

Workshop 7.4

The Role of Law Enforcement in the Facilitation of International Anti – Corruption Instruments

Workshop Coordinator: Mr. Barry O’Keefe, Chair of the IACC Council

The workshop was prepared around a number of the Articles of the UN Convention Against Corruption (UNCAC), but in particular Articles 49, 50, 60 and 61. The panel comprised members of the Interpol Group of Experts on Corruption (IGEC) and was designed to highlight some of the many issues affecting law enforcement in the implementation of the UNCAC.

Panellists:

Mr. Barry O’Keefe (moderator)

Professor Girodo (School of Psychology, Ottawa University)

Mr. Ryan Wong (Director of Investigations, Hong Kong Independent Commission Against Corruption)

Mr. Michael Dowie (Senior Assistant Commissioner, Hong Kong Police)

Mr. Franz Bruener (Director General, European Anti Fraud Office - OLAF)

Mr. Rainer Buhner (Assistant Director, Interpol)

Mr. Michael Hershmann (Chairman, Fairfax Group; Co-founder Transparency International; and Member of the IACC Council)

The Pro’s and Con’s of the UNCAC

Professor Girodo outlined the issues that law enforcement faced as a result of the UNCAC and stated that the UNCAC was not a strategy for fighting corruption but a series of important instruments that every nation needs to apply to its own jurisdiction. He emphasised the need for a managed and coordinated approach to implementing the convention and reflected on the tension between a values based approach against one of strict compliance. Although the convention spoke the right language, it was disconnected at present from the human factors required to make it effective. He spoke of the value of the IGEC-prepared “Global Standards for Police” (accessible on the Interpol website) and of the balance between a value and compliance based approach achieved in this document. He expressed concerns that some Member States may have a current focus on asset recovery at the expense of other critical articles in the Convention. Professor Girodo was concerned that the UNCAC under-emphasised some aspects of the values based approach as evidenced in the following 3 issues:

1. Joint investigations, although pivotal in the coordinated fight against corruption will not happen overnight and there is a need to build/earn trust, primarily through personal contacts;
2. Legal systems and the difficulties in the conduct of covert operations when joint investigations are required by countries with different systems - not adequately addressed as yet; and

3. Training and experience, and in particular the need for training such as conducting undercover operations, was fundamental to success. He also saw a need for a “soft law” approach and the need for guidelines in such matters.

Partnerships in Tackling Corruption - The Hong Kong Experience

Michael Dowie (Senior Assistant Commissioner, Hong Kong Police) and Ryan Wong (Director of Investigations, ICAC) described the Hong Kong experience as an excellent example of how a police organisation can work in partnership with an anti corruption agency to tackle corruption. It was explained that although there were problems initially, over time the partnership has built and now flourishes on mutual trust and respect. The essential features of building a successful partnership were described as strong leadership; a willingness to invest resources; and lifetime commitment to a common goal. Their presentations explained how anti corruption responsibilities were removed from the Hong Kong police and transferred to the newly created ICAC and how that was viewed by the police. They highlighted the early developments through to the current partnership, identifying a number of significant events, initiatives and examples of cooperation. In concluding, both presenters were positive that the Hong Kong example of partnerships could be useful for others in successfully tackling corruption and increasing community confidence.

In particular, Ryan Wong outlined the ICAC 3-pronged approach of enforcement, education and prevention to combating corruption. He discussed the partial amnesty offered to police officers in November 1977 and the difficulties that this presented with respect to public confidence. Mr. Wong explained that it was hoped that the amnesty would improve relationships between the ICAC and the police; however, this did not eventuate until the early 1980's. The establishment of communication channels between the ICAC and the Hong Kong police has played an important role in enhancing and maintaining the now excellent relationship that exist between the two organisations. Positives were the regular briefings and training inputs given by the ICAC to the police and the existence of a joint ICAC/Police prevention group and that these had played an important role in their relationship.

Mr. Dowie spoke of the partnership from the police perspective and the role of the Hong Kong Government in 1977 in publicly stating that police corruption was a problem and how this admission helped in securing partnerships. He spoke in greater detail of the partial amnesty and that in the early days; progress was extremely slow but as confidence amongst the two agencies grew, so did progress. Mr. Dowie detailed how anti corruption strategies were jointly developed. He explained that the joint committee he chaired did not concentrate purely on corruption, but also monitored professional standards. The committee also commissioned studies into police behavior and ensured that recommendations coming from these studies were implemented. Mr. Dowie also outlined the role of his own professional standards unit and how they linked activities and discussions with the ICAC and gave further examples of how the ICAC gave bespoke briefings and training input to his staff. Mr. Dowie stated that there was evidence that the standing of the police in the community had improved and that the number of corruption investigations conducted against his staff and decreased year after year.

Criminal Referrals in Joint Investigations

Mr. Franz Bruener (Director General of the European Anti Fraud Office - OLAF) spoke of the criminalisation of corruption and its importance within UNCAC. He explained that the spirit of the UNCAC already existed before the convention and that there were examples of cooperation between jurisdictions. The establishment – in 1999 – of the International Investigators Conference was an example of relationships and partnerships are an important mechanism in the anti-corruption fight. The benefit of the Investigators Conference was that it brought together each year approximately 35-40 institutions that are mandated to conduct investigations across jurisdictions in an administrative framework. Such investigative bodies are continually interacting with national jurisdictions on criminal misconduct referrals and assisting such jurisdictions in resolving cases involving international public servants.

Mr. Bruener stated that the EU is the biggest donor in the world and that OLAF is responsible for safe guarding these funds expended. He then discussed a case where international cooperation was key to the success of the investigation. It concerned a person working in a UN peacekeeping mission, but employed by the European Union, who had been implicated in an international fraud across 7 national jurisdictions. The case required rapid actions by the UN and the EU, as well as a number of national jurisdictions to freeze and then have returned 4 million euros already in transit across borders.

Mr. Bruener explained that contact was made with all 7 competent authorities through direct visits and they were routinely pushed to provide the necessary assistance. Mr. Bruener added that this case was an example of how trust and networking were critical success factors in achieving operational objectives. This case was unique in that because the suspect had invested in the share market, that once the money was recovered, it totaled more than the original amount stolen! The subject of the investigation was later sentenced to 3 years imprisonment in Germany.

As a result of the success of the above case, and issues derived from the investigation, an independent, international audit firm was contracted to review a number of the state-owned companies in the jurisdiction. As a result of the audit reports, a joint investigation team was established between OLAF, the United Nations Office of Internal Oversight Services (Investigation Division) and the Guardia de Finanza so as to assist national jurisdictions in identifying and conducting such trans-national investigations.

The Role of Interpol

Mr. Rainer Buhner (Assistant Director, Interpol) briefly explained the *raison d'être* for Interpol as being the promotion of international police cooperation, which in particular supports Article 61 of the UNCAC. He described Interpol's structure and outlined the functions of facilitating the collection, analysis and exchange of information for its 186 member states. He outlined the three (3) core functions of Interpol in support of Article 61 as being the provision of:

1. Secure global police communication services (I 24/7). This allows the secure exchange of information;

2. operational data services and databases, including DNA, child abuse images, lost/stolen vehicles; and
3. operational police services -24 hour/7 days a week/365 days per year.

Mr. Buhner outlined the 5 priority crime areas as identified by Interpol. He clearly identified the Interpol experience in the furtherance of the requirements of Article 61 and suggested that the trust factor was 1st, 2nd and 3rd in terms of prioritizing activities around the sharing of information.

However, Mr. Buhner regretted that Interpol's services did not currently extend to providing support to anti-corruption investigations due to a current lack of resources. He added, however, that to address this gap, Interpol had agreed to a recommendation from the Interpol Group of Experts on Corruption (IGEC) to establish an anti-corruption Academy in Austria.

The Interpol Anti Corruption Academy

Mr. Michael Hershmann (Chairman, Fairfax Group; Co-founder Transparency International; and Member of the IACC Council) described the far reaching and devastating impact of corruption. In spite of 20 years increased investment in the public and private sector, there still lacked a systematic and coordinated approach to the problem of dealing with corruption issues. In fact, he explained, much money was expended on infrastructure or workshops that by and large excluded law enforcement communities. Mr. Hershmann further explained that despite the treaties that pre-dated the UNCAC, they had little effect and studies indicated that corruption had actually worsened and unless some radical action was taken, the UNCAC was likely to suffer the same fate.

To address this he outlined the Interpol Group of Experts on Corruption (IGEC) vision for an international anti corruption academy to tackle the more sophisticated approaches to the increase in corruption. The IGEC believe it is essential to move from rhetoric to action through harnessing the experience and knowledge of experts in anti corruption globally. He described the vision of the academy being much more than a police academy, rather it becoming a focal point for the development of creative and innovative techniques to confront the major challenges for many jurisdictions. The academy will be under the aegis of Interpol and situated in Austria. It will engage internationally recognised scholars and practitioners to ensure that it becomes the most innovative global provider of anti corruption education, training, technical assistance and research. The Austrian Government had provided a 16th century monastery that will be completely renovated to become a state-of-the-art facility. He outlined that the Academy would provide extensive training courses and create an alumni that would build on the trust required to combat corruption. The Academy will become a centre of excellence for higher learning and leading edge thinking. Although the Austrian Government had provided generous initial funding for the Academy, the IGEC was now embarking on a series of fund raising initiatives.

Recognising the lack of capacity in some jurisdictions, the academy will also strive to assist countries with the implementation of UNCAC and other anti corruption conventions and treaties.

In an impassioned plea, Mr. Hershmann concluded that to succeed in fighting corruption, it was time to get away from the multitude of conferences - as good as they are - and get “your hands dirty”.

Rapporteur’s note

An enduring theme from all speakers was the human factor aspect raised by Professor Girodo and without exception, all referred to the essential ingredient of trust and how that contributed to building successful relationships in tackling corruption.

A spirit of optimism was exuded with a will to make things happen. The academy was the tangible demonstration of a partnership commitment.

Panel Recommendation

That delegates get agreement from their Governments and relevant authorities to encourage appropriate law enforcement authorities to support the establishment of the Interpol Anti-Corruption Academy in Austria.