



WORKSHOP REPORT FORM

Number and title of workshop

5.1 Sustaining Corruption Investigations in a Hostile Political Environment

Date and time of workshop

Nov 1, 2008 14:00 – 1600

Moderator

Michael Hershman Interpol Group of Experts on Corruption

Rapporteur

Michel Girodo Interpol Group of Experts on Corruption, University of Ottawa

Panellists

Hon Barry O'Keefe AM QC

“Government Interference in Corruption Investigations”

Nicholas Hildyard and Sarah Sexton, The Corner House, UK

“National Security Versus Corruption Investigations – the UK Experience”

Martin Kreutner, Director of Federal Bureau of Internal Affairs, Austria

“Sustaining Investigations in a National Context”

Paul Lachal Roberts, Special Advisor to the Director General, OLAF, Brussels

“Sustaining Investigations by Offices of International Institutions

Main Issues Covered

1. How has government impeded or frustrated the effective investigation of corruption?
2. How has government, party to the OECD Anti-Bribery Convention, used “national security” to quash a corruption investigation or prosecution?
3. What are some legitimate concerns of government administrations that lead to their interference in investigations?
4. Is there a fourth pillar for anti-corruption agencies to stand on if it hopes to minimize the effects of a hostile political environment?

Main Outcomes

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- Just because there is a dedicated anti-corruption body that is independent of government does not mean that it will be fully effective.
- Experience has shown that following negative government input or interference with the work of corruption investigators there tends to be a drop in citizen complaints of corruption, witnesses and sources are more inclined to refuse to cooperate, and prosecutors are reluctant to take on cases referred to it by the agency.
- Government can use the media to undermine the agency's credibility and weaken public support - - two factors at the heart of the agency's legitimacy and effectiveness.
- Agency's efforts are seriously weakened when there is a failure to act on the recommendations made by the anti-corruption agency.
- There is an urgent need for the OECD to clarify the Convention's approach to national security and to address the failure of the UK to give full force to the Convention within Britain.

Main Outputs

1. Government can generally impede or frustrate the effective investigation of corruption by:

- (a) Preventing the anti-corruption body from being independent of government;
- (b) Deliberately not providing an adequate budget for the anti corruption body to carry out its investigations; (this affects quality of investigators who join, the number and complexity of investigations undertaken, and the perceived importance of the agency by the public);
- (c) Appointing "friends of the government" to the anti corruption agency;
- (d) Frustrating the workings of the anti corruption body by not acting to enforce the agency's recommendations.

A number of cases findings of corruption were either not acted on or the public servants and officials named in such findings were promoted or otherwise favoured: Four cases illustrating this in New South Wales were referred to.

2. Some reasons why government administrations that may interfere in investigations by Offices of International Institutions

- They may be personally implicated in the investigations
- They may be concerned with the reputational risk associated with the investigation process and its outcome.
- They may be concerned with serious commercial loss.
- They may be concerned about physical harm to third parties.

Sometimes the anti-corruption body needs to be sensitive to some of these concerns and respond appropriately without claiming government interference.



3. Invoking “national security” in the UK.

Since 2004, the UK Serious Fraud Office (SFO) had been investigating corruption and bribery allegations associated with BAE’s Al Yamamah contracts to supply Tornado fighter and ground attack aircraft and associated products and support services to Saudi Arabia. In 2006, however, the SFO argued that it had no choice but to end the investigation in the face of threats by Saudi Arabia to stop intelligence and diplomatic cooperation with the UK if the case continued. As the SFO put it, to continue would have been to risk “British lives on British streets”.

CAAT and The Corner House argued that that the SFO decision breached Britain’s obligations under the OECD Anti-Bribery Convention, that the Saudi threat amounted to extortion and that, by surrendering to it, the SFO had undermined the rule of law in the UK

The UK High Court ruled that the SFO’s decision had been unlawful. The judges described the SFO’s decision as a "successful attempt by a foreign government to pervert the course of justice in the United Kingdom."

The House of Lords overturned this ruling, and in effect, ruled that the concerns about national threat took priority over all other concerns.

Recommendations, Follow-up Actions

1. Anti-corruption bodies should seek legislative status for their existence and independence, and seek to function with as much independence as possible, and have an oversight body examine its work and respond to public and government inquiries.
2. There must be a transparent process and set terms for the appointment of the head of the agency.
3. There should be an appropriate process for providing for adequate multi year budgets and other resources,
4. Anti-corruption bodies need a “buffer” between the operational arm of its investigations and possible attempts by government to influence its work. This is as important for maintaining public perceptions of independence as it is to free the agency from energy consuming time required to defend itself. Oversight committees here would serve as both a watchdog of the agency and the buffer needed to allow the agency to continue its work unencumbered by government interference.
5. Anti-corruption agencies that have particularly strong investigative functions and succeed in bringing important corrupt figures to account through the criminal justice system need to focus more effort on gaining and maintaining public support for its work.
6. Working with the media and involving media in its work will communicate the need for integrity in all public and private sector institutions. Importantly, the media are key instruments for reflecting and communicating values. The



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more the media understand the work of an anti-corruption agency the more likely it will be to report on its work accurately and in a balanced fashion.

7. International cooperation among NGOs, civil society and anti-corruption bodies is needed to act as an effective counterforce in national government interference.
8. An international tribunal competent to hear cases relating to allegations of serious multinational corruption and government interference in corruption investigations would serve as a deterrent to future interference.



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Workshop Highlights (including interesting quotes)

Signed
Michael Hershman Workshop Coordinator
