

FIGHT AGAINST TRANSNATIONAL CORRUPTION AND INTERNATIONAL CO-OPERATION

*Jeremy Lo Kwok-chung**

I. INTRODUCTION

Last year, Hong Kong celebrated the tenth anniversary of its reunification with the mainland. Like Macao, now in its ninth year, both Special Administrative Regions can proudly pronounce to the world that the “one country, two systems” philosophy is working successfully.

One example of this success is the way in which the mainland has led us in the implementation of the United Nations Convention against Corruption (UNCAC) and the United Nations Convention against Transnational Organized Crime (UNTOC).

Today, these two international instruments assist in creating a framework of laws that enable the law enforcement fraternities to work more closely as partners in the fight against transnational corruption and crime, both of which have become defining issues of the 21st century.

In the past 20 years, technological advancement and globalization have opened up vast opportunities for the perpetration of transnational corruption and crime, particularly in the form of money laundering. Nowadays, law enforcement is facing a more complex and sophisticated challenge from criminals who have extended their activities across jurisdictional boundaries. These criminals are taking advantage of increased business activities, rapid movements of money, telecommunications and computer links. This reality is reflected in the UNTOC, and was emphasized by the former United Nations Secretary General, Mr. Kofi Annan, who said at Palermo on the occasion of the Convention being opened for signing, that “If crime crosses all borders, so must law enforcement.”

Organized crime has become more and more difficult to detect as its activities operate across sovereign borders, involving multiple jurisdictions and different judicial systems. This is especially true when obtaining the evidence necessary for the prosecution of offenders. The problem is that no one single jurisdiction can act and defend alone against organized crime. There is, therefore, an urgent need to put in place international agreements between the various jurisdictions that would enable the exchange of crime information, the obtaining of evidence, the restraint and confiscation of crime proceeds, and the return of fugitives.

II. INTERNATIONAL CO-OPERATION

International law enforcement co-operation is the key to ensuring that perpetrators of transnational crimes have zero opportunity to shun investigation and escape justice. The ICAC in Hong Kong are no strangers to such kinds of co-operation. When the ICAC was set up in 1974, many corrupt police officers, government officials and organized crime figures fled Hong Kong, taking with them much of their criminal proceeds. The case which led to the setting up of the ICAC concerned a Chief Superintendent of Police who, whilst under investigation for corruption, fled the jurisdiction to return to England. The corrupt officer was subsequently extradited back to Hong Kong to face prosecution, only after the ICAC receiving valuable assistance from the Royal Canadian Mounted Police and Interpol in gathering the necessary evidence.

However, not all the ICAC efforts were successful, as in this case. Some of its attempts have not been

* Assistant Director of Operations Department, Independent Commission Against Corruption (ICAC), Hong Kong Special Administrative Region.

fruitful, and a number of our corrupt fugitives remain at large today. The limited mutual legal assistance arrangements available in the old days hindered our investigations. Rendition of fugitives from abroad was even more difficult. At that time, formal legal co-operation between jurisdictions was not common. The concept of mutual legal assistance was very much an idea in some jurisdictions whose time had yet to come.

In spite of such difficulties and constraints, the ICAC has, since 1974, successfully extradited back to Hong Kong 35 fugitives. In the past 20 years, the ICAC had made over 164 requests to Interpol for assistance from overseas agencies.

III. UNCAC AND UNTOC

Let me turn to the two important Conventions. The UNCAC and the UNTOC were both ratified by the Central People's Government of China, and were extended to the Hong Kong Special Administrative Region last year. They are powerful instruments and are fundamental to the future development of an international mechanism for tackling transnational corruption and crime. Much of what we seek under the relevant provisions can be achieved by reviewing our own criminal justice systems, and, where necessary, reforming them to enable compliance.

When you read the two Conventions, you will find that they were given much thought when they were drafted. They each contain a roadmap for countries who wish to put in place a legal framework for combating transnational corruption and crime. Once implemented, these laws will improve the effectiveness of a government's enforcement efforts within its own borders and outside. The key areas on which the two Conventions made provisions are:

- Law enforcement co-operation
- Joint investigations
- Special investigation techniques
- Special provisions for witnesses
- Anti-money laundering measures
- Mutual legal assistance
- Extradition
- Training and capacity building.

In this paper, I will focus on these eight key areas and share with you the experience of the Hong Kong ICAC.

A. Law Enforcement Co-operation

Apart from the formal setting of Mutual Legal Assistance, a vital part of the spirit of law enforcement co-operation relies on inter-agency liaison, involving, as a first step, the sharing of crime information and intelligence. This level of co-operation can be extended to assisting each other in investigations, including establishing the identity, whereabouts and activities of persons suspected to be or who have been involved in criminal activities, tracking the movement of crime proceeds, and locating the final destination and disposal of illicit monies.

In Hong Kong, the ICAC, through investigations, has come by information and intelligence concerning the activities of criminal groups operating locally as well as overseas. The International Liaison Section, whose main responsibility is to maintain close contact with our counterparts in other jurisdictions, may pass on crime information and intelligence on a confidential basis, as part of our international co-operation initiatives.

B. Joint Investigation

An important aspect of law enforcement co-operation is joint investigation. This is where two or more jurisdictions join hands to effectively investigate cross-border crime.

Let me cite an example. In 2000, the ICAC commenced an investigation into the conduct of a Hong Kong based emigration consultant who was suspected to have formed a corrupt relationship with a member of the Australian Immigration and Multicultural Affairs Department to facilitate emigration of unqualified Hong

Kong citizens to Australia. Upon assistance from an Australian authority, the ICAC identified offences linked to the consultant and others in Hong Kong. When we were set to lay charges against the consultant, he left Hong Kong illegally to escape prosecution. Eventually, he was located and arrested in the United States of America on an international arrest warrant. Following discussions and negotiations amongst the agencies from the three jurisdictions, the consultant was extradited to Australia, instead of Hong Kong, to face prosecution for similar offences he had committed there. The offences involve corruption and offences under Australian immigration law. You will see that the assistance roles were reversed. At the beginning of the investigation, Australia rendered assistance to Hong Kong. Towards the end of the investigation, Hong Kong found itself rendering assistance to Australia. At the end of the day, it matters not who prosecuted the consultant, so long as justice was done. It is all the more important that through co-operation, investigations into transnational crime can be vigorously pursued.

C. Special Investigation Techniques

As law enforcement co-operation leads to joint investigations, the natural development would be the employment, where necessary and justified, of special investigation techniques. This may include the use of undercover agents drawn from law enforcement agencies of different jurisdictions who, under special arrangements, are allowed to operate in the jurisdictions as part of a joint investigative effort. The UNCAC specifically provides for the investigation of corruption offences through the use of special techniques such as controlled deliveries, electronic surveillance and undercover operations. Article 20 of the UNTOC contains a similar provision and requires parties to the Convention to enter into agreements to allow for the use of such techniques.

Special investigation techniques are crucial to effective detection of syndicated corruption and organized crime. One of the successful ICAC cases in recent times was an investigation into a syndicate involved in the sale of diplomatic passports and corruption-facilitated money laundering. The key to its success hinged on the assistance of a Russian speaking agent from the United States of America. He was invited to Hong Kong, posing as a member of the Russian mafia who was interested in purchasing genuine diplomatic passports from corrupt immigration officials and seeking the assistance of organized crime figures in Hong Kong to assist in his money laundering business. The undercover operation, aided by covert surveillance and monitoring, was extremely rewarding in infiltrating the syndicate and getting the evidence required for prosecution. After a number of legal battles at court, the ICAC was able to secure the conviction of six syndicated members for offences of conspiracy, corruption, immigration fraud, and money laundering. They included three serving officers from Hong Kong's disciplined services, an immigration official from an African country who came to Hong Kong specifically to sell his country's diplomatic passports, and two organized crime figures. All of them were sentenced to lengthy terms of imprisonment. I have to emphasize here that the syndicate had been operating for a long period of time and very little could be done by any law enforcement agencies, simply because the syndicate refused to do business with local people. It was only through the introduction of the US undercover agent that the ICAC was able to put the major syndicate players behind bars.

D. Special Provisions for Witnesses

Both the UNCAC and UNTOC have placed much emphasis on the need for jurisdictions to provide special measures for the protection of informants and witnesses. In bringing criminals to justice, it is necessary to encourage people to report crime, and this may require an assurance to the informant that his or her identity will not be revealed. When informants become witnesses, there should be regimes in place to cater for such witnesses, where appropriate, to testify anonymously. In the more serious and organized corruption and crime cases, there is a frequent reliance on accomplice witnesses to testify in a court of law. Any such testimony may place an accomplice witness at risk, and there is a need, for the purpose of a successful prosecution, to offer the witness sufficient protection against any threats to his or her health and well-being. A witness protection programme, appropriately staffed, funded and supported by legislation, would ensure the safety of witnesses and increase the chances of a conviction against the criminals. In Hong Kong the Witness Protection Ordinance has proven to be effective legislation in inspiring the confidence of the public and enlisting witnesses to come forward to testify for the prosecution.

E. Anti-Money Laundering Measures

Money laundering is acknowledged as a worldwide problem. It is linked to underlying criminal activities that generate the assets laundered, and enables criminal activities to continue. Against this background, the

UNCAC and the UNTOC require governments to put in place offence provisions to combat money laundering, and measures for the restraint and confiscation of the proceeds of crime. Bribery is considered an effective means to facilitate money laundering, and its significance cannot be overstated. Not surprisingly, both Conventions have placed heavy emphasis on the importance of having anti-money laundering legislation to ensure that effective measures are put in place to tackle the growing problem. In this context, investigative experience tells us that it is often the connections made through financial transaction records that allow hidden assets to be located, and that establish the identity of the criminals and the criminal syndicate responsible.

A starting point for any country is the 40+9 Recommendations of the Financial Action Task Force which are designed to raise awareness of money laundering within the banking and financial systems and other areas of commercial life, and to require the reporting of suspicious transactions by such institutions.

There must also be laws to provide the means within a jurisdiction for such a jurisdiction to freeze and confiscate proceeds flowing not only from crimes committed within its own borders, but also those committed in other jurisdictions. In this regard, each jurisdiction will need to consider its policy on the sharing and return of such confiscated proceeds.

F. Mutual Legal Assistance

Mutual legal assistance concerns the use of the legal process to gather evidence in another jurisdiction. Particularly relevant are the obtaining of depositions from witnesses and the production of documentary records, including data that may be stored on computers. Information that is confidential in nature or is subject to any form of legal protection requires the compulsive nature of the mutual legal assistance process to gain access to it. The obvious type of information that falls into this category and which is crucial to serious organized crime, money laundering, and corruption investigations, are the records of banks and financial institutions. I can tell you that in the ICAC, an enormous part of the investigators' time is spent on tracing the money trail.

In a recent mutual legal assistance case undertaken by the ICAC at the request of the Malaysian government, a search warrant was executed on the office of a certified public accountant in Hong Kong. The search had helped in identifying a convoluted process by which corrupt proceeds were laundered through Malaysia, Hong Kong and Japan en route to Switzerland. The case has illustrated that mutual legal assistance is an important mechanism through which jurisdictions can work together to effectively suppress transnational crime.

To date, Hong Kong has an active and on-going bilateral negotiation programme for the surrender of fugitive offenders and for mutual legal assistance. The Hong Kong SAR Government has signed 21 bilateral agreements on mutual legal assistance, and 16 agreements on the surrender of fugitive offenders. From the ASEAN region, these countries include Malaysia, the Philippines, and Singapore.

G. Extradition

In relation to extradition, Article 44(5) of the UNCAC and Article 16(4) of the UNTOC allow the Conventions to be the legal basis for extradition of offenders for offences identified within the Conventions where States Parties have not signed formal extradition treaties. That said, extradition could still be a very complicated issue. Some jurisdictions may need to be able to rationalize matters concerning dual criminality; others may be bound by their domestic laws not to extradite their own nationals. However, countries or jurisdictions must be cautious that they do not allow considerations such as these to become obstacles to their co-operative efforts in dealing with transnational criminals.

As mentioned earlier, transnational crime is a fact of life and a growing industry. While there are practical and legal difficulties, I believe that under the two Conventions, governments can ably work together towards the setting up of an effective cross border law enforcement net, which leaves no opportunities and loopholes for criminals to operate and for crime to flourish between jurisdictions.

H. Training and Capacity Building

Effective law enforcement requires highly skilled and professional investigators of good integrity. Training and capacity building is a vital process towards the making of such professional people. Law

enforcement officials from different jurisdictions who have the benefit of being trained together develop an understanding of each other's jurisdictions, legal constraints, enforcement problems, and at the same time exchange ideas and experiences with a view to identifying solutions to take matters forward. Such training will further foster closer working ties. The ICAC has all along been promoting such a practice and culture, and has opened up its training and command courses to law enforcement personnel from overseas. In the opposite direction, the ICAC sends its officers overseas for training and development.

The success of a cross-jurisdictional investigation is often determined by a good and usually respected inter-agency relationship. For that purpose, the ICAC regularly organizes seminars and conferences with our overseas counterparts that can be traced back to the early nineties. More recently, Hong Kong joined the Anti-Corruption Action Plan for Asia-Pacific promulgated by the Asian Development Bank and the Organization for Economic Co-operation and Development. The ICAC also represents the Hong Kong SAR Government at the Anti-Corruption and Transparency Task Force of the Asia-Pacific Economic Co-operation, better known as 'APEC'.

IV. INTERNATIONAL AND MAINLAND LIAISON

In 1997, a section known as J4 was established in the ICAC. The J4 section deals with all operational liaison matters between the ICAC, mainland China and Macau on the one hand, and most other overseas law enforcement agencies on the other.

A. The Mutual Case Assistance Scheme

As early as 1988, mutual agreement was reached between the ICAC and the mainland GDPP for the purpose of regulating the process by which the two agencies assist each other in operational matters, including making cross-border enquiries. In 1996, a formal agreement on a Mutual Case Assistance Scheme was signed which enables both agencies to interview witnesses, collect evidence and exchange intelligence in each other's jurisdiction. This agreement was subsequently endorsed by the Supreme People's Procuratorate, which has become a party to it. The effectiveness of this scheme is best illustrated by the following example:

1. The "Shum Yip" Case – A Fine Example of the Scheme

In 1998, a general manager of a mainland-funded cross-border transportation company was prosecuted for soliciting and accepting more than \$11 million in bribes from Hong Kong vehicle owners for awarding mainland vehicle licenses. During court hearings, the defendant suddenly raised a line of defence which required rebuttal evidence to be obtained from a mainland company immediately. Within 24 hours, the ICAC was able to liaise with the GDPP who cleared the way for ICAC officers to collect the required evidence in Guangzhou to rebut the defence. The trial was then concluded swiftly resulting in the conviction of the defendant who was sentenced to 3 and a half years' imprisonment.

B. International Liaison

On the international front, J4 is normally the first point of contact for overseas law enforcement agencies who seek ICAC's assistance. Regular liaison meetings are held with the Hong Kong representatives of the United States Federal Bureau of Investigation, the Royal Canadian Mounted Police and the Australian Federal Police.

C. Visits and Conferences

The J4 section deals with most of the official visits to the ICAC by members of overseas agencies, including design of visit programmes and other logistical arrangements. It also serves as the secretariat for regional seminars and international conferences hosted by the ICAC.

D. ICAC Anti-Corruption Newsletter

J4 is also responsible for liaison with prominent members of overseas law enforcement agencies who from time to time contribute articles to the ICAC Anti-Corruption Newsletters, which are published online at quarterly intervals. So far, nine quarterly issues have been published and apart from the major law-enforcement agencies, the following have also contributed to the ICAC Newsletter:

Countries	Agencies
Botswana	The Office of Directorate on Corruption & Economic Crime
Brunei	Anti-Corruption Bureau
India	Central Vigilance Commission
Kenya	Kenya Anti-Corruption Authority
Malawi	Anti-Corruption Bureau
Malaysia	Anti-Corruption Agency
Nigeria	Nigerian Code of Conduct Bureau
Pakistan	National Accountability Bureau
South Africa	National Anti-Corruption Unit, South African Police
Swaziland	Anti-Corruption Commission
Tanzania	Prevention of Corruption Bureau

V. THREE DECADES OF EXPERIENCE IN INTERNATIONAL CO-OPERATION

In 1974, the ICAC was set up as a direct result of the escape from Hong Kong of Chief Police Superintendent Peter Godber. His eventual extradition back to Hong Kong to stand trial for corruption was the first major task of the ICAC and marked the beginning of our nearly three decades of international co-operation with overseas jurisdictions. Such international co-operation never ceases to expand in its scope and complexity.

I would like to share with you some examples of our cross-boundary investigations in which you will see the expanding scope and complexity of international co-operation at play.

A. Cases where the Initial Information/Complaint came from Overseas Agencies

1. Australian Immigration Case

In November 2000, the ICAC received a complaint from the Department of Immigration and Multi-cultural Affairs (DIMA) of the Australian Government that a Hong Kong Migration Consultant had offered advantages to a DIMA officer for approving migration applications handled by the former. In July 2001, the Department of Justice agreed to lay charges against the Migration Consultant and a warrant for his arrest was obtained.

2. US Human Smuggling Case

In mid-1998, the Immigration & Naturalization Service (INS) of the US Government passed information to the ICAC concerning a Hong Kong citizen whom they suspected to be the head of a syndicate which had corruptly arranged for illegal immigrants from the mainland to be smuggled into the US through Hong Kong. In early 2000, following intensive enquiries which involved the co-operation of the INS and FBI, the syndicate, consisting of two US passport holders and six Hong Kong citizens, were convicted of forgery and conspiracy to defraud. They were sentenced to substantial terms of imprisonment.

B. Cases where Overseas Agencies have rendered Assistance in ICAC Investigations

1. Fake US Bond Case

In March 2001, the ICAC arrested a US businessman and a German lawyer for corruptly obtaining credit facilities from banks by using fake US Treasury bonds and other valuable securities. The US Treasury assisted the ICAC by carrying out forensic examinations on certain valuable securities seized from the suspects. These examinations verified that they were false instruments. They eventually pleaded guilty to conspiracy to defraud and other charges.

2. Sierra Leone Immigration Case

In late 1997, a Sierra Leone immigration officer travelled to Hong Kong and solicited advantages from individuals in return for providing passports and visa facilities. He was arrested during an ICAC undercover

operation when he handed the sum of \$40,000 to an undercover officer. The Sierra Leone Government fully supported the ICAC; in particular, they verified that the passports that were to be sold by the suspect would have been considered genuine. The suspect was eventually convicted of corruption charges and sentenced to seven years' imprisonment.

C. Cases concerning Mutual Assistance in Undercover Operations

1. Customs & Excise Case

In late 1997, the ICAC was conducting an investigation of an international money laundering and smuggling syndicate which had offered protection money to a Customs & Excise officer. The core members of this syndicate and the corrupt C&E officer were extremely surveillance conscious and alert to infiltration by outsiders. The ICAC approached the FBI who provided an American Russian officer to act as an undercover agent. The agent successfully carried out several illicit business dealings with the syndicate and the C&E officer. In late 1998, the two syndicate heads and the C&E officer were convicted and sentenced to imprisonment terms ranging from four to five years. In the course of this investigation, the undercover agent also obtained evidence against two Hong Kong immigration officers, both of whom were convicted at separate trials and sentenced to four and ten years' imprisonment respectively.

2. Computer Products Smuggling Case

In early 1998, the FBI in turn sought the assistance of the ICAC to deploy undercover agents to obtain evidence in Hong Kong against a corrupt US Customs Officer who was involved in smuggling US computer products from Hong Kong to Los Angeles. The operation was successfully concluded and the two former US Customs officers were sentenced to 30 months' imprisonment by a Los Angeles court. A US lawyer received three years' probation and, at the time of writing, three other members of the smuggling syndicate are still awaiting sentencing.

D. Cases of Simultaneous Joint Operations

1. Korean Credit Card Case

In April 2001, an international syndicate involved in the manufacturing and uttering of counterfeit credit cards, through bribery of insiders in banks and retail shops, was smashed in a joint operation by the ICAC and the Korean Police. The operation was triggered by intelligence obtained by the ICAC in Hong Kong. This operation involved the simultaneous arrests of six syndicate members in Hong Kong and Korea. Three suspects were convicted in Korea. The Hong Kong suspect went on trial and received 30 months' imprisonment.

2. UK Credit Card Case

In September 1998, the ICAC and the UK police carried out a simultaneous arrest operation. The suspects were believed to be members of an international counterfeit credit card syndicate. One suspect was convicted in a Hong Kong court and two others were convicted in a UK court for offences in connection with counterfeit credit cards. The ICAC Chief Investigator in charge of this case was subsequently awarded the title "Law Enforcement Officer of the Year 1999" by the International Association of Financial Crimes Investigators.

E. Extradition Proceedings and Letter of Request

1. The *Carrian* Case

This is a landmark case which first went overt in 1985. Subsequent proceedings involving extradition of defendants (from the UK and France) and the gathering of evidence from various jurisdictions (the UK, the US, Switzerland, France, Singapore and Malaysia) lasted for 15 years. This major case could not have succeeded were it not for the co-operation and assistance rendered by all countries concerned.

2. Wanted Person in Australia

In 1993, a senior engineer of a construction consultant company absconded from Hong Kong after an ICAC investigation into suspected bribery in relation to several construction projects. Through assistance by Interpol and the Australian police, he was arrested in April 1999 in Sydney. In July 2001, he was finally convicted in Hong Kong and received five years' imprisonment.

3. Wanted Person in Canada

In 1995, a manager of an IT company who had migrated to Canada was wanted by the ICAC for suspected corrupt activities with several software suppliers. With the assistance of the Royal Canadian Mounted Police the person was eventually arrested in Canada in 2001. He was extradited back to Hong Kong, pleaded guilty and was sentenced to three years' imprisonment.

VI. CONCLUSION

Corruption knows no boundaries. The increasing globalization of crime we are presently witnessing - characterized by ease of international travel, advances in information technology and the availability of manifold options for secretly "relocating" dishonestly-acquired wealth - highlights, more than ever before, the importance of co-operation between law enforcement in different jurisdictions.

In conducting cross-boundary investigations, the main hurdles faced by the ICAC and other law enforcement agencies are the differences between jurisdictions insofar as legal, social and economic environments are concerned.

To overcome these hurdles, the co-operation that comes from a genuine understanding of the needs of each of our jurisdictions and a genuine desire to mutually assist each other in our common aims are most important. Parochial attitudes in this rapidly developing world are outdated and counter-productive. Jurisdictions must now actively seek out a partnership approach to cross-boundary, regional and international crime.

I believe this seminar provides an excellent opportunity for us to share our experience. I am grateful for the invitation to speak to you, and, through international co-operation, I look forward to seeing you again in the near future, and working with you in partnership to fight corruption, and making our world a cleaner place to live in.