

## **5<sup>th</sup> ICAC Symposium:**

### **Old Challenge, New Approach: Fighting Corruption in a Changing World**

Panel 3:                   Creating Synergy: A Multi-Stakeholder's Approach in Combating Corruption

Subject:                   Playing to Win: Teamwork to Combat Corruption

I want to introduce my comments with a brief reference to transnational crime.

It was in the mid-1990s when we first became conscious of the emerging threat of transnational organised crime. This was one of the new threats which arose after the demise of the Cold War, and, even so, I recall that it was often regarded as “a boutique” security issue – one for the police to be concerned with, but not a serious issue on the global security agenda. Indeed, it was not until 2004, when Kofi Annan, then Secretary General of the United Nations established a High Level Panel on Threats, Challenges and Change to identify what issues were seriously destabilizing international affairs. This was at a time when the so-called “Peace Dividend” should be delivering stability, development, harmony and security.

There were 16 distinguished members of this High Level Panel, which was chaired by MrAnandPanyarachun, a former Prime Minister of Thailand. The Panel concluded that there were six clusters of threats with which the world must be concerned then, and in the decades ahead. As you will no doubt recall, the six clusters were:

1. War between States;
2. Violence within States, including civil wars, large-scale human rights abuses and genocide;
3. Poverty, infectious disease and environmental degradation;
4. Nuclear, radiological, chemical, and biological weapons;
5. Terrorism; and
6. Transnational organised crime.

It was interesting to note that the Panel considered that transnational organised crime increased the risks of all the other threats, and the Report went on to explain how this occurred, with corruption being a facilitator for transnational crime. But it is also worth mentioning that the Panel also commented that “in today’s world, a threat to one is a threat to all”, thereby implying that the practice of collective action through cooperation and teamwork is required to deal effectively with the new emerging threats.

In February 1998 in Singapore, I co-chaired the inaugural meeting of a Working Group on Transnational Crime, convened by the Council for Security Cooperation in the Asia-Pacific (CSCAP), a second track body set up in 1994 to facilitate security cooperation in the region. We went around the room, seeking comments from each representative on what were the transnational crimes which posed special problems to their country. Naturally, there was a lot of overlap, but we were able to identify and prioritise 18 crime types, which the Working Group then began to consider in order to contribute ideas on how such criminal threats could be addressed in a cooperative way. However, there were two crime types which were not mentioned at all. The first was what we now describe as human trafficking for sexual and labour purposes. The second issue was corruption. It was agreed at the time that our understanding of human trafficking as a transnational crime was somewhat rudimentary; but as far as corruption was concerned, you could have heard the sucking of teeth from Singapore to Sydney – “We are not going there: that is an internal problem”. For whatever the reasons, this attitude has now changed. It is now recognised by almost every country that corruption is a serious challenge internal security and stability; a threat to human development and foreign aid; and a major facilitator for transnational, serious and organised crime.

Kofi Annan stated in 2003 that “corruption hurts the poor disproportionately by diverting funds intended for development, undermining a government’s ability to provide basic services, feeding inequality and injustice, and discouraging foreign investment and aid”. In 2006, the former Nigerian President Olusegun Obasanjo commented that industries such as oil, gas and minerals were the sectors most involved in the loss of some \$148 billion due to corruption in Africa. These

industries, he said, “are a major contributor to this monumental and preventable loss”, which he described leading to “the paradox of poverty in the midst of plenty.” Last year, the Indian Prime Minister, Manmohan Singh, expressed the view that “... corruption is the greatest threat to the nation’s prospects ...”; and only last month the Chinese Premier Wen Jiabao commented that “we should have profound understanding that corruption is the biggest threat to the ruling party.” He went on to say that “this is an extremely severe test we face.” Many other leaders from developing countries, countries in transition and industrialised countries have expressed similar views.

In March 2010, in addressing the problems posed by corruption in Afghanistan, U.S. General Stanley McCrystal said, “We can defeat the forces of the insurgency ... but if we don’t have ... credible governance, then you don’t defeat the cause of the insurgency.” McCrystal’s views appear to have been justified when you look at the community motivation behind many of the countries involved in both the Eastern European “colour revolutions” and the more recent “Arab Spring” movement. Public disenchantment with kleptocratic or dictatorial regimes, and the problem of endemic corruption at the official and business levels played a huge part in stimulating the protests which eventually overthrew many of these regimes. However, as we now know, frequently the coalitions of political forces that forge the alliances to bring about regime change, are composed of such disparate groups, that the outcomes of these revolutions may be very unstable and unpredictable, possibly leading to further serious conflict as we now see in Egypt, Libya, Yemen and Syria. In Syria we may well face the anachronism of Arab League and Western-backed activists in bed with *Al Qaeda* – they both want regime change!

Corruption is an insidious problem and it affects all our countries, but sometimes in different ways. However, there is little doubt that most of our leaders recognise the problems associated with corruption, and there is now a greater public awareness of the phenomenon, and more international cooperation in trying to find ways to counter the problem. Corruption is now accorded quite a high priority in the global political and security agenda. This is a problem which we can all address and on which we can cooperate.

International instruments, such as the OECD Anti-Bribery Convention, 1999, and the UN Convention Against Corruption, 2005; together with the establishment of bodies such as Transparency International in 1993, the International Association of Anti-Corruption Authorities (IAACA) in 2006, and the International Anti-Corruption Academy in Vienna in 2010, along with many other national, regional and global initiatives have all played their part in highlighting the problems associated with corruption, and developing strategies to deal with them.

My own awareness of corruption probably came about in 1997, when I wrote a paper for the Journal of Financial Crime, titled "Corruption and the Financial Sector: The Strategic Impact". In this paper, I discussed the 1997 Asian Financial Crisis, with particular emphasis on the unhealthy nexus between the Japanese corporate and financial sectors, the Japanese Government and the *Yakuza*, especially the *Yakuza*-influenced construction companies. I made the point that it seemed to me that many of the so-called Asian "tigers" were emulating the questionable practices which had developed in Japan, supported by a high level of corruption. Prior to publishing this paper, I showed it to a senior colleague in one of our intelligence assessment agencies, who berated me for my "naive" over-emphasis on problems associated with corruption, adding that such practices "greased the wheels of success of the Asian tigers", and so on. "The trouble with you blokes," he said, "is that you are obsessed with corruption". This conversation made me realise that I had a lot of work to do to convince some of my colleagues that they should take corruption more seriously. I imagine that many of you will have had a similar experience.

Australia became aware of the insidious nature of corruption mainly through the work of a number of Royal Commissions which, over the years, investigated various aspects of organised crime, and their damaging links to our police forces, certain senior officials, politicians and members of the legal community. Some of the revelations of these Commissions were very serious, and a number of politicians, senior police, magistrates, and others were convicted and imprisoned for corrupt practices. Anti-corruption bodies, such as the NSW Independent Commission Against Corruption, the Queensland Crime and Misconduct Commission and the WA Corruption and Crime Commission were established,

with the appropriate coercive and special powers to investigate and prosecute cases involving corruption. There are now moves to establish similar bodies in the other Australian States.

However, at the Federal Government/Commonwealth level, it was not until 2006 that the Australian Commission for Law Enforcement Integrity (ACLEI) was established. Even then, ACLEI's jurisdiction was limited to preventing, detecting and investigating serious and systemic corruption issues in the Australian Crime Commission, the Australian Customs and Border Protection Service, and the Australian Federal Police. There is no other body at the Commonwealth level, with the appropriate coercive and special powers, to investigate corruption in the Australian Parliament, within Commonwealth Departments and Agencies (other than those already covered by ACLEI), in the lobbying industry, and in the business and corporate sectors, especially those corporates that operate at the international level.

It seems that until recently the Commonwealth had not taken corruption as seriously as it might have done. Australia was a signatory to the OECD Anti-Bribery Convention in 1999, and a States Party to the UN Convention Against Corruption in 2005, but, for whatever reason, apart from ACLEI, the Commonwealth has not yet set up a Commonwealth "ICAC". There appears to be a view that as Australia is consistently ranked high in the Transparency International Corruption Perceptions Index, we do not have much of a problem at the Commonwealth level. In the 2011 CPI, Australia was ranked equal 8<sup>th</sup> with Switzerland, behind New Zealand, Singapore and the Scandinavian countries. As you are probably aware, this is in spite of the severe criticism of the Australian Wheat Board's role in the Iraqi Oil-for-Food Program in 2003, and the Securrency/Note Printing Australia case referred to earlier today, and other significant cases involving members of the Australian Parliament.

In the Independent Inquiry into the United Nations Oil-for-Food Program, released on 27 October 2005, the Committee, chaired by Paul A. Volcker (a former Chairman of the U.S. Federal Reserve), concluded that the Australian Wheat Board "made large numbers of payments to Alia (a Jordanian trucking company) and these payments in turn were channeled to the Iraqi regime."

[Volcker, p. 314] Of all the 2000-odd companies identified in Volcker's Inquiry, the AWB contribution to the Iraqi regime was by far the highest, at US\$221.7 (A\$290 million), or 14% of the illicit funds paid to the Iraqi Government in kickbacks.

The Commonwealth Government subsequently set up an Inquiry (the Cole Inquiry) into the behaviour of the AWB. Cole endorsed the relevant findings of the Volcker Inquiry, and concluded that from mid-1999 the AWB had entered into an arrangement that involved kickbacks to the Iraqi Government, through the Jordanian transportation company, Alia, in order to retain its very profitable business with Iraq. Giving evidence before the Cole Inquiry on 13 April 2006, the then Prime Minister, Mr Howard, was asked if he had ever had any suspicion about the AWB's behaviour. According to the transcript of the Cole Inquiry, in his response he said:

... I'd never been presented with any hard evidence. I was, I guess, conscious of AWB because of the predominant role of the AWB in the wheat trade, and I had always believed the best of that company, as had most people in the government. It had been associated with the Australian wheat industry since the 1930s, and it hadn't crossed my mind that it would have behaved corruptly.

Mr Howard's evidence was given some five months after the Report of the Volcker Inquiry was released. None of the AWB executives has yet been charged with any offence, and the Australian Taxation Office allowed the AWB to claim the A\$290 million paid to Alia as a facilitation payment.

One good thing that came out of the AWB case was a realization that Australian law needed to be substantially strengthened to deal with corruption. As CMDR Chris McDevitt said in his presentation yesterday, the Commonwealth Criminal Code, 1995, has been amended whereby Australian individuals or companies now face much more serious penalties for bribing foreign officials. In addition, the Code allows for limited extra-territorial reach, but, at this stage facilitation payments are still permitted.

However, there have recently been other more positive developments in relation to the Commonwealth's response to corruption. This has arisen mainly from our active membership of the G-20, the premier international forum for economic cooperation. The G-20 Leaders, Finance Ministers and Central Bank Governors meet regularly to address global economic and financial challenges. At the 5<sup>th</sup> Meeting of the G-20, held in Seoul, South Korea, on 11-12 November 2010, the G-20 released an Anti-Corruption Action Plan, which was titled the "G-20 Agenda for Action on Combating Corruption, Promoting Market Integrity, and Supporting a Clean Business Environment". In its statement, the G-20 states that "Building on our Leaders' declarations, the G-20 commits to supporting a common approach to an effective anti-corruption regime, the principles of which are enshrined in the provisions of the United Nations Convention against Corruption (UNCAC)" and "other international instruments, such as the OECD Convention on Combating Bribery of Foreign Officials in International Business Transactions". But, as the Director-General of OLAF said yesterday, one critical area requiring a high priority is that of information and intelligence exchange on relevant cases, without which the best plans will never lead to success in the fight to defeat corruption.

The G-20 statement calls for action in nine important areas to reinforce its anti-corruption efforts, including the preparation of peer-reviewed National Anti-Corruption Plans (NACP) by other G-20 members. To this end, on 19 March 2012 the Australian Attorney-General released a Discussion Paper, outlining the Commonwealth's current approach to corruption and inviting public submissions for the NACP.

In cooperation with China and Indonesia, Australia is working on the development of a G-20 Guide to Mutual Legal Assistance. Australia is also working with regional partner governments to support their own efforts against corruption. As CMDR McDevitt said yesterday, Australia provides around A\$1 billion each year to assist partner countries to strengthen their governance and anticorruption regimes. Australia also supports the Stolen Asset Recovery Initiative (StAR), a partnership between the World Bank Group and the United Nations Office on Drugs and Crime that encourages international efforts to end safe havens for

corruptly acquired or misappropriated funds by certain people in our region, and, as appropriate, to repatriate these funds to the victim countries.

Among the regional anti-corruption initiatives supported by Australia are:

- Australian Agency for International Development (AusAID)
  - Tackling Corruption for Growth and Development: A Policy for Australian Development Assistance on Anti-Corruption (March 2007);
  - An Effective Aid Program for Australia: Making a Real Difference – Delivering Real Results (2011)
  - Effective Governance (November 2011)
- Australian Federal Police (AFP)
  - AFP International Deployment Group: Police Development Project, 2011-2012
- Pacific Island Forum (PIF)
  - Forum Principles of Good Leadership and Accountability
- Regional
  - Australia supports the ADB/OECD Anti-Corruption Initiative for Asia and the Pacific (30 November 2001)

### Conclusion

Within Australia, anti-corruption is undertaken at the State, Territory and Federal/Commonwealth levels. Most States now have bodies that deal with corruption and organised crime, sometimes located within the same agency. Constitutionally, each State is free to determine its own requirements and approach, but there is a significant level of cooperation between these State and Territory agencies and the Commonwealth on matters of mutual interest in this area.

As previously stated, the Commonwealth is now taking a much greater interest in anti-corruption and is finalising a National Anti-Corruption Plan, which will hopefully be promulgated later in the year. However, apart from ACLEI, the Commonwealth has no body, with appropriate coercive and special powers, specifically dedicated to anti-corruption investigations and prosecutions.

Although the Australian Crime Commission has the appropriate powers, it is already fully engaged in investigating organised crime in Australia. At this stage, it appears that the Commonwealth's approach to combating corruption will be based on a multi-agency approach, which vests responsibilities for anti-corruption policies and initiatives with a number of agencies. A key objective of the Plan is to strengthen Australia's existing governance arrangements by developing a whole-of-government policy and plan on anti-corruption. To be successful, this will require not only a whole-of-government approach, but also a wider consultation, which will also incorporate in the private and political sectors. This may be easier said than done. In my view, to establish a comprehensive policy and prosecution approach, there will ultimately need to be a lead agency established, which will have coercive and special powers, to develop the evidence necessary for successful prosecutions, i.e. a Commonwealth ICAC. There will also be a requirement for a public awareness program to alert the community to the dangers posed by corruption.

At the regional and international levels, Australia is actively involved in a number of initiatives aimed at facilitating anti-corruption and good governance. We should continue to incorporate these measures into our foreign aid and development programs, and support other initiatives aimed at achieving these outcomes. Hopefully, this can be done through identifying common goals, with all the players – national and international - working to achieve these goals in the spirit of teamwork.

Let me finish with a little story. When our soldiers or police put their lives on the line to serve the community, we are very grateful and quite rightly pay them due respect. I think that we sometimes overlook the fact that in many countries, the men and women who investigate serious cases of corruption do not necessarily have the powers or protection that our military and police colleagues do.

In one country, not far from Australia, the Director of the local anti-corruption agency, who had fearlessly investigated corruption amongst the leaders in his country, and even managed to have the Prime Minister stand aside while investigations into his taxation affairs were undertaken. The same person, and his staff, with very limited resources and no protection whatsoever, investigated and

charged several leaders with serious corruption offences. Just before Christmas two years ago, this officer was driving home from work at about 22.00 hrs, when his vehicle was hemmed in by three SUVs, and an assailant got out of one vehicle and emptied a Glock pistol into the front of the officer's vehicle, seriously injuring him in the shoulder and arm. In spite of his injuries, the Director was able to crash his way past the surrounding vehicles and drive to safety. He was back at work within three days. He told me: "I was not going to let those bastards think they could intimidate me." I guess that some of you may know who I am talking about, but I greatly admire this man, not only for his courage, but for his resilience and resolution in the face of enormous risks and difficulties. No one was ever arrested over this attack, so the threat against him still exists. That man demonstrated the courage and qualities that we, in this room, can only admire. His leadership of his small organization demonstrates the very best qualities of integrity and professionalism.

The fight against corruption is a battle we must win, but we can only do it through teamwork, professionalism, determination and courage.

Hong Kong

10May12