return to AMPLA 2007 Table of Contents

Trading with Integrity: Strengthening Australian Laws Against Foreign Bribery and Implementing United Nations Sanctions

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SUMMARY

It is entirely legitimate for enterprising companies to contribute to economic and developmental renewal in weak governance zones and post conflict countries through investment. But Australian companies seeking to do so should not imagine that they are operating in a legal vacuum. There is a growing international consensus around specific crimes over which countries should exercise jurisdiction when committed by their nationals abroad. These include offences that undermine governance and social stability, such as bribery of foreign public officials, transnational organised crime, and money laundering, as well as offences that threaten peace and security, such as terrorism, war crimes, crimes against humanity and genocide.

Awareness of the extraterritorial operation of Australia's criminal law in these and other contexts has led a number of Australian companies to subscribe to voluntary codes and standards such as the OECD Guidelines for Multinational Enterprises and Risk Management Tool for Investors in Weak Governance Zones, to ensure their corporate governance meets governmental and community expectations about their conduct in these environments.

What corporations are often less familiar with is the extraterritorial application of laws implementing sanctions imposed by the United Nations Security Council in relation to specific situations of conflict or instability. Like the extraterritorial offences and voluntary codes, consideration of sanctions should feature prominently in corporate plans of companies engaging in countries affected by them.

The purpose of this paper is to encourage business to take into account, in relation to their international dealings, the range of Australian laws that continue to apply to the conduct of Australians when overseas. It is prompted by the recent

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passage of the International Trade Integrity Act 2007, which carries significant implications for Australian business operating abroad, particularly in weak governance zones.

The Act amends the Criminal Code Act 1995 and the Income Tax Assessment Act 1997 to clarify the defences available to the offence of bribery of a foreign public official. More importantly, it amends the Charter of the United Nations Act 1945 and the Customs Act 1901 to put in place important changes to the administration and enforcement of United Nations Security Council sanctions.

This paper will briefly discuss the bribery of foreign public officials, before providing detailed information on the imposition of United Nations Security Council Sanctions and how the International Trade Integrity Act will change the way such sanctions are implemented in Australia.

BRIBERY OF FOREIGN PUBLIC OFFICIALS

As a Party to the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions,[1] Australia is obliged to criminalise the bribery of foreign public officials in Australia, or by an Australian citizen, permanent resident or an Australian corporation abroad. The offence of bribery of foreign public officials is found in Div 70 of the *Criminal Code Act 1995*. The penalty for the offence is 10 years imprisonment, or a fine of $66,000 for individuals or $330,000 for bodies corporate.

The offence of bribery of a foreign public official has three primary elements. A person commits the offence if the person:

(a) provides, or offers or promises to provide, directly or indirectly, any kind of benefit to another person that is not legitimately due to the other person (the bribe) (regardless of the value of the bribe, or whether it is, or is perceived to be, customary, necessary or required in the situation, or of any official tolerance of the bribe);
(b) with the intention of influencing a foreign public official in the exercise of his or her official duties;
(c) in order to obtain or retain business; or an advantage in the conduct of business, that is not legitimately due to the recipient, or intended recipient, of the business advantage (regardless of the value of the business advantage, or whether the business advantage is customary, or perceived to be customary, in the situation, or any official tolerance of the business advantage, and whether or not that business, or a business advantage, was actually obtained or retained).[2]

It is important to note that the person receiving the bribe does not have to be the foreign public official who is sought to be influenced. Similarly, the person

[1] Australia deposited its instrument of ratification on 18 October 1999. The Convention entered into force for Australia on 17 December 1999.
[2] Section 70.2.

paying the bribe does not have to be the person who obtains or retains the business or business advantage.

There are two defences against a charge of bribery of foreign public officials: that the conduct concerned was permitted or required by a written law that governs the conduct of the foreign public official[3]; or that the conduct amounted to payment of a facilitation payment.[4] Both defences were clarified in different respects through amendments in the *International Trade Integrity Act 2007*.[5]

In relation to the defence of lawful conduct, the *Criminal Code* sets out a table of laws considered to govern the conduct of public officials in a range of situations. The *International Trade Integrity Act* amended the basis of the defence in this section, which previously was that a person was not guilty of an offence against Australian law if they would not be guilty of an offence under the laws governing the public official, with the phrasing recommended by the OECD. Now, a defence is only available where a benefit was "permitted or required by written law". The *Income Tax Assessment Act* (s 26-52(3)) was also amended so that the defence of lawful conduct in that Act also refers to a benefit being permitted or required by written law.

In relation to facilitation payments, the *International Trade Integrity Act* amended the *Income Tax Assessment Act 1997* to bring s 26-52(4) completely into line with s 70.4 of the *Criminal Code*. It is worth setting out this defence in full, as it is often misunderstood as being permissive in nature. A person is not guilty of the offence of bribery of a foreign public official if the person can prove that the value of the benefit was minor, was paid for the sole or dominant purpose of expediting or securing the performance of a routine government action of a minor nature (routine action is defined in the *Criminal Code*[6]) and as soon as practicable afterwards, the person made a signed record of the payment setting out its value, the date on which it was paid, the identity of the foreign public official and any other person directly involved in the payment, and particulars of the relevant routine government action.[7]

A person who is unable to meet all of the elements of this burden of proof in relation to payments they consider to be "facilitation payments" therefore runs the risk of conviction of bribery of a foreign public official. Given that facilitation payments may well be illegal in the country in which they are paid, any Australian who makes such a payment exposes themselves to even greater risk of prosecution in that country.

3 Section 70.3.
4 Section 70.4.
5 No 147 of 2007.
6 Section 70.4(2).
7 Sections 70.4(1)(c), (d) and 70.4(3).

SANCTIONS

The Charter of the United Nations bestows upon the Security Council the responsibility to determine the existence of any threat to the peace, breach of the peace, or act of aggression and to decide on measures necessary to maintain or restore international peace and security.[8] These are divided into measures not involving the use of armed force[9] or, should the Security Council consider such measures would be inadequate or have proved to be inadequate, military action necessary to maintain or restore international peace and security.[10] Decisions of the Security Council are binding on Member States.[11]

Measures not involving the use of armed force are what are known as "sanctions". The Charter was drafted with traditional threats to or breaches of the peace or acts of aggression in mind – that is, conflict between states – and its sanctions mechanism was conceived as a punitive instrument to bring pressure to bear on governments to accept decisions of the Security Council or to other forms of peaceful settlement of the international dispute in question. Thus, the examples of possible sanctions given in the Charter – complete or partial interruption of economic relations and of rail, sea, air, postal, telegraphic, radio, and other means of communication, and the severance of diplomatic relations – are measures directed against states or governments.

Over time, the Security Council has adapted this mechanism to impose increasingly more targeted measures, in relation to specific countries, specific goods and services (usually military or of weapons of mass destruction proliferation concern) and, increasingly, in relation to specific individuals and entities (in the form of travel bans or prohibitions on financial dealings). Additionally, such measures are being imposed not to penalise countries, but to assist their governments in re-establishing stability after periods of conflict, and in the recovery of stolen assets belonging to them. As at the time of writing, no Security Council sanctions regime imposes a blanket ban on trade and commerce with a country.

Scope of Sanctions

From early 2008, the penalties for breaching laws implementing UN sanctions for individuals and businesses operating in Australia and Australian individuals and businesses operating abroad will be significantly increased (to be discussed in detail below). A critical factor in managing the resultant business risk will be the extent to which businesses are able to demonstrate a commitment to taking reasonable precautions and exercising due diligence to avoid breaching such laws. Key to this is a basic understanding of the scope of application of UN sanctions,

[8] Article 39.
[9] Article 41.
[10] Article 42.
[11] Article 25.

awareness of information sources on UN sanctions, and familiarity with Australian law implementing UN sanctions. Those seeking further information should refer to websites maintained by the Department of Foreign Affairs and Trade[12] or the Security Council itself.[13]

UN sanctions are applied in relation to specific countries, in relation to specific goods and services or in relation to specific individuals and entities. There are thus three "flags" businesses should keep in mind to determine whether their transactions are affected by UN sanctions:

1. Does the transaction involve a country subject to UN sanctions?

As at the time of writing, 12 countries were subject to UN sanctions: Afghanistan; Côte d'Ivoire; Democratic Peoples Republic of Korea (North Korea); Democratic Republic of the Congo; Iran; Iraq; Lebanon; Liberia; Rwanda; Sierra Leone; Somalia; and Sudan. As explained above, in no case does the UN currently impose a complete trade and commerce ban, which means sanctions measures in relation to these countries are restricted to a limited range of very specific goods or services. Nevertheless, businesses engaged in transactions that involve any of these countries as a source, destination or transit for goods or services should scrutinise the sanctions measures imposed in relation to the relevant country to see if any prohibitions or restrictions apply.

2. Does the transaction involve goods or services subject to UN sanctions?

Given the highly targeted nature of contemporary UN sanctions, the range of goods and services that are subject to sanctions is relatively narrow and, because the measures are focused on controlling the sources or means of conflict, generally relate to goods and services that under Australian law are already subject to a measure of control. These are: military and paramilitary goods, services and training (apply to all 12 regimes); "dual-use" goods and services (that is, goods and services which make a direct contribution to the development of weapons of mass destruction or their means of delivery but also have a range of legitimate industrial, commercial or scientific applications, relevant to Iran and North Korea); as well as some goods specific to the country (controls exist on the export of acetic anhydride to Afghanistan; on the import of rough diamonds from Côte d'Ivoire; on the export of "luxury goods" to North Korea; and on any dealings in stolen cultural property from Iraq).

Businesses involved in the provision of military and security equipment, services and training need to be acutely aware of the control measures in place and the application of Australian law, even to their operations overseas, including any brokering activity. The same is true for businesses involved in the supply of dual-use goods and services, particularly those goods and services with potential applications in nuclear (including power generation) and missile programs. Even

[12] The current URL for DFAT's sanctions information site is: http://www.dfat.gov.au/un/unsc_sanctions/index.html.

[13] The current URL for UNSC Sanctions Committees is: http://www.un.org/sc/committees/.

in situations where a proposed transaction does not appear to involve any of the relevant sanctioned countries, the risk of diversion of the goods to those countries is real and needs to be considered.

3. Does the transaction involve an individual or entity subject to UN sanctions?

A number of Security Council sanctions regimes impose obligations on UN Member States to freeze the assets of individuals and entities designated by the relevant sanctions committee, and to ensure no assets are made available to such individuals and entities. At present, such obligations apply to nine of the sanctions regimes (Afghanistan, Côte d'Ivoire, DPRK, DRC, Iran, Iraq, Lebanon, Liberia and Sudan), although in two cases (DPRK, Lebanon) no individuals or entities have yet been named and thus the asset freeze obligations are not active. At the time of writing, asset freeze obligations applied to 927 individuals and entities designated under the seven active regimes. Australia imposes the identical obligations in relation to an additional 87 individuals and entities designated by the Minister for Foreign Affairs under the terrorist asset freezing regime imposed by resolution 1373 (2001).

Asset freeze obligations are implemented by Australia and other countries by making it a criminal offence for a person who holds assets owned or controlled by a designated individual or entity to use or deal with that asset, or to make any asset available to such an individual or entity. There are thus 1014 individuals and entities spread across the world with whom it is prohibited for Australians to have any commercial dealings. Australia provides a consolidation of these 1014 names into two lists available on the Department of Foreign Affairs and Trade website: one related to terrorists (names listed by the 1267 Committee, and by the Minister for Foreign Affairs under resolution 1373 (2001));[14] and one related to the other six asset freeze regimes.[15]

How UN Sanctions are Implemented in Australia

Sanctions that impose controls on the trade in goods and services, as well as asset freeze obligations, are implemented in Australia through regulations made under the *Charter of the United Nations Act 1945*. These regulations are titled according to the following convention: *Charter of the United Nations (Sanctions – [name of country]) Regulations* (hereafter collectively "Sanctions Regulations"). Asset freeze obligations in relation to terrorism (for those individuals and entities listed by the 1267 Committee, and by the Minister for Foreign Affairs under resolution 1373 (2001)) are implemented in Pt 4 of the *Charter of the United Nations Act* itself, as well as the *Charter of the United Nations (Terrorism and Dealings with Assets) Regulations* (special provisions in these regulations related to terrorist asset freezing obligations is why Australia maintains two lists of individuals and entities subject to asset freeze obligations). Measures implementing sanctions under the *Charter of the United Nations Act* have extraterritorial effect (that is, they apply to the activities of

[14] Available at: http://www.dfat.gov.au/icat/regulation8_consolidated.xls.
[15] Available at: http://www.dfat.gov.au/un/unsc_sanctions/unsc-fs.xls.

Australians abroad)[16] and prevail over any contrary law of the Commonwealth, a State or Territory.[17]

In addition, sanctions related to trade in goods only are implemented through regulations made under the *Customs Act 1901*. The export of military equipment and dual-use goods on the Defence and Strategic Goods List (DSGL) to any country is already controlled by the Department of Defence through reg 13E of the *Customs (Prohibited Exports) Regulations*. The export of any military or dual use goods not on the DSGL that is nevertheless subject to sanctions, or of any other goods subject to sanctions (such as acetic anhydride to Afghanistan or luxury goods to the DPRK) is regulated by country specific regulations in Div 3 of the *Customs (Prohibited Exports) Regulations*. The import of any goods subject to sanctions is regulated by country specific regulations in the *Customs (Prohibited Imports) Regulations*.

International Trade Integrity Act and Changes to the Administration of UN Sanctions

On 3 May 2007 the Australian Government provided its formal response to the *Report of the Inquiry into Certain Australian Companies in relation to the UN Oil-for-Food programme* by Commissioner Terence Cole QC (the Report).[18] The Government's response accepted the first three of Commissioner Cole's recommendations relating to the enforcement of United Nations Security Council sanctions.[19]

In considering the implementation of Commissioner Cole's recommendations, it is important to note that the Report was focused on the administration of a specific export trading sanctions regime which relied upon the operation of the *Customs (Prohibited Exports) Regulations 1958*. The Report properly did not consider other UN sanctions implemented by regulations made under the *Charter*

[16] By virtue of s 7 and specific provision in each Sanctions Regulation.

[17] Sections 9 and 10.

[18] The Report is available online at: http://www.offi.gov.au/agd/WWW/unoilforfoodinquiry.nsf/Page/Report.

[19] In regard to recommendations 4 and 5, public inquiries have already commenced. Recommendation 4 related to the application of legal professional privilege in royal commission proceedings. On 30 November 2006 the Australian Government announced an inquiry by the Australian Law Reform Commission (ALRC) into legal professional privilege as it relates to the activities of Commonwealth investigatory agencies.

The Australian Government accepts that the Cole Inquiry raised important questions in relation to legal professional privilege and its impact on Commonwealth investigations which require further consideration. The ALRC will look at legal professional privilege and its impact on all Commonwealth bodies, including royal commissions, that have coercive information gathering or associated power. The ALRC is to provide its report to Government by December 2007.

Recommendation 5 related to wheat export marketing arrangements. On 12 January 2007, the Australian Government announced the appointment of a Wheat Export Marketing Consultation Committee to undertake extensive consultation with the Australian wheat industry, particularly growers, about their wheat export marketing needs. The Committee reported to the Government on 29 March 2007. This report will be used by the Government to inform the decision on future wheat export marketing arrangements.

of the United Nations Act 1945 such as import trading sanctions, financial services sanctions, freezing of assets and travel restrictions.

The Australian Government nevertheless sought to apply Commissioner Cole's recommendations in a way that improves all current and future UN sanctions regimes in Australia.

Commissioner Cole's recommendations in relation to sanctions implementation centred on three aspects: permits, penalties and powers. Sanctions will continue to be implemented in Australia in the manner described above (that is, by regulations made under the *Charter of the United Nations Act* and the *Customs Act*) but the following new provisions will apply to their implementation, compliance verification and enforcement.

Recommendation One: Permits

> "I recommend that the *Customs (Prohibited Exports) Regulations 1958* be amended to incorporate a prescribed form that those applying for permission to export would be required to complete. I further recommend that the Regulations be amended so as to:
>
> - make it an offence to knowingly or recklessly provide in an application information that is false or misleading in a material particular
> - make it an offence to knowingly or recklessly omit a material particular from an application for a permission to export
> - render invalid any permission to export granted on the basis of an application that was false or misleading in a material particular or that omitted a material particular.
>
> The prescribed form should be required to be signed by a senior executive of an exporting company, who should also be personally liable for knowingly or recklessly signing a form that is false or misleading in a material particular or omits a material particular. The penalty for so doing should be imprisonment for 10 years."

The offences recommended in the first two dot points of Recommendation One are established by the *International Trade Integrity Act* as a new s 28, to be inserted in the *Charter of the United Nations Act* to apply to all laws in Australia prescribed as UN sanction enforcement laws, and as a corresponding new s 233C in the *Customs Act* applied to all UN-sanctioned goods.

Section 28 of the *Charter of the United Nations Act* will make it an offence to give false or misleading information in connection with the administration of a UN sanction enforcement law, imposing a penalty of imprisonment for 10 years or 2,500 penalty units, or both. "UN sanction enforcement law" will mean (s 2B) any provision of a law of the Commonwealth specified by the Minister for Foreign Affairs by legislative instrument that gives effect to a decision of the Security Council under Ch VII of the Charter of the United Nations on the application of measures not involving the use of armed force that Art 25 of the Charter requires Australia to carry out (such a decision is hereafter "UN sanction").

The corresponding section in the *Customs Act* (s 233C) will make it an offence to make an application in respect of UN-sanctioned goods under the *Customs (Prohibited Imports) Regulations* or the *Customs (Prohibited Exports) Regulations* that contains false or misleading information, with a penalty for individuals of imprisonment for 10 years or 2,500 penalty units, or both and for bodies corporate of 12,500 penalty units. "UN-sanctioned goods" will mean (s 233BABAA) specified goods prescribed by the regulations, the importation or exportation of which is prohibited, either absolutely or on condition, by the *Customs (Prohibited Imports) Regulations* or the *Customs (Prohibited Exports) Regulations* respectively, to give effect to a UN sanction.

The recommendation in the third dot point has also been implemented in both the *Charter of the United Nations Act* and the *Customs Act*. Section 13A of the *Charter of the United Nations Act* will provide that a licence, permission, consent, approval or authorisation (hereafter "permit") granted under the regulations will be taken never to have been granted if the application for the permit contained false or misleading information (a new s 22B makes the identical provision in relation to notices made under s 22, relating to terrorist asset freezing). Sections 13A and 22B will only apply to permits or notices granted on or after the commencement of the *International Trade Integrity Act* (ss 7 and 25 respectively).

Similarly, the *Customs Act* will be amended to provide that a permit granted in respect of the importation (s 52) or exportation (s 112B) of UN-sanctioned goods will be taken never to have been granted if the application for the permit contained false or misleading information. Sections 52 and 112B will only apply to permits or notices granted on or after the commencement of the *International Trade Integrity Act* (ss 30 and 32 respectively).

Recommendation Two: Penalties

> "I recommend that there be inserted in the Commonwealth Criminal Code, perhaps in Chapter 4, offences for acting contrary to UN sanctions that Australia has agreed to uphold. The statute should prohibit direct or indirect unapproved financial or trading transactions designated by the Governor-General. Breach of statute should be an offence of strict liability. The penalty for breach should be severe, equivalent to three times the value of the offending transactions, by way of monetary fine for corporations and up to 10 years' imprisonment for individuals."

The Government accepted the recommendation to ensure Australian law properly criminalises conduct which breaches UN sanction regimes, but chose to insert the new offence into the *Charter of the United Nations Act* and the *Customs Act*, rather than the *Criminal Code*.

In its response to the recommendation, the Government stated that it would impose strict liability only on corporations and not on individuals. This was because it would be neither fair, nor useful, to subject individuals to 10 years

imprisonment for unintended actions or unforeseen consequences unless these resulted from an unjustifiable risk, that is, recklessness.

The *International Trade Integrity Act* therefore inserts a new offence into the *Charter of the United Nations Act* of "contravening a UN sanctions enforcement law" (s 27) and new "special offences" into the *Customs Act* related to importation (s 233BABAB) and exportation (s 233BABAC) of UN-sanctioned goods.

Section 27 of the *Charter of the United Nations Act* will criminalise conduct (acts or omissions) contravening a UN sanction enforcement law, or a condition of a permit under a UN sanction enforcement law. The *Customs Act* will criminalise the intentional importation (s 233BABAB) or exportation (s 233BABAC) of UN-sanctioned goods contrary to the *Customs Act* (that is, contrary to an absolute prohibition on such import or export, or import or export without a required permit).

For bodies corporate, these new offences will be strict liability offences, but will not apply if the body corporate can prove that it took reasonable precautions, and exercised due diligence, to avoid such a contravention. The penalty for individuals is imprisonment for not more than 10 years or a fine not exceeding 2,500 penalty units, or a sum three times the value of the transaction or transactions (if calculable), whichever is the greater. The penalty for bodies corporate is a fine not exceeding 10,000 penalty units, or a sum three times the value of the transaction or transactions (if calculable), whichever is the greater. The Charter of the United Nations Act is also amended to bring pre-existing sanctions-related offences in that Act (ss 20 and 21 relating to terrorist asset freezing) into line with this new penalty structure.

Recommendation Three: Powers

> "I recommend that there be conferred on an appropriate body a power to obtain evidence and information of any suspected breaches or evasion of sanctions that might constitute the commission of an offence against a law of the Commonwealth."

In his findings Commissioner Cole notes that "no power exists for any Commonwealth entity to obtain evidence and information for the purpose of securing compliance with" UN sanctions. The legislative implementation of this recommendation is realised in a new Pt 6 inserted into the *Charter of the United Nations Act*, on "Information relating to UN sanctions".

Section 29 will remove any impediments to information sharing within the Commonwealth Government by allowing the CEO of a Commonwealth entity to give any information or document to the CEO of a "designated Commonwealth entity" for a purpose in connection with the administration of a UN sanction enforcement law, irrespective of any other law to the contrary of the Commonwealth, a State or a Territory. A "designated Commonwealth entity" is any Commonwealth entity (s 2A) so specified by the Minister for Foreign Affairs by legislative instrument.

Designated Commonwealth entities will be given the additional power to give a person a written notice requiring the person, within a reasonable time, to give the CEO specified information (including under oath or affirmation – s 31) or documents for the purpose of determining whether a UN sanction enforcement law has been or is being complied with (s 30). Although there is provision for correspondence between a person given such a notice and the CEO as to the timeframe for responding to the notice, failure to comply is an offence punishable by 12 months imprisonment (s 32). A notice under s 30 overrides any other law of the Commonwealth, a State or a Territory (s 30) and an individual is not excused from complying on the ground that doing so might tend to incriminate the individual or otherwise expose the individual to a penalty or other liability (s 33).[20] Any documents given pursuant to a s 30 notice must be returned within a reasonable time, but may be copied by the CEO (s 34).[21]

Reinforcing this power to compel production of information or documents is a requirement for permit applicants to retain relevant records or documents. A person who is granted a permit under a UN sanction enforcement law must retain any records or documents relating to the application for that permit, as well as any records or documents relating to compliance with any conditions of the permit, for five years from the last day on which an action to which the permit relates was done. Similarly, a person who applies for but is denied a permit must also retain any records or documents relating to the application for that permit for five years from the day on which the application was made (s 37).

Section 35 permits designated Commonwealth entities to use, copy or share any information or documents, both internally and externally (including to relevant foreign governments or international organisations) for a purpose in connection with the administration of a UN sanction enforcement law or with UN sanctions themselves. Section 36 protects any person from liability to any proceedings for contravening any law, or civil proceedings for loss, damage or injury of any kind suffered by another person, arising from acts done in good faith under ss 29, 30, 34 or 35 (except, of course, in relation to conduct of the person that is revealed by information or documents disclosed in the process).

CONCLUSION

UN sanctions have made and continue to make a critical contribution to the restoration of international peace and security, by restricting the unauthorised

[20] Information disclosed under a s 30 notice is, however, only admissible in evidence against the individual in proceedings for an offence against s 28 (false or misleading information given in connection with a UN sanction enforcement law) or s 32 (failure to comply with requirement to give information or document) and in no other case (s 33.2).

[21] The CEO of a Commonwealth entity may delegate in writing all or any of his or her powers or functions under this Part to an SES employee or official of equivalent rank. In exercising delegated powers or performing delegated functions, the delegate must comply with any directions of the CEO (s 38).

flows of arms and WMD proliferation sensitive materials and the funding and mobility of insurgents, terrorists and WMD proliferators. In so doing UN sanctions have helped in the recovery of populations, governance and the economy in countries affected by conflict and are contributing to the environment for foreign direct investment and the mutually beneficial exploitation of mineral resources of those countries.

Similarly, international instruments such as the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions and the more recent UN Convention against Corruption play an important role, by ensuring that countries retain the capacity to prosecute and punish corrupting behaviour by their nationals abroad, particularly where such conduct occurs in countries that lack either the ability or the will to prosecute such conduct themselves.

return to AMPLA 2007 Table of Contents