

第七届国际反贪污大会论文

PAPER OF THE SEVENTH INTERNATIONAL
ANTI-CORRUPTION CONFERENCE



HONG KONG ICAC EXPERIENCE IN
INTERNATIONAL COOPERATION; SUCCESS AND FAILURE
香港廉政公署在国际合作上的成与败

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Oct. 6-10, 1995
Beijing, China
1995年10月6-10日
中国·北京

**HONG KONG ICAC EXPERIENCE
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SUCCESS AND FAILURE**

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[Abstract] The Independent Commission Against Corruption (ICAC) is a law enforcement agency which was established in 1974 to deal with the then very widespread corruption in Hong Kong. It is an independent organization answerable directly to the Governor of Hong Kong. To combat corruption, the ICAC adopts a co-ordinated strategy known as the three-pronged attack - education, prevention and prosecution. Three functional departments are set up to tackle each specific aim, i. e. the Community Relations Department to educate the public against the evils of corruption; the Corruption Prevention Department to study procedures to minimize corruption opportunities; and the Operations Department to investigate and prosecute corrupt offenders. The Operations Department, which is the largest department with over 800 employees (out of the total establishment of 1, 200 in the Commission), is responsible for investigation of corruption in both the public and private sectors and enjoys special powers of investigation. In its 21 years of operation (up to 1 July, 1995), it has prosecuted a total of 7, 477 corrupt offenders. The ICAC was the host of the Third International Anti-Corruption Conference in 1987. The continued existence of the ICAC after the hand-over of the sovereignty of Hong Kong to China in 1997 is guaranteed as per Article 57 of the Hong Kong Basic Law.

This Paper will discuss the success and failure of the ICAC experience in

international co-operation since it was set up 20 years ago. From an organization which was little known in 1974, the ICAC has established excellent working relationship with many overseas law enforcement agencies and through its international liaison network, has achieved many successes in the investigation of corruption which has an international dimension and in seeking the return of fugitives from overseas. However, trans-border crime and corruption are escalating and know no boundaries. Effective measures should be taken to match the very sophisticated internationalization of crime and corruption. All international anti-crime co-operation is dogged by difficulties due to different judicial systems, legal restrictions, record confidentiality, linguistic differences, bureaucratic regulations and funding. The greatest difficulty appears to be the lack of law, or simplified law and procedure for investigative co-operation between countries. The paper suggests that consideration should be given to sep up special laws for international exchange of intelligence and assistance, to improve mutual assistance on a less formal basis, to simplify existing means of communication and exchange, to organize more regional conferences and to establish an international network for exchange of information and intelligence. The best way forward is perhaps to set up an international organization for anti-corruption agencies, similar to the Customs Co-operation Council, in order that members can formulate multi-lateral agreement for mutual assistance and exchange of intelligence.

Most of us enjoy talking about our successes, and I am no exception. As the Director of Investigation, Independent Commission Against Corruption (ICAC), I have the good fortune to be part of an organization that allows me ample opportunities.

When the ICAC was set up 20 years ago, it was a unique agency at the time. Its set-up and its three-pronged strategy to tackle corruption were

perhaps not previously seen in any other organizations. Public concern over the then widespread syndicated corruption in Hong Kong led to the ICAC being invested with special powers of investigation.

The ICAC consolidated public support soon after its founding through success on its first major case, which also established the international co-operation that has been so crucial to the ICAC's continued success. This particular case required the extradition of a former Hong Kong police Chief Superintendent from the United Kingdom, as well as special protection of a key witness, who was eventually settled in a third country under a new identity.

From an organization which was little known in the world, the ICAC has since then successfully arranged the extradition or return of sixteen fugitives from countries and regions such as the United States, Canada, France, the Philippines, and Thailand. In 1994, 189 ICAC officers made 103 overseas duty trips all over the world to carry out enquiries, interview witnesses or collect evidence. The ICAC now has one section dedicated full-time to handling overseas liaison, liaison with local consulates and interpol, and exchange of intelligence with overseas law enforcement agencies.

In order to more effectively counter a growing trend in recent years towards cross-border corruption between Hong Kong and the mainland, we set up a mutual assistance scheme with the mainland Procuratorates in 1987. Since then, ICAC investigators have visited the PRC 53 times for enquiries regarding corruption cases, interviewing 114 witnesses. The ICAC has also on 49 occasions assisted officials of mainland Procuratorates to interview witnesses in Hong Kong.

The ICAC's record of success has gained international recognition. Apart from being frequently invited to address major international conferences and seminars such as this one, we have also organized 3 regional seminars, and we were host of the Third International Anti-Corruption Conference in 1987.

But as much as I enjoy talking about success, I would like to spend more time talking to this gathering about a less pleasant topic - " failure".

In more than twenty years as an investigator, I have only rarely heard investigators, or lawyers, or legal administrators, recount how they have failed. Generally, winning sticks easier in the memory.

But as an investigator I have found you learn more from the cases you lose, or face losing, than from the ones you win. Especially in terms of international anti-corruption co-operation, the difficulties are so great that we all face being " failures". Even when we win, the necessary expenditure of time and money can make victory painfully costly.

All international anti-crime co-operation is dogged by difficulties. Trans-border crime is escalating. Crime, and equally important, the dispersal of the proceeds of crime, know no boundaries. Criminals have been successful in taking great advantages of less restricted cross-border activities, including passage of both the perpetrators and the proceeds of crime. Law enforcers have been less successful. Sometimes it seems as if the lack of interest, or misperceived self-interest, by law enforcement and legislative bodies against other agencies or countries has led to international corruption and crime facing far fewer obstacles than it could, or should.

To deal with corruption and crime, investigators need to secure intelligence, information, and evidence. We then need to secure suspects and defendants. Different jurisdictions have different judicial systems, evidential requirements and juridical procedures. Investigators can generally obtain intelligence, information and evidence in their own jurisdictions, for their own investigation. But they cannot officially release them swiftly, if at all, to officers of another jurisdiction. Hurdles such as record confidentiality, linguistic differences, bureaucratic regulations, legal restrictions, and funding can all contribute to lengthy delays or dead-ends. And often information delayed means an investigation denied success.

We are familiar with this situation in the Hong Kong ICAC. We have wide powers to deal with our own investigations into corruption in our jurisdiction, but we have no authority to use our powers to obtain evidence or information merely to assist an investigation in another jurisdiction. If we did use our powers to assist such an investigation, this would be considered misuse under Hong Kong law, and the courts and community could remove our powers.

Even when we obtain anything for our own investigative purpose, we cannot always easily pass it to another jurisdiction for their purpose. There is case law on this; the Hong Kong Attorney General v. Oceans Timber Transportation Ltd. Evidence seized by the Hong Kong police for their investigation could not be passed to the Fiji police for their investigation.

But it appears that the highest levels of the criminal justice system are beginning to realize that better co-operative measures among nations need to be introduced to match the internationalization of corruption and

crime. In May this year Hong Kong's Solicitor General was in Malta attending an international conference of senior law officers which expressed concern on corruption and crime. The 19th Conference of the European Ministers of Justice held in Valletta in 1994 also noted with concern links that have been established in many countries between corruption and organized crime. Senior law officers, administrators and politicians of your own jurisdictions will have been attending, over the past year, a flurry of such conferences. This major international anti-corruption conference we are now attending is a further example of jurisdictions becoming aware of the cost of internationalized corruption and crime.

At present our successes rely heavily on evidence passed between jurisdictions through Letters of Request, and suspects returned by extradition. But even these most basic and essential bridges can only be built between jurisdictions recognizing a sufficient foundation of equity in their respective criminal justice systems.

Even with these bridges, the Letter of Request is fruitful only at the end of the investigative day. It provides a means to produce as evidence usually that which is already known to exist, such as deposits in a bank account. But how does the investigator from the foreign jurisdiction know the existence of the account in the first place? There seems no legislative focus on international investigative assistance.

Extraditions also serve their purpose. But they are complicated, are rightly bound by local law and custom, and often require considerable time and resources. In one case, we in the Hong Kong ICAC had to fly a Malaysian witness to Hong Kong to give evidence on oath to use in an extradition proceeding in Singapore. This was necessary because there

was no provision in Singapore law to recognize evidence taken in Malaysia relating to an offence in a third country. On two other occasions we spent seven years securing the return of suspects to Hong Kong through extradition.

As we all know, when agencies such as the ICAC in Hong Kong and your own seek evidence in foreign jurisdictions, they are often dealing with suspects who are by no means short of money. In some of the cases where the ICAC sought extradition of individuals to Hong Kong, the defendants succeeded to cause delays in terms of years simply by using the legal process which is affordable only by the very rich.

Realistically we have to anticipate that the current developments in law will increasingly be used by rich suspects, suspects with access to financial resources beyond our imagination, to ensure that the cross-jurisdictional sharing of information and evidence that we now rely on will be curtailed in the guise of properly limiting the power of the authorities.

The issue at stake is comity, the proper respect shown by one country for the laws and institutions of another. It is only right that national law should jealously demand and guard authority in its own jurisdiction. But the downside is to ignore the investigative needs of other jurisdictions, and the fact that crime has become internationalized. Clearly there is a need to simplify law and procedures for investigative co-operation between countries.

In fact, this principle is by no means a novel concept. International organizations such as the Customs Co-operation Council, and national legislation such as the Criminal Justice (International Co-operation) Act

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These goals will take time. I hope we have that time, and I hope we use it well, or we will continue to run second to international crime and corruption.