



Lunch Address

by

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To

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Options on Transnational Crime

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Let me first thank ***The Canadian Foundation for The Americas*** for inviting me to be its Guest Speaker to so distinguished and experienced a group drawn from law enforcement, diplomacy, academia, and policy formulation in Canada, the Caribbean and the United States.

The focus of your deliberations is “Crime in the Caribbean Basin: Policy Options on Transnational Crime”.

My own focus will be limited to the smaller islands of the Caribbean, and I will make little distinction between “Crime”, *per se* and “Transnational Crime” since the reality of the Caribbean today is that the two are very closely intertwined.

I have a few simple statements that I want to make at the outset.

First, apart from drug trafficking, transnational crime in the Caribbean poses little direct threat to the international community at the present time.

Second, the Caribbean has been outstanding in its commitment and its readiness to fight transnational crime.

Third, crime, particularly violent crime, is one of the biggest problems now confronting the Caribbean.

And fourth, the international community – particularly the countries whose demand for illegal narcotics has contributed significantly to the development of the Caribbean as a transshipment centre - has failed to help the Region to implement policies to control and prevent crime. The consequence of this is that Crime now threatens the security of the Region and its economic, social and political stability.

Transnational Crime in the Caribbean

If we were to identify “transnational crimes” worldwide as drug trafficking, international gun running, money laundering, cross border fraud, theft of intellectual property, terrorism and terrorism financing, and facilitation of tax evasion, we would find that several of them either do not exist in the Caribbean or they are at a level that poses no significant threat to the international community.

Certainly, this observation is true of theft of intellectual property, the facilitation of tax evasion, cross border fraud, international gun running, and terrorism and terrorism financing.

I would also argue that, today, the instances and volume of money laundering are not a significant threat either to the Caribbean or the international community.

Drug trafficking is the principal transnational crime in the Caribbean. But let me deal first with those, which are not.

Terrorism Financing

To deal with terrorism financing first, in the aftermath of September 11th, it was discovered that financial transactions for terrorist groups occurred regularly in eleven of the thirty OECD countries including the US, the UK, Switzerland, Germany and Austria. By comparison only six non-OECD countries were found to have handled terrorist accounts and only three were Caribbean jurisdictions.

The sums unearthed by the three Caribbean jurisdictions were *de minimis* in comparison with the huge amounts found elsewhere.

In the event, Caribbean countries were among the first to sign-up to UN Security Council Resolution 1373 on Terrorism and Terrorism Financing, and Caribbean jurisdictions were also among the lead countries to pass counter terrorism financing legislation, my own country, Antigua and Barbuda, being the very first to do so. Included in that legislation is provision for immediate freezing of assets leading to forfeiture, and severe penalties including jail sentences for terrorists associated with financial transactions and the financial institutions that facilitate them.

Tax Evasion and Exchange of Information Agreements

With respect to the facilitation of tax evasion, it is instructive that 80% of the world's offshore financial services is located in OECD countries, excluding their colonies. The remaining 20% is in the non-OECD countries, with even this segment dominated by a few large centres such as Hong Kong. This means that less than 10% of the world's offshore business is conducted from the 41 jurisdictions targeted by the OECD as "tax havens". Of those 41 jurisdictions, less than half are Caribbean.

The law of averages suggests, therefore, that apart from anecdotal information, there is little evidence to support the claim that tax-evasion money is swimming around in Caribbean banks.

Nonetheless, all the Commonwealth Caribbean jurisdictions have signed Tax Information Exchange Agreements with the United States, and several have such agreements with other countries. Antigua and Barbuda, for instance, has an agreement with the United Kingdom, and we have indicated that we are ready to negotiate an agreement with Canada.

In any event, tax evasion is a crime in the majority of Caribbean countries, and many of them have Mutual Legal Assistance Treaties with the United States and other countries. Again, for instance, Antigua and Barbuda has such an agreement with the United Kingdom and we have virtually completed negotiations with Canada to establish one. Indeed, I can say now that we are ready to sign the Treaty with Canada today.

The point is that, through these Mutual Legal Assistance Treaties and Tax Information Exchange Agreements, Caribbean countries have demonstrated a

willingness to exchange information with other countries on tax evasion cases and to cooperate in the prosecution of offenders.

The OECD and Exchange of Information

The Caribbean had a different problem with the OECD and its “harmful tax competition initiative” which sought to address exchange of information on ‘civil’ as distinct from ‘criminal matters’, and which equated tax ‘avoidance’ with tax ‘evasion’, the latter being a crime in most Caribbean jurisdictions and the former being perfectly acceptable in most countries in the world including many in the OECD.

The Region’s problem with the OECD stemmed from what could be called in short, the “usurpation of global governance”.

The OECD is not an international organisation. It has no legal authority to set and impose standards and practices on any jurisdictions except its own membership.

Yet in attempting to enforce its ‘harmful tax competition initiative’ upon 41 small jurisdictions mostly in the Caribbean and the Pacific that is precisely what it was attempting to do. It was arrogating to itself the authority of an international law enforcement body to dictate global governance of cross-border tax matters.

What is more, it created a blacklist of jurisdictions and threatened them with sanctions if they did not comply.

Any such sanctions would probably have been open to challenge at the World Trade Organisation. One day, they still may be.

For the time being, however, the targeted jurisdictions agreed to participate with the OECD in a so-called “Global Forum” to explore the OECD’s requirements for exchange of information related to tax matters provided that a level playing field was established for all. In other words, our expectation was that rules would be agreed by all and applied equally to all.

Then in January this year, the European Union countries, many of whom are OECD members, decided to exclude three of their member states from requirements for exchange of information and extended the exclusion to two other OECD members, Switzerland and the United States, on what amounts to an open-ended arrangements.

Meanwhile the targeted jurisdictions, such as Antigua and Barbuda and others in the Caribbean, are required to comply with the exchange of information requirements by 2005.

Naturally some of us have called a halt to this process. Antigua and Barbuda, for one, has demanded a meeting of the Global Forum to decide whether

there is any merit left in the OECD initiative.¹ Caribbean Community Heads of Government have endorsed Antigua and Barbuda's position on this matter. The Secretary-General of the OECD, Mr Don Johnston, has agreed to a meeting of the Global Forum but the OECD members are experiencing some difficulty in setting a date.²

I mention the OECD at such length because often the 'harmful tax competition initiative' is paraded as if it is related to crime. It is important that we all understand that it is not. Its focus is cross-border tax matters of a civil nature.

Even more serious is that the way it was handled demonstrates a readiness by the big and powerful to bully the small and weak.

Money Laundering

The Caribbean experience with the global governance of money laundering issues was not dissimilar to its experience with the OECD on harmful tax.

The FATF was the creation of a handful of rich nations, which took it upon themselves to produce 40 Recommendations to counter money laundering and to impose them on selected areas of the world using the threat of sanctions to force compliance.

In this case, while there was every virtue in the objective that the FATF identified: to curb money laundering and financial crime, it was the manner in which the matter was handled that galled jurisdictions worldwide.

It appeared to many to be nothing short of a usurpation of global governance by rich nations with the clout to do so.

What is noteworthy is that while much adverse publicity surrounded the few illegal activities that were uncovered in the Caribbean, the actual incidents and sums involved were a very tiny fraction of the numerous incidents and vast sums of money that were unearthed, and continued to be discovered, in many of the FATF countries.

Indeed, to date, no study has been produced to show that the number and volume of transactions in the Caribbean connected to money laundering and financing of terrorism undermine the global financial system. Caribbean jurisdictions, under the umbrella of the Caribbean Financial Action Task Force (CFATF) have decided to commission such a study to be undertaken by a legal firm in the United States.

Nonetheless, over the past four years, the Caribbean has readily adopted the FATF's 40 Recommendations on money laundering and its more recent 8 recommendations on terrorism financing.

¹ See, letter from Sir Ronald Sanders to Donald Johnston, Secretary-General of the OECD dated 27th January 2003 on website: www.antigua-barbuda.com

² Letter dated 17th February 2003 from Donald Johnston, Secretary-General of the OECD to Sir Ronald Sanders

Throughout the region, Governments have established legislative, regulatory, supervisory and enforcement machinery to implement the FATF's recommendations, and, in some cases, to go beyond them.

With only one exception, every Caribbean country that was included in the FATF's blacklist of non-cooperative countries and territories has now been removed. In the case of my own country, Antigua and Barbuda, it was never included in the list having been adjudged from the very beginning as fully cooperative in the fight against money laundering.

This process was not easy. Governments had to make very hard choices by moving scarce resources previously allocated to health, education, and much needed physical infrastructure to comply with the requirements of the FATF.

The significant anti money laundering legislation that has been instituted in the Caribbean Region has resulted in the virtual collapse of the offshore sector in one jurisdiction. In all of them, there has been a significant reduction in the number of businesses, revenue and employment.

In the case of one country, The Bahamas, US\$36 Million were spent setting-up machinery demanded by the FATF. Every other country spent amounts that, in relation to their Budgets, were similar in size to The Bahamas.

In Antigua and Barbuda, for instance, where our register for offshore banks numbered over 50 in 1998, we have only 15 today.

This is due not only to strict compliance with FATF requirements but also to adherence to the US Patriot Act and the recommendations of the Basle Committee which require that these banks have a physical presence in the jurisdiction including not only books and records but 'mind and management' as well. Many of these institutions could not afford to lay-out even more capital to fulfil these new obligations.

All this is taking place during a period that the President of the Caribbean Development Bank, Professor Compton Bourne, describes in this way:

"In terms of the standard measures of economic performance, Caribbean states are wobbly. Economic growth rates which averaged between 2% and 4% per annum during the 1990s have fallen, some into the negative zone. Unemployment rates have increased in some countries, while not decreasing significantly in others. Vulnerability to external economic shocks and to natural disasters has not lessened. Caribbean countries lack economic resilience.

The main industries, except petroleum and natural gas in Trinidad and Tobago, face formidable challenges. WTO rulings on EU banana trade have dealt this industry a crippling blow. The filing of WTO complaints by Australia and Brazil on September 27, 2002 in respect of the EU sugar protocol threatens similar damage. Tourism, a mature industry, displays the

*characteristics of the economically aged, i.e. outmoded products, production inflexibility, high cost-returns ratios and vulnerability to newcomers.*³

At the bottom line, in an international milieu that is unhelpful to their economic growth and development, Caribbean jurisdictions now operate and enforce standards and practices to curb money laundering that are higher, tougher and more stringent than obtain in many FATF countries.

Money laundering in the Caribbean has not disappeared, and it probably never will, but the instances of it, which were relatively small to begin with, have been dramatically reduced, and the opportunities for it have been strangled to a far greater extent than in many OECD and FATF countries.

What is more the machinery for international cooperation in anti money laundering and counter terrorism financing, including information exchange on criminal matters, is well established and is working.

Through mutual evaluations of each other's jurisdictions under the umbrella of the Caribbean Financial Action Task Force, Caribbean states are also monitoring their own performance regularly and remedying deficiencies in their systems.

IMF/World Bank substitute for FATF

In the midst of all this, a new and worrying development has taken place.

Claiming that they were responding to criticisms of their lack of legitimacy in setting and imposing international standards and practices to curb money laundering, the FATF decided in October last year to allow the International Monetary Fund and the World Bank, on a 12 month pilot project, to jointly undertake assessments of jurisdictions for anti-money laundering and counter terrorism financing.

On the face of it, this might appear to be a good development, one which internationalises the governance of the money laundering issue. Such an assumption would be misleading.

Caribbean countries were not consulted directly about the transfer of this matter to the IMF/World Bank or on the content and scope of the methodology that would be applied.

Caribbean Ministers have taken the most strenuous objection to the procedures followed in relation to the purported 'transfer' and the methodology contemplated by the IMF in furtherance of it. These concerns were conveyed directly to the staff of the Fund at a Ministerial Meeting of the CFATF in The Bahamas on 17th October 2002 and again, more recently, and

³ "Small States in the context of Global change", Professor Compton Bourne OE, President, Caribbean Development Bank at 4th Annual Conference of Sir Arthur Lewis Institute of Social Studies, University of the West Indies, 15th January 2003, Sherbourne Conference Centre, Barbados.

more vigorously, at a similar encounter with IMF representatives in Barbados on 15th January 2003.

The Caribbean has taken the view that the fight against money laundering and terrorism financing is firmly rooted in the criminal justice system of all countries based on the original requirements of the Vienna Convention. They consider that the current IMF/ World Bank initiative goes beyond the mandate of the bank and Fund and should be a matter for full discussion at the annual meeting of the IMF/World Bank group later in the year when all member countries are present.

In that context they called for a truly global forum on money laundering convened under the auspices of the United Nations with a view to concluding an international convention that would set agreed standards to be applied equally to all jurisdictions.⁴

International Gun Running

With regard to international gun running, there have been few such instances associated with the Caribbean. In the best-known cases, the Caribbean was used as a transshipment point; none of the material originated in the Region.

These incidents were illegal in the jurisdictions in which they occurred, and actions have been taken to guard against their recurrence.

Firearms trafficking into the Caribbean

Trafficking in firearms into the Caribbean is a different story.

This pernicious activity is linked to the drug trade. Narcotics traffickers use weapons for protecting shipments, intimidating customers or competitors and executing informants. Dependent drug users tend also to commit crimes to obtain money to fund their drug purchases and may use firearms that are illegally obtained to perpetrate violent crimes.⁵ The increased number of murders in some countries in the Region, particularly of Police and other law enforcement officers, is directly linked to the trafficking in drugs and the associated trafficking in firearms.

Trafficking in firearms in the Caribbean, therefore, poses a far greater threat to the security and stability of the Region than it does to the rest of the world.

As a Caribbean Community Task Force on Crime and Security observed recently:

“The seemingly uncontrollable rise in armed crime and violence as evidenced by the unusually high murder rates in some member states has not only

⁴ Communiqué of Special Ministerial Meeting of the Caribbean Financial Action Task Force (CFATF) with IMF representatives in Barbados on 15th January 2003

⁵ Final report of the CARICOM Regional Task Force on Crime and Security, presented to CARICOM Heads of Government Conference in Guyana in July 2002

*threatened legitimate governments but has become very serious threats to the basic fabric of our societies”.*⁶

In passing, I might add that there is a popular belief that the increase in sophisticated crime is, in part, attributable to the deportation of criminals by the United States and Canada to the Caribbean countries of their origin sometimes tenuously ascribed. Some statistics indicate that a percentage of these deportees are charged with crimes in the countries to which they are returned, but it is doubtful that the statistics are a sound indicator since many who plan and organise and commit crimes may not be caught.

In addition, there is now some evidence of a network of criminals throughout the Caribbean who were known to each other in Canada and the United States. Through this network a criminal could be imported from one Caribbean country to carry out a criminal activity in another where he has no Police record or profile.

Concern over this matter of the impact of deportees on the escalating rate of crime sufficiently exercised Caribbean Community Heads of Government at a Conference last month that they agreed that the existing “Association of Caribbean Commissioners of Police must be recognised and institutionalised as an agency of the Community, reporting to a Joint Committee of Attorney-General and Ministers Responsible for National security”.⁷ The point of this is to design more effective tracking, monitoring and control of high-risk deportees (and other high risk criminals) including sharing information on their profiles and their movements between one Caribbean country and another.

Drug Trafficking

In 1992, in what turned out to be prescient observation, a Commission established by Caribbean Community Heads of Government to chart a course for the Caribbean into the 21st Century, said this:

*“Nothing poses greater threats to the civil society in the Caribbean Community countries than the drug problem; and nothing exemplifies the powerlessness of the regional governments more”*⁸.

Over the last decade the problem has simply worsened.

Individual Caribbean countries do not have the resources to match the vast capacity of the drug traffickers. A recent report reveals that, “the Caribbean is emerging as a major supplier of drugs to Europe as the total income generated from the illicit drug industry in the region last year totalled more

⁶ Summary report of the Seventh Meeting of CARICOM Task Force on Crime and Security: Priority Proposals on Crime Prevention, para for the consideration of the Inter-Sessional Meeting of Heads of Government, Trinidad 14-15 February 2003.

⁷ Communiqué of the 14th Inter-Sessional Meeting of the Caribbean Community (CARICOM) Heads of Government Conference held in Trinidad 14-15th February 2003.

⁸ “Time for Action”, report by the West Indian Commission, 1992

than three billion US dollars”⁹. With regard to the United States, the Report also stated that while cocaine use in that country decreased, cocaine exports transhipped through the Caribbean to the US market rose from 29% in 1990 to 48% in 2001”.¹⁰

None of this means that Regional governments have not tried. Again, scarce resources were diverted from social and economic programmes to fight drug trafficking. Evidence of these efforts is the increase in both the number of arrests of traffickers and seizure of drugs. The majority of prisoners in the now overcrowded jails of the Caribbean are drug-related offenders.

Despite the best efforts of governments, the Caribbean, because of its geographical location between the supplier and market nations, and increasingly difficult economic conditions, remains a significant corridor for illicit drugs.

Yet, we are witnessing now a marked withdrawal of resources from the Caribbean by the international community to address this problem at a time when the range of criminal activity that it spawns is threatening the economic, social and political stability of the Region.

The types of crimes that are now prevalent directly affect good governance through the corruption of law enforcement agencies, but they threaten governance itself through violent crimes such as murders – including killings of police officers, witnesses, and competitors.

Last year, there were 1,040 murders in Jamaica (amongst the highest per capita in the world), 171 in Trinidad and Tobago and 152 in Guyana of which 16 were policemen. In the first two months of this year, 6 policemen have already been gunned down in the streets.

This upsurge in crime, linked to drug trafficking, has been facilitated by the economic downturn in Caribbean countries occasioned by loss of markets for their primary products, a reduction in aid, a decline in foreign investment, a decline in tourism and a hostile onslaught on their financial services sector. In this extremely troubling situation, the international community has been less than forthcoming in supporting the efforts of Caribbean governments to tackle the problems.

Instead, there has been an obvious reduction in support to Caribbean drug law enforcement. The European Commission Drug Control Office, which operated from 1999 to 2001, was closed; the post of a Caribbean-based UK police adviser was removed to be replaced by an adviser based in London; the Caribbean United Nations Office on Drugs and Crime was significantly scaled down; the US Caribbean Drugs Control Coordinator was recalled; and a Regional Maritime Cooperation Project ended – this project was the

⁹ Report of Caribbean Regional office of the United Nations Office on Drugs and Crime, cited in the CMC New Bulletin, 26th February 2003.

¹⁰ *Ibid.*

mechanism for collaboration among Caribbean States in the restriction of drug trafficking by maritime means.

When the Guyana government appealed to the United States for help in coping with the spiralling crime situation, they were directed to a private agency whose bill would have to be met by a country considered to be amongst the poorest in the Region.

It is significant that when the international community was providing assistance, the entire focus was on restricting the supply of drugs with little or no attention to the problems that transshipment was creating for Caribbean countries themselves.

For this reason, Caribbean Community Heads of Government have announced that they want “a high-level meeting between the Caribbean Community and the international community to review drug control policies within the Caribbean”.¹¹

Policy Options

Caribbean countries have already instituted policies to address the transnational crimes that are a problem in the region.

These have been most successful in the areas of curbing money laundering and countering terrorism financing}.

Drug trafficking, however, has become the pillar of transnational criminal activity in the Caribbean resulting in an exponential increase in corruption and violent crime.

Regional governments have instituted several measures to try to meet this overwhelming phenomenon against the background of studies undertaken by a Task Force on Crime established in July 2001. Amongst these measures are: mechanisms for the effective sharing of information and intelligence, the creation of a Regional rapid response unit to bolster the capacity of domestic law enforcement agencies; and strengthening of the Regional Security System through memoranda of understanding between states for in operational security matters.

They have also instructed that a Regional Plan for a co-ordinated response to crime be completed to provide a framework for regional collaboration.

With the best will in the world, however, Caribbean countries will not win this battle against drug trafficking and all its pernicious consequences, unless they receive meaningful support from the international community, particularly those countries whose demand for illegal narcotics sustains and enlarges the traffic.

¹¹ Op. Cit., Note 5.

If this Conference does nothing else, it should try to ensure a meaningful response by the international community to the Caribbean's request for a high-level meeting between regional Governments and others to address the pandemic of drugs trafficking through the Region.

Failure to do so will occasion a further increase in crime that will cripple the area and threaten others far beyond its shores.

The Caribbean has shown itself willing. The international community especially its closest neighbours should do no less.