
PARTICIPANTS' PAPERS

OPERATION CARWASH AND THE FIGHT AGAINST CORRUPTION

*Frederico Skora Lieberenz**

I. OPERATION CARWASH

Operation Carwash, as several actions against corruption in Brazil and abroad have become known since March 2014, all started with the arrest of a former senior director of the national oil company for his involvement with a group of money launderers. It has been going strong for three-and-a-half years at the time this paper was being written, and even though it is showing signs of slowing down, it is safe to assume that it was a major step forward in the fight against corruption in Brazil and the recovery of the proceedings from those crimes.

A. Early Developments

Before the success of Operation Carwash, several other operations that investigated rampant corruption in the country had failed to stand in the superior courts. It was a known fact in Brazil that crime paid off if you were a politician or a high government official, and that the chances of conviction were minimum. This scenario started to change in 2005.

1. The Scandal of the Mensalão

In the year 2005, a Brazilian politician took the stand in Congress to report on what came to be known as the Mensalão: legislators were being paid a monthly amount by their parties to vote according to the interests of the government. The money came through fraudulent contracts with marketing companies and was suspected to have paid off more than half of the Congress. After these revelations, the second most powerful politician in the Labourer's Party of Brazil, which ruled the country, was removed from office, never to regain his former status. Several other politicians floundered but managed to come once more into office in the next legislature. In the end it amounted to a political earthquake, but economic gains and an increase in popular programmes managed to keep the government of the Labourer's Party of Brazil in power despite the heavy toll on its public image.

2. The Popular Revolts of 2013

In 2013, there were several popular uprisings in the country, the most famous of which began in Rio de Janeiro after an unpopular increase in the prices of public transportation. What at first was a movement of students suddenly started to congregate several groups, which were out to demonstrate their disapproval of the current government of both the state and the city of Rio de Janeiro. The movement culminated with the "walk of the two hundred thousand", one of the largest public demonstrations in Brazilian history, which took place in one of Rio de Janeiro's largest avenues downtown. Legislators, terrified of the public uprisings, among other measures approved several pieces of anti-corruption legislation, which had been put away in their office desks for more than a decade.

3. The Supreme Court Judgement on the Mensalão Scandal

It was not until 2013 that the Mensalão Scandal was finally mature for trial by the Supreme Court of Brazil. Since several office holders such as deputies, senators and ministers were involved in the corruption and money laundering schemes, the constitution demanded that the case had to go to trial in the highest court in the country, the Supremo Tribunal Federal.

The judgement exposed the Supreme Court judges and was entirely televised; public opinion was a definite factor in the decision taking of the judges, as they would have to answer for their opinions in court.

* Federal Commissioner, Repression of Corruption and Abuse of Public Resource Division, Federal Police.

The meticulous tracing of the money used to purchase votes in Congress and the adoption of the Theory of the Domain of the Fact as derived from Claus Roxin's exposition on Mediate Authorship¹ also led ultimately to the conviction and incarceration of several high-office-holding individuals and entrepreneurs, something unheard of in the country thus far.

B. The Operation Begins

What began as an investigation on general money laundering schemes in Brasília, the country's capital city, suddenly took a turn towards what came to be the greatest corruption scheme in the country.

1. Paulo Roberto Costa, Former Director of Oil and Gas of Petrobrás

Mr. Paulo Roberto Costa was early in his retirement after a successful term as Director of Oil and Gas of Petrobrás, the country's largest and most traded national public company. Such a position had put him in close proximity with Brazil's most powerful politicians and businessmen, including the former President of the Republic Mr. Luiz Inácio Lula da Silva and at-the-time current President of the Republic Mrs. Dilma Rousseff.

Until one day, at the beginning of March 2014, Mr. Costa was on the passive end of a judicial search and seizure warrant for allegedly receiving a luxury automobile as a donation from Mr. Alberto Youssef, one of the country's most well-known money launderers. This discovery had been possible through the tracing of one of Mr. Youssef's bank transactions, and the vehicle was ultimately found parked in front of Mr. Costa's house. Investigators were intrigued as to the reason a former high-office-holding public servant would have for receiving such a gift, and suspicions of corruption came to mind, but nothing could be proven at the time. However, the fact that more than one million Reais (approximately five hundred thousand dollars at the time) in cash was found in a safe in his residence brought more questions that required answers.

The turning point in the investigation came quickly, when it was discovered that relatives of Mr. Paulo Roberto Costa had been in one of his offices during the same morning of the search and seizure warrant at his home and took several documents and possibly money to an unknown location. Rather than suffer his family's incarceration, Mr. Costa began negotiations with the Prosecutor's Office of Brazil for a "Colaboração Premiada", Brazil's form of plea bargaining. He finally delivered testimony that put several politicians and other high-ranking officials in prison, including his former colleague Mr. Renato Duque, Director of Engineering of Petrobrás. From that point on, the scope of the operation escalated quickly, making full use of its momentum.

2. Pedro Barusco, Former General Manager of Engineering of Petrobrás

As the investigations advanced, in March 2015, a former General Manager of Engineering of Petrobrás, rather than face imminent arrest, decided to come forward and offer the Prosecutors a deal. Mr. Pedro Barusco proposed to repatriate more than one hundred and eighty million Reais he had stashed in a secret bank account in Switzerland and explain the whole scheme of corruption in Petrobrás if he could get immunity from prosecution. The deal was considered and the Prosecutor's Office decided it was worth it. Renato Duque was arrested a second time, after having been released once by the Supreme Court. It had been discovered through spontaneous international cooperation with Switzerland and Monaco that he had tried to take money from his bank accounts in the former country's financial institutions to the latter's. Differently from Paulo Roberto Costa, Renato Duque refused to cooperate with Brazil's authorities in the investigation for more than a year, before giving in and confessing his crimes in court in exchange for a reduction of his sentence.

3. The Labourer's Party of Brazil's (PT) Involvement in Carwash

It was already suspected, but due to constitutional immunities regarding the prosecution of legislators and ministers, it was a difficult case to take to court. It was easier for politicians to expel the accused from their parties and revoke their mandates, but once the investigation came too close to the leaders of the parties, including former President of the Republic Luiz Inácio Lula da Silva, it was decided that a change in strategy was necessary.

¹ Also known as the Control Over the Organization Theory.

In fact, the second arrest of Renato Duque, the director that had been appointed by the Labourer's Party, and veiled threats by his family that he would cooperate if he was not released, made it only a matter of time before the party's connection was put to light. Financial operators of other parties, including the most powerful, the Democratic Movement Party of Brazil (PMDB), had also been incarcerated and could decide to come clean to the authorities at any moment. The investigators' experience in other money laundering cases made them experts in following the money, and international cooperation, especially with Switzerland and the United States, had borne fruit. The situation was desperate for the survival of the parties.

It was at this already delicate time that several contractors with the government became targets of the investigators. Several publicly traded companies, multinationals of the oil and gas and construction businesses suffered search and seize judicial orders. It had been discovered that all those companies involved had some kind of department for handling the payment of bribes to politicians and other public officials. Brazil's largest construction firm, Odebrecht, with business all over the country and the world, after a long incarceration of its president, finally decided to collaborate with the prosecutors and revealed their "Department of Structured Operations", or the bribe payment and accounting department, which ran parallel to the corporation's regular operations. Their computer servers were encrypted and housed in a computer farm in Switzerland. Once the proper key was inserted, it revealed a world of bribes.

Testimony by Odebrecht and other companies' highest officials revealed what had long been suspected in Brazil: that the very structure of democracy in the country had been tainted by corruption since time immemorial. The president at the time, Mrs. Dilma Rousseff from the Labourer's Party, was impeached from office following constitutional dictates. The vice-president, Michel Temer, was seriously assailed afterwards, but has managed to hold on to his office despite public opinion at the time of the writing of this paper.

II. MEASURES FOR TRACING PROCEEDS OF CORRUPTION

Several instruments for tracing the proceeds of corruption are available for use in Brazil, and all of them have been used in Operation Carwash.

A. SARs (Suspicious Activity Reports)

Known as RIFs (Relatórios de Inteligência Financeira), reports from Brazil's Financial Intelligence Unit (Conselho de Controle da Atividade Financeira, or COAF) are some of the best means of tracing the proceeds of corruption. Financial institutions in the country are required to report any suspicious activities to COAF or run the risk of facing severe fines and other penalties according to the Anti-Money Laundering Statute. SARs can be used as evidence; however, this is not encouraged by the FIU as it exposes investigative techniques. Additional information can be retrieved by the Group of Egmont, a network of FIUs from all over the world.

B. Lifting of Bank, Tax and Phone Record Secrecy

Judges and prosecutors, to a lesser extent, can lift the secrecy of bank and tax statements and telephone records. Specialized computer software and investigators can then help trace the relations between certain transactions and individuals and expose corruption and/or money laundering schemes.

C. Organized Crime Legislation

Laws against Organized Crime in Brazil, especially the Act of 2013, have made it clearer to judicial authorities that Plea Bargaining and Controlled Delivery can and should be used to trace the proceedings of corruption. Means of finding evidence, such as the Colaboração Premiada (plea bargaining), are essential as they paint a much clearer picture than investigators can usually reveal using only the other means available and are often the only means to go into the deepest depths of the companies' and parties' money laundering operations. Controlled delivery can be used to trace the route used by money launderers to escape the authorities' watch and find the final recipients, those that are usually too far from the corruption act itself to be convicted otherwise.

D. Task Forces

Special judges, prosecutors and investigators have been designated by their own organizations to work in strict cooperation and in special cases. Without this joining of efforts it would not have been possible for investigations, prosecutions and convictions to happen in such short times; usually a corruption case in Operation Carwash is investigated, indicted and presented to an individual judge and tried in under a year.

Meanwhile, most of the indicted have been incarcerated for the time being due to the potential to escape and to interfere with the investigation. Cases are made strong, carried by specialized authorities and rarely suffer from nullities. Tracing and seizing of assets are done in the proper moments so it is made harder for criminals to move the proceedings from their crimes before they are taken from them. Investigations also run in secrecy until the serving of the search and seizure and arrest warrants.

E. Central Bank of Brazil

The Central Bank of Brazil keeps a record of all the financial institutions and their account holders in Brazil. This means that investigators, prosecutors and judges may at any time request information on the account holders. This is usually restricted to their names and social security numbers (CPFs), but from that small piece of information, an investigator could build up a case and request a court order to lift the bank secrecy and get the statements. The Central bank also demands that information passed by the financial institutions come in an orderly, predetermined fashion, so it can be easily run through computer software that analyses and cross references the information as to make it useful for the investigations.

F. Direct International Cooperation

Several treaties have already been signed by Brazil in the areas of Money Laundering, Corruption and the Tracing and Freezing of the proceedings from those crimes. This allows for spontaneous assistance by countries often targeted by money launderers such as Switzerland, Luxembourg and Monaco as well as direct cooperation through national central units. In Brazil the Departamento de Recuperação de Ativos e Cooperação Internacional receives both domestic and international requests for cooperation and distributes them accordingly. Statutes demand that the requests follow international guidelines and the nation's fundamental principles regarding human rights.

G. INTERPOL

As a part of INTERPOL, Brazil has an international network of police organizations at its disposal and may use it to find and arrest criminals abroad, request intelligence on individuals and companies, try to find works of art that might have been used to launder money, etc. Since corruption and money laundering is already an international crisis, police cooperation through INTERPOL has been growing in scope and is an integral part of Brazil's Federal Police structure.

H. Rogatory Letters

Once a judicial decision has been made final, it is not a matter of direct cooperation anymore. Brazilian court sentences that must be served abroad and international sentences that must be served in Brazil have to go through the country's highest courts. The long time it usually takes for a court decision to become final in Brazil, however, causes Rogatory Letters to become limited in their use against corruption and money laundering, which require quick action if they are to be effective against organized crime.

III. PROBLEMS WITH OPERATION CARWASH AND ITS FUTURE

The many investigations that have taken place since March 2014 have run into several difficulties in the judicial, political and social levels in Brazil.

A. Court Privilege

Several authorities in Brazil, not only presidents but also all ministers, presidents and governors, some secretaries, legislators, judges, prosecutors, among other authorities, all have court privileges: they must be tried by a superior court, which are generally ill suited for investigations. Usually cases tried in the first instance in superior courts go nowhere and get tangled in politics and bureaucracy. Superior courts excel in appeals but are not investigative courts. This causes office holders and other high officials to escape convictions that expire through the statute of limitations, and they often get to keep their ill-gotten gains.

B. Difficulties in the Suspension or Revoking of a Term of Office

Only legislators can suspend or revoke the Terms of Office of their peers. This causes deputies and senators with little in-house support to be ousted quickly, to appease public opinion, but those with a lot of support, such as party leaders, are usually protected from such measures, no matter the crime or how clearly it was exposed.

C. Social Partisanship

As Operation Carwash started, the country was under the rule of the Labourer's Party. President Dilma Rousseff, while she counted with the support of the extremely popular former president, Luiz Inácio Lula da Silva, did not have much charisma or support from the parties. The Labourer's Party also suffered from prejudice, being the country's only party of the masses, dedicated to the proletarian causes. Once President Dilma lost the support of Congress, it was a matter of time before the Labourer's Party was removed from office and the Democratic Movement Party of the vice-president Michel Temer was instated to resume the mandate. This has caused much belligerence between supporters of PT and those who were against it, and so the whole discussion on corruption became secondary.

In practical terms, investigations in the superior courts ran much more quickly and had more support when PT was being targeted more often. Now there is a general feeling in the country that investigations go slower and that the government is removing investigators, prosecutors and judges from Operation Carwash.

IV. CONCLUSION

There is a major election next year, and society is very polarized. Former President Mr. Luiz Inácio Lula da Silva has announced he shall be running for office once more, and there is a chance he can lose his political rights before the elections. Meanwhile candidates from the extreme right movements, which had never been seriously considered for the highest office in the country, suddenly seem to be the only alternative to Mr. Lula for some.

There is also a serious discussion as to whether the current political scheme should be kept or changed to another configuration, and as to whether companies should be allowed to pay for office runners' campaigns or not. The focus is on the next elections and the means to balance public opinion and the legislators' survival instincts.

Meanwhile, efforts to stop corruption and to seize the proceedings of the crimes continue in Brazil and abroad, but legislators are not keen to give up their court privileges and thus allow the cases against them to be handled by singular, experienced judges. Only public pressure and serious discussions of the ways to leave this standstill can move the authorities to go against their own wishes and respect those of the general populace.