

Mature Regionalism and the Rose Hall Declaration On Regional Governance¹

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Abstract:

The CARICOM Single Market and Economy (CSME) was adopted fourteen years ago but very little has actually been implemented. The core of the problem resides in the fact that the Treaty of Chaguaramas is based on the intergovernmental mode of cooperation and thus its provisions are subject to the discretions of national sovereignty. But the experience of the European Union illustrates that supranational decision-making can accelerate the process of integration in chosen policy domains; that sovereignty is a dynamic concept, divisive, and customizable according to the needs and desires of the participating States. Intergovernmentalism and supranationalism are reconcilable.

A CARICOM Commission can function effectively only if the Community itself, with the Conference of Heads of Government at its apex, is constitutionally empowered by the Member States to make decisions, to legislate, and to implement decisions. Such a process would necessitate changes to the Treaty of Chaguaramas, and amendments to the relevant laws of the individual Member States. A Commission without such powers expressly delegated to it by the member States in respect of specific agreed policy domains can merely perform a facilitating role through persuasion and wisemen brokerage. In such a case, it is likely to be little more than an expensive duplication of the CARICOM Organs; a Commission in little else but name.

The principle of automatic resource transfers for financing the Community's institutions is a timely and needed advance toward mature regionalism, especially in view of the large number of new regional institutions to be established as a consequence of the CSME and the Rose Hall Declaration. It will be a real test of the commitment to deepen regional integration. Each CARICOM citizen has a stake in the success of the Community, and this could find expression in a direct contribution by each gainfully employed citizen. This would also help to make the regional institutions more transparent and accountable to the public. If the average contribution (excluding Haiti and Suriname) were an average of only one dollar a month, this would quadruple the resources of the CARICOM Secretariat.

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Last July, CARICOM Heads of Government adopted the Rose Hall Declaration on Regional Governance in which they pledged themselves to the development of a system of "mature regionalism in which critical policy decisions of the Community taken by Heads of Government, or by other Organs of the Community, will have the force of law throughout the Region..." This resolve was doubtless made, to a good extent, because of the difficulties and very slow pace of implementation of the provisions of the CARICOM Single Market and Economy (CSME).

The CSME was adopted some 14 years ago and very little had advanced to the stage of implementation. By "implementation" I mean putting into practical operation the provisions of the Treaty, as distinct from agreements and the setting of dates to do so, on paper. The core of the problem resides in the fact that the Treaty of Chaguaramas is based on the intergovernmental mode of cooperation, and thus its provisions are subject—whatever is agreed to in its various Organs—to the discretions of national sovereignty. This means, to give an example, that if a decision is made by the Conference of Heads of Government that the free movement of capital should be put in place in the Member States of CARICOM, as has indeed been the case, the details of that decision and its related instruments still have to be scrutinized, and the national parliamentary procedures for consultation, amendment, ratification and entry into force observed in each of the 15 Member States.

This exercise of national sovereignty in the context of a Community of States is otherwise referred to as intergovernmentalism. Thus, it will not come as a surprise that any decision, especially those as far-reaching as the CSME, under this intergovernmental approach, proceeds at such a very slow pace, and indeed may even be subverted altogether in the end. This approach to integration through intergovernmentalism contrasts with the approach of supranational decision-making—supranationalism—whereby, once the consultative and legal procedures are adhered to, decisions by the Conference of Heads of Government and other Organs of the Community to which

powers have been delegated, may make certain decisions that immediately have the force of law throughout the Member States. Such an approach, you will appreciate, can proceed faster—and has been a good part of the explanation of the remarkable advance made by the European Union whose Single European Act is only three years older than the CSME. The decision of Heads at Rose Hall in the paragraph I quoted at the beginning therefore represents a major advance of CARICOM towards "mature regionalism."

Alas, however, there is a catch to it. At the end of the paragraph there appears the qualification "taking into account the constitutional provisions of Member States." Even more crippling is the affirmation made in the very first paragraph "that CARICOM is a Community of Sovereign States and territories able and willing to exercise the rights and assume the obligations of membership of the Community, and that the deepening of regional integration will proceed in this political and judicial context."

In reality therefore, there has been no advance toward mature regionalism. For it would be quite impossible to reconcile these two diametrically opposed conceptions of sovereignty—appearing in a single document, in the space of three paragraphs. It does look like one step forward and two steps backward.

But is reconciliation of intergovernmentalism and supranationalism possible? I believe that it is. And we see the living illustration of it in some of the European Union arrangements. But first, let me say that the gratuitous, uncalled for affirmation of national sovereignty in a regional integration treaty is most unusual—in fact, I know of no other example. The absence of such proclamations may stem in part from the realization that pure national sovereignty is not *de facto* the unique political and judicial context in which the integration objectives of cooperating States proceed.

Now, some of the procedures we find in the European Union may be summed up as follows. The powers of the Council are explicitly stated in the European Community Treaty in respect of specific policy domains (and which themselves have evolved under

various influences, administrative and legal, including, in particular, decisions of the European Court). Also explicitly stated are the exclusivity of the competence so conferred; the instrument(s) or combination thereof by which the Council shall act; the voting modality to be used. The requirement to consult with specified bodies is also laid down. Note that competence is described as "exclusive" where external responsibilities are exercised entirely by the Community (e.g. the common agricultural policy) and "mixed" where they are shared with Member States (e.g. transport policy).

We can say therefore that in the European Union system, the concept of sovereignty is not monolithic and static. It is divisible, and customizable according to the needs and desires of the participating States. The demarcation between national sovereignty and collective sovereignty is often explicitly defined in Treaty law, usually according to policy domain. In their integration arrangements, sovereignty may be exercised nationally—through the intergovernmental mode, and may, when desired, also be exercised collectively—through the supranational mode. It is even possible in instances to have a mixture of intergovernmentalism and supranationalism.

And finally, it is a dynamic concept, changing not only by explicit Treaty decree but, *de facto*, in response to administrative complexity and convenience, the requirements of international organizations, and jurisprudential interpretation by the European Court of Justice. Researchers in this field describe the process as movement along a continuum of intergovernmentalism and supranationalism.

I should like now to look briefly at two propositions made in the Rose Hall Declaration, specifically as they relate to the sovereignty issue—the proposed CARICOM Commission and automatic resource transfers.

The CARICOM Commission is charged with the task of facilitating the deepening of regional integration in the area of the CARICOM Single Market and Economy. The Declaration states that "the Commission's function will be to exercise full-time executive responsibility for furthering implementation of Community decisions..." Some years

ago, a similar Commission proposal was made, in the Report of the West Indian Commission (Time for Action), and at that time, I was doubtful of its potential efficacy, because it did not go to the roots of the problem and did not provide for the legal and other mechanisms that would empower a Commission. I retain these reservations on this occasion and for the same reasons—though not in principle of an effectively empowered executive mechanism. The mere appointment of Commissioners is unlikely to be a solution to the implementation problem, and we may simply end up with a parallel and costly institution to the Caribbean Community Secretariat (CCS), with a Commission in little else but name.

If a Commission is to be an effective mechanism for advancing mature regionalism and for ensuring implementation of Community decisions there would need to be agreement on whether the Community itself, with the Conference of Heads of Government at its apex, has "powers to take decisions," "powers to legislate" and "powers to implement" in respect of all the provisions included in the Revised Treaty of Chaguaramas. If not, it needs to be determined which powers it should have, in respect of which policy domains, and what should be the applicable voting modalities.

All this needs to be determined because, it should be recalled, the Treaty of Chaguaramas was and still is based on the intergovernmental mode of cooperation, and it is as yet unknown which powers Member States would be prepared to transfer to the Conference of Heads, and in respect of which domains, when it acts in a Community mode (and whether the competence so transferred is exclusive to the Community). This process would necessitate changes to the Treaty of Chaguaramas and to the relevant laws of the individual Member States.

It should thus by now be obvious that the CARICOM Commission, if we are indeed thinking of a high-politic, juridically empowered integration mechanism, cannot be invested, *carte blanche*, with powers for implementing the CSME. For the CSME covers practically all the policy domains of economic life—from trade and investment policy to capital and labor markets, most of the sectoral policy-areas, macro-economic

coordination, monetary policy and single currency. Not even in the European Union is there a readiness for such a comprehensive transfer of national sovereignty. As we have seen, in that Community, it has been a selective, customized, dynamic process.

If on the other hand, what we have in mind is merely a facilitating mechanism—one that is essentially powerless—then there are good reasons to be doubtful of its potential utility and effectiveness. Persuasion and wisemen brokerage are not likely to be a substitute for authority to take decisions, legislate and implement.

The Rose Hall Declaration also adopted the principle of automatic resource transfers for the financing of Community institutions. This is a timely and needed advance toward mature regionalism. For the financing demands for regional institutions are expected to escalate sharply. If taken seriously, the CSME requires the creation of numerous new institutions (regional and national). Bear with me a minute while I enumerate what it is we face—a Caribbean Court of Justice, a Standards Organization, a Competition Commission, a Regional Property Rights Office, a Phyto-Sanitary Organization, a Regional Fisheries Organization, a Regional Securities Commission, a Conciliation Commission, a Regional Development Fund. To these may be added institutions necessary for the implementation of the Rose Hall Declaration—a CARICOM Commission (and possibly related servicing bodies), a Revenue Authority, a Court of Auditors, and an upgraded Caribbean Assembly of Parliamentarians. In due course, other institutions will be needed as regionalism matures, such as a Caribbean Central Bank, an Economic and Social Committee, an Ombudsman Office, and a Regional Environmental Organization.

Already the Member States support a large number of regional organizations, in particular the Caribbean Community Secretariat, and the Regional Negotiating Machinery, the Caribbean Agricultural Research and Development Institute, the Caribbean Center for Development Administration, the Caribbean Tourism Organization, the Caribbean Disaster Emergency Response Agency and the University of the West Indies.

Clearly, it is going to create intolerable financial strains if the existing and new tier of institutions are to be financed by annual national appropriations—probably to the point of defection by Member States. The Rose Hall Declaration has therefore taken a step in the right direction in adopting the principle of automatic resource transfers.

But again, there is a catch to it. Automatic resource transfers is not necessarily the same as the Community having its own resources—a proprietary right to some of the resources accruing as a result of the measures/policies that are the creation of the Community. This is a matter under study and it remains to be seen what eventually will be put in place.

The issue goes to the heart of distinction between intergovernmentalism and supranationalism. Let me quote from a European Union document. "Own resources can be taken to mean a source of finance separate and independent of the Member States, some kind of tax revenue assigned once and for all to the Community to fund its budget and due to it by right..." And, it continues: "Besides the whole question of the Communities' financial independence, their sources is a major factor in shaping the relationship between the European Union's citizen, its Member States and its institutions. So the debate over the Communities' own resources is closely linked to the wider debate over the future of European integration and the struggle between two contrasting visions," that is, the intergovernmental and the supranational.

As mentioned earlier, it remains to be seen how this will be resolved. A new approach I feel should include responsiveness to ownership by the citizens of CARICOM, the distribution of the benefits of integration, equity in burden sharing (capacity to pay), and the automaticity of the transfer mechanism. Ownership is most important for directly involving the citizens in the development and future of regionalism.

At present there is little or no transparency or accountability in the use of resources by the regional institutions. There is a kind of mutual indifference between the Community's citizens and the regional institutions. I think this could change if citizens felt the

financial pinch directly and the institutions were obliged to demonstrate the development effectiveness of their endeavors.

Currently, each CARICOM citizen contributes, on average, US\$1.60 a year to support the Caribbean Community Secretariat—a total of about US\$10 million a year. The contribution is remote and insignificant—maybe one factor is explaining the mutual indifference that currently exists. Regionalism, for all that is said about its "survive or perish" importance by political leaders, is run on a shoestring and mendicancy.

Financing the new institutions of the CSME and Rose Hall and putting in place own-resource automatic resource transfers will thus be a real test of the commitment to mature regionalism. For example, a CARICOM contribution (let us say levied in a similar way to national insurance contributions) of US \$1.00 a month, on average, by each gainfully employed citizen would quadruple the CCS's resources to nearly \$40 million a year. If the citizens of CARICOM cannot be persuaded by their political leaders that this is a worthwhile investment then maybe it is time to call it a day. If they do feel it could be a worthwhile venture, they may be more vigilant of the dividend on their investment. Citizens' ownership, transparency and accountability may be promoted by requiring CARICOM institutions budgets to be submitted to the Caribbean Assembly of Parliamentarians for review/debate.

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