

**14th INTERNATIONAL ANTI-CORRUPTION CONFERENCE
RESTORING TRUST: GLOBAL ACTION FOR TRANSPARENCY**

Long plenary report

Plenary title: Strengthening Global Action for an Accountable Corporate World

Date and time: November 13, 2010, 11:30 – 13:00

Moderator: Timothy Large, Editor, Thompson Reuters Foundation

Panellists:

Mary Boakye, Africa Financial Markets group head, SNR Denton

Richard Boucher, Deputy Secretary General, Organisation for Economic Co-operation and Development

Minister Idris Jala, Minister in the Malaysian Prime Minister's Office and CEO of the Performance Management and Delivery Unit

Mark F. Mendelsohn, former Deputy Chief, Fraud Section, Criminal Division, U.S. Department of Justice

Homer Moyer, Chair, International Bar Association Anti-Corruption Group

Rapporteur: Farzana Nawaz, Programme Coordinator, Transparency International Secretariat

Experts agree that corruption had a vital role to play in exacerbating the financial crisis and this was recognised in the strong commitment made by the G20 leaders in their nine point Anti-Corruption Action Plan at the Seoul summit on 12 November. This very timely plenary on strengthening corporate governance and increasing accountability in the corporate world brought together some of the leading figures from a diverse array of perspectives – from lawyers and business leaders to government ministers and representatives of intergovernmental organizations. The session was moderated by journalist Timothy Large of the Thompson Reuters Foundation.

Richard Boucher, Deputy Secretary General of the Organisation for Economic Co-operation and Development, kicked off the session by highlighting two vital components to developing a strong corporate governance regime to combat corruption – the need to include stakeholders from different sectors and the need to focus on specific actions that corporations can take. Instruments such as the OECD Anti-Bribery Convention which deals with the supply side of corruption and measures such as peer review processes can be very valuable in this regard. He also pointed out the need to take a comprehensive approach – transnational bribery is only a part of the picture and one must not forget the need for public measures such as sound public procurement systems.

Minister Idris Jala from the Malaysian Prime Minister's Office detailed his experience from heading the Malaysian Anti-Corruption Commission which has been one of the models in the region in implementing anti-corruption measures such as sound whistleblower protection legislation, the establishment of 18 new corruption courts and the creation of a web portal to name and shame offenders. He emphasized the need for both voluntary compliance on behalf of the corporate world, for example, clear guidelines on gifts, and enforced compliance

such as laws and sanctions. Voluntary compliance measures also need the involvement of all stakeholders such as the government, businesses, civil society, religious institutions and families. Education on integrity and ethics is vital if voluntary compliance is to work. At the same time, voluntary measures need to be backed up by enforced compliance.

Minister Jala stressed the need for good infrastructure on corporate governance which should include sanctions for directors and case referrals to the security commission. Intensive involvement with the public is also critical for success. Finally, he pointed out that time is required to put these basic building blocks in place and he cautioned against unrealistic expectations of overnight success.

Drawing on his extensive experience in prosecuting FCPA cases, **Mark Mendelsohn**, former Deputy Chief of the Fraud Section in the criminal division of the U.S. Department of Justice, stressed the importance of looking at enforcement and compliance as two sides of the same coin. Investigating and prosecuting corruption cases is difficult and often takes a long time. In order for them to succeed, the tone needs to be set at the top in the private and public sector, leadership and commitment need to be backed by resources. A variety of sticks and carrots need to be employed to provide the right incentives and raise compliance standards. International cooperation between officials is also of crucial importance in transnational bribery cases. Finally, the efforts by committed public officials need to be supported by non-governmental actors such as civil society and media. The recent UK anti-bribery law is a good example of such a concerted effort. There are also many opportunities for learning among the different actors and among nations – Mendelsohn pointed out the example of the US Department of Justice drawing on civil society tools such as the TI Business Principles for Countering Bribery and regional tools such as the OECD Guidelines for Multinational Enterprises. The private sector should also be included in the dialogue for these measures to be effective and Mendelsohn stressed the need to increase private sector participation in international conferences such as the IACC.

Homer Moyer, Chair of the Anti-Corruption Group at the International Bar Association charted out the various incentives that businesses have to resist corruption. These can include: commitment to ethical business practices, compliance with laws, reduction of risks (e.g. potential linkages with international organised crime), pro-actively avoiding costs of independent investigations and expensive remediation, fear of debarment and avoiding loss of shareholder value. New trends such as extraterritorial reach of anti-corruption laws and individual liability of corporate leaders are also powerful deterrents.

Mr. Moyer highlighted the unique role of enforcement as an incentive for compliance which was illustrated by the dramatic change in enforcement patterns after the Lockheed case. A tipping point needs to be reached for corporate anti-corruption compliance. He stipulated that this can be triggered by a few things:

- Meaningful and visible enforcement of anti-corruption laws. Enforcement needs to include both the supply and demand side.
- Corporate counsel awareness of international conventions. Survey findings in Latin America indicate that almost 40 percent of corporate lawyers did not know about the United Nations Convention against Corruption (UNCAC)
- The belief that aggressive corporate self-enforcement will be recognized and credited
- The perception that most competitors are complying

Compliance regimes and best practices also need to evolve continually to keep up with the evolving nature of corruption. Best practices should include: free-standing anti-corruption compliance programs, including monitoring and testing of program effectiveness, practical guidance for employees, greater involvement of audit, supervisory committees, management accountability, development of a corporate culture of compliance and extending corporate standards to third parties.

Based on her experience in advising international businesses in Africa, **Mary Boakye**, Africa Financial Markets Group Head from the law firm of SNR Denton, challenged the common perception of corruption being entrenched in all African countries. She stressed the fact that

Africa is a diverse continent with many differences between the countries and there is still plenty of opportunity to bring in anti-corruption measures that have a high chance of success.

The presentations lead to a lively period of questions from the audience and discussion. One audience member pointed out that fighting corruption should not only be looked at as a commercial imperative, but also a moral one. The necessity for effective whistleblower mechanisms was raised by multiple participants. The importance of cultural contexts in drafting laws and setting enforcement expectations led to a spirited discussion among the audience members and the panellists. It was recognized that culture is an extremely important factor that should be taken into account especially in the drafting of laws. Close cooperation with developing countries is needed in the design stage. It was noted that anthropologists can contribute valuable insights in this process. However, there are some basic assumptions that can be made that apply across cultures and regions.

Homer Moyer concluded the session by noting that we have come a long way from the days of tax deduction for bribe payments. Bribery is now criminalized in many countries, however, many challenges remain. Corruption is a problem that needs to be dealt with cross-culturally and across sectors and it is essential to close existing loopholes in enforcement.

Concrete recommendations and follow-up actions

The panellists highlighted the need to involve different stakeholders, such as public officials, civil society and the media, in addition to businesses, to ensure effective corporate action to combat corruption. They recommended that the private sector should be consulted in formulating corporate compliance mechanisms.

A multitude of different measures need to work in conjunction to ensure corporate compliance. It was recommended that voluntary and enforced compliance mechanisms be applied simultaneously to incentivise the development of good corporate culture against corruption. Corporate standards should also be extended to third parties with which companies do business.

It was recommended that awareness and enforcement of international conventions such as the UNCAC and the OECD Anti-Bribery Convention be increased. The panellists pointed out that international cooperation between officials is also of crucial importance in transnational bribery cases.

Finally, the panellists stressed that in corporations the tone needs to be set from the top and backed by enforcement, for example, by disciplining errant directors and managers if necessary.

Interesting quotes

“Rome was not built in one day, it is essential that we stay absolutely focussed in the fight against corruption”. - Minister Idris Jala

“If most companies are complying [with anti-corruption norms and laws] then we have reached the tipping point where compliance will be the norm and not the exception.” – Homer Moyer