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Anti-corruption agencies: between empowerment and irrelevance

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Abstract The anti-corruption activity of the 1990s is characterized by the rise of new players, such as specialized anti-corruption bodies. Anti-corruption agencies (ACAs) are public bodies of a durable nature, with a specific mission to fight corruption and reducing the opportunity structures propitious for its occurrence in society through preventive and/or repressive measures. Independently of their format and powers, ACAs encounter various constraints to their mandate, which explains the meagre results obtained by some of them. This introductory paper tries to understand the rise, future, and implications of this new kind of "integrity warrior" and to locate them in the evolving doctrine of corruption control. The objective of this edited volume is to re-launch the debate on ACAs as the most innovative feature of the anti-corruption movement of the last two decades.

Introduction

One distinctive feature of the anti-corruption activity of the 1990s is the level of regulatory and institutional innovation achieved. In addition to the role played by the traditional anti-corruption actors, we also witnessed the rise of new players, such as specialized anti-corruption bodies. Anti-corruption agencies (ACAs) are public (funded) bodies of a durable nature, with a specific mission to fight corruption and reducing the opportunity structures propitious for its occurrence in society through preventive and/or repressive measures.

Although forerunners of these institutional units can be traced back in time, in the form of parliamentary commissions, inquiry committees, special police branches or

Most of the contributions in this special issue derive from papers presented by a stimulating group of younger scholars and established authorities in the field of anti-corruption studies who participated at the Second ANCORAGE-NET meeting entitled 'Defying Institutional Failure and Empowering Anti-Corruption Agencies in the Fight Against Corruption and the Protection of the Community's Financial Interests', organised by Luís de Sousa with the support from the Hercule Grant Programme of the European Antifraud Office (OLAF, Brussels) in Lisbon, 14–16 May 2008 . A special thanks to the Robert Schuman Centre for Advanced Studies (European University Institute, Florence), for giving me the opportunity to work on this research project during my stay as a Gulbenkian Fellow (2008–09).

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anti-corruption leagues, the first ACAs date from the postcolonial period in the aftermath of World War II.[1] These early agencies were either created by the declining European powers as an attempt to clean up the not-so-clean reputation of their colonial administrations or were put in place by the newly independent governments as a part of their endeavours, within the framework of self-determination, to build a new administration free from the old habits and "corrupt" practices inherited from the colonial powers. Of these, Singapore's Corrupt Practices Investigation Bureau (CPIB) and Hong Kong's Independent Commission Against Corruption (ICAC) are the most effective ACAs and have become role-models for many others in the Anglo-Saxon world and beyond ([15, 24]).

Since the end of the Cold War, the geographical location of these bodies has expanded from the developing to the developed world, from societies in transition to consolidated democracies, as corruption started to be discussed and condemned beyond the stereotyped vision which previously restricted it to the southern hemisphere. Some were born in response to the first wave of scandals during the late 1980s and early 1990s, such as the Australian New South Wales Independent Commission Against Corruption in 1988, the Maltese Permanent Commission Against Corruption in 1988, the Unit Combating Corruption and Financial Crime of the Czech Criminal Police and Investigation Service in 1991 and the French *Service Central de Prévention de la Corruption* (SCPC) in 1993. As a result of the EU accession process, a large number of these agencies mushroomed in Central and Eastern Europe by the late 1990s, among others: the Lithuanian Special Investigation Service (STT) in 1997, the Croatian Office for the Prevention of Corruption and Organized Crime (USKOK) in 2001, the Latvian Corruption Prevention and Combating Bureau (KNAB) in 2002 and the Romanian National Anticorruption Directorate (DNA) in 2002. Corruption became global, and so did anti-corruption efforts.

ACAs are often born out of a broad political consensus in a context of scandal and crisis, which helps to explain the short existence of some of these bodies and/or their limited capacity to deliver results. Following the perceived failure of conventional law enforcement bodies (police, courts, attorney-general offices, etc), ACAs are often regarded by governments, donors and international governmental organizations (IGOs) as the ultimate institutional response to corruption. Most ACAs have been set up in a context of systemic corruption and a considerable number of them have fallen short of the expectations raised. The factors accounting for their institutional failure are varied. Some have to do with their institutional design or the lack of planning/management, others with the environment in which they were meant to function.

However, the domestic context of the creation of an ACA is increasingly intertwined with the international level. World institutions have incessantly recommended the creation of ACAs as an important piece of the national institutional architecture and grand strategy against corruption. In Central and East

[1] The Corrupt Practices Investigation Bureau was formed in Singapore in October 1952, and was followed by the establishment of the Anti-Corruption Agency in Malaysia in October 1967, and the Independent Commission Against Corruption in Hong Kong in February 1974.

European countries, ACAs have also been recommended as part of macro anti-corruption programmes promoted in view of EU membership.[2]

The format of these agencies and their success in keeping up with new forms of corruption vary greatly from one country to another. But there is also a good deal of institutional mimetism. On the one hand, the creation of ACAs was the product of specific patterns of legal and institutional development, as well as of legal and institutional reactions to emerging challenges. Each agency is, in that respect, unique. Some countries have endowed their agencies with investigative and prosecution powers, whereas others have preferred a more preventive, educational and informative role. There are also differences with regard to their scope of action, resources, accountability requirements, etc. On the other hand, there has also been convergence in the type of agency adopted. It may be inappropriate to use the word model, but at least we could say that, since the late 1980s, we have witnessed an increasing transfer of knowledge between countries with regard to the format of these bodies. Governments have often fallen into the temptation of copying "successful models" without paying sufficient attention to the specificities of the institutional and cultural context in which the new bodies will operate. Knowledge of the successes and failures of foreign agencies and the importation of models already tested abroad, are an important feature of this policy and institutional engineering process.

Independently of their format and powers, ACAs encounter various constraints to their mandate, which explains the meagre results obtained by some of them: difficulties (technical, statutory or cultural) in unveiling corruption via complaints; difficulties in obtaining information about corruption and its opportunity structures from other state bodies/agencies; and difficulties in establishing a good working relationship with the political sphere. There is also a discrepancy between expected results and achievable ones that should not be ignored.

These specialised bodies should be studied for various reasons. They are fairly new (the oldest has existed for 56 years), but their numbers are increasing steadily; their adoption is often central to broader national anti-corruption programmes/strategies; they are single-issue oriented: their sole mission is to combat corruption; they are an attempt by governments to overcome the insufficiency and/or inadequacy of conventional law enforcement agencies in coping with the growing sophistication of corrupt mechanisms and transactions and detecting and/or preparing complex corruption cases. In contrast to law enforcement agencies, ACAs have also been designed to develop a preventive capacity and generate a knowledge-based approach to corruption through research. In principle, these bodies are provided with a team of experts (while also drawing on the knowledge and experience of several other monitoring and regulatory units and giving their own in exchange), an ample mandate, investigative powers, statutory autonomy and adequate funding to ensure that effective preventive steps are identified and put in place. In practice, however, the label "ACA" does not fit many of the realities found.

[2] The Copenhagen criteria suggest reforms related to the operation of the political sphere and the judiciary as a pre-condition to accession.

Placing anti-corruption agencies within the evolving doctrine of corruption control

Those who are more familiar with corruption studies are certainly aware of how the corruption control doctrine has evolved in the past two decades. The first transformation is the fact that literally everybody is now using the term 'anti-corruption' instead of 'corruption control' to describe all activities directed towards combating the phenomenon and/or the opportunity structures conducive to its occurrence. This may seem a semantic change at a first glance, but there are deep implications with regard to the nature of the activities and actors involved.

The anti-corruption discourse fuels a yin-yang dilemma that has no solution. On the one side, we have the rhetoric of moralists, populists and do-gooders that takes corruption as a sin, a disease, a canker that must be wiped from the face of the earth, which usually fizzles out in a unanimous, infertile condemnation of corruption.[3] On the other side, we have the rhetoric of functionalists and relativists believing (without empirical evidence) that corruption can serve a social, economic and institutional purpose in societies in transition, oiling the wheels of the system, involving the masses in political life and increasing levels of development.[4] These two contrasting rhetoric based on disease or the functionality of the phenomenon have often led to sterile anti-corruption debates and campaigns.

Corruption control, on the other hand, is public policy aiming to reduce the opportunity structures for corruption and to punish deviant and unlawful through the implementation of an integrated set of measures ([4, 16]):

(1) of a diverse nature (preventive, repressive, educational, legislative, institutional, procedural, etc);
(2) with a holistic or incremental scope;
(3) with a multifaceted impact (on individual ethics, organisational cultures or value systems); and
(4) displaying a complex, not always balanced mixture of incentives and sanctions manages to control the trends in and consequences of the phenomenon.

During the 1970s, there were few calls for civil society and other collective stakeholders, such as companies to fight corruption because it was a domain for public authorities to deal with via an array of institutional instruments and actors (inspectorates, state auditors, inquiry commissions, magistrates, etc). In most cases there was no grand strategy or policy connecting the different nodes of the system. Competences were shared across bodies, but there was little communication or cooperation.

With the wave of corruption scandals that swept across most western democracies from the late 1980s, throughout the 1990s, governmental efforts to combat corruption were increasingly contaminated by the rising moral tone of what could be defined as a global movement against corruption ([6]). During the 1990s, a number of multilateral negotiations under the aegis of international/regional governmental organizations, such as the Organization of American States, the

[3] The best example of this approach is Wraith and Simpkins (1963).
[4] See for example, Leff (1964).

United Nations, the European Union, the African Union, the Council of Europe, the OECD, the IMF and World Bank led to the adoption of guiding principles and international conventions criminalizing the bribery of foreign public officials, harmonizing national penal laws and procedures, facilitating cross-border criminal cooperation, etc. Further to this soft and hard law instruments, joint Action Plans were being drafted and adopted whilst new anti-corruption governmental networks, such as the Council of Europe Group of States Against Corruption (GRECO) were being established to improve the capacity of states to fight corruption. Everywhere corruption was regarded as a priority issue and no IGO wanted to be seen without an action plan against it ([1, 19]).

Today, anti-corruption activity is not about public policies only. Companies too have been forced to react to a series of scandals which damaged their image and impacted negatively in the stock market, by adopting their own internal anti-corruption policy (setting new ethics bodies, strengthening internal audit procedures and forensic inspections, signing integrity pacts and becoming members and supporters of a series of anticorruption networks, some sponsored by IGOs other by international non-governmental organisations (INGOs) such as Transparency International (TI)). New 'integrity warriors' ([25]) come into play with new ideas and ways of acting. TI and its National Chapters cannot arrest people, but they can mobilize people's attention to the problem. They cannot legislate, but they can put pressure on decision-makers to adopt and implement anti-corruption reforms. The growing role of these civil society actors has made it clear that corruption control is no longer a business for governmental bodies only. But their action does not always result in positive externalities: increased public opinion mobilization without a corresponding satisfactory response from the judicial apparatus, generates cynicism and disillusionment ([26]).

Holistic perspectives of corruption control become quite popular during this period. Since corruption was perceived as systemic, it demanded a comprehensive and integrated approach. The hypersensitivity of public opinion to the problem, however, generated a worldwide consensus against this 'plague'. Moralist perspectives of corruption as a sort of decay or decomposition of the political body start to gain terrain. Suddenly, everybody was engaged in a battle against an abstract monster: corruption. Framework concepts, such as 'ethics infrastructure' (OECD) or 'national integrity systems' (TI), bring governmental and non-governmental actors together for a common mission. They are all important and indispensable pieces of the same puzzle. However, the rigidity of these universal holistic frameworks, allegorically displayed as 'Greek temples' often neglects local cultural and institutional specificities, thus reducing corruption control to a list of "must have" instruments which decision-makers simply need to tick.

As a reaction to scandals and by suggestion or even pressure from the international community in general and donors in particular, governments have been adopting (prescribing) packages of anti-corruption measures of a multi-faceted nature[5] in an attempt to build these integrity systems. Adopting these measures and

[5] Some are legislative (such as the adoption of political financing or asset disclosure laws), other procedural (such as the introduction of debit-card payments in public departments exposed to dyadic corruption), structural (such as the introduction of competition rules in a given sector of activity) or even institutional (such as the creation of specialised anti-corruption bodies).

instruments does not necessarily mean that the legislator has an integrated vision of how they should function. In recent years, we have witnessed a massive anti-corruption legislative production with limited results.

The reformist paradigm has focused mainly on two types of response that are attracting greater public attention, raising the symbolic gains to decision-makers without necessarily having a real impact on the opportunities for corruption: legislative and criminal law reforms[6] on the one hand, and specialised anticorruption bodies on the other.

International actors have been particularly important in making ACAs become a norm. The OECD (1996) was probably a pioneer in suggesting the creation of this type of independent and specialized units to member states as an integral part of their 'ethics infrastructures'. Other initiatives then followed at the regional and international levels. In Europe, the Committee of Ministers of the Council of Europe reinforced this idea through the adoption on 6 November 1997 of the Resolution (97) 24 on the Twenty Guiding Principles for the Fight Against Corruption: Principle 3 draws attention to the need 'to ensure that those in charge of the prevention, investigation, prosecution and adjudication of corruption offences enjoy the independence and autonomy appropriate to their functions'; and Principle 7 points out the need 'to promote the specialisation of persons or bodies in charge of fighting corruption and to provide them with the appropriate means and training to perform their tasks'. Later on 4 November 1998,[7] Article 20 of the Council of Europe Criminal Law Convention on Corruption alerts to the need to have specialised and independent authorities engaged in the fight against corruption, while leaving to states the decision regarding which type of bodies should be established. In America, Article III.9 of the Inter-American Convention against Corruption (IACAC) adopted on 29 March 1996[8] suggests the adoption of this kind of specialised oversight body. In Africa, Article 4 of the Protocol against Corruption adopted by the Southern African Development Community (SADC) on 14 August 2001[9] and Article 20.5 of the African Union Convention on Preventing and Combating Corruption adopted on 11 July 2003 (which has not yet come into force) also suggest specialised bodies for the fight against corruption. Finally, the United Nations Convention against Corruption (the so-called Merida Convention) adopted on 31 October 2003[10] insisted, in Articles 6 and 36 in particular, on the

[6] There has been an increasing effort, from domestic governments, IGOs and INGOs, to harmonize legal frameworks in order to facilitate international judicial cooperation. In practice, however, most legislative initiatives in this domain arise as attempts to clean the Augean Stables and end up as "toothless lions", i.e. rules with strong normative provisions but no effective means of enforcing them (such as white-collar crime, conflicts of interest or political funding) or simply as cosmetic laws whose principles are not reflected by the instruments required to implement them.

[7] Entry into force on 1 July 2002.

[8] Entry into force on 6 March 1997.

[9] Entry into force on 6 July 2005.

[10] Entry into force on 14 December 2005.

need for countries to set up independent and specialised authorities to combat corruption through preventive and law enforcement methods.[11]

Whilst these inter-governmental conventions were laying down the legal foundations for the universalisation of ACAs as a model institutional response, other international actors were contributing to its consolidation as a norm by urging states to upgrade their domestic instruments. The European Union, the Bretton Woods financial institutions, international donor agencies and non-governmental organisations such as Transparency International ([27]) were expecting a tougher response to corruption from transition and developing countries. In the light of the 'successful' Asian experience ([24]), ACAs seemed to offer that response. A small industry of training and technical assistance has grown up to ensure compliance and they too promoted the idea that having an anti-corruption agency in place could improve dramatically the country's capacity to curb corruption. The interplay of these multiple international actors then encroached with the strategies, visions and interests of local players thus reinforcing the idea of anti-corruption agencies as central pieces to national integrity systems.

ACAs were expected to combat corruption in an independent, knowledge-based manner by developing a specialized repressive, preventive and educational/research capacity. They were equally expected to overcome inadequacy of traditional law enforcement structures and processes and to assume a leading role in implementing national anti-corruption strategies. Last but not least, they were expected to reassure public opinion of the government's commitment to fight corruption ([17]).

In some cases, these bodies have been set up as an attempt to upgrade the country's ethics infrastructure, or as a means to control the anti-corruption discourse ([26]), or simply to fulfil obligations deriving from the signing of international anti-bribery conventions. In other cases, ACAs are set up under donor and international pressure in a context of state failure/building. Expecting ACAs to deliver when all governance structures are simply not there or under-performing is mission impossible ([11]). In either case, ACAs were often expected more than they could reasonably deliver during their short existence ([9]).

In recent years, however, the initial enthusiasm and flair that surrounds any novelty in this field began to fade. Disappointment and scepticism have taken over the once motivated anti-corruption industry. International organisations had to tone down their support for the creation of anti-corruption agencies. As a 2005 UNDP Report concluded:

> 'Several countries have opted for or are currently considering creating an independent commission or agency charged with the overall responsibility of combating corruption. However, the creation of such an institution is not a panacea to the scourge of corruption. There are actually very few examples of successful independent anti-corruption commissions/agencies' ([28]).

[11] Article 36 of the Merida Convention of 31 October 2003: "Each State Party shall, in accordance with the fundamental principles of its legal system, ensure the existence of a body or bodies or persons specialized in combating corruption through law enforcement. Such body or bodies or persons shall be granted the necessary independence, in accordance with the fundamental principles of the legal system of the State Party, to be able to carry out their functions effectively and without any undue influence. Such persons or staff of such body or bodies should have the appropriate training and resources to carry out their tasks."

Different institutional realities

The literature identifies a series of requisites that need to be in place for a particular agency to be classified as an ACA ([3, 12, 13, 22-24]):

- *Distinctiveness* from other enforcement agencies with competences in this domain. In relation to other law enforcers, ACAs are primarily or exclusively mandated to combat corruption;
- The development of *preventive and/or repressive* dimensions of control;
- *Durability*, it cannot have an occasional or perennial existence;
- *Powers to centralise information* (collection, storage, processing, and diffusion; information hub);
- *Articulation* of initiatives undertaken by other control actors (interface);
- *Knowledge production and transfer* (role of research, membership of and participation in international forums and networks);
- *Rule of law* (checks-and-balances and accountability to sovereign authority);
- Existence, *known by and accessible to the public at large.*

In practice, however, very few ACAs have fulfilled these requirements. There is no standardised model of what an ACA should look like. Few have been created from scratch with a special statutory act. Many are formed from ombudsman offices, special units in the police forces or the prosecution offices.

In a recent report entitled *Specialized Anti-Corruption Institutions: Review of Models* (2007), the OECD attempted to classify existing agencies into three types ([21]):

- Specialised institutions with multiple competences — this refers to anti-corruption agencies *stricto senso* with preventive and repressive powers with a wide spectrum of activities that go beyond traditional criminal investigation, such as policy analysis, counselling and technical assistance, information dissemination, ethics monitoring, training and scientific research (risk assessments, surveying, etc.). Agencies of this type are: the Hong Kong Independent Commission Against Corruption, the Singapore Corrupt Practices Investigation Bureau, the New South Wales Independent Commission Against Corruption (Australia), the Botswana Directorate on Corruption and Economic Crime, the Lithuanian Special Investigation Service in Lithuania (STT), and the Latvian Corruption Prevention and Combating Bureau (KNAB).
- Specialised departments with special departments of the police forces or prosecution bodies. In some cases, the same body combines investigation and prosecution competences such as the Romanian National Anti-Corruption Directorate (DNA). It is difficult to establish how different this type is from the other two, as some of these bodies also have preventive functions. Other examples: the Norwegian National Authority for Investigation and Prosecution of Economic and Environmental Crime, the Central Office for the Repression of Corruption in Belgium, the Spanish *Fiscalía Anticorrupción*, the Central Investigation Directorate on Corruption and Economic and Financial Crimes of the Portuguese Judiciary Police and the Central Department for Penal Action and Investigation of the Portuguese Attorney General Office.

- Institutions with exclusively preventive competences — this model includes institutions with one or more preventive competences. They may conduct scientific research on corruption, develop and advise on corruption control policies for decision-making bodies, monitor and recommend amendments to regulations in high-risk sectors in the public and private sphere (e.g. urban planning, public works, state procurement, casinos, customs authorities, etc), monitor the rules on conflicts of interest and declarations of assets, draft and implement codes of conduct, assist public servants on corruption matters, facilitate international cooperation in this field and act as intermediaries between civil society and state bodies with competences in the area. Examples: France's *Service Central de Prévention de la Corruption* (SCPC), the State Commission for Prevention of Corruption in Macedonia, the Albanian Anti-corruption Monitoring Group, the Permanent Commission against Corruption in Malta, and the United States Office of Government Ethics.

Although attempts to classify the institutional varieties of ACAs according their formal competences can be useful, in practice, it is difficult to differentiate between these types.

General features and principles

Despite the diversity of bodies labelled as 'anti-corruption agencies', there are however a set of features and principles which are common to most of them.

Independence

Independence is a key issue in the design of most ACAs and a continuous concern during their lifetime. Most statutory discussions evolve around this problem. Independence does not mean free will or absence of reporting or external control, but refers to the capacity to carry out its mission without political interference, that is, operational autonomy. As bodies entrusted with the implementation of anti-corruption policies/strategies, ACAs cannot act in a completely 'independent' way. They are expected to transform policy into action and therefore they share with the political class the onus of success or failure. In practice, however, many of these bodies were conceived without a strategy or policy to justify their existence. Format preceded function instead of the other way round ([12]). Under their statutes, all ACAs are 'independent', but in practice degrees of operational autonomy vary considerably from one agency to another. Some of these agencies act as window dressing institutions or at best they function as a governmental anti-corruption discourse mechanism, as Daniel Smilov will elaborate further in his contribution to this special issue.

Political interference can be exerted directly by threatening to terminate the agency's work or to dismiss its senior officers, reducing its mandate and powers, and limiting its financing, or indirectly by inciting other state bodies not to cooperate with the agency or by increasing inter-institutional accountability procedures to a degree that obstructs or slows down its effective response. This is particularly the case with report procedures and the safeguards for the use of special powers.

Appointment and recruitment procedures and budgetary independence are the most sensitive areas in which ACAs can be exposed to political pressure. Tension between ACAs and the political class can also mount as the result of a redefinition of the agency's strategic priorities. Moving from petty to grand corruption, involving a whole range of actors, single and collective (parties, companies, foundations, etc), and complex exchanges (use of off-shore services, false accounting, etc) is not always an easy decision. Wrestling with 'the powerful' can dramatically shorten the life expectancy of ACAs, but it can also help them to consolidate their mission. Success depends on a series of factors: assertive and visible results (which require adequate means and powers of investigation not always available), solid public support, media coverage,[12] and strategic alliances with other bodies with competences in this domain.

Inter-institutional cooperation and networking

Inter-institutional cooperation and membership in international networks is another common feature to most agencies and is quintessential to the agency's institutionalisation and effectiveness.

ACAs are not born and do not exist in an institutional vacuum. They are part of a control system and share with many other public bodies some of its competences. In formal terms, they are a component of the domestic 'ethics infrastructure' (OECD) or 'national integrity system' (TI), and often the most important one, given their responsibility for coordinating the implementation of the national strategy against corruption. In practice, however, many ACAs are condemned to solitary work, because the modes and processes of inter-institutional cooperation with other state agencies were not thought well in advance before their creation.

ACAs also enter international cooperation networks. One of the main reasons why governments decide to set up ACAs is to overcome the inadequacies of traditional institutional arrangements for addressing the growing sophistication and globalisation of corrupt transactions. For this reason, these agencies enter international cooperation networks and forums to compensate for the insufficiency of domestic instruments and responses. Regional cooperation arrangements such as the Eurojust have been particularly important in facilitating the transfer of information and stimulating the coordination of investigations and prosecutions on corruption between EU member state agencies.

International networking is also a source of knowledge transfer across different institutional realities. Professional networks, of a variegated nature, such as the Group of States Against Corruption (GRECO) of the Council of Europe, the International Association of Anti-Corruption Authorities (IAACA), the OLAF's Anti-Fraud Communicators Network, the European Partners Against Corruption (EPAC) or the Anti-Corruption Agencies Network (ANCORAGE-NET) have grown in numbers in recent years. They offer specialized training to ACA officials, help their socialization, and promote best practice across the agencies. The International Anti-Corruption Conference and other similar forums also provide good networking

[12] Not all ACAs have been successful in establishing a relationship with the media and other civil society actors that play a fundamental role in unveiling and reporting corruption allegations/occurrences.

opportunities (and tourism too!). How much of this knowledge diffusion and networking impacts on the performance of ACAs is something yet to be studied.

Recruitment and specialisation

The fight against corruption today requires an integrated, multi-disciplinary and informed strategy. It is no longer about small-scale dyadic illicit exchanges. The growing complexity of the phenomenon can be seen in the nature of the players involved, the types of exchange, the settings in which they occur and the sophistication of transaction mechanisms ([19]). For all these reasons, specialised knowledge on corruption is essential to the role and performance of ACAs.

The degree of specialisation varies considerably across agencies and is reflected in the nature and scope of the preventive and repressive initiatives they are able to develop and the results achieved. The inadequacy of recruitment and training procedures is one of the major causes for the lack of specialisation. Governments spend too much time framing statutes and discussing the formal aspects related to the legal creation of these bodies and too little on the management of human resources. The recruitment procedures adopted by ACAs for their operational staff reproduce the traditional recruitment procedures of conventional enforcement agencies. These are often based on general open competitions, and not task-oriented and objectives-oriented job selection, thus denoting that there is no underlining human resources strategy. The successful completion of specific training of candidates or new members in corruption investigation techniques is not even taken into consideration by the majority of agencies. For that reason, previously acquired expertise and first-hand experience in the field becomes an important asset. Most agencies have been staffed with law enforcement officers 'transferred' from other agencies, some of which facing critical corruption problems of their own, without successfully completing an initial specialized training or a proper ethics/security screening. This recruitment strategy is cheap and is thus attractive during times of harsh economic conditions or high public debt. In principle, it has also the advantage of reinforcing the inter-ministerial nature of these bodies. This can be useful not only in providing the new body with sufficient and diversified critical mass in the various branches of public law (penal, competition, tax and public administration law) and in the various areas of public activity where corruption occurs, but also in facilitating cooperation and the transfer of information from other public bodies (since the agency will profit from its members' insider knowledge of other bodies and their networks). In practice however, this recruitment strategy can result in jealousies and rivalries affecting negatively the work environment between ACAs and conventional law enforcement bodies with which it needs to cooperate to fulfill its mandate.

In other cases, there has been a tendency to compartmentalise fields of specialisation. It is impossible for an agency's staff to embrace all the fields of knowledge. Options have to be made. Some specialist skills and expertise can be brought in or bought in ([11]).

Wide competences and special powers

The scope of action of these specialised agencies is usually broader than that of conventional bodies (police, public prosecutors, judges), both in terms of their competences as well as their universe of action. The operational definition of

corruption should not be limited to one or two types of crime in the criminal code. The agency's mission requires the fight against corruption to go beyond the legal and criminal provisions in force. The agency should also target practices and behaviour that, while not actually against the law, are ethically reprehensible.

Focusing the agency's work on grand corruption cases (such as political corruption or financial crime) may be an advantage from the point of view of resource allocation, institutional visibility, and public support. Few agencies, however, have the capacity to undertake complex investigations of this kind. Bad scoring on large cases may prove fatal to the agency's initial phase of institutionalisation.

Unlike conventional law enforcers, ACAs also tend to benefit from a range of special (investigative) powers. The fact that this type of institutional response to corruption is traditionally associated with broad competences and special powers is controversial and is not always popular in democratic regimes. On the one hand, the decision-makers and legislators fear the allocation of special powers to ACAs, on the grounds that their excessive use or abuse represent a threat to constitutional freedoms and guarantees; while on the other hand, the conventional law enforcers fear an inevitable loss of competences to the specialized agency. This explains why there are few of them in western democracies.

Carrying out visible operations can be quite rewarding to ACAs, but decision-makers and citizens are not only concerned with the results achieved but with how these were obtained and through what processes. In principle, the means are not always justified, even if in practice, pressure to get visible and meaningful results fast can put aside considerations on the need to safeguard the democratic freedoms and guarantees underpinning the rule of law. Stan Lee's famous citation 'With great power, comes great responsibility' describes accurately the concerns about the (ab)use of special powers[13] allocated to some of these agencies. One of the legitimate fears is that such special prerogatives can be abused for personal vendetta or political purges.

The role of research

One of the main reasons for setting up an ACA is the need to address corruption in a knowledge-based manner, in other words, to carry out significant empirical research about the causes, mechanisms, attitudes, contexts and consequences of corruption, in order to improve its control. Corruption control is public policy that seeks to reduce the scope and likelihood of corruption ([4, 16]). It has both a repressive and preventive dimension and neither of these is attainable without a proper understanding of what is being dealt with.

[13] Some of the special investigative/coercive powers attributed to these agencies are, for example, the capacity: to obtain information, documents and other things from a public authority or official; to enter public premises; to require a public official to produce a statement of information or a document or other thing; to hold hearings in public and private, without the rules of evidence applying; to require a witness to answer any question, regardless of the possibility of self-incrimination; to issue a warrant for arrest of a person failing to answer a summons, or likely to fail to answer a summons; to obtain a warrant for a telecommunications intercept or listening device; to conduct a controlled operation; to use an assumed identity and to access tax records. Not all multi-purpose anti-corruption agencies display such an ample selection of special powers. The accountability and reporting mechanisms for their use varies considerably across agencies. For more information on the competences/powers allocated to the various agencies, see the National Assessment Survey on ACAs: www.ancorage-net.org.

The research activities of ACAs can take different forms: conducting original empirical research, providing research support for major investigations; monitoring and assessing anti-corruption initiatives; creating databanks (for instance, on unveiled or reported corrupt occurrences/allegations, on corruption trials, on crime statistics for corruption and related crimes or on attitude surveys); processing and transforming raw data into relevant, ready-to-use information; and serving as an interface for other researchers in the field. Obviously, some of these corruption-related research products are more important to the pursuit of the agency's objectives than others.

The diversity of research activities that ACAs can perform on their own depends largely on their resources: human (critical mass), technical and financial. Not all ACAs have engaged in or can afford to engage in empirical research, despite their claims about the importance of a knowledge-based corruption control strategy. Most research products tend to be commissioned and some are very costly.

Surveys are an expensive research tool and, reflecting what was just stated, often commissioned, which means they represent a serious drain on resources. Given their budget limitations, agencies tend to prefer more qualitative studies based on interviews or documentary analysis, which can be carried out within their limited in-house research and financial capabilities. Risk assessments[14] tend to be produced by the agency's staff, but they have also been contracted out to research centres and consulting firms if the agency lacks critical mass in a specific domain or has all its human resources committed in other areas. Most low maintenance research activities, such as thematic workshops and roundtables with prominent public figures and academics are organised by the ACAs themselves. These activities do not require the agency to develop its own research capacity: it simply frames themes and profits from knowledge generated elsewhere in various professional sectors.

What is the actual impact of this knowledge production on the agencies' strategies? Most of these products are used to raise public awareness and as advocacy tools (assessing/proposing legislative reforms), but they are not relevant for framing policies and strategies. In this sense, a series of agencies are replicating the work of anti-corruption NGOs, the only difference is that they do not have to compete for funds (at least not in the same manner as NGOs) and the final product has an official stamp (hence Daniel Smilov's thesis that ACAs are anti-corruption discourse control mechanisms). Although this is valid for the majority of small units created in recent years, it is not a rule for all ACAs. Some do invest in research and get the expected returns.

Durability

Setting up an ACA can bring considerable symbolic gains to the incumbent especially in a context of electoral downturn. The decision to set up an agency is often the easiest part of its institutionalization process. The hard bone is to guarantee its effectiveness and long-term durability. ACAs must have regular funding and

[14] These are essentially evaluations of various sectors of the public administration that are more vulnerable to corruption and similar illicit practices.

continuous political support throughout its existence to achieve concrete results. It is precisely in terms of these two factors that the incumbent government is co-responsible for an agency's success or failure. Without tangible results, the existence of an ACA is a legal euphemism; without political will, it is but a farce. The durability of ACAs is one of its major defining traits. ACAs are not meant to be occasional anti-corruption bodies, but durable institutional responses.

Looking at the annual budget and staff figures of these agencies to determine their viability would be a too reductive exercise if not taking into account the scope of the mandate (i.e. the number of public officials under its remit), the country's level of wages and other historical and organizational aspects related to institutionalization. It is known that efficiency cannot be attained only through systematic injections of funding, since this may just lead to an increase in the agency's bureaucracy without an improvement in its levels of productivity. Agencies working on tight budgets tend to be quite productive at least in their initial stages of institutionalisation ([7]). Over time, however, their staff members are disheartened by the lack of resources. Whatever measure is used, it is clear that a certain level of organization and resources are necessary for the agency's role to be taken seriously.

Can ACAs defy institutional failure?

Organizations can empower themselves without having to wait for statutory revisions of their competences or the adoption of more favourable legal frameworks to carry out their mandate. Incremental and less noticeable changes in the performance of organizations can occur in a more flexible and informal way. The importance of such interstitial change to cope with institutional failure is considerable. According to Calvin Morrill ([20]) interstitial change starts with 'pragmatic innovation of alternative practices among informal networks of players in overlapping organizational fields as they respond to real or perceived institutional failure.'

Overtime, the European Commission Anti-fraud Office (OLAF) has been able to assert its investigative competences over European bodies, which initially were thought to fall outside its remit. Attempts by the European Central Bank and the European Investment Bank to retain competence over investigations of their respective internal cases were finally annulled by a decision of the European Court of Justice and OLAF's internal investigative competences restored[15] ([14]). The case of OLAF is special given its supranational nature. Brendan Quirke, also a contributor to this collection, will consider the role of this body in the fight of EU related fraud and corruption and its relationship with other transnational law enforcement bodies such as the Eurojust and Europol. A similar development took place with the French magistracy in the early 1990s. In the early 1990s, the French magistrates (*juges*

[15] For an overview of the ECJ decisions empowering OLAF, see Case C–11/00 Commission v European Central Bank, [2003] ECR I–7147, Case C–15/00 Commission v European Investment Bank, [2003] ECR I–7281 and Case C-167/02 Willi Rothley and Others v European Parliament, [2004] ECR I–000. Judgment of 30 March 2004.

d'instruction) decided to stretch the use of the crime of *abus de biens sociaux*[16] to overcome the lacunae and insufficiencies of the penal framework of corruption. Despite having a softer sanctioning regime, this white-collar offence offered magistrates a better legal ground to address the illegality surrounding party financing due to its flexible prescription rule, in operation since 1967. This pragmatic response to the procedural difficulties raised by the 1990 political financing law, also known as *loi d'amnestie*, enabled the magistracy to secure a high number of convictions and to put pressure on the political class to review the rules of political financing in view of prohibiting company donations ([5]).

Some ACAs have been able to defy adversities to their institutionalization through a variety of changes in their modus operandi: by being creative; by maximizing their competences and resources to the full; and by seeking alternative ways to exercise their mandate. However, this pragmatic response to institutional failure requires a combination of factors, which are not always in place, such as a successful recruitment strategy and professionalization (that boost the internal critical mass of the organization and lead to important productivity gains and innovation); a flexible statutory framework that allows the organization's leadership to seek innovative responses without having to wait for a painful legislative discussion/revision of its competences; an adequate mobilization and allocation of resources; and, last but not least, political will ([2, 7, 11]). Political commitment has been particularly important for the successful institutionalization of the Singapore CPIB and the Hong Kong ICAC, as Jon Quah will demonstrate in his article to this volume.

Conclusion

The belief that once an anti-corruption agency is created everything else will fall into place is patently untrue. If there is one lesson to be learnt from the history of anti-corruption activity, it is that there are no individual solutions but a cocktail of measures, no silver bullets but a mixture of successes and failures and no quick fixes but a long and hard learning process. ACAs are an innovative institutional response to corruption, but they are not the panacea.

Even though there is a tendency towards institutional isomorphism and mimetism, agencies are shaped by organisational cultures and institutional development patterns that differ from one country to another. Some have seen their capabilities grow over time (e.g. Lithuania, Romania), a few have been abolished (e.g. Italy, Portugal, South Africa); others have remained shallow institutions and unknown to the public at large (e.g. Malta, Mozambique).

There are many factors that can account for institutional failure ([3, 8]): organizational cultures, degree of institutional development, political stability, etc.

[16] The offence of improper use of company goods or money for ends contrary to its market success or to favour another company where the wrongdoer detains a direct or indirect interest (hereafter *abus de biens sociaux*) was created by decree-law in 1935 following the *Staviski affair*. The offence was reintroduced under the *Loi 66-537* of 24 July (*sur les sociétés inscrits au code du commerce*) as an important instrument to fight *white collar* crime, but it would later evolve and assume an application that was not foreseen at the time of its creation.

Some are internal to the agency (internal governance problems, weak leadership and inadequacy or absence of management strategies), other are external (lack of political will/support, unsustainable budgets, tense relationship with the public and the media in particular). There are, however, a series of (un)intended errors committed at the conception phase that will have negative repercussions on the agencies' future performance, for example: little care in choosing their format, location and in setting adequate management strategies from the outset; even lesser care with regard to their financial autonomy; expectations inconsistent with the available resources (financial, human, knowledge); and unfit recruitment and reporting/accountability arrangements.

In recent years, newly created ACAs are attracting attention to them but not necessarily for the best of reasons. The lack of visible results is making the option of terminating their work tilting in the back of the minds of decision-makers, donors and the international community. The record of performance is not outstanding across the different agencies. There are many stories of institutional irrelevance and failure and few of success to make the case of ACAs strong ([10]). In order to be prepared to make their case heard in what is increasingly a hostile and disillusioned environment, ACAs are increasingly committed to take evaluation procedures seriously and devote some time to develop performance indicators and to learn how to communicate them. Having said so, 'good' performance is not necessarily important to determine their fate. They are created and terminated by a political decision and not always an informed one.

Political decisions to terminate ACAs are often justified in terms of efficacy (or the lack of it), but without an assessment of concrete performance indicators. This was the case with the extinction of the Portuguese High Authority Against Corruption by parliamentary vote in 1992, the Republic of South Africa government's decision to dissolve the Directorate of Special Operations, commonly known as the *Scorpions* and amalgamate it with the South African Police Service in June 2008, and the decision of the Italian Prime-Minister Berlusconi to abolish the Italian High Commissioner Against Corruption by Prime-Ministerial decree in 2008, soon after he came to power.[17]

We do not yet know what the future of these agencies will unfold. Will they remain permanent institutional features of governmental structure or will they slowly disappear while conventional enforcement agencies gradually become more effective and regain prestige and support among the public? Will ACAs continue to expand to new countries or will the demand for these specialised agencies start to fade as the attention of world institutions moves away from corruption to other pressing global problems? We do not yet know if ACAs have come to stay. There is, however, one tendency that we have witnessed in recent years: the creation of specialised anti-corruption bodies at the local level ([18]). As integrity systems go local, it is possible that the Hong Kong model will be considered at its initial level of implementation

[17] Following mounting pressure, externally, from international bodies and networks devoted to the fight against corruption, such as the Council of Europe, Group of States Against Corruption or the OECD, Anti-Bribery unit and internally, from the opposition and the public opinion at large, Mt Berlusconi reviewed his position and the High Commissioner has now been reissued and relocated. It displays a more limited range of powers and it is located under the supervision of the Ministry of Public Works. This decision does not come as surprising since public works are one of the sensitive areas that the High Commissioner is expected to inquiry.

([13]): city-state level of government. The three most successful ACAs operate in large metropolitan areas (Hong Kong, Singapore and Sydney). However, as Frank Anechiarico rightly observes (in this compilation): 'the discussion about local level systems has been limited and the attempts to compare policies and institutions are virtually nonexistent'. The objective of this edited volume is to re-launch the debate on ACAs as the most innovative feature of the anti-corruption movement of the last two decades.

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