

The Future of Financial Services in the Caribbean: International Tax Competition, Globalization and Fiscal Sovereignty

A presentation by Sir Ronald Sanders¹

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¹ The writer is Antigua and Barbuda’s Ambassador to the US and the OAS. He has been engaged with the OECD, FATF and the governments of the US and UK on financial services matters, including the OECD Harmful Tax Competition Initiative and TIEA’s since 1998. He has written and spoken extensively on these matters. He is also a Senior Fellow at the Institute of Commonwealth Studies and Massey College in the University of Toronto. *The views expressed in this presentation are entirely his own.*

I have been asked to speak on “The Future of Financial Services in the Caribbean” in the context of “International Tax Competition, Globalization and Fiscal Sovereignty”.

As I speak, that future is bleak.

Globalization has been a one-way street of impositions by powerful countries; fiscal sovereignty has been violated by the strong; and tax competition remains under threat from the mighty.

Indeed, if the current pattern of incursions, restrictions and false labelling of Caribbean jurisdictions as ‘tax havens’, and the Caribbean as a region of ‘high risk’, is not halted soon and swiftly, not only will financial services have no future, but the Caribbean region as a whole could be relegated to the backwater of global existence.

The evidence of the last 30 years speaks for itself.

OECD CAMPAIGN

It is clear that the major member states of the Organisation for Economic Cooperation and Development (OECD) have been embarked upon a campaign to eliminate competition in financial services from Caribbean countries and other developing states, since the 1990s.

That campaign has never waned.

It has gained validation in the international community by seducing or coercing some developing countries into participation in groups, created at the behest of G7 countries, ostensibly to establish globally acceptable rules on tax information exchange, transparency, common reporting standards, anti-money laundering, counter terrorism financing and tax evasion.

One such group is the OECD Global Forum on Transparency and Exchange of Information for Tax purposes which claims 139 members and in which the countries of the European Union are over represented since they participate as individual nations and as a collective body.

At the end of the day, the seemingly broad membership of the OECD Forum is window-dressing for the menacing objectives of the more powerful countries.

The high number of members, masks the fact that no small nation can resist the candy-coated but bitters pills with which they are presented.

In the end, sanctions hang like the sword of Damocles over the heads of those who participate.

The entire process remains one of pushing the agenda of automatic access to tax information and ending tax competition in keeping with the prevailing ideology of European Union countries especially.

SOVEREIGN RIGHTS IGNORED

Despite all the rhetoric of 'level playing fields' and respect for sovereign rights, the world remains one in which might parades in the armour of right, and power camouflages itself in the clothes of justice.

In this matter, there has been – and continues to be – the most blatant disregard for the rules of international law; rules that have been spelled out by the UN and upheld by the International Court of Justice.

Those rules specify quite clearly that States cannot intervene in areas solely within the jurisdiction of other States, and international organisations are restricted from intervention within the domestic jurisdiction of states.

Yet, the powerful nations of the world – clustered in the OECD – do precisely the opposite.

And, weak and vulnerable nations are powerless to respond.

In fear of sanctions, such as blacklisting by OECD countries and the European Union Commission, and penalties from the United States, they acquiesce; surrendering their sovereignty.

At the conception of the United Nations, world leaders committed themselves to a world "governed by justice and moral law", one in which they asserted the "pre-eminence of right over might and the general good against sectoral claims".

If, in the history of the UN, that commitment was ever respected, it has certainly been disregarded if not reversed in relation to fiscal sovereignty and globalisation.

'DOGS OF WAR' RELEASED

And, in all this, the powerful nations have seduced the international media into becoming participants in their campaign.

As far back as 1834, a US Senator described this with prescient clarity.

He said "power marks its victim; denounces it; and then excites public hatred and odium to conceal its own abuses and encroachments".

So, as one commentator put it: "The dogs of war have been released on Caribbean off-shore centres".

In the wake of the so-called "Panama Papers", Panama has had its share of the snarling and bites of the war-dogs.

The truth that dares not speak its name is that "automatic exchange of tax information"; false branding of countries as "tax havens" while the real tax havens continue to thrive and prosper; and sanctions against what is described as "uncooperative jurisdictions", is a form of neo-colonialism.

It is a campaign to dictate the tax systems and structures of other nations for the benefit of OECD member-states, curbing the rights of sovereign but weak states and autonomous jurisdictions.

This campaign has been continuous and unrelenting, reaching an apex 17 years ago, when the OECD launched its so-called 'harmful tax competition' in 1999.

NO UNIFIED RESPONSE FROM VICTIM COUNTRIES

The campaign has persisted and has been successful not only because of the coercive might of the powerful States, but also because there has been no unified response from the countries and jurisdictions which are their victims.

Indeed, there is still no unified response.

The victim-nations lack the cohesion, the coherence and the capacity to formulate a common position and to stand-up for themselves.

Instead, there is a scramble by individual powerless nations to salvage what they can of their financial services sector, and to avoid, at all costs, the sanctions and penalties of the powerful countries.

So, they play the game as best they can, with their feet hobbled and their hands tied behind their backs.

The upheaval against the discriminatory political order that we have seen within the affairs of nations has not yet taken root in the affairs between nations.

There is as yet no leader ready to trump the abuse of the last three decades.

In fact, the absence of cohesion and coherence by developing countries might be obvious in a recent decision by the government of Ecuador, as Chair of the G77 & China at the UN, to work for an independent UN body that will eliminate tax havens and illicit financial flows.

There had been no prior discussion with other developing countries on this effort, and no clear indication of which jurisdictions Ecuador regards as tax havens.

The initiative might get the support of developing nations if the real tax havens are identified.

As it is, more than a little suspicion now attaches to its motivation and its initiators, and that is unfortunate.

But, in any event the OECD countries, including the US, would hardly support a UN body over which they would have no control.

They are far more comfortable with the OECD Global Forum on Taxation that they dominate and with their own unilateral actions such as the US Foreign Account Tax Compliance Act (FATCA) and the blacklists of countries they issue from time to time.

CARIBBEAN NOT A TAX HAVEN

It is well-known that Caribbean jurisdictions have been labelled as 'tax havens'.

There is this belief that we are rum and Coca-Cola societies that deliberately hide the ill-gotten gains of foreigners; help people to shield their taxable revenues from tax authorities; and have off-shore centres in furtherance of the Hollywood image of swashbuckling Pirates of the Caribbean.

Nothing could be farther from reality.

A 'tax haven' is an area or jurisdiction where payable tax is hidden, and where countries, in which such payable tax originates, are prohibited from receiving information on the such taxable assets.

That is not the Caribbean; it is other countries – some in the OECD; but not in the Caribbean.

Low tax or no tax jurisdictions are not 'tax havens'.

Low tax or no tax is not a measure of a 'tax haven'.

Countries pitch their tax levels in accordance with the imperatives of their economic and social development.

For instance, with a corporate tax rate of 22%, Ecuador is 7% lower than the average of the Americas and considerably less than Europe.

But Ecuador would not consider itself a tax haven.

In the case of my own country, Antigua and Barbuda, we are a low tax jurisdiction; indeed, we abolished income tax completely last year on the strong belief in two things: first, that the costs of pursuing such taxes outweigh the benefits, and second that money left in people's pay packet will promote economic growth through spending and saving.

With growth of 4.3% last year, Antigua and Barbuda was the fastest growing economy in the Caribbean and the fourth fastest growing economy in Latin America and the Caribbean.

But, Antigua and Barbuda, like most Caribbean countries, is not a tax haven.

CARIBBEAN COUNTRIES COMPLY WITH RULES

All Caribbean countries have had to make themselves compliant with the demands of the countries of the OECD as a group and individually.

In this regard, every Caribbean country is compliant with the rules of the Financial Action Task Force (FATF) on money laundering and counter terrorism financing.

They are also subject to regular reviews.

In fact, they are more compliant than the US, which the FATF found to be non-compliant with 'entity transparency' and 'gatekeeper rules' in 2006, and which the FATF has chosen not to evaluate since.

And, as far as the OECD Global Forum rules on Transparency and Exchange of Information for Tax Purposes are concerned, the majority of Caribbean countries are on their way to full compliance.

Notably, my own small country, Antigua and Barbuda, is fully compliant with the requirement for Common Reporting Standards (CRS), while the US has not signed-up to it.

And the US has been the beneficiary as Trust structures move there to avoid disclosure.

States in the United States, such as Delaware, South Dakota, Wisconsin, Colorado and Arizona, disregard OECD rules – and are practical tax havens, demonstrating why the US has not signed-up to the CRS.

But, it is clear that the doctrine of ‘might is right’ continues; the principle of transparency applies only to the weak; and the notion of a level playing field for competition is a myth.

US NOT ENFORCING TIEA’s IN THE US

Incidentally, it is worth pointing out that, in 2015, a number of individual States of the US adopted legislation naming Caribbean countries, including my own, as ‘tax havens’.

When, as Ambassador of my country to the US, I pointed out to the Commissioner of the US Inland Revenue Service that under the Tax Information Exchange Agreement (TIEA) which my country signed with the US in 2000, the US – and all its States – had access to automatic tax information and, therefore, the legislation adopted by Maine, Montana, Oregon and the District of Columbia was ill-informed and wrong, and that he should so advise them, the reply I received in writing was that “the IRS plays no role in the legislative process” of these States.

Nothing was done.

It makes one wonder what is the point of a TIEA with the Federal Government of the US, and whether, instead, we should have negotiated individually with all 50 States of the United States.

What is clear is that, though the IRS won’t enforce the terms of the TIEA with its own States, it demands enforcement, upon pain of penalties, by Caribbean countries.

Added to all this, over the last two years, Caribbean countries have been facing a huge new threat not only to their financial services, but to their sustainable development and their ability to participate in the global financial and trading system.

THE NEW THREAT – WITHDRAWAL OF CBR’s

This new threat comes from a decision by banks in the US and the UK to withdraw correspondent banking relations from respondent banks in the Caribbean.

As Christine Lagarde, the Managing Director of the IMF, points out: “Correspondent banking is like the blood that delivers nutrients to different parts of the body. It is core to the business of over 3,700 banking groups in 200 countries”.

Without correspondent banking relations, Caribbean countries cannot pay for the goods and services that they buy from the US and the UK, including medical and education services.

They also cannot receive payments for tourism or remittances from their diaspora that sustain the well-being of the poorest and most vulnerable in their societies.

The consequences of this should be obvious, since the US and the UK are the Caribbean's biggest trading partners.

As I speak, the majority of banks across the Caribbean have lost their correspondent banking relations with US and UK banks.

They have had to find expensive alternatives that have pushed up the price of bank transactions and the cost of doing business.

Already heavily-burdened, open economies in the Caribbean are now faced with additional costs to import goods and services from the US and UK, and to receive payments for their own goods and services.

It is not clear how long these alternative arrangements will last before US and UK banks shut them down under the present dispensation.

And what is the present dispensation?

Frightened by the huge fines and forfeitures with which they are threatened, particularly by regulators in the US, and conscious of the branding of the Caribbean as a 'high risk area' for financial services, banks that have done business and made profits in the region for over a century, are taking the view that the risk is not worth the rewards of the business.

But what is the risk?

No bank or other financial institution in the Caribbean has been a party in any of the cases of money laundering or tax evasion prosecuted in the US or the UK.

It should be patently clear that the withdrawal of correspondent banking relations from the Caribbean is not due to any lack of compliance with the anti-money laundering, counter terrorism financing or tax evasion rules of the OECD countries, including the US.

One is left to speculate, therefore, as to the real reason.

An incongruous side note to this is that the World Bank has warned that around 50% of adults in the world's poorest households are unbanked – in other words, they have no access to financial institutions.

The World Bank says that it is "scaling up support to reach an additional billion people".

But, while it is doing that, 15 million people in the Caribbean are at risk of being unbanked by the withdrawal of correspondent banking relations.

And, the response of the pre-Donald Trump administration to what should be an obvious wrong was that the Caribbean – already more compliant than the US with FATF and OECD

rules – must strengthen their anti-money laundering and counter terrorism financing regimes.

That response demonstrates that the playing field is anything but level, and redress for injustice is not a matter of morality; it is a matter of might.

LOOKING TO TRUMP

It would be helpful if, committed as it says it is to less regulation, the Donald Trump government will be more open to the Caribbean's argument that US regulators and correspondent banks should mitigate rather than avoid risk, and that, therefore, US banks should only terminate correspondent banking relations where money laundering and terrorism financing risks cannot be mitigated.

But that is a mere hope; it is not an expectation.

Nonetheless, it is a proposition that Caribbean countries collectively should explore with the Trump administration as soon as they are able to do so at all levels.

So, what the future holds for correspondent banking relations for the Caribbean is very uncertain.

What is clear is that if the present trends continue, the region will be in danger of losing even more sovereignty over its fiscal and banking affairs.

If the indigenous onshore banks and offshore banks of the Caribbean are all deprived of correspondent banking relations, the region will be left with only the foreign-owned banks (mainly Canadian) that may be prepared to remain because they have their own headquarters correspondent relations.

A NEW COLONIALISM

But those banks can then form cartels that control the means of exchange in the Caribbean and determine interest rates, lending policies, and sectoral investment.

The region will be gripped by a new form of colonialism and control – this time by foreign banks.

A responsible international community should help the Caribbean to resist this growing cancer; other developing countries should be in the forefront of support, for the cancer can spread to them, as it has already started in Central America, including Panama, and Africa.

Incidentally, nothing that I have said here should imply or suggest that Caribbean countries ought not to comply with the rules against money laundering, counter terrorism financing and tax evasion that are being set – albeit not by globally-represented bodies.

They have to do so, and are doing so, at very high cost.

For instance, in my own country, here is a list of the obligations that we have to finance:

- The FATF's rules on anti-money laundering and counter terrorism financing;

- The OECD's common reporting standards;
- The US FATCA
- Operation of Tax Information Exchange Agreements with over 25 countries;
- Operation of Mutual Legal Assistance Treaties with almost 90 countries.

In the case of the US FATCA, small countries in the Caribbean are paying for the dubious privilege of being policemen for the US Inland Revenue Service.

And, incidentally, the US has only promised to provide reciprocal information; it has not done so and shows no sign of doing so.

But Caribbean nations – and all other affected countries – should strengthen their advocacy worldwide, enhance such representation as they have in the OECD Global Forum and at the FATF, and demand that every OECD country implements the same rules they impose on others.

SUMMARY

So, to summarise the themes of this presentation.

In relation to Globalisation, the only global rules are those set by powerful countries in their own interest.

Fiscal sovereignty as a right of individual States is largely ignored and up-ended by the doctrine of might is right.

Tax competition has survived in part so far; but the OECD countries are unrelenting in their efforts to coerce other nations into mirroring the areas of their taxation, even though the economic imperatives of nations are vastly different.

WHAT SHOULD CARIBBEAN NATIONS DO?

What then for the future of Financial Services in the Caribbean?

The prospects would be best served by the formation of alliances in every global forum to wrest control of financial services matters from the OECD which represents only a handful of nations in the world community.

In the late 1990s, it was an alliance of Caribbean nations with Austria, Switzerland, Luxembourg, the Isle of Man and Jersey, that held back the OECD over its so-called 'harmful tax competition initiative'; and it was the decisive intervention of the new Republican government of George W Bush, before 9/11 and the Patriot Act, that eventually pushed back the OECD.

But, since then, the European jurisdictions retreated into the fold of the OECD, and the Obama administration in the US strengthened the heavy-hand of regulation and extra-territorial laws such as FATCA.

The Caribbean should now look elsewhere – to the countries of South and Central America, including Panama, and to Africa and the Pacific where nations are also subject to coercion, erosion of fiscal sovereignty and loss of competitiveness - to build alliances to counter the domination of global rules on tax matters by a few self-serving nations.

A TRULY REPRESENTATIVE WORLD BODY NEEDED

The Ecuadorian government is right - a UN body is needed.

But not to chase after imaginary windmills of falsely-labelled tax havens.

It is needed to create standards created by representatives of the entire world and not by a handful of elite countries; it is needed to establish rules that tax competition, like all other competition, is good for global growth; it is needed to enshrine the principle that setting levels of taxation is the sovereign right of each nation in the context of its own economic and fiscal imperatives.

Alliances should also be sought with groups within OECD countries that recognise that high taxation and coercion of other nations do not make for a prosperous world or a peaceful one.

That, to paraphrase Abraham Lincoln, the world will not survive half-free, and half-enslaved.

There would be good reason for other developing nations and groups within OECD countries to join the Caribbean in such an undertaking.

For, the small are the bully's first victim; they are seldom the last.

Thank you.