could encourage border laws that link local authorities either within the Greater Caribbean or in countries where there are already border laws, thus encouraging relations outside national spaces. In addition, special autonomies (in the cases of Nicaragua and Colombia) can be used to initiate processes that break with the national enclave. This possibility highlights the need to recognize municipalities' power to negotiate agreements without the need to create specific legal entities through the recognition of their international activities, thereby contributing to the development of "grassroots" integration strategies (CESPI, 2011, p. 73).

As shown in the comparative analysis of the four countries studied, we can conclude that the more modern and in-depth the dynamics of constitutional reforms, decentralization and the development of border regulations, the greater the likelihood that local actors can develop cross-border integration policies. Colombia and Nicaragua proved to be the countries whose territorial entities and regulatory developments at various levels of government have the best legal and administrative tools to achieve a cross-border integration policy for the Greater Caribbean. This finding is particularly important considering that these two countries are engaged in particularly critical boundary disputes in the Caribbean that require urgent solutions. Panama and Costa Rica showed weak potential both in normative terms and in territorial organization, thus hindering those countries' chances of cross-border integration. Nevertheless, the detection of legal tools within national systems is vital to identify both the potential and the need for the possible mobilization of resources by local actors in achieving integration.

Two elements are therefore open for discussion in the specific case of the Caribbean: first, that border integration in the Caribbean necessarily implies looking at policy and management models of maritime areas because it is essentially the sea where economic and societal exchanges are developed. This is not to discount the importance of revising the territorial and legal systems that we have analyzed here: without social actors and their ability to articulate both inward and outward national spaces, the sea would be a vacant space that could not be to the subject of integration policies or agreements. Innovative and flexible models of maritime management that contribute to the formation of integrated coastal and marine areas will have to be reviewed.

Finally, we recognize the most important aspect of the cross-border situation: the possibilities of articulating the cross-border region in the Caribbean do not necessarily depend on regulatory or territorial models of regional integration—or even on supra- or trans-national institutions—to bureaucratically regulate the integration process. Border integration can respond to autonomous societal dynamics that dispense with institutional instruments in the states and their localities and even dispute or ignore these instruments, as indeed has already been occurring recently in autonomous processes that involve relations and twinning among social border actors in Colombia and Nicaragua.<sup>15</sup> We

<sup>15</sup> After the decision of the International Court of Justice, an autonomist Raizal movement from San Andrés (the AMEN group) signed a twinning agreement with the ancestral village of the Autonomous Region of the South Atlantic in Nicaragua on December 12, 2014, without the support or endorsement of the Colombian government (Raizales y Nicaragüenses, 2014).

believe, however, that the existence of legal tools and autonomous processes favored by nation states within their respective regulatory frameworks and territorial organizations constitute an encouraging environment for border societies, through autonomy and decentralization, to transmit their demands, empower their resources and assert their basic rights based on their cultural, economic and social ties.

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