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SWITZERLAND

SWITZERLAND: FACETS OF AN UNIMPOSING PROBLEM



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Introduction

Usually, Switzerland is not perceived in conjunction with phenomena like corruption or varieties of bad governance. Geneva is the home of a major United Nations seat and the four Geneva Conventions of 1949, the two Additional Protocols of 1977 and the Additional Protocol of 2005 that form the core of international humanitarian law.¹ Furthermore, it is the homeland of the International Committee of the Red Cross, the Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and Their Disposal,² and comparable institutions. In wealthy and affluent societies, corruption is seen as less pervasive.

Switzerland's financial centre plays a central role in its economy with regards to labour, the creation of value and tax revenue. The financial sector is responsible for roughly 11.5% of the gross domestic product and employs 6% of the workforce. Furthermore, this sector contributes approximately 10% of the country's income and corporate tax revenue. Switzerland's general stability accounts for its international reputation as a preferred provider of financial services. Important competitive advantages are, for instance, its political constancy and the stability of its currency. Switzerland also plays a leading global role in asset management: roughly one third of all private assets invested abroad are managed by Swiss banks.³

Country situation

According to the Transparency International (TI) Corruption Perceptions Index 2011, Switzerland is at the forefront with a reputable eighth position behind New Zealand, Scandinavian countries, Singapore and the Netherlands.⁴ But this is only one side of the coin and reflects a common perception.

1 www.eda.admin.ch/eda/en/home/topics/intla/humlaw/gecons.html

2 www.basel.int

3 www.transparency.ch/financialcentre

4 cpi.transparency.org/cpi2011/results and www.transparency.org/news/pressrelease/20111201_cpi

A closer look at the Swiss Alps republic offers plenty of less laudable facets.

A main pillar and pride of Swiss identity is its longstanding neutrality. Over broad periods of its contemporary history, Switzerland used this special status for all sorts of doubtful collaborations. Among the more familiar is the Nazi gold transferred by Nazi Germany to Swiss and overseas banks before and during the Second World War.⁵ And over the course of decades, Switzerland was a safe harbour for fraud and embezzlement of national wealth for almost all despots around the world, including Idi Amin (Uganda), Jean-Bedel Bokassa (Central African Republic), Joseph Desire Mobutu (Zaire), "Baby Doc" Duvalier (Haiti) and Ferdinand Edralin Marcos (Philippines), among many others.⁶ Money laundering on a broad scale for Latin American and other drug cartels was another lucrative line of business for Swiss banks.⁷ Huge treasures of speculated national wealth from all over the globe are stashed in Swiss bank accounts, totalling around 2.7 trillion Swiss francs, according to the Swiss Bankers Association.⁸ Among accomplished gentlemen at the Zurich Paradeplatz, the gathering place for Swiss bankers, a common understanding that "money has no smell" prevails. Almost constitutional in this respect is the famous Swiss bank secrecy – another pillar of Swiss national identity or particularity.

"Potentate money"

On the one hand, the country's elite stands on its immaculate image as honourable bourgeoisie; on the other hand, they never had any scruples about serving as helpers and dealers of the world's worst scoundrels. While the international community closed ranks for the UN boycott against the South African apartheid regime, Swiss business and bankers proved beneficial for the regime.⁹ As always, money has no smell, and whatever serves one's own

5 en.wikipedia.org/wiki/Nazi_gold and en.wikipedia.org/wiki/World_Jewish_Congress_lawsuit_against_Swiss_Banks

6 Ziegler, J. (1992) *Die Schweiz wäscht weißer: Die Finanzdrehscheibe des internationalen Verbrechens*, Knaur, Munich.

7 Trepp, G. (1996) *Swiss Connection*, Unionsverlag, Zurich.

8 www.swissbanking.org/en/home.htm and www.spiegel.de/spiegel/print/d-88754355.html

9 www.apartheid-reparations.ch/documents/reparationen/WSP_en_05.pdf

interests cannot be doubtful. And the Swiss government, while continuously praising the country's "humanitarian tradition" and values, has tolerated this distinct form of hypocrisy over decades. "Cases like Abacha, Marcos and Duvalier clearly show that Swiss bank accounts were continuously abused by dictators... [and this] has impaired the reputation of the country's finance centre," says TI.

This inglorious tradition or business-as-usual policy has seen a constant but hesitant change in recent years through the freezing of illicit assets. Switzerland has undertaken various steps on the legal front over the last years to strip off its negative image as shelter for illegal money from "politically exposed persons" or so-called "potentate money".¹⁰ In 1997, the parliament passed a new law to combat money laundering, corruption and the financing of terrorism in the financial sector – the GwG.¹¹ Another challenge for the Swiss government was a transparent and fair restitution of illicit assets act – the Act on the Restitution of Illicit Assets (LRAI), also known as "Lex Duvalier" – which entered into force in February 2011.¹²

According to the Swiss Foreign Office:

Switzerland has returned about 1.7 billion Swiss francs to countries of origin, which is more than any other financial centre of a comparable size. Individual cases attract considerable publicity on account of the high profile of the people and the amounts of money involved. Examples include: the Montesinos case, Peru, 2002; the Marcos case, the Philippines, 2003; the Abacha case, Nigeria, 2005; the Angolese assets case, Angola, 2005; the Kazakh assets case, Kazakhstan, 2007; the Salinas case, Mexico, 2008. Some cases are particularly complex to solve. Among them, one can mention the Mobutu case (Democratic Republic of Congo or DRC) and the Duvalier case (Haiti). In the Mobutu case, Switzerland strove during 12 years to return the frozen assets to the DRC. This challenge finally failed among others because of the lack of co-operation of [the DRC].¹³

TI together with other Swiss NGOs is closely observing such restitutions to the countries of origin as well as their appropriate expenditure.

Lessons learned: The Arab Spring cases

Some observers argue that there was an uncontested change of policy when the former minister of foreign affairs, Micheline Calmy-Rey (2003-2011), a member of the Social Democratic Party (SPS), came into office. In recent cases the Swiss government proved to be alert and responsive. At the beginning of 2011, Switzerland was the first country to freeze assets held by the former Egyptian and Tunisian leaders and their entourages, in order to return the illicit assets by means of legal assistance and in cooperation with the countries concerned. At an international experts meeting in January 2011 in Lausanne, the Federal Department of Foreign Affairs (FDFA) stated:

It was Switzerland's wish to bring together the various actors from these states and these financial centres a year after the events. The purpose was to summarize the first lessons learned from the experience, to examine possibilities of future action and to strengthen contacts between the different governmental actors and inter-governmental organizations concerned with the recovery of stolen assets.

This was the sixth seminar as part of the Lausanne Process launched by the FDFA in 2001 to promote dialogue between countries affected by corruption and recipient countries of illicitly acquired assets.¹⁴

While considerable progress was made in terms of illicit assets, Switzerland is still a safe harbour for tax evasion from neighbouring countries like Germany, France, Italy and others. Under constant pressure from the European Union (EU) and the Organisation for Economic Co-operation and Development (OECD) over the last years, Switzerland is redefining its tradition of bank secrecy and has started bare-knuckle negotiations with the German government. This has resulted in a bilateral tax treaty (Steuerabkommen) that is still strongly disputed in the German parliament and public for not being effective enough.

The export sector

Switzerland's wealth is not so much based on its financial sector but rather on exports.¹⁵ Another facet of the corruption and bribery story is Swiss enterprises doing business abroad where "bribery is almost a day-to-day routine." According to a survey published by the University of Applied Sciences in Chur (HWT), around 40% of Swiss enterprises are

¹⁰ www.transparency.ch/de/aktivitaeten/potentatengelder/index.php?navanchor=2110020

¹¹ www.admin.ch/ch/d/sr/9/955.o.de.pdf

¹² www.admin.ch/ch/d/sr/c196_1.html and www.eda.admin.ch/eda/en/home/topics/finec/intcr/poexp.html

¹³ Ibid.

¹⁴ www.news.admin.ch/message/index.html?lang=en&msg-id=43127 and www.eda.admin.ch/eda/en/home/recent/media/single.html?id=37632

¹⁵ www.rudolfstrahm.ch/wp-content/uploads/2012/03/buchbestellschein-hep.pdf

confronted with bribery demands. And more than half of them concede to such practises. In total, more than a fifth of 510 export companies surveyed are using bribery to land contracts – “a surprisingly high share” say the authors of the study.¹⁶

For TI this finding once again shows gaps in the legal order. On one side, bribing of foreign officials is a punishable offence. Furthermore, enterprises that do not take precautions can be prosecuted and fined up to five million Swiss francs. However, not punishable is the so-called “business climate care work” which includes favours for foreign officials that do not involve official orders or authorisations.

According to TI spokesperson Delphine Centlivres, “Corruption is a deed with two offenders, whereas a victim in the classical sense is missing.” Therefore, law enforcement agencies are rarely informed about such abuses and “nobody invokes the courts.” Subsequently, condemnations for bribery abroad are extremely rare. An exception from the rule was the Alstom case when the French energy and transport giant was fined 2.5 million Swiss francs for briberies in Latvia, Tunisia and Malaysia in 2011. According to the Office of the Attorney General of Switzerland, Alstom used a number of middlemen to veil payments to foreign officials. A total of 24 criminal procedures were launched.¹⁷

OECD progress report

A recent TI report on the Progress Report on Exporting Corruption published by the OECD indicates that corruption charges increasingly lead to fines, imprisonments and claims of damages against reputation. With 52 anti-corruption cases and a share of 1.5% of world trade, Switzerland belongs to the seven countries actively implementing the OECD anti-bribery convention.¹⁸ However, the number of cases is still rather small and imposed sanctions are often not deterrent enough. Furthermore, regulations against bribery in the private sector should be intensified and incorporated into the criminal code. Moreover, national regulations for granting of undue advantages should not be limited to public officials in Switzerland only, but equally applicable to officials abroad.¹⁹

Spicy side notes

Other unsavoury corruption stories in the country involve the International Olympic Committee (IOC), seated in Lausanne, and the World Football Association FIFA, based in Zurich. Over the years, the media has continuously reported about hair-raising corruption stories from these organisations. “Corruption in sport became endemic and endangers the integrity of Olympic sports gravely,” says Richard Pound, who has been the IOC vice president for many years. The overwhelming majority of the 35 Olympic World Sport Associations have taken no precautions to prevent and combat corruption. Most associations and their officials are not even aware of the problem. As head of an internal assessment commission in the bribery case of Salt Lake City, Pound saved the IOC from the corruption nemesis in 1999.²⁰ After persistent criticism and pressure the IOC established an Ethics Commission to investigate its notoriously incompetent executive board members.

In recent times, the turmoil around FIFA and its autocratic boss Sepp Blatter has bothered Swiss parliamentarians. Notorious scandals at the FIFA headquarters in Zurich were not an issue for Swiss politicians until December 2010, when new revelations about bribery cases in the top management became public. A 20-million-euro sponsoring deal between FIFA and Interpol, the specialised agency to combat international crime, covering 40% of Interpol’s annual budget, was singled out by a Swiss MP: “It’s like the smuggler bribing the customs officer.” In several motions by political parties the government was urged to take actions against common corruption and betting manipulations in sports associations. Parliamentarians asked for termination of unjustified tax privileges and exemptions for FIFA which were “harming Switzerland’s reputation.”²¹

As of now, the IOC and FIFA are not subject to Swiss corruption laws – the Confederation still considers them ordinary associations, despite the fact that the Olympic umbrella organisation conducts the games every four years with turnovers of around USD 6 billion. With its four-yearly World Cup, FIFA generates around USD 4 billion. Yet the direction of these mega events is not legally considered a

¹⁶ www.transparency.ch/de/aktuelles/meldungen/2012_10_19_DerBund_Jedes_fuenfte_Unternehmen_zahlt_im_Ausland_Schmieregelder.php?navid=1

¹⁷ Ibid.

¹⁸ www.oecd.org/daf/bribery/internationalbusiness/anti-briberyconvention/38028044.pdf

¹⁹ www.transparency.ch/de/aktuelles_schweiz/meldungen/2012_09_05_Pressemitteilung_OECD_Progress_Report_2012.php?navid=1 and transparency.ch/de/PDF_files/Divers/2012_ExportingCorruption_OECD_Progress_Report_EN.pdf

²⁰ www.stuttgarter-zeitung.de/inhalt.korruption-bei-fifa-und-ioc-der-kampf-gegen-die-schattenmaenner.b09f633f-4bd3-4365-b2f5-b60c8c6270fb.html; www.weltbild.ch/3/17401951-1/ebook/korruption-im-ioc.html and Sitarek, J. (2004) *Quo vadis, IOC? Der Korruptionsskandal um die Vergabe der Olympischen Winterspiele an Salt Lake City 2002 und die Folgen*, Diplomica, Hamburg.

²¹ www.tagesanzeiger.ch/schweiz/standard/Die-Schweiz-nimmt-Schaden/story/22748653?dossier_id=1536 and www.tagesanzeiger.ch/Sport/dossier2.html?dossier_id=1536

business operation. Misconduct inside the world's biggest sport organisations is subject only to a sort of self-administered justice or a kind of dysfunctional self-regulation.²²

Conclusions

There is no evidence or obvious causality that the internet was crucial for revealing corruption problems in the country, besides increasingly promoting transparency and accountability. Over the years, Swiss NGOs specialised in development cooperation like the Berne Declaration and others have been doing their best to sensitise the public and to launch campaigns that improve the compliance of Swiss global players abroad:

Business opportunities for corporations have greatly increased in recent years. Swiss corporations buy, invest, produce, and sell all over the world nowadays. The Berne Declaration makes sure that they act responsibly towards the societies and the environments in which they operate. This is particularly important in areas where Swiss concerns are major global players: in pharmaceuticals, agribusiness and finance.²³

Civil society and NGOs are increasingly using new communication tools and platforms to launch petitions and campaigns and to improve public scrutiny.

Action steps

- The sensitisation of the public, political parties and parliamentarians about the various impacts of corruption in Swiss politics and business is necessary. The internet and related communication tools have become an important instrument for civil society and NGOs to increase awareness and the transparency and accountability of the country's institutions, where established media do not properly perform this watchdog function.
- The excellent work TI is doing needs stronger public support and recognition.
- There is a need for the reconsideration and modification of the IOC's and FIFA's legal status as business entities and increased control.
- Critical voices like the Berne Declaration and other NGOs specialised in development cooperation in its various facets should be listened to by the country's political and business actors. ▀

²² www.news.de/sport/855089725/sport-als-rechtsinsel-feigenblatt-ethikkommission/1

²³ www.evb.ch/en/f25000037.html