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Advisory Council
of the United Nations
Crime Prevention and Criminal
Justice Programme*

The United Nations Convention against Corruption as a way of life

Edited by
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INTRODUCTION

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Corruption is neither a new phenomenon nor confined to particular countries, geographic regions, political systems or cultures. New is an international determination to act effectively against this scourge, which undermines political stability, sabotages development, distorts competition, violates the rule of law, maintains structures of inequality and poverty, and adds to other sources of insecurity, unfairness and injustice.

In the last two decades, the world has witnessed many initiatives against corruption and its negative effects on governments, businesses and society at large.

The growing anti-corruption momentum is supported by strong popular feelings, the recognition that corruption is connected with other important issues of public policy and a denser globalization process, whereby actions in one place of the planet have both local and international effects.

No international instrument, however, is as comprehensive and elaborate as the United Nations Convention against Corruption (UNCAC). The UNCAC is now reality. The Convention entered into force on the 14th December 2005, only two years after it was adopted unanimously by the General Assembly of the United Nations and opened for signature in a political conference organized for that purpose in Mérida, Mexico. As of November 2007. The Convention has been signed by 140 countries and ratified by 103 countries. The number of parties to the Convention keeps rising at a remarkably fast pace, especially in view of the convening in December 2006 of the inaugural session of the Conference of the States Parties (CoSP) and the second one scheduled for early 2008. The CoSP is a body established by the Convention for the purpose of reviewing and supporting its implementation. The conclusion of the negotiations and the entry into force of the UNCAC in record time, together with the growing number of parties, are tangible demonstrations of the high priority accorded to action against corruption all over the world. The Convention represents the state of the art in its comprehensive and far-reaching nature, with innovative provisions on matters of vital importance that range from prevention to international cooperation and asset recovery. The world is

truly behind the UNCAC. The task is to move it forward effectively, efficiently, consistently and fairly.

This high priority and the concomitant political will that made the Convention possible have created great opportunities, but also present significant challenges. The attention that corruption and action against it command all over the world has helped to bring about significant reform processes, but at the same time has raised expectations. Frustrating those expectations could lead to disappointment and apathy that risk setting back the collective work of many years.

A crucial challenge thus is how to make sure that the Convention becomes the vibrant instrument that its negotiators aspired to create. Essential in this endeavour is full and well planned implementation by governments. However, beyond legislation, technical measures and steps, long-term success will depend on whether the Convention becomes a daily reality, on whether the substantive principles and messages it conveys are well known to all and converted into a way of life. Deep awareness and attitude adjustments are part of the needed emergence of a new “culture against corruption”. For that challenge to be met and the relevant efforts to be crowned with success, all stakeholders and contributors – governments, the media, civil society, academia and the private sector – must join forces and work together.

True to its long-standing tradition of creating opportunities to explore in depth complex and topical matters of international interest and making tangible contributions to the international community through the United Nations Crime Prevention and Criminal Justice Programme, ISPAC devoted its annual conference to the issue of converting the gist of the United Nations Convention against Corruption into a way of life. Building on the Conference of the States Parties, which concluded a day earlier, the ISPAC conference aimed at taking stock of recent advances and making a decisive step towards the implementation of the UNCAC at a global level. The ISPAC Conference was designed to explore partnerships and ways to work together to make the Convention part of daily routines, to enable it to become a source of inspiration and a compass for collective, sustained, effective and successful action against corruption. In that vein, the Conference brought together representatives of Governments, multilateral organisations, the media, civil society, academia and the private sector. The conference provided an opportunity to engage in an in-depth dialogue about how these stakeholders can work together and chart a common course for the future.

In this effort, we need to transcend the necessary and vital technical aspects or particular provisions and ensure that the spirit of the UNCAC is well understood and widely respected. We have in place a Legislative Guide, a Technical Guide near completion and reports from Working Groups on implementation, asset recovery and technical assistance. All stakeholders must be brought and stay together to reach concrete conclusions, elaborate consensus-based guidelines and recommend pragmatic approaches for a sustainable long-term effort against corruption.

The objective of this ISPAC conference and this book based on the stimulating presentations, papers and discussions was to facilitate this process and make a lasting contribution to the international community for an improved system of governance at the national and global levels.

SELECTED PAPERS AND CONTRIBUTIONS

THE UNITED NATIONS CONVENTION AGAINST CORRUPTION:
A WAY OF LIFE

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I. Early work of the United Nations against corruption

The United Nations Crime Prevention and Criminal Justice Programme¹ began exploring whether the ground was fertile for action against corruption at the international level at a time when it was deemed adventurous even to mention the word “corruption”.

True to its tradition that prevailed since its establishment almost sixty years ago and is at the root of many of its successes, the Programme approached the issue from the technical rather than the political perspective.

In December 1989, working in close cooperation with the (then) Department of Technical Cooperation for Development of the Secretariat, the Programme organized an interregional seminar, which was hosted by the Government of The Netherlands in The Hague. Following a thorough review of the impact of corruption on good governance, public administration and the judiciary, the seminar produced a set of comprehensive recommendations.

It is interesting to note that the seminar prefaced its recommendations with certain special considerations, which were cast as overarching conditions for effective action against corruption, or in other words, as essential elements of an enabling framework and environment for such action to be meaningful.

^{*} The views expressed in this article are those of the author and do not necessarily reflect the views or position of the United Nations.

¹ At the time of writing this article, the United Nations Crime Prevention and Criminal Justice Programme is implemented by the United Nations Office on Drugs and Crime.

And it is equally interesting how relevant these recommendations are still today, 18 years later.

The seminar recognized the importance of democratic institutions, a free press, the rule of law, the independence of the judiciary and the creation of a political, administrative and socio-economic environment in which public service can operate without improper interference. The recommendations of the seminar covered considerable ground, ranging from the need to embrace economic and development strategies, to the requirement of putting in place a broad range of preventive and law enforcement measures, and including the establishment of independent specialized bodies to implement (or oversee the implementation of) policies and measures against corruption. In the area of international cooperation, the seminar called for improved mutual legal assistance and extradition, as well as confiscation of illicit proceeds, and stressed the importance of technical cooperation in this sphere. The seminar also proposed the preparation of an international code of conduct for public officials and a United Nations Programme to promote compliance with that code. The seminar offered the opportunity for the Crime Prevention and Criminal Justice Programme to present a first draft of a manual on practical measures against corruption on which it had been working and receive valuable comments.

In August 1990, the Programme organized the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders. One of the resolutions that received the most support and passed unanimously was resolution 7 on action against corruption, which was inspired by the recommendations of the seminar and called for the preparation of a draft international code of conduct for public officials and the finalization and publication of the manual on practical measures against corruption.

Action against corruption featured prominently among the priorities established for the United Nations Crime Prevention and Criminal Justice Programme by the Versailles Ministerial Conference that revamped the Programme in 1991. It was also among the issues that the Commission on Crime Prevention and Criminal Justice decided to pursue when it was established in 1992. Under its guidance, the Programme developed the International Code of Conduct for Public Officials, which was adopted by the General Assembly by its resolution 51/59 of 12 December 1996. The General Assembly recommended it to Member States as a tool to guide their efforts against corruption. Further in its resolution 51/191 of 16 December 1996, the Assembly adopted the United Nations Declaration against Corruption and Bribery in International Commercial Transactions, annexed to that resolution, and requested the Economic and Social Council

and its subsidiary bodies, in particular the Commission on Crime Prevention and Criminal Justice, to examine ways, including through binding international legal instruments, to further the implementation of the Declaration, to keep the issue under regular review and to promote the effective implementation of that resolution. The Declaration is generally regarded as the precursor to the OECD Convention against bribery of foreign public officials.

II. Background to the United Nations Convention against Corruption

The new Convention can be seen as the most recent of a series of developments in which experts have recognised the far-reaching impact of corruption and the need to develop effective measures against it at both the domestic and international levels. It is now widely accepted that measures to address corruption go beyond criminal justice systems and are essential to establishing and maintaining good governance structures, domestic and regional security, the rule of law and social and economic structures which are effective and responsive in dealing with problems, and which use available resources as efficiently and with as little waste as possible.

The gradual understanding of both the scope and seriousness of the problem of corruption can be seen in the evolution of international action against it, which has progressed from general consideration and declarative statements², to the formulation of practical advice³, and then to the development of binding legal obligations and the emergence of numerous cases in which countries have sought assistance from other countries in investigating and prosecuting corruption and in tracing, freezing, confiscating and recovering proceeds of corruption offences. It has also progressed from regional instruments developed by groups of relatively

² See, for example GA/RES/51/59 and 51/191, annexes, and the discussion held at the 9th UN Congress on the Prevention of Crime and Treatment of Offenders, held in Cairo from 29 April – 8 May 1995 (A/CONF.169/16/Rev.1, paragraphs 245-261.

³ See, for example, the United Nations Manual *Practical Measures against Corruption*, ECOSOC Res.1990/23, annex, recommendation #8 and International Review of Criminal Policy, Special Issue, Nos. 41 and 42, New York 1993.

like-minded countries such as the Organisation of American States⁴, the African Union (formerly Organisation of African Unity)⁵, the OECD⁶, and the Council of Europe⁷ to the global United Nations Convention⁸.

The question of a convention against corruption was raised for the first time in connection with the negotiations for the United Nations Convention against Transnational Organized Crime⁹. The *Ad Hoc* Committee that carried out negotiations for that Convention debated whether corruption should be covered by it. The view that prevailed was that corruption was too complex and broad an issue to be covered exhaustively by a convention dealing with transnational organized crime. However, all negotiators were convinced that that Convention would not be complete without provisions on corruption, because corruption was both a criminal activity in which organized criminal groups often engaged and a method used by those groups to carry out other criminal activities. The *Ad Hoc* Committee agreed on the inclusion of limited provisions on corruption in the United Nations Convention against Transnational Organized Crime on the understanding that a separate instrument would be negotiated to cover corruption in the appropriately comprehensive manner. The Convention against Transnational Organized Crime contains an article criminalizing corruption and an article foreseeing a number of measures against this criminal activity. The article criminalizing corruption includes also a basic definition of public officials, essentially deferring to national law.

The General Assembly established an *Ad Hoc* Committee for the Negotiation of a Convention against Corruption in December 2000¹⁰. The

⁴ Inter-American Convention Against Corruption, OAS General Assembly Resolution AG/res.1398 (XXVI-0/96) of 29 March 1996, Annex.

⁵ African Union Convention on Preventing and Combatting Corruption, Maputo Mozambique, 11 July 2000, available from the AU on-line at: http://www.africa-union.org/Official_documents/Treaties_%20Conventions_%20Protocols/Treaties_Conventions_&_Protocols.htm.

⁶ *OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions*, OECD document DAF/IME/BR(97)20.

⁷ European Criminal Law Convention on Corruption, 1998, European Treaty Series #173.

⁸ For a summary of other international legal instruments dealing with corruption, see *United Nations Manual on Anti-Corruption Policy*, Chapter V, available on-line at: <http://www.unodc.org/pdf/crime/gpacpublications/manual.pdf>.

⁹ General Assembly resolution 55/25, Annex I.

¹⁰ General Assembly resolution 55/61.

Assembly also outlined a preparatory process designed to ensure the widest possible involvement of Governments through policy-making bodies. The Centre for International Crime Prevention (CICP) was asked to prepare an analysis of existing international legal instruments for the Commission on Crime Prevention and Criminal Justice, whose central theme in 2001 was the issue of corruption. The Assembly also called for the convening of an open-ended intergovernmental group of experts, which was asked to draft terms of reference for the negotiation of the new instrument, taking into account the analysis of existing legal instruments and recommendations prepared by the Secretariat and the views and comments of the Commission. The Group was asked to submit its recommendations to the General Assembly, through the Commission and the Economic and Social Council, for approval.

At the time that the General Assembly was considering resolution 55/61, Nigeria, on behalf of the Group of 77 and China¹¹, proposed to the Second Committee of the General Assembly a draft resolution on the illegal transfer of funds and the repatriation of such funds to their countries of origin. As originally proposed, the draft resolution was calling for the negotiation of a separate instrument on this subject. Through negotiations at the General Assembly, the two resolutions were brought in line and the Intergovernmental Expert Group mentioned above was asked to examine the issue of illegal transfer of funds and repatriation of such funds when considering the draft terms of reference for the negotiation of the new convention against corruption. This new mandate placed the issue of asset recovery squarely within the framework of the new convention.

The sensitive and complex nature of asset recovery became evident during the tenth session of the Commission on Crime Prevention and Criminal Justice, in 2001, when the Commission negotiated a draft resolution, which later became Economic and Social Council resolution 2001/13. While maintaining the matter as one of the key issues to be covered by the new Convention, the debate on the draft resolution produced an evolution of the terminology employed to approach the question. The new resolution spoke of transfer of funds of illicit origin, derived from acts of corruption, including the laundering of funds, and the return of such funds.

The Intergovernmental Expert Group met in Vienna from 21 to 30 July 2001 and recommended, by means of a draft resolution, terms of

¹¹ A group of mainly developing countries at the United Nations, which currently numbers 132 members.

reference for the negotiation of the new convention regarding both substance and procedure. The Commission approved the draft resolution at its resumed session in September 2001 and, following approval also by the Economic and Social Council, the General Assembly adopted it as resolution 56/260 on 31 January 2002.

In that resolution, the General Assembly decided that the *Ad Hoc* Committee established pursuant to resolution 55/61 should negotiate a broad and effective convention, which, subject to the final determination of its title, should be referred to as the “United Nations Convention against Corruption”. The General Assembly requested the *Ad Hoc* Committee, in developing the draft convention, to adopt a comprehensive and multidisciplinary approach and to consider, inter alia, the following indicative elements: definitions; scope; protection of sovereignty; preventive measures; criminalization; sanctions and remedies; confiscation and seizure; jurisdiction; liability of legal persons; protection of witnesses and victims; promoting and strengthening international cooperation; preventing and combating the transfer of funds of illicit origin derived from acts of corruption, including the laundering of funds, and returning such funds; technical assistance; collection, exchange and analysis of information; and mechanisms for monitoring implementation. The General Assembly also invited the *Ad Hoc* Committee to draw on the report of the Intergovernmental Open-Ended Expert Group, on the report of the Secretary-General on existing international legal instruments, recommendations and other documents addressing corruption, as well as on the relevant parts of the report of the Commission on Crime Prevention and Criminal Justice on its tenth session, and in particular on paragraph 1 of Economic and Social Council resolution 2002/13 as resource materials in the accomplishment of its tasks. The General Assembly requested the *Ad Hoc* Committee to take into consideration existing international legal instruments against corruption and, whenever relevant, the United Nations Convention against Transnational Organized Crime; decided that the *Ad Hoc* Committee should be convened in Vienna in 2002 and 2003, as required, and should hold no fewer than three sessions of two weeks each per year; requested the *Ad Hoc* Committee to complete its work by the end of 2003 according to a schedule to be drawn up by its bureau; and accepted with gratitude the offer of the Government of Argentina to host an informal preparatory meeting of the *Ad Hoc* Committee, prior to its first session.

The Informal Preparatory Meeting took place in Buenos Aires from 4 to 7 December 2001. In preparation for that meeting, CICP asked Governments to submit proposals they wished to make in relation with the new convention. The purpose of the Informal Preparatory Meeting was to

consolidate any proposals made by Governments, in order to pave the way for the work of the *Ad Hoc* Committee. The meeting had before it 26 proposals, submitted by countries of all regions of the world. Some of these proposals contained full texts for the convention, while others offered more general observations and comments regarding the content of the new instrument or the methodology of the negotiation process. The multitude and wealth of the proposals are evidence of the interest of countries from all regions and their willingness to be actively engaged and involved in the negotiation process. These elements augured well for the comprehensiveness and quality of the final product of the negotiation process. They also offer a guarantee of the universal nature of the new instrument, a key component of its effectiveness, acceptance and success. The Informal Preparatory Meeting consolidated all textual proposals in a single document, which the *Ad Hoc* Committee could use as the basis of its work.

III. The Negotiation Process

The *Ad Hoc* Committee began its work officially in January 2002. In seven sessions, in 2002 and 2003, the *Ad Hoc* Committee carried out three readings of the draft convention, eliminating options and refining the text as it proceeded in its effort to reach consensus and make sure that all concerns were reflected adequately. It is important to note that the *Ad Hoc* Committee was an open-ended body and consistently attended by more than 125 delegations on average.

The *Ad Hoc* Committee came very close to completing the negotiation process at its sixth session in the summer of 2003. It ran out of time at 4 a.m. on a Saturday morning, with only very few outstanding issues. It was convened in a shorter than normal seventh session, held in Vienna from 29 September to 1 October to finalize the new Convention and transmit it to the General Assembly.

The *Ad Hoc* Committee made every possible effort to comply with the mandate it received from the General Assembly and develop a broad, effective and comprehensive convention. At the core of the negotiating process from the beginning was the desire of all delegations to find an appropriate balance in the new instrument, in order to make sure that adequate and proportionate attention would be devoted to prevention, criminalization, international cooperation and asset recovery. At the end,

the *Ad Hoc* Committee managed to inject in the new instrument the appropriate equilibrium, so as to ensure that the new convention is valuable for all countries of the world and meets the collective wish to improve the ability of all States to prevent and fight corruption.

Some of the key issues that the *Ad Hoc* Committee had to tackle during the negotiations were:

- The definition of “public official”. The debate revolved around how broad this definition would be and whether the Convention would contain an “autonomous” definition or whether the definition would be left to national law.
- Whether the new Convention would include a definition of “corruption”, and if so, how broad this definition would be. For many countries it was appropriate to draw inspiration from the United Nations Convention against Transnational Organized Crime, which did not contain a definition of transnational organized crime. An equally interesting discussion related to whether agreement should be sought first on the definition of corruption or on the offences to be established. This discussion provided at an early stage a hint of the more central question of what countries wished the Convention to be and to accomplish, and related to the question of the appropriate balance, mentioned above. Criminalization would be more important to a Convention that would be intended as an international cooperation tool, while a Convention negotiated for the purpose of setting standards might not give the same weight to criminal law.
- The question of whether private sector corruption would be included in the criminalization provisions of the new Convention. Private sector corruption was understood as conduct that begins and ends within the private sector and does not involve any contact with the public sector whatsoever. For many countries the matter was very complex, creating many conceptual, legal and procedural problems, which might not lend themselves to globally acceptable solutions.
- The question of how extensive and how binding the provisions on prevention would be. The debate was related to the expected nature and intended accomplishments of the Convention, as indicated above. One issue that was settled early in the negotiations was whether there would be an annex to the Convention containing the

International Code of Conduct for Public Officials¹². The legal significance of an annex to a binding international legal instrument, such as a convention, and the consequent need to subject such an annex to negotiations of the same rigour as for the main text, led to a preliminary decision not to include an annex to the Convention but to make a reference to the General Assembly Resolution adopting the Code in the text of the Convention.

- The question of how extensive the criminalization provisions of the new Convention would be. The issue was related to a large extent to the choices various countries have made by criminalizing different types of conduct, which they view as manifestations of corruption.
- The related question of the scope of the international cooperation provisions of the new Convention.
- The very important issue of asset recovery. This was an entirely new question, never previously tackled in the context of a binding international legal instrument. It was so complex that it was even difficult to find terms that would adequately describe both the phenomenon in its full and different dimensions and the type of actions that would be required to address it.
- What type of implementation mechanism would be appropriate for the new Convention, in view of its nature as a global instrument. This was an area where the debate was influenced by a number of important concerns related to the principle of national sovereignty, but also the capacity of States, particularly developing countries and countries with economies in transition, to undertake commitments that could imply a significant investment of scarce resources.

It would be important to note that, because of the complexity of the issue of asset recovery, the Secretariat organized a one-day technical workshop during the second session of the *Ad Hoc* Committee, following a proposal to that effect by the Government of Peru. The purpose of the workshop was to provide interested participants with technical information and specialized knowledge on the complex issues involved in the question of asset recovery.

¹² General Assembly Resolution 51/59.

IV. Overview of the Convention

a. General Provisions (Chapter I, art.1-4).

The first article of the Convention states that its purposes are the promotion and strengthening of measures to prevent and combat corruption more efficiently and effectively; the promotion, facilitation and support of international cooperation and technical assistance, including in asset recovery; and the promotion of integrity, accountability and public management of public affairs and public property.

The Convention then includes an article on the use of terms. In addition to such definitions as “property”, “proceeds of crime” and “confiscation”, the most significant innovation of the new Convention are the definitions of “public official”, “foreign public official” and “official of a public international organization”.

The Convention contains a broad and comprehensive definition of “public official” that includes any person holding a legislative, executive, administrative or judicial office and any person performing a public function, including for a public agency or public enterprise, or providing a public service. The definition retains the necessary link with national law, as it would be in the context of national law that the determination of who belongs in the categories contained in the definition would be made.

During the negotiation process significant debate revolved around whether there was a need for a definition of “corruption” and, should the answer to that question be affirmative, what the content of such a definition would be. In the end, negotiators decided that attempting to define in legal terms, i.e., in terms that would stand scrutiny in a wide array of legal systems around the world and would add value to the rest of the text of the Convention was neither feasible nor desirable. Corruption could easily be allowed to stand as a word describing conduct that that was broadly understood in a progressively more consistent manner throughout the world. While the term might still be understood in a broader or narrower fashion depending on national exigencies or traditions, attempting to crystallize in a short legal text requiring high precision the core of the collective perception of the concept entailed a number of unnecessary risks. There was the risk of limiting the Convention to the current understanding, thus depriving the instrument from the dynamism necessary for it to remain relevant to national efforts and international cooperation in the future. There was also the risk of capturing in the definition only some aspects of the phenomenon, thus inhibiting broader action against corruption that countries might have already taken or might be contemplating. In deciding

not to include a definition of “corruption” in the final text. The negotiators were inspired to a large extent by the similar approach taken by the United Nations Convention against Transnational Organized Crime, which does not define “transnational organized crime” but, instead, contains a definition of “organized criminal group”.

The Chapter contains an article on the scope of application, which states that for the purposes of implementing the Convention, it will not be necessary, except as otherwise provided in the Convention, for the offences set forth in it to result in damage or harm to state property. This provision has particular importance for international cooperation and asset recovery.

Finally, the chapter contains an article on protection of sovereignty, an issue which figures prominently in the concerns of Member States, especially in view of the jurisdictional provisions that are later found in the Convention. The article was inspired and follows the formulation of a similar article in the United Nations Convention against Transnational Organized Crime.

b. Preventive Measures (Chapter II, art. 5-14)

The Convention contains a compendium of preventive measures which goes far beyond those of previous instruments in both scope and detail, reflecting the importance of prevention and the wide range of specific measures which have been identified by experts in recent years. More specifically, the Convention contains provisions on policies and practices, preventive anti-corruption bodies; specific measures for the public sector, including measures to enhance transparency in the funding of candidatures for elected public office and the funding of political parties; comprehensive measures to ensure the existence of appropriate systems of procurement, based on transparency, competition and objective criteria in decision-making; measures related to the judiciary and prosecution services; measures to prevent corruption involving the private sector; participation of society; and measures to prevent money laundering. The chapter on prevention has been structured in a way that would establish the principle of what needs to be put in place, but allow for the flexibility necessary for implementation, in recognition of the different approaches that countries can take or their individual capacities.

The provisions on preventive measures are regarded as forming an integral part of the mechanisms that the Convention is asking States to put in place. It is the one side of the coin, the other being the criminalization of a variety of manifestations of corruption. It is important to note that the prevention chapter covers all those measures that the international

community collectively considers necessary for the establishment of a comprehensive and efficient response to corruption at all levels.

c. Criminalization and Law Enforcement (Chapter III, art.15-44)

While the development of the Convention reflects the recognition that efforts to control corruption must go beyond the criminal law, criminal justice measures are still clearly a major element of the package. The Convention would oblige States Parties to establish as criminal offences bribery of national public officials; active bribery of foreign public officials; embezzlement, misappropriation or other diversion of property by a public official; money laundering; and obstruction of justice. Further, States Parties would establish the civil, administrative or criminal liability of legal persons.

In recognition of the fact that there may be other criminal offences which some countries may have already established in their domestic law, or may find their establishment useful in fighting corruption, the Convention includes a number of provisions asking States Parties to consider establishing as criminal offences such forms of conduct as trading in influence, concealment, abuse of functions, illicit enrichment, or bribery in the private sector.

The final formulation of the criminalization chapter, with the inclusion of both “mandatory” and “discretionary” offences, created a quandary for negotiators as to how to deal with international cooperation, more significantly certain principles such as dual criminality, which normally govern such forms of international cooperation as mutual legal assistance. The solution found, which is explained below under “international cooperation”, is another innovative feature of the Convention, adding significantly to its value for the international community.

Other measures found in Chapter III are similar to those of the *Convention against Transnational Organized Crime*. These include the establishment of jurisdiction to prosecute (art. 42), the seizing, freezing and confiscation of proceeds or other property (art. 31), protection of witnesses, experts and victims and cooperating persons (art. 32-33) and other matters relating to investigations and prosecutions (art. 36-41).

Elements of the provisions dealing with money-laundering and the subject of the sharing or return of corruption proceeds are significantly expanded from earlier treaties (see Chapter V), reflecting the greater importance attached to the return of corruption proceeds, particularly in so-called “grand corruption” cases, in which very large amounts of money

have been systematically looted by government insiders from State treasuries or assets and are pursued by subsequent governments.

d. International Cooperation (Chapter IV, art. 43-49)

Chapter IV contains a series of measures which deal with international cooperation in general, but it should be noted that a number of additional and more specific cooperation provisions can also be found in Chapters dealing with other subject-matters, such as asset recovery (particularly art. 54-56) and technical assistance (art. 60-62). The core material in Chapter IV deals with the same basic areas of cooperation as previous instruments, including the extradition of offenders, mutual legal assistance and less-formal forms of cooperation in the course of investigations and other law-enforcement activities.

A key issue in developing the international cooperation requirements arose with respect to the scope or range of offences to which they would apply. The broad range of corruption problems faced by many countries resulted in proposals to criminalise a wide range of conduct. This in turn confronted many countries with conduct they could not criminalise (for example, the illicit enrichment offence) and which were made optional as a result. Many delegations were willing to accept that others could not criminalise specific acts of corruption for constitutional or other fundamental reasons, but still wanted to ensure that countries which did not criminalise such conduct would be obliged to cooperate with other States which had done so. The result of this process was a compromise, in which dual criminality requirements were narrowed as much as possible within the fundamental legal requirements of the States which cannot criminalise some of the offences established by the Convention.

This is reflected in several different principles. Offenders may be extradited without dual criminality where this is permitted by the law of the requested State Party¹³. Mutual legal assistance may be refused in the absence of dual criminality, but only if the assistance requested involves some form of coercive action, such as arrest, search or seizure, and States Parties are encouraged to allow a wider scope of assistance without dual criminality where possible¹⁴. The underlying rule, applicable to all forms of cooperation, is that where dual-criminality is required, it must be based on the fact that the relevant States Parties have criminalised the conduct

¹³ Art.44, para.2.

¹⁴ Art.46, para.9.

underlying an offence, and not whether the actual offence provisions coincide.¹⁵ Various provisions dealing with civil recovery¹⁶ are formulated so as to allow one State Party to seek civil recovery in another irrespective of criminalization, and States Parties are encouraged to assist one another in civil matters in the same way as is the case for criminal matters¹⁷.

e. Asset Recovery (Chapter V, art. 51-59)

As noted above, the development of a legal basis for cooperation in the return of assets derived from or associated in some way with corruption was a major concern and a key component of the mandate of the *Ad Hoc* Committee. To assist delegations, a technical workshop featuring expert presentations on asset recovery was held in conjunction with the second session of the *Ad Hoc* Committee¹⁸, and the subject-matter was discussed extensively during the proceedings of the Committee.

Generally, countries seeking assets sought to establish presumptions which would make clear their ownership of the assets and give priority for return over other means of disposal. Countries from which return was likely to be sought, on the other hand, had concerns about the incorporation of language which might have compromised basic human rights and procedural protections associated with criminal liability and the freezing, seizure, forfeiture and return of such assets. From a practical standpoint, there were also efforts to make the process of asset recovery as straightforward as possible, provided that basic safeguards were not compromised, as well as some concerns about the potential for overlap or inconsistencies with anti-money-laundering and related provisions elsewhere in the Convention and in other instruments

The provisions of the Convention dealing with asset recovery begin with the statement that the return of assets is a “fundamental principle” of the Convention, with annotation in the *travaux préparatoires* to the effect that this does not have legal consequences for the more specific provisions dealing with recovery¹⁹. The substantive provisions then set out a series of

¹⁵ Art.43, para.2.

¹⁶ See, for example, art. 34, 35 and 53.

¹⁷ Article 43, paragraph 1 makes cooperation in criminal matters mandatory and calls upon States Parties to consider cooperation in civil and administrative matters.

¹⁸ See A/AC.261/6/Add.1 and A/AC.261/7, Annex I.

¹⁹ Art. 51 and A/58/422/Add.1, para.48

mechanisms, including both civil and criminal recovery procedures, whereby assets can be traced, frozen, seized, forfeited and returned. A further issue was the question of whether assets should be returned to requesting State Parties or directly to individual victims if these could be identified or were pursuing claims. The result was a series of provisions which favour return to the requesting State Party, depending on how closely the assets were linked to it in the first place. Thus, funds embezzled from the State are returned to it, even if subsequently laundered²⁰, and proceeds of other offences covered by the Convention are to be returned to the requesting State Party if it establishes ownership or damages recognised by the requested State Party as a basis for return²¹. In other cases assets may be returned to the requesting State Party or a prior legitimate owner, or used in some way for compensating victims²². The chapter also provides mechanisms for direct recovery in civil or other proceedings (art. 53) and a comprehensive framework for international cooperation (art. 54-55) which incorporates the more general mutual legal assistance requirements, *mutatis mutandis*. Recognizing that recovering assets once transferred and concealed is an exceedingly costly, complex, and all-too-often unsuccessful process, the chapter also incorporates elements intended to prevent illicit transfers and generate records which can be used should illicit transfers eventually have to be traced, frozen, seized and confiscated (art. 52). The identification of experts who can assist developing countries in this process is also included as a form of technical assistance (art. 60, para. 5).

f. Technical Assistance and Information Exchange (Chapter VI, art. 60-62)

The provisions for research, analysis, training, technical assistance and economic development and technical assistance are similar to those contained in the United Nations Convention against Transnational Organized Crime, modified to take account of the broader and more extensive nature of corruption and to exclude some areas of research or analysis seen as specific to organized crime. Generally, the forms of technical assistance under the Convention against Corruption will include established criminal justice elements such as investigations, punishments and the use of mutual legal assistance, but also institution-building and the

²⁰ Art.57, subpara. 3(a).

²¹ Art.57, subpara. 3 (b).

²² Art.57, subpara. 3 (c).

development of strategic anti-corruption policies²³. Also called for is work through international and regional organizations (many of whom already have established anti-corruption programmes), research efforts, and the contribution of financial resources both directly to developing countries and countries with economies in transition and to the United Nations Office on Drugs and Crime²⁴, which is expected to support pre-ratification assistance and to provide secretariat services to the *Ad Hoc* Committee and Conference of States Parties as the Convention proceeds through the ratification process and enters into force²⁵.

g. Mechanisms for Implementation (Chapter VII, art. 63-64)

The Convention contains a robust mechanism for its implementation, in the form of a Conference of the States Parties, with comprehensive terms of reference already specified in the Convention and with a secretariat that would be charged to assist it in the performance of its functions. These provisions are inspired by the United Nations Convention against Transnational Organized Crime, but go considerably beyond that instrument, both in terms of scope and detail. The Secretary General is called upon to convene the first meeting of the Conference within one year of the entry of the Convention into force²⁶, and the *Ad Hoc* Committee which produced the Convention is preserved and called upon to meet one final time to prepare draft rules of procedure for adoption by the Conference, “well before” its first meeting²⁷. The bribery of officials of public international organizations is dealt with in the Convention only on a limited basis (art.16), and the General Assembly has also called upon the Conference of States Parties to further address criminalization and related issues once it is convened²⁸.

²³ Art.60, para.1.

²⁴ Art.60, paras. 3-8.

²⁵ General Assembly resolution 58/4, paras. 8 and 9 and Convention art. 64.

²⁶ Art.63, para. 2.

²⁷ General Assembly resolution 58/4, para. 5.

²⁸ General Assembly resolution 58/4, para. 6.

V. The New Convention: a Global Framework

The *Ad Hoc* Committee commanded the attention of Governments, international organizations and the civil society throughout its work; and for good reason. Doubtless, its task was demanding: to deliver to the world a broad, comprehensive, functional and effective international instrument to fight corruption. The consistent presence and efforts of so many delegations from all regions of the world constituted tangible proof that the international community rose to the challenge. The success of the *Ad Hoc* Committee turned the page in international cooperation and the establishment of new standards by which the international community will be measuring its performance in crucial sectors. A functional and universal new instrument as the new Convention offers significant new opportunities for all countries to pursue and attain sustainable development and realize their full potential.

The General Assembly gave the *Ad Hoc* Committee clear and broad terms of reference, and asked it to complete the negotiation process in two short years. This deadline was doubly significant. Firstly, it carried an important political message; the international community was intent upon showing that it meant business. There was no room for drawn out negotiations, but the product was needed urgently. Secondly, the deadline was yet another tangible proof that significant, ground-breaking new legal instruments can be produced in the United Nations within a pre-determined and reasonable time-frame. The same goals were achieved by the previous *Ad Hoc* Committee on the negotiation of the United Nations Convention against Transnational Organized Crime and its three Protocols, and there was no reason why the positive experience could not be repeated.

From the very beginning of its existence, the *Ad Hoc* Committee added one unwritten rule to its rules of procedure. All its members demonstrated that they would be guided by a spirit of cooperation, understanding, flexibility and consideration for differing positions. That spirit was fundamental not only to the achievement of consensus, but to the safeguarding of the quality of the instrument that it was entrusted with developing. Indeed, the *Ad Hoc* Committee explored all avenues for reaching consensus, taking into account the concerns of all States, but keeping a watchful eye at all times on certain key qualities of the new Convention. The *Ad Hoc* Committee wished to make sure that the new instrument would be truly universal, functional, ratifiable and implementable. The results of its work show that its strenuous efforts were crowned with success.

The Convention has enormous significance. It proves that a destructive practice as old as history can no longer be tolerated. It manifests the realization that the world of the 21st century needs new rules to become a better place for all peoples. It demonstrates that core values, such as respect for the rule of law, probity, accountability, integrity and transparency must be safeguarded and promoted as the bedrock of development for all.

The Convention offers good reason to look at the future with optimism. It is itself an act of faith. Only a few years ago, speaking of the possibility of such an instrument, and saying it would be negotiated in such a short time, would have brought ironic smiles to the faces of most people. Yet, it is a reality and a remarkable achievement.

It became a reality because of the vision, determination and commitment that all Governments displayed throughout the negotiation process. And it is a remarkable achievement because it is innovative, balanced, strong and pragmatic. These qualities, together with its universality and functionality, make the new Convention a unique platform for effective action and an essential framework for genuine international cooperation.

Negotiating the Convention was not an easy undertaking. There were many complex issues and concerns from different quarters that the negotiators had to tackle. It was a formidable challenge to maintain the quality of the new instrument while making sure that all of these concerns were properly reflected in the final text. Very often compromise was not easy and all countries made concessions. But the result is a source of pride. This result was made possible by the flexibility, sensitivity, understanding, and above all strong political will that all countries displayed.

The Convention was adopted unanimously by the General Assembly on 31 October 2003²⁹ and opened for signature at a special high-level political conference in Mérida, Mexico from 9 to 11 December 2003. The Convention entered into force in December 2005 and at the time of writing this article it had 140 signatories and 103 Parties.

The implementation mechanism of the Convention, the Conference of the States Parties was convened for the first time in Jordan in December 2006. It will hold its second session in Indonesia from 28 January to 1 February 2008.

²⁹ General Assembly resolution 58/4.

UNCAC: A WAY OF LIFE
THE ROLE OF THE LEGISLATIVE BRANCH

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Background and Context

At the December, 2003 signing ceremony in Merida, Mexico, the Chair¹ of the Global Organization of Parliamentarians against Corruption (GOPAC) announced its support for the UN Convention against Corruption. He also noted that parliamentarians were not recognized at the event as a distinct group, but that they needed to be actively involved in its implementation. For the UNCAC to become ‘a way of life’, (using the words of the conference) parliamentarians must be engaged in its implementation, as must governments and citizens.

GOPAC – an organization of parliamentarians committed to combating corruption through strengthening the effectiveness of parliaments and parliamentarians – had little difficulty in deciding to support the UNCAC. Such parliamentarians tend to see criminalizing corrupt activity, improved prevention, and better international cooperation as necessary. They also see their direct roles in shaping legislation, allocating resources, and overseeing the administration’s use of its powers and resources as essential. What is less obvious, and what is addressed in this paper, is what they can do to be most helpful.

Since the signing ceremony, GOPAC has held a number of regional chapter meetings where the UNCAC has been on the agenda, typically including a presentation by a UNODC representative. The Africa chapter of GOPAC also has been actively pursuing the ratification of the African Union Convention against Corruption and examining the legislative

¹ The founding and current Chair of GOPAC is the Hon. JOHN WILLIAMS, Member of Parliament, Canada.

impacts of doing so. The Latin American chapter decided to consider the OAS-organized reports of country implementation of provisions of the Inter American CAC². Our Southeast Asian chapter has looked at the UNCAC as well as the ADB-OECD Asian Anti Corruption initiative. A number of other parliamentary groups also have been active in exposing parliamentarians to this UN initiative, including the IPU (Inter Parliamentary Union) at its recent meeting at the UN in New York. And earlier this week, three years after the Merida signing ceremony, at the December Conference of State Parties on the UNCAC, in Jordan, Dr Naser Al Sane, Vice Chair of GOPAC³, chaired a small side meeting of parliamentarians aimed at developing a plan as to how parliamentarians might play an effective role in its implementation⁴.

GOPAC and other parliamentary groups, accordingly, have been acquainting their parliamentary colleagues with the provisions of the UNCAC, examining its importance in combating corruption, and engaging each other in thinking about how they can better support it. By noting similarities to related regional conventions and initiatives, they have helped reinforce the view that corruption is not simply a local or regional problem, but rather one which requires both international cooperation and cooperation among sectors of society.

Such improved understanding is important for a number of reasons. It conveys the idea that corruption is not simply a failure of social values, an inevitable result of poverty, or due to an unfortunate colonial past. Moreover, the message of the UNCAC does not suggest that the solution is either simple or requiring only a short attention span. But, on the other hand, it does hold out hope that the problem can be addressed – that it is not inevitable. Extending such an understanding of corruption to parliamentarians and through them to the public, I believe, is very helpful and needs to continue.

I am emphasizing the value of improved understanding, not only because it is important, but also to help ensure that I am not interpreted as

² Although the Latin American chapter has not yet followed up on this plan, it promises to be a useful role that parliamentarians could play – encouraging the government to make improvements and alerting the public to the value of such improvements.

³ Dr. AL SANE is also the Chair of a GOPAC regional chapter, the Arab Region Parliamentarians Against Corruption (ARPAC).

⁴ A summary can be found at http://www.gopacnetwork.org/Programming/programming_UNCAC_en.htm.

criticizing what parliamentary groups are doing to be supportive. Such broader understanding is very important, but I will argue in this paper that effective implementation of the UNCAC requires parliaments to become more effective in their core roles – that is, for parliamentarians to do more. And, the global initiative to implement the Convention provides an excellent opportunity for members of GOPAC as well as other parliamentarians to do so. It also requires that parliamentarians think deeply as to how their own actions might encourage, rather than discourage, corruption. Does the legislation, for which they ultimately are responsible, provide in their country a legal and institutional framework that encourages integrity in governance? Are they undertaking their oversight role effectively in the interest of citizens? Does their own behaviour add credibility to parliament in representing citizens' interests? While I am confident that many individual parliamentarians do consider these matters deeply (and perhaps so too do certain groups of parliamentarians), there is a need to do this collectively across jurisdictions and in a way that is recognized by the other sectors of society working toward the same result.

The next section outlines GOPAC's own efforts and plans to take some such further steps. It is called the Arusha Agenda, after the host city of the GOPAC Conference which developed the resolutions mandating this agenda. The central theme of the actions outlined, in addition to thinking deeply and collectively, can be thought of as 'political leadership'. The final section looks at the kinds of incentives that parliamentarians face in exercising political leadership and improving parliamentary performance and also muses about ways these might be enhanced.

The GOPAC "Arusha Agenda"

Although GOPAC as an idea was confirmed at a conference in Ottawa, Canada in late 2002 and was formally incorporated in 2003, it still sees itself as very much an organization under development. Funding is limited and the time of parliamentarians is voluntary. However, GOPAC is uniquely focused on combating corruption by strengthening the effectiveness of parliamentarians in their traditional legislative, oversight and representation roles.

GOPAC is a global organization of individual parliamentarians and former parliamentarians. It initially focused on developing a global voice, extending membership primarily through developing its regional chapters, and building links with international organizations with complementary objectives. The seminal event for GOPAC was a global conference in

Tanzania in September, 2006, in partnership with the Parliament of Tanzania and the African regional chapter. In addition to the conventional networking and educational objectives, the conference identified 8 areas of activity for its Board and Executive to pursue. The areas included were:

- International Conventions Against Corruption
- Parliamentary oversight
- Anti-money laundering
- Transparency, access to information and media
- Codes of conduct for parliamentarians
- Parliamentary immunity
- Resource revenue transparency
- Engaging parliaments in overseeing development cooperation assistance.

We did not get the list by reviewing UNCAC provisions or anti-corruption checklists, nor were they based on a disciplined discussion of the core roles of parliamentarians. Rather, they emerged directly from issues and interests raised at a number of regional events and the views of the members of the Conference Program Committee⁵ and the Chair of GOPAC. Although a number of other specific items were raised in these discussions, the only one that was seen as equally important, but excluded for practical reasons, was fair elections. In each area a workshop was held at the conference to review the relevant issues. In addition, a resolution regarding what GOPAC should seek to do was debated and prepared for consideration by the Conference plenary. The proposed resolutions were accepted and serve as direction to the GOPAC Board of Directors.

All these areas, I believe, are linked to the implementation of the UNCAC, although one might question the inclusion of the development assistance and immunity issues. Development assistance often is seen as a source of funds for corrupt officials and the central issue of the workshop was parliamentary oversight of such funds expended through government agencies. Parliamentary immunity in some jurisdictions is similar – a license provided to parliamentarians to pursue corrupt activity with a reduced risk of legal consequences. It also can be a weapon available to a dominant executive to discipline parliamentarians seeming perhaps to

⁵ The Conference Program Committee was chaired by Dr. NASER AL SANE, and included representatives from the African, European, Latin American and south east Asian chapters.

playing their oversight role too vigorously. In addition to this direct link, where parliamentary immunity is used improperly, it has a negative effect on citizens' trust of parliamentarians as credible representatives. Without such credibility the capacity of parliament to serve as an agent of integrity in governance is considerably reduced. A number of parliamentarians also see a close link between immunity and the need for parliamentary codes of conduct that aim at strengthening the credibility of parliamentarians by helping them focus on their core roles and on avoiding improper activity, as well as making this more visible to citizens.

There likely is little need to discuss the inclusion of the other items since they are quite clearly linked to the implementation of the UNCAC, particularly as related to prevention. The experience of the GOPAC Conference does indicate that, among parliamentarians with a commitment to combating corruption, the actions that come directly to their minds tend to line up well with those needed for effective implementation.

Political Leadership⁶: a Parliamentary Anti-Corruption Workplan

While each of these areas is being assigned to a global or a Board of Directors task force and a few specific actions were included in the wording of the resolutions, what could they actually do beyond the in-depth exploration of each issue and informing their colleagues? The words that seem to best capture the anticipated additional activity are 'political leadership', 'building consensus' and 'developing a bigger coalition'.

GOPAC, although a developing organization, has developed an approach to such political leadership. It works with experts where possible and on on-going initiatives, encourages task force members to pursue related initiatives in their regions or countries, and undertakes work to build understanding and trust while developing regional champions. This has emerged from three "perspectives":

The first is an ancient Chinese adage: "Tell me and I'll forget; Show me and I'll understand; Involve me and I'll remember". Although I think it applies rather more broadly, it certainly aligns well with our experiences in dealing with parliamentarians.

⁶ Political is used in this paper in its sense of developing consensus on actions to respond to a particular problem that is broadly accepted as a problem. It is not used in the sense of promoting a particular position on an issue.

The second comes from an experienced Canadian Parliamentarian who, when asked how he decided which way to vote on certain issues, responded: “*At each session of parliament, I vote approximately 3000 times. I only seriously look at about a dozen issues over a year. So, what I do on the other occasions is take the advice of colleagues I trust*”.

The third is from evaluations of a number of AML sessions provided for parliamentarians that GOPAC has conducted together with World Bank, IMF and other experts. At these events there have been both speakers with technical expertise and parliamentarians who were knowledgeable about the related legislation and political debates. Participants certainly valued the experts and their knowledge, but *emphasized the great importance of also receiving the perspectives provided by their political colleagues*.

My interpretation of these perspectives as they apply to guiding the work of the task forces is that:

- experts and parliamentarians should work together on issues and products – in each task force, therefore, we are looking for one or more expert organizations to play a central role in each task force;
- face-to-face communication is important to develop the essential personal trust and build consensus; and
- knowledgeable parliamentary champions are required to be able to build the coalitions needed to make actual changes.

The task forces, and therefore their plans, are still being developed. However, a couple of initiatives might illustrate some of the activities being considered. The anti-money laundering task force is currently the best developed. One proposed task is to prepare a position paper on the current international anti-money laundering initiatives focused specifically on parliamentary action, and doing so together with experts from the several international organizations actively engaged in combating money laundering. They also will be looking at whether there would be value in upgrading the FATF⁷ Recommendations to an international convention. Such an activity including face-to-face meetings is aimed at developing a shared understanding and knowledgeable regional champions. Therefore, in

⁷ FATF, the Financial Action Task Force is based in Paris and works closely with the OECD. It developed 40 Recommendations (now updated and supplemented by nine Special Recommendations on Terrorist Finance) for controlling money laundering that have been adopted by OECD countries and increasingly more broadly.

addition to developing coalitions around extending the application of the FATF Recommendations to more countries, it will consider the value of a more formal international instrument.

A possible activity of the Parliamentary Immunity task force is to undertake a few implementation case studies. Parliamentary immunity is a matter that the IPU and others have studied in considerable depth. There also are detailed case studies of problems and actions needed in particular countries. Yet, on the whole, there seems to be very little improvement on such obviously undesirable parliamentary practices in several countries. With this in mind the emerging task force is looking at the feasibility of undertaking a number of 'implementation studies', perhaps initially within a single region. While a parliamentarian or a small team in each case study country would lead an initiative to change the regime, it would be supported by an expert organization and the task force. The team would also monitor activities and results to learn what works or does not work in making clearly beneficial changes in parliamentary practices.

Some thoughts on incentives for parliamentarians

There are stories of individual parliamentarians that have been physically attacked for their actions in fighting corruption. In some cases, the situation might indeed require such dedication. However, if such extreme dedication is needed, it is certainly not 'a way of life'. Personal values and interests, the views of the electorate, and the position of one's political party likely play the determining role in what parliamentarians do. However, I believe it is worth looking at whether there might be other incentives that would encourage more parliamentarians to support anti-corruption initiatives. If such changes in incentives are possible, one would expect more parliamentarians to play their legislative and oversight roles more vigorously, more actively engage citizens in governance, as well as being part of coalitions to lead specific anti-corruption initiatives.

Criminalization as outlined in the UNCAC, and effective prosecution and courts provide incentives to improved behaviour. So too would a legislated (or equivalent) oversight framework for government. Such a framework, illustrated in Annex A, would incorporate incentives for officials to pursue integrity in financial administration. Better understanding on the part of parliamentarians of the negative effects of corruption, especially if understood by voters as well, would help. Simple membership in organizations such as GOPAC may be of value, providing both personal support and a degree of protection. While there undoubtedly

are several other incentives, I suggest two that might provide additional value: *a)* membership in the “right clubs”; and *b)* documenting parliamentary performance.

Many observers have noted the incentives provided by the need to meet conditions for membership in certain organizations. The more obvious are the European Union and the World Trade Organization. Belonging to the governments that have ratified the UNCAC also seems attractive. Unfortunately, the UNCAC provisions are not directly aimed at parliaments. If such conditions could be added or a sister parliamentary convention created, it might serve as a comparable desirable “club”. There could also be less vivid variations.

The second incentive is the more formal and open measurement of parliamentary performance. There can be little doubt that the Transparency International Perceptions Index is an effective incentive. Would something similar focused on parliaments have a comparable positive effect? We all are aware of some of the ways measurement and reporting of indicators of performance can be misused, but there is now considerable experience with such weaknesses and how they can be mitigated.

My own sense of the situation is that several approaches to documenting the performance of parliaments would provide the best combination of incentive and direction. Of the many ways to measure performance, I believe there is value in including one that directly engages parliamentarians themselves in defining the indicators, the approaches to measurement and the mechanism of reporting. Perhaps it could be linked to a parliamentary code of conduct, if such a code included what parliamentarians should do, as well as what they should not do. Public credibility of any resulting reports might be weaker than independent approaches, but engaging parliamentarians directly, as we have seen in training and orientation events, would be more likely to actively engage them in thinking about their performance and how it might be measured. Such engagement, as noted in the Chinese adage in the previous section helps build understanding. It might also help develop a group of champions to build a coalition around instituting such an initiative.

GOPAC has a commitment to engage its members to track parliamentary anti-corruption measures in countries and regions where it has active chapters and members. The idea is one of developing a degree of comfort that changes are possible and indicating which changes might be the most likely to succeed. If this proves feasible, it provides a base from which to begin to make judgements about the importance of these changes.

It also is important to recognize the sometimes limited capacity of parliamentarians to respond, regardless of the incentives they face.

Although I suspect that the portion of capacity building resources development cooperation agencies direct to improving the parliamentary function is small in comparison to that allocated to the executive branch of government, it is likely that these resources do make a substantial difference. Perhaps they could be expanded.

Conclusions and Observations

If the UNCAC is to become a ‘way of life’ (sustainable effective implementation), the core legislative, oversight and representation roles of parliamentarians must be played well. In many jurisdictions, this is not now the case. And in some jurisdictions parliaments are seen more as part of the problem than as part of the solution. Accordingly, the inevitable conclusion I believe is that *making the UNCAC a way of life requires improving the effectiveness of parliaments.*

This in turn requires enhancing the capacity of individual parliamentarians. There are initiatives to educate and orient parliamentarians, but perhaps too few and perhaps not sufficiently emphasizing political leadership and coalition building. The peer support, learning and coalition building on specific initiatives beginning to be provided by GOPAC seem to be valuable additions. Building capacity of parliaments through improved access to technical experts, staff support and adjusted parliamentary procedures is needed, but *building capacity of parliamentarians should also consider improved access to peer support networks and opportunities to be actively engaged in international initiatives.*

Finally, I believe public expectations as to the democratic roles of parliamentarians need to be clarified for citizens and incentives developed to re-enforce these roles. This clearly is an area where other sectors of society must also play key roles. The two suggested approaches in the preceding section render parliamentary behaviour as related to their roles more publicly visible. But looked at from another perspective and more generally, *non-parliamentary sectors of society must provide the incentives encouraging parliamentarians to play their key roles more effectively – becoming more effective partners with other sectors of society in making the UNCAC a way of life.*

Annex a: an Anti-Corruption Legislative Framework

The following is an informal tool used by the GOPAC Secretariat to outline the areas of legislation (and equivalent authoritative rules) shaping governance. The numbers in parentheses identify UNCAC articles that relate to this framework.

<i>Criminal (and related Enforcement) Law</i>	
	Criminal law: (15 to 36)
	Police and prosecution: (11)
	Appointment of judges: judicial independence: (11)
<i>Electoral Law</i>	
	Voter access to candidate information and voting
	Multi-party options
	Fair party/candidate funding/spending
	Election management and oversight
<i>Transparency, Citizenship Rights, and Media</i>	
	Access to government information: (6, 9, 10, 13)
	Communication of citizen rights and public services
	Redress procedures
	Media independence
<i>Parliamentary Oversight Framework</i>	
	Government financial admin: consolidated budget, procurement, accounting and reporting, independent audit: (5, 6, 7, 9, 10)
	Public service: appointment, compensation, accountability: (7, 8)
	Parliamentary procedures for parliamentary oversight: (5, 6, 10)
	Parliamentary procedures for preparing budgets and granting supply
	Parliamentary procedures for enacting legislation
	Parliamentary conduct
<i>Governance Provisions in Other (Socio-Economic) Legislation</i>	
	Governance provisions in socio-economic legislation (anti-money laundering, asset recovery): (14, 31, 51-57)
	Potential for “economic rent” in socio-economic legislation
	Incentives related to the “underground economy”

UNCAC: A WAY OF LIFE
THE ROLE OF THE JUDICIARY

GHERARDO COLOMBO
Judge, Supreme Court of Italy

In a democratic system, the roles of the various institutions are distinct and multifaceted. Only the judiciary appears to have a single role. The Prosecutor has to investigate a great variety of cases, and so must, case by case, determine the most appropriate mode of carrying out his work, choosing between the many different investigative instruments at his disposal. The Member of Parliament is faced by a whole gamut of different questions and must on each occasion apply himself to a specific issue. Conversely, the Judge is solely called upon to tackle every case in the same way: he has to act with independence, impartiality and perspicacity, assessing whether the accused before him did or did not commit the offence and whether in committing it he was criminally liable for it, or whether some factor is present which should exempt him from punishment (e.g. the act was committed unintentionally, or as a result of *force majeure* or perhaps by pure accident).

Consequently, the position of the judge is central to the theme that we are debating. This, in my view, occurs because of two factors. First, the judge figures as a member of the judiciary as an institution. Second, he figures as an individual, carrying out his regular judicial duties, but at the same time being included in the definition of “public official” given by the Convention. Thus, the judge is among those officials who may betray their trust and become subject to corruption. Therefore, taking a bird’s eye view, there are three aspects of the directions laid down by the Convention for the Judiciary which merit an examination.

At the outset I underlined the fundamental importance of independence. I have had occasion to speak about, and be confronted with, the theme of independence of the judiciary, in various parts of the world. It has occurred on a fair number of occasions that I have run up against a judiciary which as a whole is no stranger to corruption. The episode sharpest in my mind occurred in a country in which, in a confidential conversation with the Attorney General, I asked “in your view what percentage of Prosecutors in this country are corrupt?” His answer was

“more or less, 90 per cent”. The independence of the Judiciary is one of the preconditions under which a system to fight corruption must operate.

The Convention does not refer directly to the independence of the Judiciary, since essentially it operates on the assumption that the Judiciary cannot be other than independent (see especially art. 11) Given that the Judiciary has to be independent, measures are taken to prevent instances of corruption, which even in an independent organ remain possible.

Another two provisions, art. 6 and art. 36, speak of independence with reference to various bodies which may include the judiciary. Article 6 speaks of an “*Independent Body*” whose role is to prevent corruption. Article 36 refers to *specialized authorities* tasked with fighting corruption through law enforcement. The Convention lays down that one of the characteristics of these bodies must be their independence. It is obvious, above all in relation to corruption (a subject with regard to which the relations existing with other authorities in the State can be particularly important) that this independence is essential in order that the Judiciary can fulfil its functions efficiently and correctly. Independence is important not only in relation to the outside world but also within the organization of the Judiciary itself. So, independence is important for each and every judge, both as an official and as a person, who has to confront crimes which unfortunately often put him in situations of extreme pressure, when, as a result of major interference which he suffers, independence cannot be guaranteed.

There exists a risk, which I have been able to notice in the course of my travels. It is the risk that the Judiciary may operate protectively, covertly to shield some among them stained with even serious offences.

I believe it is also necessary to speak for a moment of the Judge as the person who is the object of norms aimed at preventing and at the same time repressing corruption. I said previously that art. 2 included Judges among Public Officials and thus the judge is subject, just like the other people operating for and in the name of the State, to legal provisions aimed at preventing and repressing corruption.

These provisions are contained in arts. 15-20 of the Convention. I do not think it is necessary here to examine all of them, as time does not permit. However, the term “corruption” in its broadest sense, not only embraces “bribery”, receiving money for doing something, but also covers conduct consisting in “trading in influence”, the abuse of powers and unlawful enrichment.

Art. 8 provides for the introduction of codes of conduct. Personally, when I hear of codes of conduct, I sometimes wonder whether such

measures are not in fact superfluous, since the general and abstract norms of law should suffice to give sufficient information to practitioners as to what should and should not be done. Yet I am compelled to recognize that codes could assist in understanding the legal provisions which prohibit corruption and might help to understand relationships: in other words, promote a culture which regards corruption as disgraceful and damaging. The judge, therefore, is subject just as much as all other public officials to the obligation not to permit himself to be corrupted or to corrupt others.

One or two points need emphasizing, because corruption and lack of independence can sometimes be close neighbours and I believe it is not difficult to slip back from a dependency, which may even be concealed and unrecognized as a mode of avoiding problems, into manifest corruption. In this context, it is worth looking carefully at a pair of Articles in the Convention which deal with a very important area, where the risks, especially in countries lacking an established institutional tradition, could become really significant. I am referring to arts. 32 and 33, which relate to the protection of witnesses and the protection of those reporting crimes. Corruption, like any other crime, can only be demonstrated through two routes: by documents and by words, and frequently the documents need to be explained by words. It may happen that the Judiciary fail to pay sufficient attention to ensure the security and freedom of those who come forward as the vehicle for the disclosure of corruption: should this protection fail, the direct system for bringing corruption to light, and for stamping it out in all its ramifications, would be unable to function.

GOVERNANCE/ANTICORRUPTION
LEGAL ISSUES IN THE WORK OF THE IMF¹

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1. The IMF's work in the area of anticorruption and governance does not fit neatly into a single box. Instead, the IMF's contribution permeates its work in a number of fields within its mandate. This note first provides an overview of how anti-corruption and good governance fit into the mandate of the IMF. The note then turns to experiences in advising on anti-corruption regimes and highlights some challenges that arise.

Governance and anti-corruption in the mandate of the IMF

Overview

2. Historically, the IMF was not significantly involved in anti-corruption issues. In the 1990's, there began to be a recognition on the relationship of governance issues with economic growth and macro-economic stability. This connection is explicitly recognized in a Guidance Note on the Role of the Fund in Governance Issues approved by the Executive Board in 1997². The Guidance Note articulated a role for the IMF in the area of anti-corruption and governance and set out the boundaries for that role.

¹ The views expressed in this article are those of the author and should not be attributed to the International Monetary Fund, its Executive Board, or its management.

² "The Role of the IMF in Governance Issues – Guidance Note, July 2, 1997, <http://www.imf.org/external/pubs/ft/exrp/govern/govindex.htm>.

3. As was recognized in the Guidance Note³, the IMF does not have a mandate per se to fight corruption in member countries. Rather, the IMF's purposes relate to collaboration on international monetary problems, promoting exchange stability, assisting in the establishment of a multilateral system of payments for current international transactions and in the elimination of foreign exchange restrictions, assisting members in correcting balance of payments maladjustments, and facilitating the expansion and balanced growth of international trade. In designing and applying its work in the governance and anti-corruption area, the IMF and its staff must work within the scope of its mandate as defined in the Articles.

4. Within these areas of concentration there is an opportunity for the IMF to promote good governance in several important areas of governmental activity. Such areas include public resource management with a focus on fiscal transparency, financial sector soundness, tax administration, central bank safeguards, as well as anti-money laundering and measures to counter the financing of terrorism (AML/CFT). The IMF also advises on anti-corruption issues addressed in the UN Convention Against Corruption as they arise in appropriate cases. The advice on anti-corruption matters to date has been principally on the legal frameworks and institutions necessary to promote good economic governance, such as dedicated anti-corruption commissions and asset/wealth declarations.

5. Three main features characterize the IMF's work on governance in all these subjects. First, it emphasizes prevention, focusing on measures to promote transparency, foster good administrative practices and thereby limit the scope for corruption. Second, the main tools in fostering these goals are improving the legal and institutional frameworks for addressing governance and anti-corruption issues. Third, IMF advice cannot extend to investigations into the actions of targeted individuals or enforcement of particular criminal prosecutions. Such involvement would be outside the scope of the IMF's mandate and be seen as prejudicing proceedings launched by national authorities against particular individual charged with corruption-related offenses.

³ IMF Articles of Agreement, <http://www.imf.org/external/pubs/ft/aa/index.htm>.

The Role of Governance in the IMF “Instruments”

6. The 1997 Guidance Note sets out in general terms the criteria for IMF involvement as follows: “In considering whether IMF involvement in a governance issue is appropriate, the staff should be guided by an assessment of whether poor governance would have a significant current or potential impact on macroeconomic performance in the short and medium term, and on the ability of the government to credibly pursue policies aimed at external viability and sustainable growth⁴”.

7. Different standards for involvement also apply in the different instruments of IMF work: surveillance, financing, and technical assistance. These areas will be discussed in turn.

8. *Surveillance:* Surveillance is conducted under Article IV of the IMF’s Articles of Agreement, which articulates a set of obligations both for members in the conduct of specified domestic and exchange rate policies and for the IMF in its surveillance over members’ policies in these areas. An exhaustive discussion of the obligations of surveillance is beyond the scope of this note, but an extensive paper on the issue was recently published by the IMF⁵. In brief, these discussions cover a range of economic matters that include exchange rate, monetary, fiscal, financial and structural measures. The discussions are known as “Article IV consultations” and are generally held on an annual basis. The process involves a staff visit, a report prepared by staff for the IMF’s Executive Board, discussion by the Board; many of these reports along with summaries of the associated Board discussions are published, with the consent of the relevant members. Consistent with the Fund’s approach under Article IV, issues of governance and corruption may be discussed in an Article IV consultation when they are considered to be “macroeconomically relevant” for the country in question. In line with this approach, Article IV reports for 27 countries in 2005 touched on issues of corruption.

⁴ 1997 Guidance Note, op. cit. footnote 2, paragraph 9.

⁵ *Article IV of the Fund’s Articles of Agreement: An Overview of the Legal Framework* (June 28, 2006). <http://www.imf.org/external/pp/ppindex.aspx> (search for “Article IV of the Fund’s Articles of Agreement: An Overview of the Legal Framework”).

9. *Financing*: Unlike the multilateral development banks, the IMF does not provide project financing. The IMF provides financial assistance to help members address a problem in their balance of payments. Financing is usually provided in support of an economic reform program of the member designed to overcome the problems that led to the balance of payments difficulties. It is provided in an “arrangement” under which the IMF commits resources to a member and establishes conditions for the release of those resources that are drawn directly from the member’s economic reform program. Two issues arise in this context: First, to what extent the IMF can make country strategies on anti-corruption conditions for financing. Second, how the IMF ensures that its financing is not misused.

10. First, the IMF’s Guidelines on Conditionality prescribe the extent to which the IMF can make country strategies on anti-corruption a condition for financing. A criterion for establishing any condition is that it is of “critical importance for achieving the goals of the member’s program⁶”. Measures that are outside of the IMF’s core areas of responsibility may be established as conditions, but require more detailed explanation of their critical importance. Thus, structural measures related to fighting corruption may be established as conditions, if this standard is met.

11. Second, to help prevent the possible misuse of IMF resources and to minimize the possibility of misreporting by a member, the IMF has put in place a policy of “safeguards assessments” which applies to the central banks of countries receiving IMF financial assistance⁷. This policy was introduced on an experimental basis in March 2000 and adopted as a permanent policy in March 2002. The assessments are aimed at providing reasonable assurance to the IMF that the central bank’s control, accounting, reporting, and auditing systems in place to manage resources, including IMF disbursements, are adequate to ensure the integrity of operations. A key element is that central banks of member countries making use of IMF resources publish annual financial statements independently audited by

⁶ Guidelines on Conditionality, <http://www.imf.org/External/np/pdr/cond/2002/eng/guid/092302.htm>, paragraph 7(a).

⁷ IMF, *Safeguards Assessment – Review of Experience and Next Steps* (February 15, 2002). <http://www.imf.org/external/np/tre/safegrds/2002/review.htm>

auditors external to the central banks in accordance with internationally-accepted auditing standards.

12. *Technical assistance*: The IMF provides technical services to members in accordance with Article V, Section 2 (b) the Articles of Agreement, which provides in relevant part: “If requested, the Fund may decide to perform financial and technical services ... that are consistent with the purposes of the Fund.” This standard is broader than those for surveillance and use of Fund resources. Nonetheless, technical assistance is voluntary for members and is provided at their request. Providing technical assistance is also voluntary for the IMF and may be subject to practical restraints on the IMF side, such as the extent of expertise and resources. Under Article V, Section 2 (b), the Fund may provide technical assistance, if it is consistent with the purposes of the Fund.

Experience on Governance and anti-corruption advice

13. Standards and Codes: The IMF Executive Board has endorsed standards and codes in several areas as representing best practice for governments in those areas. IMF staff conducts assessments on member’s compliance with these standards and the resulting Reports on Standards and Codes (ROSCs) are often published. The IMF’s assessment of a member’s compliance with any of these standards is a form of technical assistance and, as such, is voluntary both for the member in question and the IMF.

14. At least three of these codes of good practice play an important role in promoting good governance – the codes relating to fiscal policy transparency, data dissemination, and transparency in the conduct of monetary and financial policies. In 2004, the IMF published a resource revenue transparency guide as a complement to the fiscal transparency code. The guide deals specifically with the management of revenues from oil, gas and mining, which are important in many developing countries. The transparency of a member’s accounts is especially important for countries rich in natural resources as many of these countries face acute governance challenges, since natural resource production tends to attract rent seeking and corruption. IMF staff has also been active in providing technical support to the Extractive Industries Transparency Initiative (EITI), particularly in the design of a template for reporting by governments as well as private and public companies.

15. Another important IMF-endorsed standard for the promotion of good governance takes the form of the 40+9 recommendations on anti-money laundering and combating the financing of terrorism developed by the Financial Action Task Force (FATF). The IMF's assessments of countries' compliance with this standard are based on a methodology of about 250 criteria which the IMF has developed in conjunction with the FATF. IMF staff conduct about 6-8 assessments a year. For these assessments, Fund staff coordinates with the World Bank, the FATF and FATF-like regional bodies. IMF staff also offer extensive technical assistance on implementation of AML/CFT standards, both on improving the legal framework and the practical aspects of implementation. For example, advice may involve a needs assessment, regional or country specific workshops, building the capacity of Financial Intelligence Units, and legislative drafting.

16. On matters of anti-corruption, matters such as those covered by the UN Convention Against Corruption, IMF advice focuses not only on transparency but also on the development of strong legal frameworks and institutions to prevent and fight corruption. In particular, IMF staff have advised several countries on the development of anticorruption regimes. As many countries have chosen to create a dedicated anticorruption commission or establish a regime for the declaration of wealth by public officials, IMF staff have been asked to comment on laws and regulations that address these matters. The UN Convention Against Corruption now provides an important benchmark for such advice. The legislative guide recently published by the UNODC will also provide an important element of the toolkit for future advice.

17. In the context of advising on anti-corruption regimes, IMF staff have, in particular, noted five key challenges that countries and experts face in designing these regimes:

- a) *Long term approach:* A country's effort to fight corruption is of course welcomed, but it is important to develop approaches that avoid the "quick fix" and provide long-term solutions. Anti-corruption measures must address longstanding legal and cultural issues. Even if the IMF involvement is generally short-term in nature, IMF staff attempt to coordinate with other donors that have been or will be engaged with the country on a long term basis.
- b) *One size does not fit all:* Whatever solution is adopted should meet the needs of the country in question; reliance upon experience from other countries, while helpful, always needs to be adapted as

appropriate. A government seeking to address the problems of corruption should always engage in a careful diagnostic assessment in order to design solutions tailored to the problems in that country. In the absence of such an assessment, however, Fund staff may research the analysis done by local entities, such as a bar association or chamber of commerce, or from reports of NGOs. Countries should also avoid “trendy” solutions; for example, the decision to establish a dedicated Anti-corruption Commission should be carefully considered based on the circumstances in each country.

- c) *Early drafts of legislation:* Technical assistance in the area of legislative drafting if IMF staff are involved at an early stage of the process. This is particularly the case when IMF staff are asked to review and comment on draft legislation prepared by the authorities. Once a draft law has been submitted to the Council of Ministers, for example, there may be little scope for revision.
- d) *Independence:* Where the authorities put in place legislation that establishes a dedicated Anticorruption Commission, the law should give sufficient attention to its independence. Two key areas stand out: First, executive functions of the agency need to be free from political influence, while including appropriate mechanisms for accountability. Second, the law also needs to establish budgetary independence for the Commission.
- e) *Investigation + Prevention & Education:* It is sometimes evident that countries launching an anti-corruption strategy have in mind targeting particular individuals and thus may be over-focused on the investigative function of anti-corruption agencies. Equal weight should be placed in the law on the role of anti-corruption commissions on prevention and education (which relates back to the first issue of addressing a long term approach to anti-corruption).

18. Finally, following are five key challenges relating more specifically to designing asset declaration regimes:

- a. *Define the purpose:* Drafters should be clear whether the goal of the regime is to avoid conflicts of interest or to establish a crime of unexplained wealth (“Illicit Enrichment”). The purpose of the regime impacts, for example, the level of detail needed in the reporting template. Also, if prosecution of illicit enrichment is a goal, then it needs to be formally established as an offense under the criminal laws of the country.
- b. *Promoting compliance:* The relevant law should identify sanctions for failure to report or false reporting. To help avoid a clear

opportunity for contravention, the reporting should cover assets of spouses and children.

- c. *Capacity to implement:* A balance is needed between, on the one hand, the interest in requiring a broad range of officials to disclose and, on the other hand, the administrative ability of the government to review or investigate suspicious cases. Lack of enforcement can weaken the credibility of the system. One possible approach is to implement a phased approach that extends to a broader range of officials over time as the government gains experience in monitoring the declarations.
- d. *Confidentiality:* Even in cases where there is a strong interest in protecting the confidentiality of the declarants, there may be cases where confidentiality may need to be compromised in the interests of effectiveness. In particular, it is often helpful in the pursuit of anti-corruption cases, if the declarations are made available as appropriate to investigating officials at an early stage of conducting investigations.
- e. *“Publication”:* One view is that the declarations should be made publicly available in all cases. Such availability allows oversight by NGOs and the press, which is especially helpful in countries with weak administrative capacity that hamper prompt review of the declarations. From another point of view, publication could be a longer term goal in the face of cultural restraints on of particular countries, such as security risks (e.g., high kidnapping rates) and other sensitivities.

GOVERNANCE, ANTI-CORRUPTION AND DEVELOPMENT
EFFECTIVENESS – THE ASIAN DEVELOPMENT BANK
PERSPECTIVE

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1. There has been much said and written recently about the impact of corruption on inclusive economic development. There is a risk that skeptics could view this sudden and renewed emphasis on reducing corruption as the “flavor of the month”, providing a convenient topic for conferences such as this. However, there is clear evidence that the poor suffer most from the impacts of weak governance, poorly performing institutions and are most vulnerable to the adverse impacts of corruption. It is for this reason that for over 10 years now, the development community has been focusing on strengthening institutions and reducing vulnerability to corruption as prerequisites for effective and sustainable development.

2. The purpose of this brief paper is to provide an insight into how the Asian Development Bank (ADB) views governance and anticorruption from a development perspective and how governance and anticorruption support ADB’s overarching development objective of poverty reduction. We will briefly describe ADB’s Governance and Anticorruption policies, cover ongoing discussions on how to improve the effectiveness of development assistance, describe ADB’s strengthened approach to country strategy and planning and finally, we will cover ADB’s recently approved Governance and Anticorruption Action Plan and what this could mean to our client countries.

ADB's Policy and Strategic Framework

3. In 1999, ADB adopted poverty reduction as the over arching goal. Pro-poor sustainable growth, social development and good governance are the three pillars of ADB's poverty reduction strategy. ADB's overall strategic direction is provided by the Long Term Strategic Framework¹, which reinforces these three pillars, and the second medium term strategy² which has adopted five strategic priorities: catalyzing investment, strengthening inclusiveness, promoting regional cooperation and integration, managing the environment and improving governance and preventing corruption. This strategic focus of ADB recognizes that it is the poor who suffer most from poor governance and corruption.

4. ADB's specific policy guidance is derived from our governance and anticorruption policies. In 1995, ADB became the first multilateral development bank (MDB) to formally adopt a governance policy to promote sound development management. The policy, *Governance: Sound Development Management*³, applied to all ADB operations in Asia and the Pacific. According to the executive summary of the policy, "The Bank will integrate governance dimensions into its operations. To the extent possible, Bank-supported programs and projects will be designed such that they raise governance quality in the sectors concerned." Governance is defined as, "... the manner in which power is exercised in the management of a country's economic and social resources for development." The policy further conceptualized governance as, "... the management of the development process involving both the public and private sectors. It encompasses the functioning and capability of the public sector, as well as the rules and institutions that create the framework for the conduct of both public and private business".

ADB's governance policy identifies four basic elements of good governance, namely accountability, predictability, participation and transparency.

¹ ADB. 2001. The Long-Term Strategic Framework of the Asian Development Bank (2001-2015) <http://www.adb.org/documents/Policies/LTSF/default.asp>.

² ADB. 2006. *Medium-Term Strategy II 2006–2008* <http://www.adb.org/Documents/Policies/MTS/2006/default.asp?p=policies>.

³ ADB. 1995. *Governance: Sound Development Management*. Manila.

5. In addition to specific policy and strategic guidance, ADB's sovereign document, the Charter⁴, requires that ADB operations follow sound banking principles. It specifically requires ADB to correctly assess a borrowing country's ability to meet its obligations under the terms of loan contracts and that ADB funds be used their intended purpose. In this context, corruption undermines the effectiveness of investments made in developing member countries (DMCs) by increasing nonproductive debt and undermining business confidence. These Charter issues were taken into consideration in developing the anticorruption policy.

6. The anticorruption policy⁵ was approved in July 1998 and supplemented in November 2004. ADB defines corruption as the abuse of public or private office for personal gain. The policy objectives are to support competitive markets and effective public administration to support explicit anticorruption efforts in the region and to ensure that ADB financed projects and its staff adhere to the highest ethical standards. In particular, the policy commits ADB to (i) zero tolerance for corruption in its own activities, (ii) consideration of corruption more explicitly in the formulation of country strategies and programs, (iii) strengthen procurement, (iv) update the code of conduct for ADB staff, (v) establish independent internal reporting, and (vi) adopt improved loan supervision and oversight and conduct staff training and seminars. ADB defines corruption as the abuse of public or private office for personal gain.

7. The close linkage between the Governance and Anticorruption Policies can be found in the first two objectives, good governance can be defined as effective public administration, and the second objective of the policy, namely to support explicit anticorruption efforts of our client countries, recognizes the developmental role that these efforts play in the region.

The Broader Development Agenda

8. The agenda of the international development community, at least since 2000 has been guided very much by the Millennium Development

⁴ ADB. 1966. *Agreement establishing the Asian Development Bank* (The Charter), Manila.

⁵ ADB. 1998. *Anticorruption Policy*, Manila.

Goals. On 8 September 2000, all 189 Member States of the UN adopted the UN Millennium Declaration which embodies a number of specific commitments aimed at improving the lot of humanity in the new century, these are referred to as the Millennium Development Goals (MDGs). The MDGs, are not just commitments, they are accompanied by specific targets and indicators by which performance will be measured.

9. The Millennium Declaration has set the basic ground rules for the international development agenda. MDG 8 indicates the need to develop a global partnership for development. It has been recognized that achieving the MDGs will require not only an increase in the amount of aid provided, but more importantly, more effective use of country's total financial resources. In many countries overseas development assistance represents only a small proportion of domestic resources. Ensuring that development assistance alone is well managed is less important than strengthening capacity of the country to manage its entire resource base.

10. In 2002, a meeting of international leaders concluded that development agencies would intensify efforts to adapt their business models. The initial objective of harmonization was to reduce the administrative costs associated with managing aid flows at the country level. It was recognized that capacity in developing countries was already constrained, and that donors were actually exacerbating this by having specific individual administrative requirements. The meeting in Monterrey also identified the need to monitor and deliver development results, shifting the emphasis are measuring development aid provided to measuring the extent to which the aid provided actually results in tangible improvements at the country or community level.

11. To further the work begun in Monterrey, in February 2003, a Harmonization Forum was jointly sponsored by the five multilateral development banks⁶ and the OECD Development Assistance Committee (OECD-DAC). The closing statement, the Rome Declaration on Harmonization, summarized progress and committed all participating institutions to specific activities to enhance harmonization. Key commitments included: (i) recognizing the importance of country

⁶ African Development Bank, Asian Development Bank, European Bank for Reconstruction and Development, InterAmerican Development Bank and the World Bank.

ownership; *(ii)* agreeing that donors would streamline the conditions under which assistance was being provided, to simplify business processes and harmonize documentation requirements; *(iii)* to develop and implement good practice standards and principals for aid delivery and management; *(iv)* donor agreement to rely on work undertaken by others through the concept of delegated cooperation; *(v)* agreeing that sustainable development will depend upon country capacity, and that all steps would be taken to strengthen this capacity.

12. The Second High Level Forum on Aid Effectiveness was held in Paris in 2005. This second forum focused on furthering the harmonization agenda, broadening it to recognize the need to align donor requirements around country systems. The aim of the meeting in Paris was to move the harmonization and alignment agenda from rhetoric to action. A lot of time had been spent talking about harmonization, but there was little evidence that the approaches to the provision and/or management of development assistance had changed. The Paris Declaration highlighted four key elements: ownership, alignment, harmonization and the need to manage for development results.

13. The Paris Declaration on Aid Effectiveness draws a clear link between country ownership of the development agenda and effective, sustainable development. It also commits providers of development assistance to increase reliance on country systems. For example, using country funds flow mechanisms, relying on the supreme audit institutions, using country procurement systems etc. Effective governance and sound institutions are necessary conditions for country ownership, to ensure that country systems are sufficiently robust as to provide comfort to the donor community and sufficient capacity must be developed at the country level to absorb the increased level of aid flows that will be required to achieve the MDGs.

14. Not only is good governance a key success factor for the broader harmonization and alignment agenda, but the risk of corruption poses a serious challenge to the Paris Declaration commitments. Providers of development assistance are accountable to their own financiers, be they taxpayers, parliaments and/or shareholders. As the focus on corruption escalates, so too does the fiduciary and reputational risk of the donor.

ADB's Response

15. Consistent with its international commitments, as the needs of our client countries have rapidly changed, ADB has adopted a reform agenda to enhance the development effectiveness of its operations by reforming policies, strategies, processes and programs. The objective is to make ADB more effective in delivering country development outcomes and reducing poverty in the Asia Pacific Region. The Reform Agenda, launched in June 2004, consists of 19 initiatives to deliver 5 broad outcomes related to internal changes and realignment. The five broad outcomes include: (i) improved operational policies, strategies and approaches; (ii) mainstreamed managing for development results; (iii) refined organization process and structure; (iv) reinforced knowledge management; and (v) improved human resources management and staff instructions.

16. Of the 19 initiatives under the review agenda, two are of particular relevance. The first relates to ADB's strengthened approach to country strategy and programs, and the second is the review of the implementation of the Governance and Anticorruption policies.

Strengthened Approach to Country Partnership Strategies

17. As part of the overall reform agenda, ADB has developed a strengthened approach guide to the engagement with developing member countries. This revised approach reinforces the objectives of the global development agenda, specifically it addresses requirements to demonstrate improvement in country ownership, harmonization, alignment, results and mutual accountability.

18. Key elements of this strengthened approach are to (i) create strong collaboration with development stakeholders, including government, civil society, NGOs, and the private sector; (ii) enhance ADB's responsiveness to local needs and issues; (iii) build strong relationships with other development partners and strengthen donor cooperation through joint country programming and portfolio reviews, and program-based approaches, leading in aid coordination, where possible.

19. To emphasize ADB's vision and understanding of the principal nature of its relationship with DMCs and to further strengthen country

ownership, ADB the key country planning document has been renamed the “country partnership strategy” (CPS). A CPS is prepared every 3 – 5 years; it guides the relationship between ADB and its clients. In addition to a new name, there is a committee to enhance the focus in CPS on building a partnership with our client countries to meet medium – and long – term development needs.

20. From a Governance and Anticorruption perspective, this means assessing the risk that program outcomes will be limited by poor governance, weakly performing institutions and/or vulnerability to corruption. ADB can identify and mitigate risk in a variety of ways, and ultimately, from a financial perspective. As we have sovereign guarantees on a significant portion of our portfolio, our financial risks are very manageable. The concern is whether or not our client countries can afford to invest in projects that may not have sound economic rationale or pay more for goods and services due to inefficiencies or leakage.

Second Governance and Anticorruption Action Plan

21. In 2005, ADB undertook a thorough review of ADB’s implementation of the Governance and Anticorruption Policy (the Review)⁷. The Review concluded that the policies had been implemented only partially for two main reasons: first, the wide coverage of the policies has kept ADB from responding effectively to systemic governance and corruption issues, given the competing demands for its limited resources; and, second, with its qualified success in mainstreaming the policies, ADB has not been able to mitigate the governance and corruption risks in sector work effectively.

22. The Review went on to identify critical areas for action: (i) filling the significant gaps in compliance with the Policies and relevant operations procedures and project administration instructions; (ii) building much stronger partnerships with other institutions particularly in strengthening countries’ public financial management (PFM) and procurement systems; (iii) more effective application of knowledge and country/sector

⁷ ADB. 2006. *Summary Report on Improving Governance and Fighting Corruption: Implementing the Governance and Anticorruption Policies of the Asian Development Bank*. Manila (IN.216-06, 4 August).

assessments to determine focus and priorities; and (iv) longer term flexible arrangements for institutional development to address systemic weaknesses in sector governance and corruption.

23. As a result of the review, ADB began to develop the second governance and anticorruption action plan (GACAP II) earlier in 2006. GACAP II provides focus, contains actions to strengthen project oversight and internal checks and balances. Three governance themes critical to development effectiveness and poverty reduction and relevant to a significant proportion of ADB's lending form the basis of GACAP II: (i) PFM; (ii) procurement; and (iii) combating corruption through effective preventative enforcement and investigative measures.

24. The priority governance themes will apply to: (i) national and sub-national levels of government including municipalities; and (ii) operationally relevant sectors. One of the key features of GACAP II is that it incorporates a risk based approach. The question is whether or not our work in a particular sector, in a particular country, could be adversely affected by poor governance, weakly performing institutions or vulnerability to corruption. To answer this question, and as part of our strengthened approach to country partnership strategies, ADB will conduct governance, institutional and corruption risk assessments as part of our sector analysis leading up to new country partnership strategies.

25. These risk assessments will serve multiple purposes: (i) they will help to identify the risks inherent in our forward sector programs and to identify approach risk mitigation strategies; (ii) they will help us to gain comfort with country systems, or identify issues or concerns which could limit our ability to rely on those systems; and (iii) they can help our client government counterparts to prioritize actions and investments to reduce risks over time, and to strengthen systems.

26. GACAP II will be implemented gradually, basically to allow us to work with our client countries and other development partners to develop appropriate methodologies and to learn from some initial experiences. A key element of GACAP II is to move much of our work from the project to the sector and eventually the country. So, initially, the implementation will be limited to two sectors selected in five of our new Country Partnership Strategies. In determining the sectors, country teams will meet with our client governments. The types of criteria that should be considered in selecting the sector could include: (i) ADB's forward lending program

envisaged for the sector; (ii) perceived risk level in the sector; and (iii) Government's preference. With respect to the last item, the willingness of our client government's is very important. Without a constructive relationship, the assessment will be of little value, and it may be better just to consider the sector to be high risk and to design projects/programs under that assumption.

Conclusion

27. The linkage between good governance and sustainable, equitable economic development can not be questioned. A landmark study by the World Bank, *Assessing Aid – What Works, What Doesn't and Why* (1998)⁸, demonstrated the crucial role that good governance plays in enhancing the effectiveness of aid. The study found that, where there is sound country management, an additional one per cent of GDP in aid translates into a one per cent decline in poverty and a similar decline in infant mortality – whereas in a weak policy and management, environment aid has much less impact.

28. Developed and developing countries alike have recognized that corruption not only drives up the cost of public services, but that it affects the poor disproportionately. A quick internet search will yield multiple real life examples. But perhaps the most concise assessment is found on the U4 Utstein Anti-Corruption Resource center, a web based resource center established by the Utstein Group to strengthen their partnership for international development⁹. The website provides the following ways in which corruption perpetuates and exacerbates poverty: (i) diverting resources and benefits towards the rich and away from the poor; (ii) disturbing the pattern of public spending and investment (reducing the

⁸ World Bank, Global Monitoring Report 2006: Strengthening Mutual Accountability - Aid, Trade and Governance, WB, Washington, 2006. Chapter V, Online <http://web.worldbank.org/WBSITE/EXTERNAL/EXTDEC/EXTGLOBALMONITOR/EXTGLOBALMONITOR2006/0,,menuPK:2186472~pagePK:64218926~piPK:64218953~theSitePK:2186432,00.html>

⁹ The Utstein Group consists of the United Kingdom, Norway, Sweden, The Netherlands, Germany and Canada, whose international development ministers have formed a partnership to co-ordinate development assistance policies. The Anti-Corruption Resource Centre is found at www.u4.no

resources available to governments to reduce poverty through education and social programs); (iii) imposing an additional unofficial “tax”, which the poor are least able to pay; (iv) reducing tax revenues to governments, thereby reducing public services the benefit the poor; (v) undermining social and political stability leaving the poor more insecure; (vi) reducing economic growth and thereby reducing opportunities to escape from poverty; (vii) perpetuating social exclusion and preventing the poor from acquiring the capacity to challenge inequalities of power and resources and (viii) depriving the poor of their rights and entitlements. The site goes on to state:

“Corruption contributes directly to poverty by depriving the poor of public services and benefits, by denying them political, social and legal rights and by distorting development priorities. Corruption encourages the poor to see government as predatory and oppressive rather than enabling and their sense of powerlessness and exclusion is reinforced”.

29. Improving governance, strengthening institutions and reducing vulnerability to corruption are and will continue to be challenges for achieving equitable and sustainable economic development. ADB is committed to working with our client countries, over time, to reduce vulnerability to corruption, a key to achieving our longer term goals of reducing poverty in the Asia Pacific Region.

THE BBC AND THE TRAINING OF JOURNALISTS; REPORTING ON CORRUPTION, KEEPING THE INFORMATION FLOWING INCREASING AWARENESS, SHAPING PUBLIC OPINION, LOWERING THE THRESHOLD OF TOLERANCE

SIMON DERRY
Director, Media Development, BBC
World Service Trust, UK

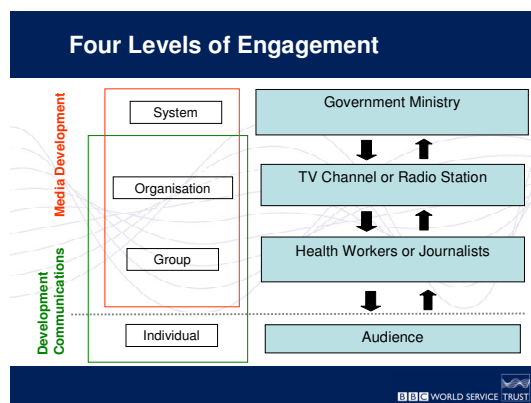
As the only broadcaster on the panel, I thought I should start this paper by showing the power of the media by sharing with you a clip from the latest James Bond movie.

Well we're not all James Bond – and even the secret services have problems with dodgy dossiers.

In our multimedia world we have to think what can really help the fight against corruption. So, in this short presentation, I do not want to just talk about training journalists – this is vitally important – but I want to talk about the kinds of media that can promote good governance and develop accountable, transparent societies.

I would therefore like to start by deconstructing the media environment – how do we as journalists and producers operate? Who are the stakeholders? Whose interest do they serve?

Slide One: Four Levels of Engagement



We at the Trust have developed the following model to analyse the markets that we are working in. Essentially, it breaks down into 4 areas: System, Organisation, Group and Individual.

But what do we mean by that? Looking at it from the left hand, the two titles Media Development and Development Communications are the two broad areas where the Trust works. In our definition, Media Development is about working with professionals to improve skills. Those professionals may be journalists and programme makers, but they may also be editors, managers, owners or government ministers and officials.

Development Communications for us concerns making effective programmes that tackle social issues and deliver appropriate messaging.

The green and red Venn diagram on the first slide shows how Media Development and Development Communications work together. To produce effective output with a social purpose, producers and journalists must be trained, but they must also work within an environment that is conducive to continuing to make high quality programming. Before we design interventions, it is crucially important for us to understand this environment.

This is why we look at our work on the four following levels:

Firstly, the System Level – with Government ministries – regulation and media environment – the legal framework for the practice of journalism in a given country.

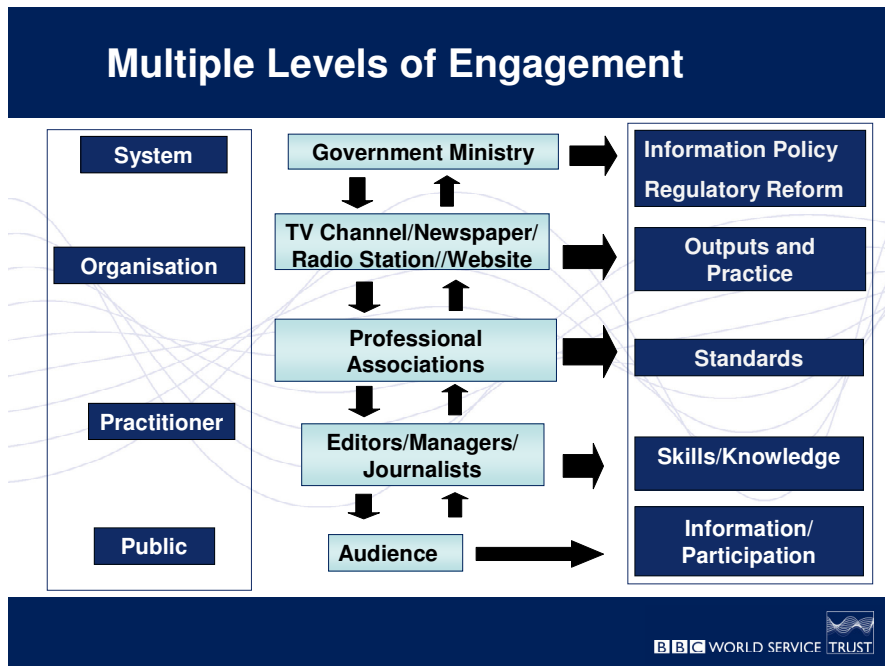
Secondly, the Organisation Level – The Institution Level – Media Houses, many of which are now multiplatform that run websites, have portals, run magazines, newspapers, TV and radio – even billboard advertising.

Thirdly, the Group Level – journalists and programme makers but also people whom we need to interact with in order to make programmes. The slide mentions health workers, but that could include debt management officers, the World Bank or other relevant interlocutors.

Fourthly, the individual level – how our activity affects the individual, or the audience, or if you like the citizens, and how it can empower them to make informed choices about their lives.

I think we would all agree this is what we are trying to achieve while making programmes, writing articles which expose corruption that people want to read, listen to and watch. But in order to allow people to do that, we need to understand where we should act.

Slide Two: Multiple Levels of Engagement



So, the second iteration of the model shows all the interconnections that we must deal with when designing effective interventions.

Our work on governance shows that training journalists can only be fully effective, if the other levels of the model have bought into a more transparent society.

So, at the policy level, some of the key questions are: is there a debt management office? How accountable is the government already? What do the international financial and other organisations think about the country – how is it ranked by Transparency International or other yardsticks?

At the organisational level – what kinds of media are operating in the society? Is there already a pluralist body of media that is underdeveloped or is there still a government controlled media scene?

If there are reasonably pluralistic media, what is their output? Who are they owned by? Are they already making information programming or are they just playing music?

At the practitioner level – are journalists being paid? How are they organized? What news meetings do they have? How do they cover stories at the moment?

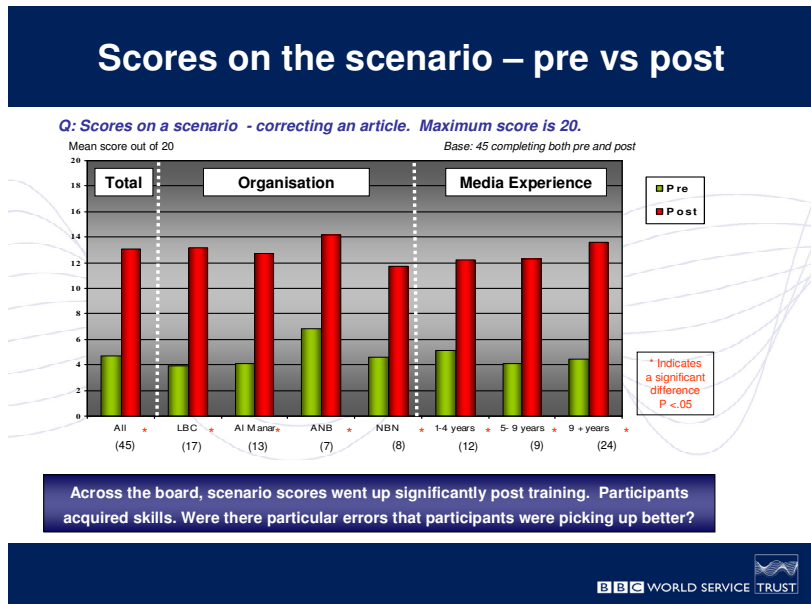
These are our first questions, when we are embarking upon designing new projects in any field of journalism and media. We are really asking how sustainable is the action that we are about to undertake?

When we are asked to deliver a course to train journalists about reporting corruption or financial affairs we are mainly asked to work at the practitioner level. Without doubt the main problem in this area is not lack of specialist skills (financial, health or social affairs reporting). Rather, it is the lack of basic, evidence-based reporting skills defining news stories from gossip and tittle tattle.

For instance, one of the first things we do in a training environment is to run a series of scenario exercises with young journalists. One example would be where a news flash comes up saying that a plane has crashed.

Most of the time all the journalists take the copy and rewrite it and then publish or broadcast the story without first thinking if the provenance or source of the story is reliable. It is only when we point out that it could be a prankster or a politically motivated individual feeding information that they understand the point.

Slide Three: Scores on the Scenario

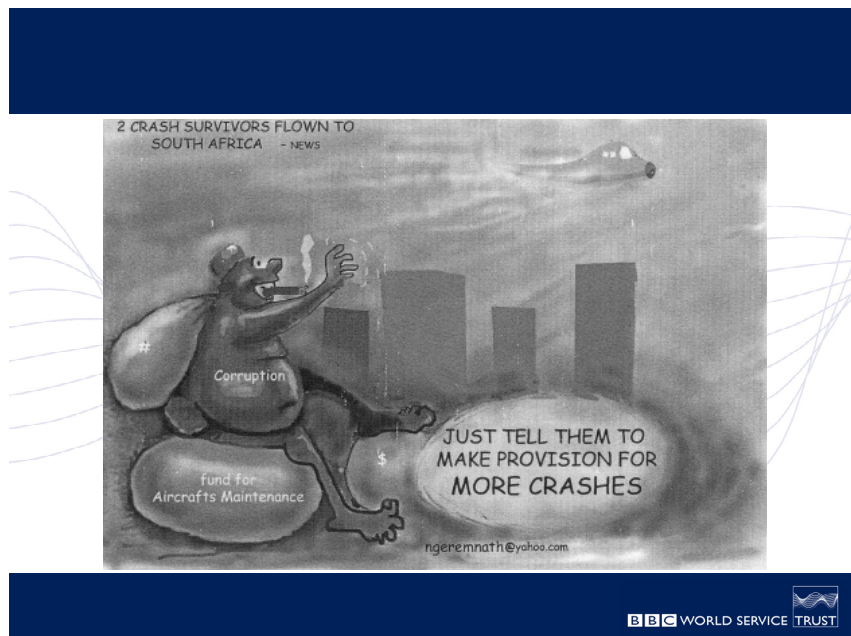


Slide three is from just such an exercise that we conducted with journalists in Lebanon. Here we ask journalists to spot the numbers of errors in a story. You can see from this slide that the green represents comprehension before training and the red afterwards. Results improve dramatically after training. You will also see at the organisational level – another interesting point for those among us who are approaching middle age – that far from being ready for the knackers yard – old dogs can learn new tricks – the final column shows that age was not a limit to comprehension!

The results are so positive, because many journalists we work with have not been trained and do not know how to research stories properly and to gain information from various sources in order to authenticate what they hear and see.

For this training to be successful though, the practitioners have to understand the need to serve the audience; the staff and management have to understand that is the contract that they have to deliver on. It is the same contract for commercial broadcasters too – although they are bound by the market and advertising revenue, ultimately it is the public that they serve also.

Slide 4: Cartoon



Slide four is from our Budget Monitoring project in Nigeria. As mentioned earlier, the problem of the lack of skills, is a fundamental factor when we are designing interventions. The next question, however, is how effective is training anyway?

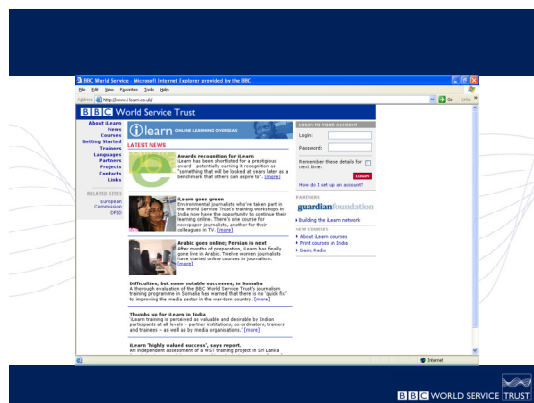
Do you remember the last training course that you went on? How relevant was it to your job? Did you learn a lot from it? Was it followed up by the trainer afterwards or by a questionnaire within six weeks of carrying out the training? Does your organisation now consider itself to be a Thought Leader and a World Leader in Knowledge Management? Is your organisation now moving over to web based modules which you have to do on your own not in a classroom environment?

United Kingdom statistics show that at a traditional face to face training course where you have a group of motivated trainees with an excellent trainer – the majority of the participants will be able to remember 60% of what they were taught within a six week time span. Of course, this tails off after six weeks.

That is in a good learning environment where the trainees go back into what I would call a reinforcing environment. That is, an environment where their new skills are appreciated and their bosses do not feel threatened by the new knowledge that their staff have acquired.

In many of the places that we are asked to work, this is not the case. Institutional and management development is *weak* and organisations need to be supported to help improve their output. This has meant that we need to go back to the drawing board, when we are looking at devising new projects.

Slide 5: I-Learn Slide



This is where we have developed a low tech e-solution called i-learn. Slide five shows the front page. It is web based, but in countries with poor information technology infrastructure, it can be used from CD in a PC. Where PCs are a problem, we have even used it as a print out distributed to participants.

It is an easy to use simple system designed by our journalist trainers to provide good, solid editorial training to journalists and their managers. We have teamed up with the Manchester Guardian's Foundation to do print modules and we currently have courses on everything from basic journalism skills for radio, TV and online to specialist courses on budget monitoring and conflict reporting.

The great feature of i-learn through our mentoring system is that you can work with journalists and managers over time. In fact, I have been calling it the modern correspondence course. So, you can tackle this problem of skills drop off by getting willing participants to continue updating their skills over years.

So, training has to be targeted properly and ideally it should be done overtime. And as stated earlier, it is also about formats: how can you best tackle a subject in a given environment. In Bangladesh, we have been working with local journalists to produce lively discussion programmes which bring politicians to account. We also produced a short film for the World Bank Congress in Rome.

Discussion programmes always engender lively debate, and if you can train producers to be ruthless in chasing down the right experts and politicians to participate, then you can get an excellent level of debate, which can heighten public awareness.

When we were designing our Budget Monitoring project in Nigeria (which was funded by the European Union and the Department for International Development), we wanted to know what the audience already knew or, in many cases, what it did not know. I don't want to get into known unknowns or unknown knowns, but we needed to find out exactly how financial stories are presented at the moment. Does the individual in the street understand how the government spends its money? The answer unfortunately is NO! So what medium resonates with people.

Slide 6: Nigerian Cartoon



The cartoon in slides four and six came from this project. We are currently holding a competition for cartoonists, giving a prize to the best financial cartoons that highlight an issue of the day. We have trained them to think about financial issues and try to get the issues across to their readers, in a way that has not been done before.

Cartoons are just one example of a medium that came out of our research in many countries that people, the audience enjoy pictures and can learn from them, particularly where literacy is a problem. Often quirky, irreverent and iconoclastic cartoons can put across in pictures what a thousand words can sometimes not express (if you have read some of the Nigerian newspapers I have, then it is nearer 10,000 words!).

Conclusion

So to sum up, the training of journalists on corruption issues in society can only be successful, if you look at the context of that society.

This is obvious, you may assume, but it is amazing how many times that fact is forgotten.

Secondly, journalists need to be supported over time and they must go back into a reinforcing environment, so their managers and the owners of their papers, radio or TV stations need to be committed to providing informative and educative programmes to their audiences.

Thirdly, you need to do audience research to work out what citizens know and what they don't, how they rate the programmes or publications that are put out. The interventions that are run must be rigorously monitored and evaluated, so you can assess how well trainees have learnt and how much they are able to put what they learnt into practice.

CONNECTING LOCAL WITH GLOBAL MEDIA ACTION AGAINST CORRUPTION

NATHANIEL HELLER
*Co-founder, Managing Director,
Global Integrity*

This paper seeks to describe the work of Global Integrity in qualitatively and quantitatively assessing anti-corruption architectures around the world and highlight trends in the media's role in fighting corruption that emerged from a recent round of fieldwork in 43 countries.

Introduction

Global Integrity is a Washington, D.C.-based international nonprofit organization dedicated to the comprehensive and timely research and reporting of governance and corruption trends around the world. Global Integrity was created recognizing the international community's need for a trustworthy source of unbiased information on corruption and governance produced by an entity without partisan, ideological, or financial interests or agendas and based on a robust methodology accepted by the governance, development, and business communities as a reliable tool for quantitatively and qualitatively gauging government accountability and openness. Global Integrity produces the Global Integrity Index, a balanced assessment of diverse countries with more than 290 indicators of openness, governance, and anti-corruption mechanisms. Global Integrity hopes to provide global citizens, including the public, the private sector, non-governmental organizations and governments, with an innovative set of accessible information tools to understand and analyze governance trends in a globalized world.

In September 2005 Global Integrity (www.globalintegrity.org) spun off as a separate international NGO from the Center for Public Integrity (another Washington-based NGO where Global Integrity was housed as project since 1999). Just over a year old as an organization, the idea behind Global Integrity – to apply a unique assessment methodology, using in-

country virtual teams of investigative journalists and social scientists around the world, to capture the strengths and weaknesses of national public integrity systems – has been around for several years. In December 2001 we completed a three-country pilot study of our methodology¹; in April 2004 we rolled out a 700,000 word online report of 25 diverse countries²; and in January 2007 we published the 2006 Global Integrity Index and country reports from 43 nations around the world³. For a full description of the methodology see the January 2006 edition of the *Journal of Democracy*⁴.

Our mission

Global Integrity’s mission, which informs our approach on a day-to-day basis, is to provide information on governance and corruption for global citizens:

“Global Integrity generates, synthesizes, and disseminates credible, comprehensive and timely information on governance and corruption around the world. As an independent information provider employing on-the-ground expertise, we produce original reporting and quantitative analysis in the global public interest regarding accountable and democratic governance. Our information is meant to serve simultaneously as a roadmap for engaged citizens, a reform checklist for policymakers, and a guide to the business climate for investors”.

¹ 2002: Italy, Indonesia, South Africa.

² 2004: Argentina, Australia, Brazil, Germany, Ghana, Guatemala, India, Indonesia, Italy, Japan, Kenya, Mexico, Namibia, Nicaragua, Nigeria, Panama, the Philippines, Portugal, Russia, South Africa, Turkey, Ukraine, USA, Venezuela, and Zimbabwe.

³ 2006: Argentina, Armenia, Azerbaijan, *Benin*, Brazil, Bulgaria, Cambodia, *Democratic Republic of Congo*, Egypt, *Ethiopia*, Georgia, Ghana, Guatemala, India, Indonesia, Israel, Kenya, Kyrgyz Republic, Lebanon, Liberia, Mexico, Montenegro, *Mozambique*, Nepal, Nicaragua, Nigeria, Pakistan, the Philippines, Romania, Russia, *Senegal*, Serbia, *Sierra Leone*, South Africa, *Sudan*, Tajikistan, *Tanzania*, *Uganda*, USA, Viet Nam, the West Bank, Yemen, and Zimbabwe.

⁴ CAMERER, M, “Measuring Public Integrity.” *Journal of Democracy* Volume 1, No 17 (2006): 153–165.

Essentially, we are motivated by the desire to improve, enhance and influence both the transparency around and quality of information about corruption and governance trends that goes into decisions that affect people's lives.

Actors such as the World Bank, the Millennium Challenge Corporation, US Agency for International Development (USAID), private investors who want to know where to invest, and grassroots advocacy groups all need credible information to inform their work and, in the case of citizens, to actively hold their governments accountable.

1. The Global Integrity approach to assessing integrity and anti-corruption

Sustainable Integrity = Credible Information + Functioning Systems + Engaged Citizens

The Global Integrity approach does not attempt to measure or assess corruption. Rather we focus on generating credible information that objectively assesses the existence and effective functioning of systems and institutions in a particular country that can play a role in preventing abuses of power (corruption). We also assess the extent to which citizens can access those mechanisms in order to hold their governments accountable.

Global Integrity's approach is thus to quantitatively assess the *opposite* of corruption, that is, the access that citizens and businesses have to a country's government and public integrity institutions, their ability to monitor a government's behavior, and their ability to seek redress and advocate for better governance.

Based on "integrity" incentives rather than a shaming "corruption" approach, the Integrity Indicators attempt, as objectively as possible (supported by a transparent scoring mechanism, references, and reader review comments) to assess the existence and effectiveness of the systems and institutions that promote public integrity. The resultant data and reporting provides a roadmap for reform and identifies strengths and weaknesses in a system that helps to prioritize governance challenges where financial and political capital are scarce.

Issues of corruption and governance are complex. Undoubtedly a universal problem, context matters. Understanding the political culture and context within which national integrity systems and institutions in a society develop requires multiple sources of data, both qualitative and quantitative. By using truth tellers and knowledge workers, journalists and social

scientists, to both report on and research the various dimensions of these issues, we believe we are accomplishing this goal.

2. How Global Integrity's findings have been used

Global Integrity's mission and purpose were developed in response to the user community, namely the need for credible, comprehensive and timely data and information on governance and corruption trends around the world. We wanted to move beyond single country scores which, while very effective for naming and shaming, are simply not actionable for decision makers.

From the development aid community to policy analysts, practitioners, programmers, and political risk consultants, we have heard that all these actors are using our data and reporting. From the investment community we have reports that our data and reporting is being used for client vetting and country risk analysis.

The World Bank

According to a lead economist in the public sector group, the Global Integrity data and reporting are being used for two purposes:

1. As part of the Country Policy and Institutional Assessments (CPIA). These are internal World Bank staff assessments done on an annual basis of countries across several dimensions (16 indicators, including those on economic management, structural policies, policies for social inclusion and public sector management). CPIA ratings influence International Development Association (IDA) allocations. 75% of the countries making up the 2006 Global Integrity Report are IDA countries.
2. For programming purposes, as part of the actionable indicators specified in the Bank's new anti-corruption strategy. The World Bank in its recent *Global Monitoring Report* refers to our methodology as, "an example of 'good practice' methodology for governance indicators ... because each measure is specifically defined, it provides 'actionable' information for governance reform.

The specific [Global Integrity] indicators cover the range of the checks and balances constellation...⁵.

Millennium Challenge Corporation

The Millennium Challenge Corporation is also excited about our data and reporting in terms of informing their work in seeking to reward reforming governments with large aid packages.

The 2004 Global Integrity reports are being used extensively by the MCC. They are seen as, “a fantastic diagnostic tool”, one that “yields comparable diagnostics across countries that translate into specific policy decisions.” In particular, with regard to the MCC’s threshold program, Global Integrity data and assessments are included as part of senior MCC executives’ briefing books on negotiating trips. Global Integrity data was used to design Ukraine’s threshold program focused on reforming conflicts of interest regulations and enforcement.

The Global Integrity approach to quantifying integrity is thus:

- Accessible – our indicators are comprehensible and actionable, using information that is relatively easy to obtain, whether it be the existence of a law, the extent to which it is implemented or enforced, and other data that supports the score.
- Timely and Cost-effective – using smart technology and the internet to interact with our virtual network of independent social scientists and investigative journalists, it takes approximately 3 – 6 months to produce a country report (10-12 weeks of on-the-ground research (raw data gathering + peer review) followed by several weeks of preparation at GI HQ).
- Repeatable – 15 of the 25 original countries are being repeated in 2006 with the aim to expand the country sample significantly as resources become available. This may mean not doing every country each year, but having a rolling bi-annual sample that continues to expand country coverage.
- Innovative – With this year’s development of a “codebook” to accompany the indicators and anchor the scoring, and our continued commitment as a learning organization, it seems there is little doubt

⁵ Global Monitoring Report 2006: Millennium development goals: strengthening mutual accountability, aid, trade and governance.

that what we do is unique and adds value to existing governance approaches.

3. *Observations on the Role of Media in Combating Corruption*

For 2006, Global Integrity assessed 43 diverse countries on close to 300 separate indicators of anti-corruption effectiveness and good governance mechanisms. The role of the media in curbing corruption is central to our philosophy and thus constitutes an important portion of our Integrity Indicators. For 2006, we “asked” the following questions relating to the media of every country covered:

- I-2** **Media**
- 5** Are media and free speech protected?
 - 5a** In law, freedom of the media is guaranteed.
 - 5b** In law, freedom of speech is guaranteed.
- 6** Are citizens able to form media entities?
 - 6a** In practice, the government does not create barriers to form a media entity.
 - 6b** In law, where a media license is necessary, there is an appeal mechanism if a license is denied or revoked.
 - 6c** In practice, where necessary, citizens can obtain a media license within a reasonable time period.
 - 6d** In practice, where necessary, citizens can obtain a media license at a reasonable cost.
- 7** Are the media able to report on corruption?
 - 7a** In law, it is legal to report accurate news even if it damages the reputation of a public figure.
 - 7b** In practice, the government or media owners/distribution groups do not encourage self-censorship of corruption-related stories.
 - 7c** In practice, there is no prior government restraint on publishing corruption-related stories.
- 8** Are the media credible sources of information?
 - 8a** In law, media companies are required to disclose their ownership.
 - 8b** In practice, journalists and editors adhere to strict, professional practices in their reporting.
 - 8c** In practice, during the most recent election, political parties or independent candidates received fair media coverage.
 - 8d** In practice, political parties and candidates have equitable access to state-owned media outlets.

- 9** Are journalists safe when investigating corruption?
- 9a** In practice, in the past year, no journalists investigating corruption have been imprisoned.
- 9b** In practice, in the past year, no journalists investigating corruption have been physically harmed.
- 9c** In practice, in the past year, no journalists investigating corruption have been killed.

Again, these media-specific indicators represent a smaller portion of the almost 300 indicators scored for every country. For every indicator, we also provide scoring criteria for our lead researcher in each country in the form of a codebook that serves to anchor the indicator assessments. In essence, the scoring criteria tell the lead researcher, “If you see X on the ground, score this indicator in the following way.” The purpose of the scoring criteria, or “coding,” is to minimize the potential for personal and cultural biases skewing the data in one direction or another. “In law” indicators are scored either YES (100) or NO (0) while in practice indicators are scored on the same 0 to 100 scale but with ordinal steps at 25, 50, and 75 in addition to 0 and 100. After the lead researcher in each country completes the initial scoring of all of the indicators, a team of additional country “readers” (a mix of other in-country experts and out-of-country experts) blindly reviews the data, providing third-party perspective and criticism that provide an extra check and balance on the fieldwork and inform final scoring adjustments before publication.

Below are some key insights relating to the role of media in fighting corruption that emerged from the 2006 fieldwork:

- *Media ownership structures remain a serious and growing threat to the media’s ability to serve as an effective check against corruption.* In many countries, both rich and poor, the increasing prevalence of media owners with overt political ties and affiliations is leading to increased rates of self-censorship and skewed coverage in newsrooms. These are problems shared by media in diverse countries including Romania, Bulgaria, and Russia.
- *The “corporatization” of media, combined with downsized newsrooms, is an equally dangerous threat to the media’s ability to defend the public interest.* Profit pressures resulting from media companies being bought by publicly traded companies is forcing an increasing number of layoffs and stretching news staffs too thin in many countries. Coupled with low salaries for reporters in the

developing world and many media outlets' reliance on government advertising, the trend is a toxic mix that is getting worse, not better.

- *The issue of political financing remains fertile ground for reporters and editors wanting to emphasize issues of corruption in their news coverage.* According to Global Integrity's new round of data, problems associated with political financing are the #1 contributing factor to poor anti-corruption architectures around the world. The paper trail left by political financing records and disclosures, however incomplete, can offer a way for media to galvanize public opinion in the fight against corruption.

Another key insight that emerged from the 2006 fieldwork was the seemingly paradoxical relationship between a free and independent media and perceptions of corruption in a country. Many analysts tend to view a free media as a "good governance" indicator (a sentiment this author shares) that should necessarily translate to "lower" levels of corruption, as measured by public perceptions of the problem.

In practice, however, the 2006 Global Integrity data revealed several instances where more open and independent media environments (as assessed through Global Integrity's Integrity Indicators described above) correlated to lower perceptions of corruption in other international perception surveys. The converse also held true; countries with closed and repressive media environments were scored closer to the global median in third-party international perception surveys. Senegal is a good example of this phenomenon: a country that ranks near the median in most perception surveys of corruption but was assessed as "Very Weak" in Global Integrity's 2006 data for civil society, media, and access to information freedoms.

Can we explain this ostensible paradox?

One compelling explanation is that a more open and free media environment worsens perceptions of corruption because journalists and media outlets have the political freedom and space to actually report on scandals. Free from the threats of government intimidation, libel lawsuits, and coercive media ownership, journalists can go about doing their jobs more effectively as public watchdogs. More corruption-related scandals on the front pages of newspaper and on the evening news thus translate into a perception that corruption is "getting worse". In reality, true levels of corruption per se may not have changed at all, but the public perception of

corruption is heightened, leading to a drop in polling data. This is an important lesson for understanding the limitations of perception surveys when it comes to corruption and governance.

The observations above, however anecdotal, are based on a uniform methodology applied in countries as diverse as Argentina and Zimbabwe, Yemen and Vietnam. They also suggest a path forward for the United Nations in bolstering the role of media in fighting corruption. The international community and the United Nations must recognize the dangers that “politicized media ownership” pose and begin a serious debate as to what steps can be taken to control the phenomenon. While surely issues of national sovereignty come into play, simply ignoring this dangerous trend is not a sustainable course. Citizens need information that they can trust. The media is the main source of such information and needs to be protected from overt political influence. Several options come to mind as worthy of debate:

- Greater national disclosure requirements and auditing of media ownership structures.
- An agreed Code of Conduct for large media interests that “manage,” through full disclosure, overt political affiliations of media outlets.
- The establishment of a multinational funding mechanism to support independent media outlets, particularly in the developing world, to wean them off of government advertising in exchange for rigorous auditing and disclosure requirements.

THE IMPACT OF UNCAC ON GOVERNANCE: OPPORTUNITIES AND RISKS

NIKOS PASSAS
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Introduction

The significance of the United Nations Convention against Corruption (UNCAC) cannot be over-stated. So far, there are 140 signatories, while 103 countries have ratified it at a record-setting pace. The entry into force of the UNCAC in December 2005 presents the international community with opportunities for major positive changes not only with respect to the fight against corruption and related crimes, but much more broadly for criminal justice, security and development. In essence, the UNCAC offers some general principles and concrete steps through which national and global governance can be greatly enhanced. The full and effective implementation of this consensus document has the potential to boost the legitimacy of international legal systems and norms.

This new global standard describes corruption related acts in detail and represents an opportunity and risk at the same time. There is a great opportunity for the international community to take stock of the progress that has been made so far and to further improve public and private sector governance, transparency and accountability, prevention and law enforcement, international cooperation and truly restorative justice for individual, corporate and state victims. The UNCAC provisions relate to so many facets of society that many countries may have to introduce wide-ranging reforms conducive not only to good governance, but also to higher respect for the rule of law and justice, security, economic development and legitimacy.

Efforts to combat serious transnational misconduct have intensified in recent years particularly with respect to terrorism, money laundering, human trafficking and smuggling of all sorts (e.g. see the United Nations Convention against Transnational Organized Crime and the Protocols thereto, and the 13 universal conventions against terrorism).

Effectively dealing with one type of crime has often positive effects on the prevention and law enforcement against others crimes. One strategic arena to fight crime is anti-corruption. Justice, accountability and legitimacy suffer when governance is weak or corrupt. At the same time, corruption torpedoes public policies instrumental to crime reduction, such as those aimed at economic growth, employment, public health, political stability and conflict resolution or de-escalation. The fight against corruption is also vital to democratization and the materialization of the Millennium Development Goals to which the international community has expressed strong commitment. Even the most sophisticated institutional or legal arrangements and controls can be evaded and undermined by official blind eyes or acts of obstruction. Corruption directly and indirectly affects the sources fuelling transnational crime. For this reason, the UN Convention against Transnational Organized Crime (UNTOC) requires that States take effective action for the prevention, detection and punishment of corruption by public officials, including adequate independence in order to avoid undue influences (see UNTOC art. 9. para. 2).

The UNCAC builds on the UNTOC and moves far beyond it. The UNCAC is quite comprehensive and draws on the lessons learned from earlier experiences. It is a complex convention and covers numerous areas of private and public life. Its provisions cover extensively the areas of prevention, criminalization, law enforcement, the involvement of civil society and the private sector, transparency and accountability of public institutions and officials, domestic coordination of anti-corruption efforts, international cooperation and, quite importantly, the return of assets to victims of corruption.

For many countries, the implementation of the UNCAC involves major undertakings, including legislative action, institution building, and organizational changes. The task is often Herculean. For this global effort to succeed in the long term, joint and coordinated action by all stakeholders is not just essential, it is a *conditio sine qua non*.

This paper seeks to place the global project against corruption in a broad context, to outline some opportunities and challenges produced by the UNCAC, to describe some risks we need to be aware of, and to offer some concrete projects that could be undertaken with the assistance and contribution of academia.

The Context and Opportunity

The UNCAC contains three types of provisions. *Mandatory* provisions must be implemented by all States Parties – 39 articles of the UNCAC contain mandatory provisions. The second type is provisions that each State *must consider* seriously and implement, if they are consistent with its fundamental legal principles. Finally, there are many *optional* measures the Parties may wish to consider, as these constitute good practices which facilitate international cooperation and ultimately asset recovery.

Given the urgency to comply with many other crime-related international standards, (especially less developed) countries are overwhelmed by what I have called a *regulatory tsunami* (Passas, 2006), even if they only focus on mandatory provisions. In addition to this complex Convention, countries have to implement the UNTOC, thirteen Terrorism Conventions and several other international instruments and standards, regional and international Conventions.

Besides terrorism, transnational crime and money laundering, countries are also parties to other anti-corruption conventions with partially overlapping requirements (e.g., Inter-American Convention against Corruption, African Union Convention on Preventing and Combating Corruption, the Convention on the Fight against Corruption Involving Officials of the European Communities or Officials of Member States of the European Union, the Council of Europe Criminal Law and Civil Law Conventions on Corruption, the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions).

In addition, there are assessment and monitoring exercises by numerous organizations, which have occasionally led to ‘monitoring fatigue’. Unfortunately, the diverse nature and substantive focus of each instrument, as well as a generally fragmented approach, make coordination quite challenging (UNODC, 2005). As governments receive reassurances that monitoring and measuring exercises are not merely to point out non-compliance with these instruments but seek to encourage the development of effective anticorruption policies and institutions, they may end up receiving mixed messages on what they need to do to avoid embarrassment or pressures. This begs the question of whether this situation is conducive

to better anti-corruption programs or to *ad hoc*, disjointed and half-hearted responses amounting to paper compliance¹.

Paradoxical as it may appear at first sight, the addition of UNCAC to the to-do list makes things easier, as it facilitates the parallel implementation of multiple international instruments. Many synergies and efficiencies could be achieved through a well planned and coordinated effort, which would reduce the costs to each country, while substantially improving overall national and global governance.

Governance is broadly understood as the process of making and implementing decisions. It may be defined as a set of values, policies, processes and institutions through which a social group manages its economic, political and social affairs including interactions between the state, civil society and the private sector.

“Good governance”, on the other hand, contains the following characteristics: participation, transparency, effectiveness and efficiency, responsiveness, accountability, consensus, equity and inclusiveness, and the rule of law². As has been pointed out, aspects of all of these elements are covered by numerous provisions of the UNCAC (Passas, 2007).

In a sense, the project “UNCAC as a way of life” does not equal merely a technical and mechanistic implementation of convention provisions. Rather, this project means practical respect for the spirit of the UNCAC: a pragmatic integration into public policy at the national and international levels. It entails thoughtful, knowledge-based, context-sensitive, holistic and strategic thinking embedded into enforced policies and measures affecting several public policy areas including serious and organisational crime, terrorism, poverty, public health, environmental degradation, human rights, economic development. All of them may be addressed at the same time through joint or coordinated efforts of governments, the private sector, NGOs and civil society in general. The inter-connectedness of these issues can thus potentially be matched by more integrated, comprehensive and effective strategies and policies (UN Secretary General, 2005).

This is feasible because earlier resistance and ‘paper compliance’ regarding international standards on criminal justice, transnational organized crime, terrorism or money laundering – which were not regarded

¹ Such ‘window dressing’ is found also with respect to measures against money laundering and terrorist finance (Passas, 2006).

² See UNESCO website: <http://www.unescap.org/pdd/prs/ProjectActivities/Ongoing/gg/governance.asp>.

as a high priority in the global South – is now replaced by enthusiasm for the UNCAC. Less developed countries led the way towards the entry into force of the UNCAC, whereas other international instruments have been championed mostly by developed countries.

The speedy entry into force of the UNCAC and extraordinary ratification rate by developing countries owes much to the fundamental principle of corruption assets return. The fortunes held by high-level corrupt officials outside their home country can make a huge difference if recovered, returned and applied fairly and productively in states victimized by kleptocratic practices.

At the same time, many provisions of the UNCAC are similar or identical to those of previously less genuinely welcomed conventions and standards. Many speakers at the ISPAC conference discussed some of them, including money laundering, obstruction of justice, national and international prevention measures, monitoring of politically exposed persons, bank secrecy, legal entities and actors, asset seizure, international cooperation, mutual legal assistance, etc.

In short, implementing properly the UNCAC entails de facto implementation of key requirements of other conventions. Thus, the international community could make giant steps towards a convergence of North-South interests and aims on the basis of a sound normative and institutional infrastructure. This is an opportunity to strengthen the legitimacy of international norms and standards, to bridge desires and expectation gaps between developed and developing countries, and to enhance integrity and development. The spirit of the UNCAC is synonymous to consistent and integrated “good governance”, a linchpin that brings together many public policy concerns and diverse country interests.

Asserting that all this is feasible is by no means the same as saying that it is easy. Vital ingredients and guiding principles in this endeavour include a knowledge-based strategy reflecting awareness of root causes and local specificities, a holistic approach, adequate setting of domestic priorities and sequencing of particular tasks, country and region ownership, genuine political commitment to substantive changes targeting the causes of corruption, wide and active participation of all stakeholders, national and international coordination, quality controls, as well as continuous assessment of progress and adjustments. It is imperative to shun lofty expectations. All efforts must build pragmatically on existing capacity and create it where it needs support through technical and other assistance.

The UNCAC offers a tremendous opportunity but also generates awesome responsibilities and challenges. In all areas listed above, there is

plenty of room for improvement. Addressing them is a matter of urgency, because failure would be costly and damaging. A win-win scenario could also turn into a lose-lose situation if inconsistent and inadequate implementation of the UNCAC undercuts its guiding power with collateral spillover consequences on other international standards and principles of governance.

Risks

The magnitude and scope of the challenges in implementing the UNCAC are well recognized in statements and documents, but not always in practice. For instance, no anti-corruption project should be allowed to become a tool in the hands of those who seek to fight political opponents and secure more power and resources for themselves. Implementers are advised to shun the thinking that one anti-corruption law can address all aspects and requirements of the convention. A set of plans, laws, procedural and institutional arrangements are likely to be necessary in many instances.

The most serious risk is that, if this is not done well, serious setbacks can be expected: loss of momentum of anti-corruption programs, waste of resources, immunity of serious offenders, popular and private sector disenchantment, creation of dysfunctional institutions, constitutional challenges, need for further legal amendments, and inability to coordinate and cooperate internationally. Limiting resources or underestimating the significance of the implementation of UNCAC therefore can be counterproductive.

Yet, there are no established guidelines or best practices on how to construct a coherent and appropriate national anti-corruption program.

The risk is that instead of such accomplishments, the credibility and authority of UNCAC and many more standards will be undermined, asset recovery and other key provisions are not implemented or enforced fairly. The anti-corruption momentum may be lost, if current practices are not drastically improved. Withdrawal of support for the UNCAC could easily spill over to other instruments – which we have seen are less widely accepted – and thereby lead to a serious crisis.

Indeed, there are conferences every two or three weeks about corruption. There are numerous initiatives, documents, ideas and debates about it. However, in practice we still have a situation where multiple agencies from a given country are working with multiple donor organizations or outsiders, but there are few mechanisms to ensure that no

damage and harm is caused by “inexpert experts” (those who either do not have the required knowledge, skills or experience for the tasks at hand). The risk is that, if we do not eliminate this problem, we will be introducing laws, processes, institutions and interests that will take root and will take generations to correct. So, instead of making progress, we may move backward.

Expectations are very high; people want and expect a lot out of the UNCAC. If we disappoint them, we would not only undermine the legitimacy of this Convention, but could affect other instruments and a general crisis of legitimacy.

Not everything is going to work in the same way in all countries. If we look at the history of colonization, we could see structures designed to exploit people, resources and economies. Nowadays, the occupants of such structures may have been replaced by new people. However, if locals exploit other locals, there is little change to the colonial exploitation of indigenous people. That is a structural challenge. Introducing new laws, prosecuting and sanctioning offenders are necessary steps but not sufficient. If such structures remain in place, our endeavour will be futile and will resemble to drilling holes in the water.

I participated in UNODC’s outreach and awareness-raising seminars in several regions. At one of them, an honest Prosecutor came to me and said: ‘If you want to implement what the Convention requires, what you are asking us to do is criminalize our way of life’. This is a challenge we face not only in that particular country, but in many parts of the world. This cannot change with a law; this cannot change just with an anti-corruption Committee or Commission or an Agency with new investigative and enforcement powers. This is about values, attitudes and principles that guide thinking and behaviour. In other words, this is about *culture*. Both structural and cultural changes are necessary for the ambitious project at hand. This is what is meant by moving beyond the letter of the UNCAC and embracing its spirit.

This is the only effective, long-term and sustainable approach. We must start with small steps and realistic, pragmatic targets, but at the same time with a vision of where we want to be in the end.

Concerns spring from the lack of:

- strategic thinking (linking various problems and their solutions even within the same country),
- planning and actions based on particular needs and context of different countries or regions (thereby individualizing the pace,

- priorities and sequencing of the substantial reforms and measures mandated by the UNCAC),
- coordination of effort among various donors, NGOs, multilateral organizations and other actors,
 - quality control (quality suffers when donors and their technical assistance capacity are stretched thin by the current demand for help in numerous countries simultaneously – for example, inadequate laws can be introduced leading to successful constitutional challenges, the acquittal of serious offenders, loss of assets, undermined credibility of anti-corruption efforts, demoralization, waste of time and resources),
 - capacity of skilled trainers, implementers and technical assistance providers (often putting unhelpful laws, procedures and interests in place – this would make matters worse and take many years to correct). This includes good ‘listeners’, who take advantage of expertise and experience coming from developing countries,
 - adequate resources to enable and facilitate all of this.

All wealthy countries and multilateral organizations are active in this field, but no one has the mandate to ensure that development, anti-corruption, rule of law and other communities effectively communicate with each other, coordinate, collaborate and create synergies. Nevertheless, they all do know that better governance will self-evidently help private sector initiatives, economic growth, employment, resolution of conflicts, education, environmental and public health policy improvement. There are too many ideas, programs, projects and initiatives going on in parallel and often complete ignorance of each other. Limited talent and resources are thus wasted or ineffectively applied.

Donor organizations also underestimate in practice the UNCAC challenges or simply aim at ‘easy goals’ and short-term successes that may satisfy certain political or organizational objectives or the desire to do something swiftly, but may not have as lasting effects as necessary.

The need for technical assistance (TA) and support is widely acknowledged as well as required by the UNCAC (see articles 1, 60-63). High quality TA and good understanding of national specificities is a precondition for the success of the entire enterprise. Yet, current and anticipated demand exceeds the existing capacity.

Prioritization and sequencing of tasks is even more critical for developing countries lacking resources and capacity as well as for countries with parallel federal and state arrangements. Donors, NGOs and

international organizations engage in TA, assessments and guidance on certain aspects of corruption, but each focuses on different issues, with different methods, scope, mandate and intent. All this is also done under implicit assumptions on what works that may not be consistent with each other. These are valuable building blocks for a national strategy, but there is little architectural and engineering planning.

Some countries or different parts of a given government seek TA from multiple organizations at once. Coordination as well as quality controls are essential for such projects. Precisely because the UNCAC relates to some many aspects of social, economic and political life, it is easy for each group to focus on their own issue and agenda either reinventing the wheel and duplicating the effort or working at cross-purposes and undermining each other.

Such risks are far from theoretical or contained in the anti-corruption field. In some instances, because a government is so dependent on aid donors, there is a lack of domestic ownership over the policy agenda to reduce poverty and no democratic mandate for such an agenda. Legitimacy and commitment to good governance can only flow from collaborative efforts that draw on and consolidate local support and societal initiatives.

Again, in order to promote the win-win scenario sketched earlier, a concerted effort of all stakeholders is indispensable. Here are some concrete projects to which academics can make a significant contribution.

Policies and the Role of Academics

National Strategy Construction and Implementation

Some speakers at ISPAC mentioned the *Zero Tolerance* policy in all their programs. Nevertheless, in contexts where everyone depends on bribes, gifts or favours in order to bring some food to the family, *Zero Tolerance* is not going to work from the beginning. It is a target, but it is not an immediate reality. So the question is: with what levels of problems can we cope at the beginning, for how long and how do we prioritize and sequence the different tasks in different countries. In order to do that, a strategy is required. The strategic thinking has to be context-sensitive, locally owned and realistic.

Some recommendations and good practices for different building blocks may well be available, but a comprehensive anti-corruption architecture is unavailable. In some countries victimized by grand corruption, repatriation of looted assets is likely to be a high priority. In

other countries, the main focus will be prevention. Legislative action and reform is also essential for the establishment of legal basis for international cooperation regardless of whether the focus is on the prevention of organized crime activities, financial crime, corruption or terrorism (see OSCE, 2005).

Others may focus on specialised police, investigation and prosecutorial units able to carry out complex financial investigations and analyze computerized information systems. Multi-disciplinary teams composed of lawyers, investigators and prosecutors as well as legal reforms to cover the liability of corporate entities may be necessary to effectively combat corruption and other sophisticated forms of crime (International Association of Prosecutors, 1999). The prosecution of corruption committed within the criminal justice system is harder due to the perpetrators' knowledge of police and prosecutorial methods and the existence of accomplices or allies within the system. Proactive investigations or special anti-corruption units for police and prosecutors to collaborate closely may be an option (ADB-OECD, 2003; Dempsey-Brench, 2003). Joint investigations and standards or supervisory arrangement under which they are to be conducted is another area (Plachta, 2005; Schalken and Pronk, 2002) or the best ways of tracing, freezing and confiscating crime assets (G-8 Lyon Group, no date). Other central issues include how to enable and involve civil society in the anti-corruption strategy (Johnston, 2005) and the role/responsibility of the private sector (OECD, 2000; Olaya, 2005).

Much anti-corruption effort is also outsourced to experts and consulting firms. A question not asked often enough and for which best practices are also missing is how to deal with private sector consultants and agencies offering advice on a country's anti-corruption program that may affect directly or indirectly their own interests. How is the integrity and accountability of this process checked and ensured? Prevention of conflicts of interest has become a cornerstone of USA anti-corruption programs (Ley, 2003), but this is not the same with private contractors who operate under different rules (Passas, 2007b).

This is a mere illustration of aspects and issues on which attention is centered. The problem, however, is that there is no instrument or best practices for the construction of effective, coherent, legitimate national anti-corruption strategies that could help move governments from general statements of commitment to concrete steps sensitive to local exigencies and realities.

Academics can contribute in this direction by offering analytical accounts, socio-economic, cultural-economic understanding on the context

and thereby assist in answering the questions: where do we start? How fast do we move? And what comes first and where do we want to go later on? Once we meet these realistic middle-range goals and win some small victories in the interim, the momentum of anti-corruption will grow, the legitimacy and credibility of the efforts will be enhanced, and continuity will be secured.

Some of the questions to be posed are: Who are the main players in the promotion of best AC practices and in the provision of technical assistance internationally? Some of this work is done by government agencies, but also by NGOs, international and donor organizations, as well as the private sector (consulting firms and individuals). What is their relative significance and impact? Do their recommendations and practices reflect the same assumptions on the causes and remedies of corruption (see Hunt and NBER, 2005; Mocan and NBER, 2004; Passas, 1997, 1997b, 1998)? Are these assumptions openly stated or implicit? Are they consistent with each other? How do possible inconsistencies affect prioritization, sequencing, appropriateness, legitimacy and effectiveness of anti-corruption measures and plans? Are there conflicts of interest in the involvement of different types of TA providers (or assessors) – especially when single-cause NGOs or private sector entities are involved? How are these resolved? Who ought to monitor such issues and with what enforcement powers?

Which assumptions and practices are reflected in current national anti-corruption programs? Are there any patterns depending on region, socio-economic legal or cultural conditions? Are they consistent with each other? Can we draw on these programs for feedback to the specific guidelines (the building blocks)?

What challenges, difficulties and successes are reported by those directly involved in the design and implementation of such strategies and best practices?

In short, scholars can analyze systematically building blocks for a national strategy and compare underlying theoretical or policy assumptions in order to see how these can be used toward strategic visions and action. Scholars can produce a guide on what seem to be the most successful approaches to strategic planning in specific contexts or circumstances. This outcome would be extremely useful to the Conference of the States Parties charged with the monitoring of the implementation of the UNCAC. Other beneficiaries include Justice Departments, the Anti-corruption Authorities and agencies in numerous countries, lawmakers, implementers and TA providers.

Measuring Corruption and Progress

Existing measures of corruption based on perceptions may lend apparent clarity through indices and rankings but can be misleading, for they suggest a degree of precision unsupported by the underlying data (Johnston, 2005b; UNODC, 2005). Thus, we often have what Karl Popper warned against, when he stated that he would rather be generally right than precisely wrong.

The UNCAC offers an opportunity for the research community to review and adjust the tools and methods measuring corruption in order to produce complementary and novel yardsticks, qualitative assessments, and useful benchmark for the development and implementation of anti-corruption policies and strategies.

Mapping of Illicit Networks, Asset Recovery and Accountability

Assets recovery is another area where academics may be helpful. Criminals rarely specialize in one kind of crime. When we look into the acts of serious offenders, we see that they usually commit multiple offences which transcend the jurisdictional arrangements we have for investigations and prosecutions internationally and domestically. Investigators and prosecutors may be overwhelmed with the tasks involved in identifying the corruption assets, tracing them to different countries, chasing witnesses and suspects, identifying all co-conspirators and facilitators, filing mutual legal assistance requests, etc. The cost of these operations is often daunting. Additional hurdles are raised by:

- “Facts by repetition” on security, terrorism, organized crime and corruption cases, when intelligence and open-source information is distorted, inaccurate or misinterpreted.
- Jurisdictional firewalls of information and knowledge slowing down the process and impeding investigations.
- The focus on particular offense may tend to neglect ways in which a variety of serious crimes may be committed in or through the same actors and networks.
- Open source information is not collected, organized and analyzed in a systematic fashion. There may be data available through courts, media, scholarly publications, and think-tank, government or other reports. If they are scattered and not readily accessible, under-resourced anti-corruption actors cannot avail of them. In addition, in

cases where the suspects are fugitive or the cases are settled without trial, the data on what they did how and with whom, will not make it to any common knowledge base. Those who directly worked in these cases move to the next job while the valuable information is shelved or destroyed.

A project designed to map illicit and corrupt networks will address all of these problems and make inroads into effective anti-corruption action and accountability. A project aimed at mapping of illicit networks would look in depth into the division of labor, geographic location, methods of operation of corrupt actors, nexus with other serious crimes, changes over time, interface with legitimate actors, etc.

We will be able to know what sets of offences are committed by what networks of offenders using what types of methods and routes. Mapping such illicit landscapes will help strategically, operationally and preventively. The users of such knowledge are legion and include the following:

- Investigators and prosecutors looking for suspects or likely modus operandi or jurisdiction through which offenses were committed or assets may have crossed – cutting down on usual suspects or likely modus operandi and jurisdictions to look at of mutual legal assistance requests or other formal and informal cooperation.
- Asset recovery, esp. in grand corruption cases, where sophisticated methods and professionals in multiple jurisdictions are often involved.
- Strategic planning – enabling the analysis of systemic or other vulnerabilities and threat/risk assessments for both private and public organizations and actors.
- Understanding how legal and illegal actors interface (not only for antithetical interests but also when their relationship may be symbiotic – this is important when seeking to anticipated consequences of law enforcement actions or reform, planning for functional alternatives and support for conventional actors, reducing market and demand for illicit enterprises) (see Passas, 2003 typology as one possible organizing conceptual framework).
- Technical assistance providers and implementers of international standards or evaluators of implementation and compliance progress.
- Development agencies seeking to make the best use of their resources and providing effective aid.
- Good governance policy makers in private and public sectors.

- Operational support (knowing where the critical nodes of certain networks are is important when the aim is to take out/destroy an illicit network; knowing what other relationships/activities will be undermined when given actors or entities are removed is necessary in order to prepare for collateral effects or other consequences we may thus anticipate).
- Victim support: knowing visible and invisible victimization of serious crime and corruption helps construct and implement safety nets and relief programmes for support, reparation of damages, enhancing victim collaboration with authorities or NGOs and better/more accurate reporting of misconduct.
- Criminal intelligence gathering (knowing where the information-rich nodes are in a given network).
- Anticipatory analysis: in the light of previous adjustments and plans for immediate/future action against illicit actors, what are likely future shifts one could predict in a given environment?
- Causal analysis and remedial action planning: insights will be offered on the factors producing demand for illegal enterprises (goods and services) and the factors that bring knowingly or systemically together conventional and criminal actors. Having an up-to-date view of the big picture of transnational serious crime assists in developing policy and well targeted responses.

A General Anti-Corruption and UNCAC-specific Knowledge Base

All of the previous projects can be integrated with additional information, materials and reports emanating from States Parties. The function of reporting and monitoring of the UNCAC implementation must be more than a goal in itself. This would work best if it produced tangible benefits and feedback to Member States. Many States Parties have indicated that they need technical assistance in the implementation of the UNCAC, as well as in meeting its reporting requirements.

A knowledge basis could be created in order to provide such assistance. It would lend itself well to the development of a strategic framework for the provision of the various forms of technical assistance necessary to close the gaps and meet the identified needs. However, for such an approach to be successful, it must be based on broad, deep and accurate knowledge.

Reports coming from States Parties are essential for monitoring the implementation and effectiveness of the UNCAC. They form a basis for decision making within the framework of the Convention. It is therefore important to also identify the difficulties encountered in the implementation phase. This basic information would supplement nicely the products described above, but one could go even further and engage in detailed case studies by UNCAC provision or set of provisions (mandatory and optional), country, legal system, degree of development, region or other important parameters.

Scholars can assist with the creation of a CD-or web-based analytical grid into which the publicly available or research-generated information could be entered. From there, any of the above users could access it for their own purposes and objectives. This knowledge base could be used, for example, for internal/domestic self-evaluation and assessment purposes. National agencies could be invited to contribute their own progress reports, successes, lessons learned and challenges still in need of solutions.

We could collect and later synthesize additional sources of information: What corruption-relevant debate is going on within each country? What is discussed in legislative or executive bodies? What are people writing in the press? What NGOs reports are there? What laws are in place or in the pipeline? What cases have gone through the courts and what do we learn from them? What international cases have emerged and how did they use or benefit from the UNCAC or other related international instruments?

This kind of online knowledge base will become a source of insights, information on legal texts, measures and arrangements in similar legal systems or neighbouring countries on which States parties can draw for domestic purposes or in view of further international cooperation.

This product can constitute a model for other international instruments and thus merged with other related Conventions, such as the UNTOC and the Convention against the Financing of Terrorism. In this way efforts to coordinate national and regional implementation efforts will be further facilitated and enhanced.

Such a knowledge base can help inform our search for causes, victimization and support for victims, nexus with other crimes, improvements in the criminal justice systems and broader governance issues. Finally, technical assistance providers will be able to consult the database for coordination of efforts and improvements in the quality of assistance.

Education, Training, Capacity Building

Then of course, the obvious things academics can contribute include training, educating, improving technical assistance and going beyond technical implementation. All of the above evidence, experience, insights, context, challenges and answers must be converted into publications, seminars, training and broader educational programs. Once developed, these products must then be regularly updated and revised. Peer review of what experts and consulting companies publish, recommend and actually do can also be part of this project, in order to enhance the quality of information available and then using the knowledge base described above for wide dissemination and avoidance of past mistakes. At the ISPAC conference, we heard calls for monitoring, critique and oversight by Parliamentarians, government officials and the mass media. They want to be watched, pressurized and held accountable. The same applies to scholars and experts.

The most important project, in my view, is the long-term goal of developing local expertise on which countries can depend for long-term, sustainable success. We will never be able to succeed if simply, every time we have a problem or need, we import (generally expensive) people from overseas.

The process of capacity building is not one way, however. The North has a lot to learn from the South. Production of knowledge, expertise and training must take stock of insights and experience available and emerging in developing countries. A genuine and constructive dialogue is a crucial component of the anti-corruption and governance project.

In brief, capacity building, local ownership and domestic expertise and constant learning in action must be guiding mantras for academics and other stakeholders alike.

Conclusion

Scholars can help reduce the risks mentioned earlier and maximize the opportunities for better governance. Academics need to leave for a while the ivory towers and “travel” mentally and physically around the world to appreciate and understand the context in which people are working and operating against corruption. We must develop *consensual knowledge*, a factual knowledge base that we can all agree on, develop a common language and understanding, common language and articulate inspiring, fact-based educational and training materials. If one of our students states

at the end of the semester: ‘You fire me up, I want to work, do you have any project against corruption where I can work?’, that would be a major success. That is the best feedback that a professor can get. When it comes to matters as important as justice, security, development and good governance, this is not only a function for professors, it is a duty too.

We have reviewed some of the opportunities, challenges and risks that UNCAC presents. We have seen the difficulties and promises that lie ahead. Working closely with all other stakeholders, academics can help remove the hurdles, reduce resistances, invent solutions and activate the potential for synergies and good governance.

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THE ROLE OF CIVIL SOCIETY IN THE FIGHT AGAINST CRIME

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le mafie; Founder Gruppo Abele,
Italy*

After listening to such expert and authoritative speakers, I feel a little “ill at ease” in addressing you. I very happily accepted the invitation to do so, even though I must admit that I am not an expert, the only qualification to which I can lay claim being in “mixed sciences”. I will confine myself, therefore, to imparting to you the experiences of *Libera*, a body which came into being in Italy after the bloody Mafia outrages of Capaci and Via d’Amelio.

After those massacres, some of us wondered what we should do and the idea arose of creating a joint committee of large and small organizations in Italy, dedicated to the fight against the Mafia, crime, corruption and unlawfulness. Our numbers grew and today, eleven years after its inception, *Libera* has some 1300 members: associations, groups, co-operatives in different fields and backgrounds, but every one of them expressions of a civil society that had decided no longer to be passive onlookers but to live up to their responsibilities without leaving it just to the courts and the police to contend with the Mafia.

So let me remind you of Giovanni Falcone, the great judge who was assassinated by *Cosa Nostra* at Capaci together with his wife Francesca Morvillo and the young men of his escort, Rocco Di Cillo, Vito Schifani and Antonio Montinaro. “It is time”, said Falcone, “to go forward, not with sterile declarations, and no longer relying on the heroic efforts of others, but with the committed and united effort of everyone, in a battle which above all is in the name of civilization, a battle which can and must be won”.

I start from this point to say that our choices of action, our challenges must be translated into a daily and practical endeavour. This must be the norm, not the exception. This is our challenge, our commitment, our dream.

The first initiative of *Libera* was to gather a million signatures to urge for and promote the Law confiscating the assets of *Mafiosi* and corrupt

individuals and use them for the good of society. These legal provisions implemented the great inspiration of Pio La Torre, the politician and Sicilian union leader killed by *Cosa Nostra*, author of the Rognoni-La Torre Law of 1982, which introduced the crime of Mafia-association and provided for the seizing and confiscation of the assets of organised criminals. The Law, which also provided for the social re-utilization of such assets, came into force in March 1996 – although regrettably the part dealing with corruption was expunged – so that today, in some supermarkets it is possible to buy pasta, oil, wine, flour produced by co-operative businesses operating on sites confiscated from the Mafia. If there is one thing that really gets under the skin of criminals and Mafiosi, this is to see their lost assets managed by young people committed to practical action, who create real work, which in turn gives them dignity, income and a future. It is the greatest possible slap in the face to the Mafia, and a number of instances illustrate this. As soon as these villains saw these objectives being realised, to create from confiscated assets a healthy economy and a concrete culture of legality, they sought to put a spoke in their wheels: intimidation, sabotage, destruction. They even concocted ingenious schemes, such as setting up “front” co-operatives which might work in different ways with the confiscated assets – three of which have already been unmasked. Consequently it is vital to co-ordinate the efforts of the judiciary, the police, the prefectures and civil society: we are all called upon to make our contribution and, when we succeed in this, important results are achieved. But there is more: the Mafia bodies have learnt that when civil society unites, it becomes a “force”. So this is the counter-attack – the creation of anti-Mafia associations.

To non-Italians the name Bernardo Provenzano does not mean a lot, but it is laden with meaning for his countrymen. Arrested after having been a fugitive for 43 years and having taken over from Totò Riina, as the head of *Cosa Nostra*, after the latter’s arrest, Provenzano had a collaborator, Francesco Campanello, who provided him with false documents enabling him to travel to and operate from Marseilles. It was discovered that Campanello had created an anti-Mafia association. When he was arrested, he said that he had attended many commemorations of Falcone and Borsellino; in *Corriere della Sera* I read that he had even come to my lectures, to take notes..... Among the scraps of paper found in Provenzano’s lair – the little notes used by the boss to communicate with his allies – there was one in which Campanello asked for authorization, promptly given, to organise an anti-Mafia march in his own part of the country. So, you must understand that if the Mafia seeks in any way to

impede, sabotage, disguise or infiltrate the life of civil society – the confiscation of assets, work opportunities for the young, encouragement of development and lawful endeavours form the right response.

There are two words on everyone's lips; words which have been mistrusted and abused. The first is *emergency*: suddenly in Naples there is the Scampia emergency, a section of the city in the hands of the Camorra. Then there is the Locri emergency in Calabria, with the violence and killings involving the *'ndrangheta*. Afterwards, it is the turn of Gela, in Sicily. But the fight against crime and the Mafia is not just reflected in emergencies. It is a struggle which demands coherence and credibility and requires above all one thing, which must always be written in capital letters: *continuity*. There has to be continuity, coherence and credibility in every counter-measure; it is not enough to react vigorously to an emergency and then do nothing until the next event.

Too often in Italy I hear it said "the youth are our future" and it annoys me intensely. This is because I believe that the youth need to be our *present*. Our society needs to invest today in the world of the young, to create today genuine instruments for their participation, for their healthy involvement. I become even angrier whenever I hear it said that we must reorganize society and begin with the young. The reorganization of society should start with the adults, because in politics, education, the Church or employment, we are dealing with adults and therefore that is where the reorganization needs to start. It is necessary to inspire a new generative force, between adults and the young, if we are to turn over a new leaf. Last year, when the town of Locri, in the territory of the *'ndrangheta*, came into the headlines after the murder of Francesco Fortugno, Vice-President of the Regional Council, someone had forgotten that 35 years ago, precisely at Locri thousands of young people had taken to the streets after a series of killings. "They are our future" was what people said at that time. And now I think that while it is vitally important to demonstrate and to show indignation, such momentary emotion does not suffice: coherence, credibility and continuity must characterise the drive for change, transforming today's outcry into building up hope. Any this is why – for all its limitations, efforts and mistakes – *Libera* has striven to invest in education and work with the schools, thousands of schools. It has involved teachers, set up training courses and offered instruments to convince that liberty begins with the assumption of responsibility. Legality is what converts the "I" to the "we", who have the responsibility for justice, and it is for this that we must show the young that change is only possible if we all, first and foremost, make it our concern to achieve it. We cannot ask the

State or the institutions to fulfil their part if we are not the first to invest continuous coherence and effort.

Continuity, coherence, responsibility. Let me offer one more keyword, albeit with some effort: the word is *ethics*. Everybody today speaks of ethics, but what does it mean? Ethics – I am told – is the quest for what is genuinely humane. And it cannot be genuinely humane if not accompanied with responsibility of the individual towards others. Thus individual responsibility is, at the same time, collective responsibility, a co-responsibility which must animate citizens, civil society, groups and associations, institutions and administrations. Whoever fills public office is not committed to honesty solely through his own personal conscience. As a representative of the social system and public institutions, he responds to a dual ethical imperative: to himself and to society at large. And this is why, as educators, we are preoccupied with the effect on the young of forms of illegality and corruption present in the public and administrative world and with the perverse effect of ever more prevalent measures to condone it. We have seen how the young react in three ways: imitation – everyone does it so why shouldn't I? – mistrust of institutions, but also, fortunately, rebellion. The psychological aspect makes educative work fundamental and, like *Libera*, we are equipped to achieve it at a number of levels, from young children to adolescents, with *ad hoc* publications, production of commercials and short films, responsible tourism. In the schools we have pressed to get the pupils to visit Florence and Rome to see the monuments and artistic masterpieces there, but also to engage them in activities of another type: to get them to meet young people who have opened agricultural co-operatives using confiscated criminal assets and to “work” alongside them. We have reached a number of agreements with universities and only the other day, in Bologna, one was signed to enable young people to be trained in those bodies most heavily engaged in the battle against loan-sharking, protection rackets and corruption.

Let me here utter a strong word in parenthesis. Italy not only has not yet ratified the United Nations Convention against Corruption but it has not even followed the Directive which recommends the appointment of “an independent Anti-Corruption Authority”: the current Extraordinary Commission for the fight against corruption has been recommended by the previous government and by the Prime Minister, and thus you will appreciate the contradictions that have arisen.

I would like to make two more points. I turn to the young, the young who are our present. Meeting so many of them, every day, I have realised that they are not looking for perfect adults but for adults who evince both

passion and authenticity; not adults who just tell them to do something but who, alongside them, do it themselves; adults who are able to understand their aspirations, who help them, through maintaining a real but discreet presence as they make the delicate passage between the dream and the assumption of responsibility.

I began by speaking of Giovanni Falcone and I would like to end with speaking of another judge, Rosario Livatino. After his death at the hands of the Mafia on 21st September 1990, his mother found his notebook. It contained these words, words which for me never cease to be a provocation and a reference-point. He wrote: “we will not be called upon to be believers, but to be believable”. Legality begins with the little things – it lies within our own hearts.

TRANSPARENCY AND ANTI-CORRUPTION

JACQUES TERRAY
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As a bank lawyer for more than 35 years, I was trained to issue “legal opinions”. They state that a financial transaction complies with the law, so that its provisions will be given their full effect in the jurisdiction(s) in which it is designed to be implemented.

So that my way of looking at a rule of law, be it a national statute or a multi-state convention such as UNCAC, tends to be simplistic: is this rule setting an obligation, the violation of which will be punished (by a civil or a criminal penalty), or is it expressing a guideline for regulators, which does not directly affect my practice?

Clearly, UNCAC belongs to the second category, and only a few provisions should be of concern to me: the rule that bank secrecy must not be an obstacle to court investigations (art.40 in the domestic field and 46-8 for cross border enquiries), and the right for private individuals or entities to sue for damages (art. 35). Most other articles only give directions to the member states, and until specific legislation has been enacted, I need not worry about the convention.

There is even a weaker layer, where UNCAC recommends to the states a certain behaviour to prevent corruption, or to promote transparency in public or private life, but does not give any indication of a precise obligation.

As a continental lawyer, I may regret the mixing of (a) directions for the adoption of strictly legal rules and (b) broadly political recommendations which could hardly be converted into law, such as the simplification of administrative procedures (art. 10,b)) or the “adequate

¹ This statement only reflects the views of the speaker as an individual, and may not be shared by his colleagues at Transparency International, or by ISPAC.

compensation” of public agents (art. 7,c)). In my view, such mixing may weaken the authority of the convention, as it reflects an underlying ideology (apparent in the yearly “Doing Business” reports of the World Bank) rather than a commonly agreed course of action.

Beyond those reservations, though, the catalogue of measures, and the breadth of the situations envisaged is remarkable. From now on, all countries will have an authorised pattern of what bona fide anti-corruption rules and policies should be. It will be much easier, when examining the legal anti-corruption framework in a jurisdiction, to identify what is there and what is missing.

Turning now to the goals pursued by UNCAC, I would submit that fifty years from now, it will be viewed as reflecting the concerns of the post-communist era, i.e. a fundamental conflict of priorities: between (a) “the circulation of legitimate capital” which must not be “(impeded) in any way” (art. 14-2), or the obligation not to “prejudice the bona fide rights of third parties” (art. 31-9) on the one hand, and (b) the strong will expressed in the preamble, i.e. the determination: “to prevent, detect and deter in a more effective manner international transfers of illicitly acquired assets”.

In Transparency International, we believe that worldwide market rules, a basic constituent of globalisation, should not prevent us from taking a closer look at the anonymous means that the law currently offers for the transfer of crime money.

Where is the line to be drawn between impeding the normal course of financial transfers, which would be a step backward, and is therefore unacceptable, and the current situation where the investigations of judges are stopped by the impossibility to identify the actual beneficiary of a bank account opened in an offshore center?

Are we satisfied that every conceivable measure has been taken, for example in the major financial centers of the world, to implement the basic rule of FATF in its fight against money laundering: “know your client”? Prosecutors of Western countries admit that until now, that fight has been lost, and the flow of crime money into offshore centers is increasing.

I will examine the convention under the following three different angles:

- The circulation of capital as a priority
- The progress brought by the convention
- What is missing in order to tackle the transfer of crime money.

1. The circulation of capital as a priority

This is a consequence of what was called in the City of London the “Big Bang”, in other words the deregulation of the financial markets, the replacement of the previous government supervision by a small number of “self regulated organisations”, and the will to achieve a “level playing field” worldwide.

As a result, cheap and speedy circulation of capital became the major element of competition between the global financial centers, and it is now one of the pillars of the modern economy.

The clearest example I can find of the constraints brought by the willingness to speed up the circulation of capital is SWIFT, the interbank mechanism for automatic money transfers². In order to secure the irrevocability of the transfer, there must not be any indication of the underlying transaction (whether it is a sales price or a loan, or the mere relocation of assets), as there might be a flaw in the transaction and as a consequence the transfer might have to be reversed.

There is thus a quid pro quo: security and speed versus transparency.

More generally, UNCAC carefully avoids any impediment to the freedom and the ease of business transactions. The most recurring sentence in the convention is the reference to the “fundamental principles of (each country’s) legal system”³.

All lawyers know that fundamental principles are not formal legislation, so that it gives the legislator in each country plenty of room to weaken or to ignore a prescription of the convention. Another precaution is the need to protect property rights (in the preamble), and the rights of bona fide third parties (art. 31-9).

² [Editor’s Note: SWIFT is a cooperative company set up by the financial industry and provides global financial messaging services; see details on its functions and activities at its website <http://www.swift.com/>].

³ [Editor’s Note: The UNCAC contains several different clauses, of which this is one. The Convention does not contain a definition or interpretation of these clauses. In accordance with fundamental principles of international law, the interpretation of treaties is a prerogative of States, which undertake to apply to such interpretation in good faith and keep in mind the purposes of the treaty in question.]

A distinctive feature of UNCAC, when compared for example with the OECD Convention of 1997, is the preference given to soft law over legal constraints⁴.

There are several references to the need to publish codes of conduct (art. 7-1, *d* and 8-2 for the public sector, 12-, *b* for the private sector), and the public at large should be educated: “undertaking public information activities that contribute to non-tolerance of corruption as well as public education programmes, including school and university curricula”(art. 13-1, *c*).

A great emphasis is also placed on whistle-blowing, for public officials (art. 8-4), and for all citizens and residents as well (art. 33).

So, UNCAC relies to a large extent on the education of public agents, judges and citizens, and their voluntary action, to prevent corruption and to disclose it when it occurs.

Given the volume of transfers of crime money, and of the criminal assets laundered in tax havens, one may wonder whether the remedies provided or recommended in the convention in this respect are at the right dimension.

The recommendations given (in art. 52) in the field of anti-money laundering are a good example of a very soft approach. After recalling that the banks should “envisage” to increase their scrutiny over money transfers where the identity of the client is dubious (art. 14-3, *c*)⁵, the convention provides that the states must take appropriate measures to cause the banks “to determine the identity of beneficial owners of funds deposited into high-value accounts” (art. 52-1).

As this provision may have seemed too severe, it is followed in the same article by what appears to be an apology:

“Such enhanced scrutiny shall be *reasonably* designed to detect suspicious transactions for the purpose of reporting to competent authorities and should not be so construed as to *discourage or*

⁴ [Editor’s Note: The Convention is an international legally binding instrument. Therefore, none of its provisions can be termed «soft law».]

⁵ [Editor’s Note: The text of Article 14, 4-*c* of the convention does use the term ‘envisage’: “States Parties shall consider implementing appropriate and feasible measures to require financial institutions, including money remitters: ...*(c)* To apply enhanced scrutiny to transfers of funds that do not contain complete information on the originator.”]

prohibit financial institutions from doing business with any legitimate customer.” [emphasis added]

2. The progress brought by the Convention

While the anti-money laundering measures recommended in the convention fall short of the ambition expressed in the preamble “to prevent, detect and deter in a more effective manner international transfers of illicitly acquired money”, it brings an indisputable progress in the fight against grand corruption.

Bank secrecy is not a valid obstacle to court investigations any more, be it by national or foreign judges (art. 40 and 46-8). The clear language used contrasts with the softness of other provisions in the convention. It will provide a useful argument for prosecutors in their investigations in non cooperative offshore centers.

Another fundamental innovation (although a similar provision appears in the civil law Convention of the Council of Europe of Nov.11, 1999) is the prescription that each state “shall take such measures as may be necessary, in accordance with principles of its domestic law, to ensure that entities or persons who have suffered damage as a result of an act of corruption have the right to initiate legal proceedings against those responsible for that damage in order to obtain compensation.” In France, this means that the prevailing doubt whether public corruption may or may not be a valid ground for civil damages will be resolved: until now, criminal actions could only be brought by state prosecutors, so that a victim of corruption had no available remedy. From now on, a victim will be entitled to bring a civil action for damages based on the principle set by the convention.

The emphasis put on the recovery of stolen assets (a fundamental principle according to art. 51) is also a major improvement in the fight against corruption, even though many precautions are taken not to infringe on state sovereignty. As noted by Lucinda Low in her remarkable paper for the IBA Conference of May 2006, the convention does not give states a right to recovery of stolen assets, which would have been overly ambitious at the present stage of international law. But it provides a wide variety of legal tools for judges in the country where stolen assets have been found to freeze those assets and to give to the victim-state all possible information and rights of action to enable it to assert its title over them. It draws a thorough lesson from the Swiss case law in this respect (repatriation of the assets deposited in Switzerland by Presidents Marcos and Abacha).

An innovative concept is the crime of illicit enrichment (art. 20), which shifts the burden of proof where a public official is unable to justify a significant increase of his wealth. This may raise, under French law, as it sure does in other jurisdictions an issue of constitutional law. However, the French government has already taken practical steps to apply the rule, and recently appointed a national police unit to detect important estates the owner of which does not appear to earn corresponding revenues.

3. What is missing?

The preamble, when expressing the strong will to deter international transfers of illicit money, insists that it should be done “in a more effective manner”, which is an acknowledgement that until now, in spite of the useful framework built by FATF, this fight against money laundering has been a failure.

In a recent session entitled – “10 Years After the ‘Appel de Genève’: What is the State of Judicial Cooperation in Europe?”⁶, the European Parliament stressed the need for public authorities, such as Customs, tax and judges, to identify the individuals hiding behind screen companies. The Parliament also pointed to the need of centralised information in each country, listing all bank accounts held in the name of the same person. While FATF requires each bank to keep on record the information on clients having opened an account in its books, foreign judges are unable to trace the funds, if these have been moved from one bank to another, or if their information on the bank account is too vague.

Similarly, a report from the US Senate (Permanent Subcommittee on Investigations, Committee on Homeland Security and Government Affairs, “Tax haven abuses: the enablers, the tools and secrecy”, August 1, 2006) also recommends action to obtain better information on the interests of US persons in tax havens, and describes a number of frauds made possible by the use of offshore trusts or shell corporations.

Investigative judges and prosecutors from Western Europe have also complained in recent years about the difficulty of tracing the outflows of money into offshore centers, due to a lack of cooperation of their colleagues – not only those in the offshore centers, but in certain neighbouring countries as well.

⁶ See <http://www.europarl.org.uk/news/textfiles/epnews274-22September2006.htm>

This is worthy of notice, as several detailed conventions have been signed at the initiative of the Council of Europe (the main one as early as in 1959: the European Convention for judicial cooperation in criminal matters of 20 April 1959) on cooperation between judges. It shows that even between countries belonging to the same region and culture, and sharing the same values, cooperation requires a long process of mutual understanding and the willingness to treat the requests of foreign investigators as a priority in an already tight agenda.

Given these obstacles to the mission of judges and prosecutors to identify the corruption payments and their laundering, one can draw the conclusion that the convention is a first step in the right direction. One of the most important of its provisions is the one which decides the holding of an ongoing conference (art. 63). The goal of the conference is “to improve the capacity of and cooperation between States Parties to achieve the objectives set forth in this convention and to promote and review its implementation”. This is an admission that the convention is more a catalogue of long term objectives that States parties to the convention commit to reach together than a piece of ready made legislation. The first round of the Conference took place in Amman and its outcome was a disappointment. Possibly, the agenda was too ambitious. At least, the member states decided to create committees which will report their findings to the next round in 2008. Monitoring of the convention is a key element of its success in the future, as shown by the experience of the OECD Conference and the pressure exerted by the OECD Working Group in the Yamamah case. Transparency International is dedicated to this goal.

My view is that we, the anti-corruption activists, must bring to our fight the same imaginative skill that certain professionals in financial centers have developed to serve the interests of their criminal clients. The whole community of professionals, private bankers, lawyers or accountants operating in the global financial centers, are reluctant to share their experience with us, as they fear that we would recommend that regulators adopt rules which would restrict the confidentiality and flexibility of their favorite legal instruments, such as trust deeds, anstalt, nominee holdings and the like.

I am therefore turning to academics, in the fields of law and economy, and I propose to them a program of work with three successive stages:

The first step would be to draw a comprehensive list of the major legal devices used by criminals to hide their assets, and to share that

knowledge with other interested authorities (in line with the US Senate's report).

Surprisingly, the list may be shorter than one would expect: due attention should be paid to the jurisdiction clause selected in case of difficulty (the beneficiaries of these schemes do not trust the courts of offshore centers and prefer a solid Western jurisdiction or a renowned arbitration center). It shows which national body of law and which judicial system has been implicitly relied upon, should litigation arise.

The second step requires a dialogue between academics and members of the legal profession to make appropriate distinctions between the legitimate use of these devices (such as securitization or tax planning), and their use for fraudulent purposes. Once again, my experience has been that business oriented professionals are not willing to participate in that exercise!

The third step would be to submit draft legislation to define the legal tools capable of screening the legitimate transactions and preventing or blocking the fraudulent ones. Obviously, the goal is to enable the public authorities worldwide to have access to the appropriate information on the identity of the true owner/controller of an asset. The current anti-money laundering rules prescribe that the banks must "know their clients" and must ask for the reason for their instructions and the identity of the beneficiary of their transfers. But that information is not of public record and an investigating judge has no way of anticipating it. What is needed is, for example, the equivalent of a company registry where qualified authorities could find who has set up the legal device which owns a given asset or issues a given instruction. Any bank, lawyer or accountant setting up or assisting such an anonymous device should be under an obligation to check that it is duly registered. Legislation has just been enacted in France to this effect, in the newly adopted Act on fiduciaries (Act n° 2007-211 of 19 Feb. 2007).

This is a very ambitious plan, but unless it is launched, many people may suspect that transparency in the international circulation of funds is not the priority that we claim it is.

RAMPANT CORRUPTION EXACERBATES PUBLIC DISTRUST IN
PUBLIC AND PRIVATE SECTOR DEALINGS

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(POGO)

On May 8, 1965, United States President Lyndon B. Johnson issued Executive Order (E.O.) 11222, which instructed agencies to establish “standards of ethical conduct for government officers and employees”¹. One of the main purposes of this and other conflict of interest and ethics laws is to protect the integrity of the government’s system of buying goods and services from contractors. President Johnson stated that “every citizen is entitled to have complete confidence in the integrity of his [or her] government”². Subsequent laws and regulations have promoted President Johnson’s intent:

Each [executive branch] employee has a responsibility to the United States Government and its citizens to place loyalty to the Constitution, laws and ethical principles above private gain. To ensure that every citizen can have complete confidence in the integrity of the Federal Government, each employee shall respect and adhere to the principles of ethical conduct set forth in this section, as well as the implementing standards contained in this part and in supplemental agency regulations³.

¹ See 48 C.F.R. § 3.101-3(a). The U.S. Code of Federal Regulations (C.F.R.) is available at <http://www.access.gpo.gov/nara/cfr/cfr-table-search.html#page1>.

² Exec. Order No. 11222, 30 Fed. Reg. 6469 (May 8, 1965). Available at <http://www.archives.gov/federal-register/codification/executive-order/11222.html>.

³ 5 C.F.R. § 2635.101(a) (“Basic obligation of public service”).

While a worthy goal, the “basic obligation of public service” stated above is undermined when government employees engage in illegal activity⁴ and/or leave the civil service to work for federal contractors⁵.

American taxpayers have witnessed a series of corporate mega-mergers that have transformed large government contractors into a small universe of formidable lobbying and influence-peddling machines. The politics of contracting have become so pervasive and entrenched that even Congress is rarely able to insulate itself or stem its power. Additionally, relaxed federal contracting laws and regulations, and inadequate oversight of the entire ethics and contracting system, have added to the private sector’s influence over the way the U.S. government – the largest consumer in the world, spending more than \$415 billion in fiscal year 2006 – operates⁶. In particular, many unneeded or ill-conceived weapons systems are purchased and sweetheart deals are made because of endemic conflicts of interest.

Integrity in the public and private sectors is under assault today more than it has ever been since the Project On Government Oversight (POGO) was founded over 26 years ago⁷. Institutional corruption in both the public and private sectors undermines the public’s confidence in the democratic process and exacerbates distrust in our society. For example, the United States has been shaken by corporate scandals involving corporate giants Enron⁸, WorldCom⁹, Boeing¹⁰, and many of those giants’ executives.

⁴ See “Enough with the ‘one bad apple’ defense: Policies to curb violations have served as Band-Aids when the face of government is changing,” op-ed by POGO’s Scott Amey in *Federal Computer Week*, September 4, 2006. Available at <http://www.fcw.com/article95828-09-04-06-Print>.

⁵ See POGO Press Release, “Government Contractors Wield Influence Through Revolving Door, Campaign Contributions,” June 29, 2004. Available at <http://pogo.org/p/contracts/c/ca-040601-contractor.html>.

⁶ The U.S. government awarded \$415,466,073,469 in contracts in fiscal year 2006. Available at http://www.fpdsng.com/downloads/top_requests/FPDSNG5YearViewOnTotals.xls.

⁷ Visit www.pogo.org for more information about POGO.

⁸ U.S. Department of Justice, Enron index. Available at <http://www.usdoj.gov/enron/>.

⁹ U.S. Department of Justice (04-41), “U.S. Charges Ex-Worldcom CEO Bernard Ebbers; Former Worldcom CFO Scott Sullivan Pleads Guilty,” March 24, 2004. Available at <http://www.fbi.gov/dojpressrel/pressrel04/world030204.htm>.

Darleen Druyun, a former senior Air Force official, admitted to performing favors for her post-government employer Boeing¹¹. Randy “Duke” Cunningham, a former Member of Congress from California, is now infamous for his “bribe menu” – a list of bribes that he demanded in exchange for government contracts¹². David Safavian, a former head of government contracting, was found guilty of four charges, including obstruction of justice, related to his relationship with disgraced former Washington lobbyist Jack Abramoff, who has become infamous for one of the largest government corruption scandals in the U.S.¹³. The fallout from the Abramoff scandal is still descending. On March 23, 2007, James Steven Griles, the former deputy secretary of the Department of the Interior (DOI), pleaded guilty to obstructing the U.S. Senate’s investigation into the Abramoff case¹⁴.

Anti-Corruption: a way of life

In theory, the U.S. government is predicated on equal opportunity, a system of checks and balances, and a government of the people. In reality, however, the U.S. government has been transformed into an institution that caters to powerful private interests. A spaghetti bowl of laws, regulations, and complex oversight structures comprised of the federal government, the media, non-governmental organizations, corporations, and American taxpayers are supposed to ensure good government and corporate practices.

¹⁰ U.S. Department of Justice (06-412), “Boeing to Pay United States Record \$615 Million to Resolve Fraud Allegations,” June 30, 2006. Available at http://www.usdoj.gov/opa/pr/2006/June/06_civ_412.html.

¹¹ United States v. Druyun (U.S. E.D. Va. – Criminal No. 04-150-A), “Supplemental Statement of Facts,” no date. Available at <http://pogo.org/m/cp/cp-druiyun-postpleaadmission-2004.pdf>.

¹² United States v. Cunningham (U.S. S.D. Cal. – Criminal No. 05cr2137-LAB), “Government’s Sentencing Memorandum,” February 17, 2006. Available at <http://www.signonsandiego.com/news/politics/cunningham/images/060218sentencememo.pdf>.

¹³ U.S. Department of Justice (06-381), “Former GSA Chief Of Staff David Safavian Convicted of Obstruction, Making False Statements,” June 20, 2006. Available at http://www.usdoj.gov/opa/pr/2006/June/06_crm_381.html.

¹⁴ Under the terms of the plea agreement, Griles faces a maximum sentence of five years in prison and a \$250,000 fine. Sentencing is scheduled for June 26, 2007. Available at http://www.usdoj.gov/opa/pr/2007/arch/07_crm_174.html.

Yet even with that complex network of oversight, corruption and other misconduct pervades public and private sector dealings.

The U.S. has an extensive system of anti-corruption measures¹⁵ and government watchdogs including:

- Department of Justice (DOJ)
- Federal Bureau of Investigation (FBI)
- Securities and Exchange Commission (SEC)
- Federal Election Commission (FEC)
- Internal Revenue Service (IRS)
- Government Accountability Office (GAO)
- Inspectors General (IG)
- Federal Auditors
- Office of Government Ethics
- Agency-level ethics offices
- Congress
- Private entities
- Non-governmental organizations
- Media
- Taxpayers

Within that framework, the U.S. prides itself on its disclosure of campaign contributions and spending, lobbying disclosure requirements, a transparent court system, full and open competition for contract awards, a contractor suspension/debarment system that prevents irresponsible contractors from receiving future government contract awards, a bid protest process that permits certain contract awards to be reviewed by an independent third-party, and the Freedom of Information Act (FOIA)¹⁶, which provides public access to government information. Despite all of those access points to the government's activities and operations, the U.S.

¹⁵ See "A Matter of Trust: How the Revolving Door Undermines Public Confidence in Government – and What to do about it" published by the Revolving Door Working Group (RDWG), October 2005. POGO is a member of the RDWG and authored various chapters of the report, including a summary of "Federal Revolving Door & Ethics Restrictions." Available at <http://www.cleanupwashington.org/documents/RevovDoor.pdf>.

¹⁶ 5 U.S.C § 552.

still struggles to address the culture of corruption that has permeated American society.

The United States might meet the literal requirements of the United Nations Convention Against Corruption, but it has a long way to go before becoming an anti-corruption leader. One reason for its failure is the U.S. government's heavy reliance on private entities to retain its share of the global marketplace. Second, there is the problem of the proverbial "fox guarding the hen house". Simply stated, those who are in power and who influence policymakers are the same people taxpayers must rely on to improve the ethics system and promote an anti-corruption agenda. For example, a regulation to promote a "zero-tolerance" policy on human trafficking has been proposed by multiple U.S. agencies¹⁷. Certain private sector entities, many of which have Iraq reconstruction contracts or other contracting interests around the world, have nominally supported the proposed rule¹⁸. Those same entities, however, claim that rule's requirements are too difficult to monitor and enforce. As an alternative, those private entities have suggested very minor changes that will neither hold them accountable nor protect victims of human trafficking.

Another anti-corruption measure that has been targeted by private interests is the federal False Claims Act (FCA)¹⁹, the U.S. government's primary weapon to fight fraud. On November 21, 2006, the U.S. Department of Justice announced that the government recovered a record \$3.1 billion in fraud and false claims in fiscal year 2006, and \$18 billion

¹⁷ The regulations modify civilian and defense contracts by adding anti-trafficking provisions, including employee education programs, reporting requirements, and penalties.

¹⁸ Public comments were submitted by the Council of Defense and Space Industries Associations. Available at [http://emissary.acq.osd.mil/dar/dfars.nsf/40d9d4f429f73a4e8525699600776f78/d766cfff3cb8d748525706f005a8aca/\\$FILE/CODSIA%20DFARS%20Combating%20Trafficking%20in%20Person%20_Final_.pdf](http://emissary.acq.osd.mil/dar/dfars.nsf/40d9d4f429f73a4e8525699600776f78/d766cfff3cb8d748525706f005a8aca/$FILE/CODSIA%20DFARS%20Combating%20Trafficking%20in%20Person%20_Final_.pdf).

¹⁹ The False Claims Act (31 U.S.C. §§ 3729-3733) was originally passed in 1863 at the urging of President Abraham Lincoln, who was attempting to halt the Civil War profiteering which was crippling the Union Army. Amendments to the Act in 1986, championed by Senator Charles Grassley (R-IA), increased the penalties for fraud and encouraged private citizens to come forward if they were aware of corporations defrauding the government.

from those who commit fraud since 1986²⁰. Despite the clear benefits the FCA provides to taxpayers, it has come under heavy assault by defense industry representatives who argue that “innocent disagreements” are being prosecuted as fraud and that companies are deterred from doing business with the government for fear of alleged excess vulnerability to fraud lawsuits.

There have been some recent attempts to improve the way that the government and the private sector operate. Congress has attempted to improve federal election laws, corporate accountability, and transparency in federal contracting²¹. However, those efforts only start to improve a system that has a long way to go before truly checking corruption. Watchdogs must continue to expose and stamp out the following anti-corruption setbacks:

- A Congress deaf to calls for an overhaul of lobbying and ethics regulations.
- Senior policymakers frequently driven by personal or private interests.
- Contractor political action committees (PACs) providing funding to election candidates.
- U.S. revolving door laws and regulations replete with loopholes that allow influence peddling and private interest without any transparency requirements²².
- Civil servants often being replaced by contractor employees.
- A Freedom of Information Act (FOIA) weakened by many exemptions that prevent full access to government information,

²⁰ DOJ Press Release (06-783), “Justice Department Recovers Record \$3.1 Billion in Fraud and False Claims in Fiscal Year 2006,” November 21, 2006. Available at http://www.usdoj.gov/opa/pr/2006/November/06_civ_783.html.

²¹ See Pub. Law 107-155 (the McCain-Feingold bill reformed the campaign finance system and attempted to reduce the influence of money in the electoral process); Pub. Law 107-204 (the “Sarbanes-Oxley Act of 2002” attempts to protect investors by improving the accuracy and reliability of corporate disclosures made pursuant to the securities laws); Pub. Law 109-282 (the “Federal Funding Accountability and Transparency Act of 2006” requires full disclosure of all entities and organizations receiving Federal funds).

²² The DoD, pursuant to 10 U.S.C. §§ 2397-2397c, kept statistics of former civilian and military employees hired by private contractors. Those laws, however, were repealed in 1996 and, as a result, any illusion of transparency of DoD’s revolving door ended.

including provisions that permit companies to redact “commercial data”.

- Secrecy as the rule rather than the exception.
- Government neglect of opportunities to increase public knowledge about contracts and contractor misconduct²³.
- A federal government failing to prioritize enforcement of anti-corruption and conflict of interest statutes.

An anti-corruption system is in place, but it is far from being the perfect system. The U.S. has a long way to go to be a five-star member of the Convention.

Reforming the System

POGO believes that the government must improve and enforce laws that prevent undue influence and corruption in government elections, contracting, and corporate business dealings.

- Congress must improve contracting by:
 1. Promoting aggressive arm’s-length negotiations with contractors.
 2. Encouraging “competition” to correct the current trend in which nearly 50 percent of government contract spending is made through no-bid contracts.
 3. Regularly monitoring and auditing contracts after they are awarded.
 4. Ensuring that the contracting process is open to the public, including copies of all government contract awards, contractor data, and contracting officers’ decisions and justifications²⁴.
 5. Guaranteeing that certain contract types that have been abused in the past are only used in limited circumstances and are accompanied by audit and oversight controls.

²³ POGO will soon release a new and improved Federal Contractor Misconduct Database that will include information on the top 100 U.S. federal contractors. Please check www.pogo.org in 2007 for more information.

²⁴ See “POGO’s Federal Contracting Resources” web page. Available at <http://pogo.org/p/contracts/federalcontractingresources.html>.

- Congress should revisit and study whether “inherently governmental functions,” such as oversight and contract decisions, are being preformed by political appointees or private contractors rather than career civil servants.
- The government must close revolving door loopholes that allow former government employees to work for the same contractor they oversaw as a government employee.
- Congress should pass conflict of interest and ethics laws that apply to federal contractors.
- Congress should restore the pre-1976 prohibition on contractor campaign contributions, thereby assuring the American public that contractors’ contributions are not driving government decisions.
- Congress should remove or modify conflict of interest and Freedom of Information Act exemption and waiver provisions for federal advisory board members and ensure that unclassified portions of board meeting minutes are publicly available. Additionally, Congress should enact laws requiring federal advisory committee members to recuse or disqualify themselves from any discussion on matters in which they or their private employer or client have a significant financial interest. This disclosure or recusal statement – including name, title, and employer – should be filed with an ethics office and made publicly available.
- Congress should increase the one-year ban on lobbying for Members of Congress and their senior staffers who have a nexus between authorizations or appropriations authority over their post-government employer.
- Paid contractor consultants should be required to register with the Office of Government Ethics. Many former government employees are hired to promote a contractor’s agenda and the current system does not provide any transparency of those actions.
- Government and private entities must strengthen whistleblower protection laws so that people can come forward when they witness corruption or other misconduct.

POGO at a Glance

Founded in 1981, POGO is an independent nonprofit that investigates and exposes corruption and other misconduct in order to achieve a more honest, open, and accountable federal government. As

such, POGO oversees federal agencies, Congress, and government contractors. POGO made its mark by looking into Pentagon waste, fraud, and abuse, spotlighting overspending on overpriced toilet seats (\$640), coffee makers (\$7,600), and other spare parts (\$436 hammers). Today, POGO's range of investigations includes national defense and homeland security concerns; government subservience to commercial interests; abuse in government contracting; excessive secrecy; and mismanagement of natural resources by federal agencies. POGO uses investigative journalism techniques to shed light on the government's activities, including working with whistleblowers and anonymous sources and accessing information through the Freedom of Information Act (FOIA).

Government and corporate whistleblowers and insiders bring POGO many of its important investigative topics and information. POGO informs the public of its findings, in large part through reports that contain extensive documentation and recommendations for how to solve the problems that are identified. Once a report has been released, many more insiders usually approach POGO to provide further documentation and information. By gathering information and building relationships with whistleblowers and government insiders (at the congressional and agency levels), as well as by collaborating with other nonprofit organizations, POGO is able to get to the root of the issues in question. We can then provide realistic recommendations for solving age-old problems that have plagued the government and the services it is responsible for providing.

Often POGO is called upon to work with other groups inside Washington, D.C., and groups that are emerging around the world whose missions are to promote a more transparent, honest, and accountable government and corporate structure. POGO is also often asked to submit public comments to proposed regulations, to testify at congressional hearings, to provide background information and questions to Members of Congress, and to brief government officials, the Government Accountability Office (GAO), and Inspectors General.

Realizing the need for genuine oversight, POGO initiated a training series for Members of Congress and their staff. The Congressional Oversight Training Series (COTS) is designed to provide a way for congressional staff to learn how to conduct effective oversight and investigations. Since September 2006, POGO has conducted monthly bipartisan sessions that include a combination of hands-on training and exercises, mock hearings, case reviews, and lessons from some of the

nation's most well-regarded congressional oversight experts, government insiders (or whistleblowers), investigative journalists, current and former Inspectors General, GAO staff, and current and former congressional staff. These sessions are not open to the public. Topics include oversight of federal contracts, how to prepare for an oversight hearing, handling classified information, working with government insiders and whistleblowers, and investigating the Internal Revenue Service.

By applying internal and external pressure through the media, the public, government insiders, and policymakers, POGO helps ensure that the federal government implements policies and programs in a manner that benefits all Americans.

Conclusion

The dilemma that faces the United States also faces the Convention and its member countries. There will be a long-term struggle between merely creating an anti-corruption system and creating an effective and enforceable anti-corruption system. The United Nations Convention Against Corruption, along with watchdogs including POGO, have to keep pressuring our respective governments and private sector entities to implement effective anti-corruption systems. We also need to pressure them to spend the time and resources required to enforce those systems, thereby deterring corruption.

As United States Supreme Court Justice Oliver Wendell Holmes advised many years ago, "*Men must turn square corners when they deal with the Government*²⁵". (Emphasis added.) That principle is vital to promoting integrity in the government and the private sectors, and to exposing those who are driven by personal or private gain rather than the public good.

²⁵ *Rock Island, Arkansas & Louisiana R. Co. v. United States*, 254 U.S. 141, 143, 41 S. Ct. 55, 65 L. Ed. 188 (1920).

CIVIC EDUCATION IN UNIVERSITIES:
UNDERSTANDING THE NEED FOR RULES

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1. Cesare Beccaria, the great reformer of criminal law in eighteenth century Europe, identified education as “the surest”, but also the “most difficult way of preventing crime” (difficult on account of the enormity of such a “subject”, on account of its being linked “too intrinsically with the nature of government”) and identified, as the “principal maxims of education” that are truly useful to mankind, those consisting “less of a sterile multitude of objects than of the choice and precision of the same”; in approaching the “fresh minds of the young”, he wrote, we should “turn them away from evil” by following the “*infallible*” path “*of necessity and inexpediency*, and not the uncertain one of command, which only produces a simulated and momentary obedience”¹.

The teaching of this Lombard man of the Enlightenment also addresses the essential point of the role of educational institutions and, more to the point of my presentation today, academic institutions, with a view to the prevention of that particular crime which is corruption. To respond adequately, then, to the exhortation in Articles 6 and 13 of the *United Nations Convention Against Corruption*, which calls for “increasing and disseminating knowledge” in this field and the involvement of civil society in a growing public awareness of the existence, the causes and the seriousness of the threat posed by corruption”².

¹ C. BECCARIA, *Of Crime and Punishment*, edited by F. Venturi, Turin 1994, chap. XLV, p. 102.

² Art. 6 - Preventive anti-corruption body or bodies
1.(b) Increasing and disseminating knowledge about the prevention of corruption.
Article 13- Participation of society

I would say that Beccaria's reflections are particularly appropriate with reference to corruption: a *crime* that, specially in its most pervasive and often systemic forms, is rooted in its own particular culture or sub-culture. Corruption, too, as the experts in the field know, has its own unwritten but inflexible³ laws, certainly opposite to the rules of legality

1. Each State Party shall take appropriate measures, within its means and in accordance with fundamental principles of its domestic law, to promote the active participation of individuals and groups outside the public sector, such as civil society, non-governmental organizations and community-based organizations, in the prevention of and the fight against corruption and to raise public awareness regarding the existence, causes and gravity of and the threat posed by corruption.

This participation should be strengthened by such measures as:

(a) Enhancing the transparency of and promoting the contribution of the public to decision-making processes;

(b) Ensuring that the public has effective access to information;

(c) Undertaking public information activities that contribute to non-tolerance of corruption, as well as public education programmes, including school and university curricula;

(d) Respecting, promoting and protecting the freedom to seek, receive, publish and disseminate information concerning corruption. That freedom may be subject to certain restrictions, but these shall only be such as are provided for by law and are necessary:

(i) For respect of the rights or reputations of others;

(ii) For the protection of national security or ordre public or of public health or morals.

2. Each State Party shall take appropriate measures to ensure that the relevant anti-corruption bodies referred to in this Convention are known to the public and shall provide access to such bodies, where appropriate, for the reporting, including anonymously, of any incidents that may be considered to constitute an offence established in accordance with this Convention.

³ In particular in so-called *systemic* corruption, the network of corrupt exchanges becomes institutionalized thanks to a set of "informal rules of the game", sanctioned by the centres of power that benefit from the flow of bribes; these regulate the conduct of the corrupt and corrupters so as to minimize the occasions for conflict. Cf. A. VANNUCCI, *The Corruption Market. The mechanisms of occult exchange in Italy*, Milan, 1997, pp. 65-79; ID., *Corruption in the Italian political system ten years after 'Clean Hands'*, in G. FORTI (Ed.), *The Price of a Bribe. Corruption as a system ten years after 'Clean Hands'*, Milan, 2003, p. 30.

which are intended above all to safeguard the equality of all citizens⁴. The “culture” of corruption, as a recent empirical study confirmed, is very persistent and deep-rooted: it is not easily changed even when those who have absorbed it move into social contexts different from those of their origins⁵.

Beccaria’s thinking that I mentioned at the start may also be seen as an effective expression of the important inverse and bi-directional correlation between widely spread knowledge and crime. In the *Human Development Report* of 2005, the indicators of a country’s human development included knowledge (in its turn divided into sub-indicators like the level of literacy of the adult population and investments in primary, secondary and tertiary schooling)⁶, and a recent study carried out by two young economists highlighted the “strong link” between corruption and human development⁷; amongst the channels whereby corruption acts on the level of that development, the main factors were the variables of governance: a corrupt Government generally dedicates few resources to education, but in turn low public investment in and attention to education influence governance through the low quality of political and administrative personnel.

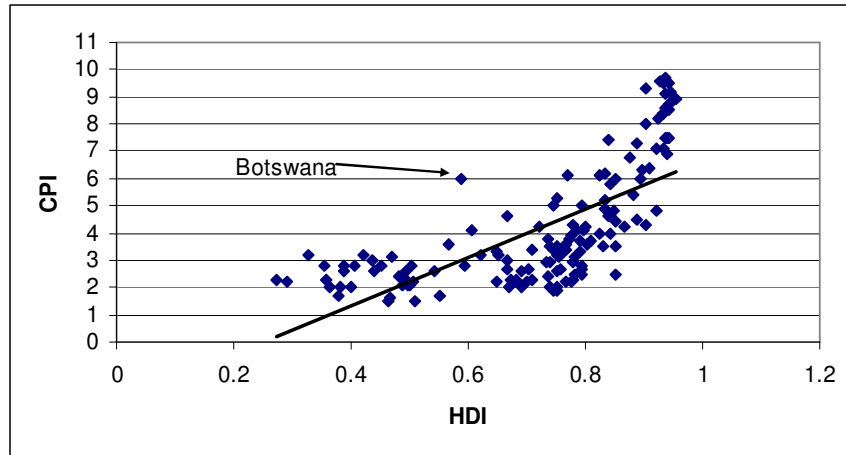
⁴ Article 3, Para. 1 of the Italian Constitution, for example, states that “all citizens have equal social dignity and are equal before the law, without distinction of...personal and social condition”.

⁵ R. FISMAN – E. MIGUEL, *Cultures of Corruption: Evidence from Diplomatic Parking Tickets*, text presented on 28 April 2006 to the USC FBE APPLIED ECONOMICS WORKSHOP.

⁶ Cf. *Human Development Report 2005*, published by the United Nations Development Programme (UNDP), in particular Table 11 on p. 254, showing the percentage of investment in education compared with GDP and with the total of public expenditure, as well as the split of investments in education amongst the various levels of education (primary, secondary and tertiary).

⁷ M. ARNONE – E. ILIOPULOS, *Corruption Costs*, Milan, 2005, spec. pp. 144 ss.

Figure 1: Corruption and Human Development



SOURCES: ARNONE and ILIOPULOS, based on UN data, *Human Development Report 2004*, and TI.

Figure 1 shows that for a wide sample of 140 countries around the world, high levels of human development are associated with low levels of corruption; the effects of corruption, then, reach deep into society.

It is precisely such awareness that makes the idea behind this conference particularly topical and significant: the need to involve all parts of society, beginning with educational institutions, in the effort to generate an anti-corruption culture as a “new way of life”. Given that the norms of corruption are “sticky”⁸ and do not lend themselves to “solutions” when fought only with the dissuasive impact of punishment, we must raise and broaden our perspective, taking into consideration the context in which people live their lives, and ask ourselves why they should feel the need to seek support in the unwritten “rules” of corruption, the non-rules of inequality.

⁸ Fisman – Miguel, *Cultures of Corruption*, cit., p. 15: “The most important message of our main result is that corruption norms are sticky. This result raises the critical question of whether there are policy interventions that can modify norms over time.”

2. Simply by paying attention to the dense meanings of the word “corrupt” I believe we can appreciate Beccaria’s idea of educating the “fresh minds of the young” to the “necessity” and, at the same time, the importance of that preventive knowledge that the Convention invites us to “increase and disseminate”, by involving the institutions of higher culture. The university, addressing itself not only to future philologists and jurists (for whom of course words are the “raw materials” for the exercise of their professional skills), but to every one of its students, should above all teach respect for the language, i.e. a careful use of words, as a precondition for respect of those relationships, objects and hence persons whose distinct identities can be recognized only through appropriate, precise language. The words we use (or should use) appropriately, if we listen to them in silence, often have sufficient density to make us understand the phenomena and situational contexts to which they refer and at the same time to reveal the need to activate our defences and the most appropriate remedies. This is also the meaning, I think, of the extraordinary thought expressed by Franz Kafka in one of his sententious aphorisms. “You don’t need to go out. Stay at your desk and listen. Don’t even listen, just wait. Don’t even wait, sit in complete silence and solitude. The world will offer itself for unmasking, it can’t help but do so, it will twist in ecstasy before you”⁹.

Well then, let us “listen in silence” to that kind of ‘ontological’ sense that in practically all the Indo-European languages attaches itself to the concept of corruption¹⁰ and that appears to be inextricably linked with the

⁹ F. KAFKA, *Aphorisms and Jottings*, Milan, 2004, p. 72.

¹⁰ The *Oxford English Dictionary*, for example, identifies no fewer than nine definitions of the term “*corruption*”, which can be grouped into three basic meanings of the term: “*corruption*” in a physical sense (“disintegration, decomposition, putrefaction...”); “*corruption*” in a moral sense, including the concept of political and administrative corruption, but not only that (think, for example, of the “*corruption of minors*” in Article 609-*quinquies* of the Italian penal code) and “*corruption*” intended as “perversion of the original state of purity of something”. As has been noted, the present use of the term *corruption* in the political context takes on the “moral” significance of the concept: cf. A. HEIDENHEIMER, *Introduction*, in A. HEIDENHEIMER (ed.), *Political Corruption. Readings in Comparative Analysis*, New Brunswick, N.J., 1978, p. 4 (see also now the third edition of the volume: A. HEIDENHEIMER – M. JOHNSTON (ed.), *Political Corruption. Concepts and Contents*, New Brunswick, 2002). Zingarelli’s *Vocabolario della lingua italiana* (11th edition, Milan, 1989, p. 470), records six meanings for the term corruption, especially corruption in a

more properly axiological and moral, as well as technical-juridical and political-social sense¹¹: ‘corruption’ evokes the idea of dissolution and

“material” sense – as a synonym for decomposition, putrefaction – and in a “moral” sense, meaning depravation, dissolution and perversion. One should also note the meanings of “alteration, decadence of language or style”, as well as those, no longer used in Italian, of “contagion, infection” or “break-up”.

- ¹¹ Cf. HEIDENHEIMER, *op. cit.*, p. 4 and following. In social sciences three definitions of corruption come to the fore. The prevalent meaning connects the notion with a deviation of public officials from their proper duties. So it is affirmed that corruption “is a general term by which is meant an abuse of authority caused by considerations of personal advantage, not necessarily of a pecuniary nature” (cf. BAYLEY, *The Effects of Corruption in a Developing Nation*, in HEIDENHEIMER (Ed.), *op. cit.*, p. 522; see also MCMULLAN, *Corruption in the Public Services of British Colonies and Ex-Colonies in West Africa*, *ivi*, p. 317ss.; NYE, *Corruption and Political Development: A Cost-Benefit Analysis*, *ivi*, p. 566s.). There are also meanings based on economic criteria and therefore of demand, supply and exchange. Thus it is said that “corruption implies a move from a model of forced fixing of prices to a model based on the free market”; in this perspective, the fact that the “customer” for administrative services deems it worthwhile to run the risk of legal penalties and the extra costs associated with corruption causes “a serious imbalance between supply and demand” and a “collapse of the centralized allocation mechanism that is the ideal of modern bureaucracy”. In such conditions, “bureaucracy takes on the characteristics of the free market” (TILMAN, *Black-Market Bureaucracy*, *ivi*, p. 62; see also van KLAVEREN, *op. cit.*, p. 39). Finally, there are meanings that, deeming the foregoing definitions to be either too restrictive or too broad, emphasize the public interest and so identify “corruption” where the holder of power, charged with certain responsibilities, is induced by an illegal recompense to bring about acts “that favour the payer of the recompense, thus damaging the community and its interests” (FRIEDRICH, *Political Pathology*, in *Political Quarterly*, 1966, p. 74). We can see that corruption “is in contrast with responsibility with regard to at least one public or private regulation” whose characteristic is to “place the common interest above individual interest”: “damage to the common interest for an individual advantage”, then, is “corruption” (ROGOW – LASSWELL, *The Definition of Corruption*, in HEIDENHEIMER (ed.), *op. cit.*, p. 54). One must also note the division, characteristic of the English language, of the Italian concept “corruption” into the two terms *corruption* and *bribery*. However “intimately interlinked”, the two notions do not seem to be “inseparable”, in the sense that a “bribed” person is certainly “corrupt” but *corruption* could also exist without

consumption of bodies and objects, their decomposition, “something vile and repugnant”¹².

Such a meaning is often recalled in specialist discussions of the problem, with frequent use of nosographic metaphors or similes, associating corruption with chronic or destructive diseases. The most recent of these metaphors was, I think, recently used in the presentation made on 6 December 2006 by Terry Davis, Secretary General of the Council of Europe, during the 31st plenary meeting of the Group of States Against Corruption (GRECO). Davis said that “when functionaries, politicians or members of the judiciary become involved in embezzlement or abuse of the community’s assets, the foundations of democracy are at risk” and, he declared¹³, “corruption is to democracy as flu is to a human being. We are

the paying to a public official of a *bribe* (according to BAYLEY, *ibidem*). Basically, however unclear the line of demarcation is in the use of the two concepts in an empirical and social context, the broader meaning of the English term *corruption* may be seen as roughly corresponding to all those aspects that in the Italian legal system have to do with the abuse of position or the illicit enrichment by a public official. It is *bribery*, judging by a comparison with the normative descriptions in Anglo-American law (see above), that best corresponds with the notions described in Article 318 and following articles of the Italian penal code and the “*concussione*” [extortion] in Article 317. English also uses the term “*graft*” to designate the phenomenon of corruption; this also recurs in the specialist literature (cf. e.g. AMICK, *The American Way of Graft. A study of corruption in State and local government, how it happens, and what can be done about it*, Princeton, N.J., 1976). This is a more generic and comprehensive term than *bribery*, frequently used, specially in the United States, to mean “the use of illicit or unfair means to acquire an advantage in business or politics”, as well as the “benefit obtained in that way” (see *Oxford Advanced Learner’s Dictionary*⁴, Oxford, 1989, p. 541).

¹² R.C. BROOKS, *The Nature of Political Corruption*, in A. J. HEIDENHEIMER (Ed.), *Political Corruption*, cit., p. 57. Cf. also DELLA PORTA, *The Hidden Exchange. Cases of Political Corruption in Italy*, Bologna, 1992, p. 83, which points out the difficulty of a “neutral” use of the concept of corruption, given the strong tendency toward a much wider meaning that is imposed by a moral judgment tending to see as “corrupt” everything whose original purity has been tainted, including the degeneration of the democratic system.

¹³ “Corruption is to democracy as flu is to a human being. We are all at risk, and there is no fool-proof protection. Its effects vary from temporary malfunction to lasting and even fatal damage. Luckily, there are vaccines, and there can be no doubt that when it comes to prevention and treatment, GRECO has become a

all at risk, and there is no fool-proof protection. Its effects vary from temporary malfunction to lasting and even fatal damage. Luckily, there are vaccines...”. At numerous conferences and scientific meetings I have often come across (even in the title of the conference itself) another even stronger and more worrying nosographic metaphor: corruption as a cancer threatening civil society and democracy¹⁴.

These “ontological” and figurative meanings of the term “corruption” vividly express what lurks in the mind of anyone who is even only *inclined* to choose corruption as a means to reach his ends. To plan an advantage for oneself or for others *by way of* corruption implies an attitude that, on the one hand, conceives of the *res publica* (and the party embodying it) as corruptible and, on the other, places that corruptibility in relationship with the corrupter’s own aims in acting as an ‘external agent’ upon it. The idea of corrupting, of being *able* to corrupt, presupposes the negation of the value *per se* of the *res publica* in its broadest sense (and of the rules that belong to it) or at least the attributing to it of a derived or subordinate value in relation to the personal, contingent objective being pursued: a value and importance that *can* and *must* be overcome as a hindrance. The mind of a person planning to corrupt is taken over by that decomposition, that pollution (it is no coincidence that dictionaries, under “pollution”, give the figurative sense of “contamination, corruption”) which is also the effect of the acts of corruption. If there exists, as Gregory Bateson wrote, an “ecology of mind”¹⁵, we might say that there is something profoundly anti-ecological in the mind of the corrupter. Polluting ‘decomposition’ of the *res publica* is at the same time what is produced in the mind of the corrupter, what he *needs* to achieve his

trademark of excellence which has set high standards for monitoring the anti-corruption efforts of the vast majority of the Council of Europe’s member states”.

¹⁴ This, for example, is the presentation of the conference entitled *Corruption – The Enemy Within*, Fourteenth International Symposium on Economic Crime, held on 13 September 1996 in Jesus College, Cambridge: “Corruption is a cancer that affects all countries and that in various degrees eats away at the fabric of society, weakening relationships and destabilizing the institutions of the State. Corruption and related abuses undermine the integrity and therefore the efficiency and effectiveness of institutions, whether in the public or private sector, from within”. See the recent title of the Third World Bank Global Seminar, 11 February 2005: “Global Economy: Cancer of Corruption”.

¹⁵ G. BATESON, *Steps to an Ecology of Mind*, It. trans. *Verso un’ecologia della mente*, Milan, 2000.

purpose, and then, once his purpose has been achieved, what is left as the *state* of what has been corrupted: the annulment of the separate identity of it and of the person who, having been subjected to such an act, becomes a thing, a fungible object, exchangeable goods.

The corruptive attitude (before even the act itself) presupposes a lack of respect, a disbelief in if not a radical negation of the need that is intrinsic in every person or thing; a lack of confidence in rules, that are necessary, that define identities and social roles, in ongoing links, the relationships that bind people and things to other people and things. In this sense this is an act of power and *hubris*, because it presumes to undermine with money the relationships of objects that are significant for social cohabitation: by corrupting the *res publica* and leaving it corrupt, it is cut out of the network of relationships that are essential to it, the network of the public good. The administration decomposes in that its “objective” rules – as Weber has it¹⁶ – leave the field free for the “subjective” rules of the economy and politics. But that is not all: the overwhelming of the administration by the economy and politics betrays the very *raison d’être* of the economy and politics, because it is in effect from the separation, or at least the distinction, between these two spheres that they derive the ability to follow their own rules. In other words, the economy and politics that corrupt the administration also corrupt themselves and are no longer able to present themselves as autonomous spheres with their own meaning, being now reduced to a mere tumultuous sum of actions and agents that are “perfectly self-interested”.

“A market which *normally* operated with perfectly self-interested individuals, as would seem to be suggested by the most “comfortable” reading of Smith’s theory of the “invisible hand”, would have extremely high operating costs because it would have to be continually dealing with the attempt by individuals to redefine to their own advantage the “rules of the game”, i.e. the institutional context within which market exchanges take place”; “if the market manages to function in an orderly fashion, it happens precisely *because* the parties involved can successfully call upon a set of values and expectations of equity that go beyond the contractual clauses and which do not belong to *homo oeconomicus*”¹⁷.

¹⁶ Cf. spec. F. WEBER, *Wirtschaft und Gesellschaft*, 2. Halbband, Köln-Berlin, 1969, p. 710 ss.

¹⁷ Thus the ever current and incisive observations of L. SACCO, *Homo economicus doesn’t explain the market*, in *Il Sole-24 Ore*, 31 August 1997, p. 28; see also G. BATAILLE, *The Expenditure*, Ed. E. Pulcini, Rome 1997 and R.R. WILK,

Culturally, corruption seems to be a factual expression of certain techniques of discussion and argumentation. Its result is to bring the entities it involves down to the same level and, as it spreads, in the end it brings everything to the same level, removing distinctions, qualities and boundaries between things and values. But as is well known in the theory of argumentation, “beings, once they are compared”, even maybe in order to establish a hierarchy amongst them, “belong to the same group”: every comparison “is somehow a downgrading”, because it eliminates “the uniqueness of incomparable objects”: “treating one’s country, one’s family, as a country, as a family, means depriving it of part of its prestige; which gives rise to the somewhat blasphemous character of rationalism, that refuses to consider concrete values in their uniqueness”¹⁸.

It’s as though a sort of ‘blasphemous rationalism’ were attached to corruption and its effects: it drags things down, it is morally corrupting, because it tends to render everything quantifiable and comparable. Corruption, like consumerism, makes “a promise that the cure for every problem is awaiting us in a shop, and can be found by searching carefully”, transforming the citizen into a consumer¹⁹. The language of corruption and, therefore, its cultural cipher is similar to the one which has been called the “victorious language of the economy and of technology”²⁰, that “requires a single space, a single *concept* of space, as an *a priori* form, ‘free’ of every difference of place”, that causes the “liquidation of every ethos”; “the indisputable tendency of the age toward *global unity*” imposes silence upon jurists, just as once it imposed it upon theologians, and condemns jurisdictional powers to “occasionalism”, in part because it deprives them of that certain, defined terrain that is the text of the law and the ability to read it, inexorably subjected now to the “only language that seems to have survived: that of ‘freedom’ of global commerce, economy and technology”.

Far from being innovative and progressive, far from producing development, as some functionalist economic theory has tried in vain to demonstrate (though specially with reference to the economies of

Economies and Cultures. An Introduction to Economic Anthropology, Milan 1997.

¹⁸ C. PERELMAN-L.OLBRECHTS-TYTECA, *Traité de l’argumentation. La nouvelle rhétorique*, It. trans., *Trattato dell’argomentazione. La nuova retorica*, Turin, 1966, p. 260.

¹⁹ Z. BAUMAN-K.TESTER, *Conversations with Zygmunt Bauman*, It. trans., *Società, etica, politica*, Milan, 2002, p. 120.

²⁰ M. CACCIARI, *Geo-Philosophy of Europe*, Milan, 1994, pp. 126-127.

developing countries) by seeing in corruption a sort of tribute to be paid to the process of modernization, a bribe is in reality absolutely conservative and regressive; it produces immobility and stagnation, given that by its nature it ontologically affirms that element of total interchangeability that brings down and flattens out, that twists and turns upon itself and so impedes progress and innovation, and prevents liberation from the petrification produced by blasphemous and rationalistic ‘comparison’, by the reduction of everything to the only current measure, that of numbers and money. A similar “universal trend toward unity”²¹, as a philosopher has written, “radicalises, and does not contradict, the characters and the language of European nihilism”; “for it, everything *must* be relative – except its own goal: the neutralization of values. Everything *must* be reduced to equivalent-indifferent – but not universal equivalence. Everything *must* be negotiable and exchangeable – but not the universal dominion of the negotiable and exchangeable. Everything *must* be reduced to equivalent-indifferent – but not universal equivalence”.

As was observed in a study of the reconstruction of a “common horizon” for the cultural traditions of the West and the East (with specific reference to the modest unostentatious aspect of the Japanese tea-house, the *sukiya* or *chashitsu*), at the basis of manifestations of understatement in many Eastern rites there is “the conviction that every exclusively individualistic statement about oneself coincides with a process of *separation*, if not a tearing of the fabric that binds the individual to things and to other individuals. The ethical ideal, instead, consists in *maintaining* or – if previously torn – *repairing* this fabric, which is considered the original and natural condition of every living being: each, in order fully to realize his own nature, need not use any and all means to reaffirm his own ‘specialness’, but must maintain or repair the network of connections that link him to the physical environment and the human context”²². We should remember the perspective of Taoism and Zen Buddhism, where there is an *ecological* model “based on which the life of the parts is better to the degree that the *relationships* between the parts is better”. An “organic” concept, “far different from the ‘mechanical’ one that has predominated in modern Western civilizations”.

“Corrupting or devastating places in the name individual interests – different from those of the environment and of the community – means contaminating and destroying parts of the earth imbued with age-old

²¹ CACCIARI, *Geo-Philosophy of Europe*, pp. 128-129.

²² G. PASQUALOTTO, *East & West*, Venice, 2003, p. 72.

meanings produced by the *relationships* of men with something that has always been greater than their individuality: the sense of the numinous, the presence of the gods, the name of God, the idea of a community of the just or the ideal of a perfect society. So it is true that “the eclipse of the sacred that is the hallmark of modernity destroys, with its ritual orientation, the bulwark that *solidarity between man and place* formed to resist the spread of nothingness in the profane space”, but this modernity defined in an individualistic sense also destroys the bulwark that *solidarity between man and man* has always formed to resist the spread of senseless times²³.

The dissolution of longstanding relations between persons through the dissolution of things (beginning with the *res publica*) and places that are their guarantee is the greatest harm caused by the “cancer” of corruption when it spreads through the social fabric. But to cut relations always means somehow bringing into question the very idea of democracy in its social and ethical dimension, not merely as a form of government or ritual exercise of the right to vote. The philosopher J. Dewey²⁴, when discussing the cognitive and ethical foundations of a democracy, criticized as intrinsically antidemocratic the veneration of heroes, of bosses, of leaders, *precisely* because that is a celebration of the cutting off of an “exemplary” individual – and therefore of every individual – from his network of relationships (and is therefore an expression of disdain for the man, reduced to a non-person, to an anaemic caricature of his immense potential for life, communication and relationships): “man is essentially a

²³ PASQUALOTTO, *op. cit.*, p. 210, also with ref. to G. FERRARO, *The Book of Places*, Milan, 2001, p. 17.

²⁴ In the framework of an analysis of the normative models of democracy aiming to confer on the expression of democratic will a stronger role than that imagined by political liberalism, Dewey’s thinking has recently been appreciated as a possible “third way” between Arendt’s “republicanism” (with special ref. to H. ARENDT, *Über die Revolution*, München 1973) and Habermas’s “proceduralism” (with special ref. to J. HABERMAS, *Faktizität und Geltung*, Frankfurt am Main 1992, It. trans., *Fatti e norme: contributi a una teoria discorsiva del diritto e della democrazia*, Ed. L. Ceppa. Milan, 1997², in particular chap. VI). Cf. A. HONNETH, *Demokratie als reflexive Kooperation*, in A. HONNETH, *Das Andere der Gerechtigkeit*, Frankfurt am Main 2000, pp. 282-309 which, in Dewey’s work, refers esp. to *The Public and its Problems*, in J. DEWEY, *The Later Works, 1925-1953*, and *The Ethics of Democracy*, in J. DEWEY, *The Early Works 1882-98*, It. trans. *Etica della democrazia* (the source of the two passages cited in the text), in *Scritti politici*, Ed. G. Cavallari, Rome 2003, pp. 3-22.

social being” and so “the non-social individual is an abstraction we arrive at by imagining what man would be if all his human qualities were removed”.

3. From what has been said thus far, I think it must be clearer why many of the analyses – juridical, sociological or political – of the problem of corruption concentrate on the impact it has on ‘confidence’. This too was noted recently by Terry Davis, in his above-mentioned address: “Taking legal action against ministers, members of parliament and high officials guilty of enriching themselves illicitly and of other acts of corruption, as we have seen in a number of our Member States, can only *strengthen the confidence* of citizens in democratic institutions and the rule of law”.

Subjecting things and people to exchange without rules (which always tends to affirm and impose the idea of universal interchangeability, replaceability of everything by everything), inevitably undermines confidence in institutions, in public administration, in the State, and in the market itself, which is a secondary institution that survives in a credible form “only if society has sufficient confidence to ensure the terms of exchange”²⁵; above all in the *objectivity* of institutional decisions. To some extent, however, that also erodes a deeper confidence which is essential for people’s lives: ‘confidence in the truth’. What is spoiled is the expectation that appearances, forms, correspond to substance, that rules are really and not only nominally in force and, as such, have real value for the general population. Emblematic of this is the characteristic secrecy that is so central to every case of corruption: the constant, almost obsessive, efforts of the players to keep ‘secret’ their illicit ‘exchange’ is once again, as ever in human affairs, both the cause and the effect of their act.

Identifying a violation of the collective confidence in matters of corruption naturally implies a preliminary clarification as to what the ‘expectations’ are that a certain society, at a certain point in time, has of its public administration and how such expectations are ‘disappointed’ when confronted by more or less widespread corrupt practices in the political-administrative fabric. It has been noted, for example, how different levels are involved, all of which are crucial to the maintenance of social order: collective confidence in the pursuit of the common good by those in government; confidence in the validity and respect of equality of the legal system and of institutions; confidence by each arm of the State in the

²⁵ J. RIFKIN, *The Age of Access*, It. trans., *L’era dell’accesso*, Milan, 2000, p. 323

honesty and correctness of the others; confidence of businesses that their competitors abide by the 'rules of the game'; confidence of the members of the same corporation that the others – directors, shareholders etc. – are really acting in the interests of the corporation.

The sociologist Zygmunt Bauman identifies, as the heart of the idea of “cosmic awe” (described by Michail Bachtin as the “human feeling evoked by the magnificence of the universe that passes human understanding”, the “trepidation one feels before the immensely great and immensely powerful”), the vulnerability and uncertainty of the human being; that feeling that “all religions have used to claim authority and demand faith and reverence *in exchange for the offer of comfort*”. But vulnerability and uncertainty “are also the two key aspects of the human condition that underpin ‘official awe’, the fear of power created and exercised by man. If this is the basis of human power, then generating official fear is the key to making that power effective [...] Official fear must be *designed*. Terrestrial powers, as is the case with consumer products, must induce demand; in order for their grip to be tight, their human objects must be *made* and *kept* vulnerable and insecure”. “In an average modern society, vulnerability and existential uncertainty are greatly favoured by the exposure of vital activities to market forces, which are noted for their instability and turbulence”²⁶.

One could say, then, that corruption generates official fear because, by undermining the reassuring objectivity of the law and, therefore, the perception of its equitable application, it takes each of us back to a state prior to the social contract, revealing the brutal face of uncontrolled power, unleashing the forces of a winner-takes-all market without rules, to which each of us may find ourselves sacrificed. As is observed in the economic study I cited at the start, “the degree of legality that characterizes a society is an indication of the effectiveness of the set of rules that govern it”, but “if the laws are not complied with, society is pervaded by a state of uncertainty, and respect for the rights established by the legal system is not guaranteed”. And uncertainty represents “a significant cost for business operations” and in turn causes serious inefficiencies; “the same principle is valid in the wider context of the uncertainty caused by non-compliance with the rules of civil society”. One may conclude, then, that “low levels of legality create fertile terrain for the development of cases of corruption”²⁷.

²⁶ Z. BAUMAN, *A New Human Condition*, Milan, 2003, p.100 ss.

²⁷ ARNONE-ILIOPULOS, *Corruption Costs*, cit., p. 134.

Fear, then, comes before the precipice of corruption: fear of competition, fear of loss of political power or of being excluded from it, fear of innovation and of comparison, fear of losing status and self-respect that a perverse cultural short-circuit identifies with affluence and power. But fear is also at the bottom of that precipice, it is what corruption insinuates into minds every time it affirms its perverse rules or manages to make a commodity of things and people, thus inducing people to seek protection so as to obtain the safety no longer guaranteed by the laws it has helped render ineffective. As Beccaria would have said, this leads to the insinuation of that “imperceptible insect”²⁸ that erodes the “regulatory spirit of republics” and affirms the “spirit of family”, that is “a spirit of detail and is limited to little things”, opening the way for “ruinous and authorized injustices”²⁹ from which all attempt to defend themselves as best they can, yearning for the protection of some “head of the family”.

There is a hint of the nihilistic, evil and deadly in the attraction that corrupting and being corrupted exerts in a social community. For this reason, years ago, in the introduction to a book I entitled, not by chance, *The Price of the Bribe*, I compared the evil of corruption to the mythological monster Medusa³⁰. The serpentine tangle of causes and effects of corruption that is its most destructive aspect can be traced back to the fact that its replication, its method of spreading, depend on the desire for petrification that fear generates. Corruption then is both the cause and the effect a country’s lack of confidence in the possibility of finding that “legal security of allowed, free choices of action” in which the Italian Constitutional Court, in an important sentence³¹, distilled the essential guarantee that a constitutional State should offer its citizens so that they are

²⁸ BECCARIA, *Of Crimes and Punishment*, chap. XXVI, p. 50.

²⁹ BECCARIA, *Of Crimes and Punishment*, chap. XXVI, p. 56 ss.

³⁰ In the myth, Medusa is the expression of death in its fearful aspect, in its radical otherness. Unlike virile *Thanatos*, who takes on a warrior’s form and represents the ideal of the heroic, this Gorgon is closer to the repulsion and horror caused by the transformation of a living being into a cadaver and of the cadaver into a carcass: Medusa is the confrontation of death, “that hereafter, that abyss that yawns on the other side, that no look can reach and no description express: only the horror of an inexpressible Night”. Cf. J.-P. VERNANT, *L’individu, la mort, l’amour*, It. trans.. *L’individuo, la morte, l’amore*, [The Individual, Death and Love] Milan, 2000, pp. 113-114, but see also pp. 111-132.

³¹ Constitutional Court 23-24 March 1988, no. 364, with comments by D. Pulitanò, in *Riv. It. dir. proc. pen.*, 1988, pp. 686ss and spec. p. 713.

not and *do not feel as though they are* treated as “subjects” and so that they do not view social and juridical rules as an “obstacle” to the “full development” of their *persona*.

4. Taking inspiration from the metaphor that depicts corruption as a cancer eroding civil cohabitation and institutions, we might say that anti-corruption policies, rather than proposing to intervene – always too late – with destructive means on the affected social and institutional tissue, must above all concern themselves with bringing to bear treatments analogous to those that oncologists, being aware of the correlation between the process of growth of veins and metastasis, use to stifle the proliferation of cells. The keywords in this new therapy are to “asphyxiate” or “starve” the tumour: i.e. to prevent it constituting “its own” network of veins to bring oxygen to the cells that are growing in a continuous uncontrolled way. To cut off the process of “angiogenesis” (i.e. the “formation of new veins”), to “cut supply” or the trophic channels of corruption means, leaving the metaphor behind, undertaking broad-ranging action capable of activating inhibitors of the many communication flows that nurture the culture of corruption. Inhibitors having, as the oncologist Judah Folkman says of *his* therapies, small negative side-effects or rather, as we might say of a pervasive culture of anti-corruption, have many very favourable side-effects for the society, culture and legal system in which they are actuated.

I believe that universities are called upon to make an important contribution in stimulating the “inhibitors” of the corruptive “angiogenesis”. However they certainly cannot see their role limited simply to teaching phenomenology, the causes and seriousness of the consequences of corruption. The mythological image I proposed above could be filled out by remembering that Perseus was able to cut off and defeat the head of Medusa, wrapped in its writhing serpents, on the condition that he did not see her face, but only its reflection in the smooth surface of his shield, a gift from Athena, not coincidentally the goddess of rational *métis*, the Ulyssian virtue *par excellence*.

Similarly, so as not to submit to the bewitching tangle of corruption, analysis and preventive action must first find the key to breaking the circle, the reptilian spirals of the Gorgon: what is needed is a metaphorical shiny shield of Perseus that is able to decipher the arcane codes of corruption and is immune from its petrifying seductive force and its illusory, because in reality nihilistic, promise of immortality.

The “shield of Perseus” that an “institution of thought” like the university should provide is certainly (as is recommended by the UN Convention) the dissemination of knowledge of this problem but also the

ability to dig deep into corruption's cultural roots, before getting into its structural, economic and organizational causes; constant attention must be paid, then, to the corruptive *mentality* and the conditions, in this case structural, economic and organizational, that favour its growth and spread. The tools of thought and culture must be brought to bear to "educate" in Beccaria's sense as to the need for rules, or the awareness and concrete ability to perceive the need that is in people and things, that is part and parcel of respect for their individuality. This means "educating to" a sort of ecology of the mind, or to the durability of the things that make up the human and natural environment that surrounds us, which is opposite to their consumeability, dispensability, interchangeability. It is the same durability that gives substance to relations between people, given that in the durability of human relations there is always some real or ideal substance, a durable circle at least partially protected from the destructive and nihilistic flows of history.

The task is difficult if we consider the formidable forces pushing in the opposite direction. In a recent book, Richard Sennett recalls that the culture of the new capitalism promotes "a short-term-oriented ego which concentrates on potential abilities and is ready to abandon past experiences" and that preaches, in the name of liberty and individual autonomy, the need to "cut links, especially links that have grown over time"³². Nietzsche would have said that such an "ego" has lost "the instinct that gives rise to institutions", "that lays the foundation for a future"³³. The "culture" of the new capitalism throws up, as Sennett further observes, "a strange type of human being": a man who is not a true man, given that "most of humanity is not made like that: people need a coherent biography, they are proud of knowing how to do certain things and value the experiences of a lifetime"³⁴.

³² R. SENNETT, *The Culture of the New Capitalism*, It. trans., *La cultura del nuovo capitalismo*, Bologna, 2006, p. 144.

³³ "The West as a whole no longer has these instincts that give rise to institutions, that give rise to a *future*: perhaps no other thing is quite so contrary to its 'modern spirit'. People live for today, they live in a great hurry – they live in a very irresponsible world: this is what is called 'freedom'. What makes institutions institutions is disdained, hated, refused: people fear a new slavery if they even only hear the word 'authority'" (F. NIETZSCHE, *Götzen-Dämmerung oder Wie man mit dem Hammer philosophiert*, It. trans. by F. Masini, *Il crepuscolo degli idoli*, Milan, 1983, p. 115s.).

³⁴ SENNETT, *The Culture of the New Capitalism*, cit., p. 9s.

Faced with these forces that, in the broadest sense, are forces for corruption, because they tend to cut the links between persons and, above all, *within* each single individual, encouraging him constantly to abandon “the experiences of a lifetime” and the “network of connections” that link him to the physical environment and the human context, the “parts of the earth imbued with age-old meanings produced by the *relationships* of mankind”, the university can and must interpret in the widest possible sense its educational and *civic* task.

I’d like to recall here the interesting idea proposed by Rifkin of a *civil education* based on the premise that young people of any age learn better “if their education is founded on experience and is directly linked to the neighbourhood and the community in which they live”. The active *partnership* for this *civil education* should also involve different generations of students. And indeed, “access to the knowledge available in cyberspace and virtual worlds, though necessary, must be accompanied by access to collective knowledge and the wisdom of the local community within which students are integrated”. Learning “also means being able to interact with others in an intimate direct manner, in the time and space of reality” and “civil education is based on the premise that the principal mission of scholastic education is to prepare students for the culture to which they belong and to take on an active role within that culture”. “Supporters of civil education affirm that, in order to give greater depth to the student’s sense of identity, it is necessary to convey to him a sense of belonging to the community. Education, they declare, must nurture social confidence and empathy, as well as promoting intimate relations with others – and with other creatures – making students aware of the fundamental role played by culture in conserving civilization”³⁵.

This education as to links to one’s own culture and relations with others must also be sustained and filled out by educating the “fresh minds of the young” – as Beccaria would have said – in precision of language, the exercise and, above all, the essential nature of thought, the quality and, thanks to all of that, the capacity to create one’s own interior space.

4.1 Universities must encourage education in language and words, first of all. Corruption is in fact confusion, the inability to define borders and distinctions between concepts and things, let alone between public and private interests. That “ecology of mind” that is the antithesis of the

³⁵ J. RIFKIN, *The Era of Access*, cit., p. 336ss.

corruptive mentality, passes by way of an ecology of language, of public communication. It requires attention to the precision of language to allow each to express himself with the greatest completeness and precision possible: “feelings, nuances, thoughts, perceptions that remain nameless”, said the Russian writer Iosif Brodskij, “incapable of finding a voice and dissatisfied with approximations, accumulate within an individual, repressed, and may lead to a psychological explosion, or implosion.”³⁶. Brodskij’s exhortation can also be read as directed to the community, the *polis*, as an invitation to give and find a voice, with the precision and completeness of a rich vocabulary, for the community of individuals, to make it “decent” and “good to live in”³⁷ thanks to the quality and decency, especially in terms of communications, of those who go to make it up.

4.2 A richness of language is both premise and consequence of a capacity for thought. Hanna Arendt, during the trial of the Nazi criminal Adolf Eichmann in Jerusalem, observed that “however monstrous” his actions had been, “the person who committed them was neither a monster nor a demon”. “The only quality one could attribute to him, on the basis of his past and his conduct at the time of the interrogations and trial, was negative: it was not so much a question of stupidity as a ‘genuine inability to think [...] To the rather limited stock of statements at his disposal he had now added a few more, and he was clearly in difficulty only when none of them could be used for the situation confronting him – as happened when he had to speak on the gallows and was obliged to use the cliché of the funeral oration, with a rather grotesque result, given that in that case it was not he who was going to survive. [...] Clichés, pre-formed phraseology, adherence to convention, standardized codes of expression and behaviour, all this has a function in protecting us from reality, or from the invitation to think that we constantly receive from each event and each fact of our existence”³⁸.

An “institution of thought” like the university has the task not only of teaching thought, but above all of helping the “fresh minds of the young” understand what it means to think and why that is so necessary today. Thinking is the precondition for judging situations and so for distinguishing between right and wrong. And we know that corruption is ethical confusion

³⁶ I. BRODSKIJ, *Profile of Clio*, Milan, 2003, p. 88.

³⁷ Cf. A. MARGALIT, *The Decent Society*, Milan, 1998.

³⁸ ARENDT, *Thought and Moral Considerations*, in H. ARENDT, *Responsibility and Judgement*, It. trans., *Responsabilità e giudizio*, Turin 2004, pp. 137-138.

but is also theoretical: it fears, as Medusa did the sword of Perseus, judgment and distinctions.

As Arendt wrote, “the purgative element of thought [...] that reveals the tacit implications of opinions not subjected to examination and destroys them – destroys values, doctrines, theories and even convictions –, is political by definition. Since this destruction has a liberating effect on another human faculty, the faculty of judgment, that we could also define, with reason, the most political of human capabilities [...] Judgment, the by-product of the liberating effect of thought, implements thought, makes it manifest in the world of appearances where I am never alone and am always too busy to think. The manifestation of this wind of thought is not knowledge, it is the capacity to distinguish right from wrong, the beautiful from the ugly³⁹.”

4.3 “The activity of thought”, “in its broadest and most general sense” may also be defined, as Plato has it, “a form of silent dialogue between me and me”⁴⁰. And here we come to another important educational question for our young people. The condition of the inner space without which there can be no thought and consequent resistance to the confusion and lack of distinction of the corruptive mentality.

Educational and academic institutions, then, must combat the erosion of the inner space, of the capacity for thought that is after all, as Hanna Arendt wrote, the capacity to be alone with oneself, to establish a sincere inner dialogue with oneself. This, too, is a formidable task for the universities, given that recently a well-known Italian psychiatrist drew attention to a current trend, especially amongst the young: “a new form of autism”. “New” because the “old” autism was to take refuge in one’s own inner world and thus exclude the outside world that one was unable to come to terms with. In this autism, instead, the sufferer is unable to be alone, because there is nothing, since his own world cannot be defined and so he needs external stimuli that do not come from men and women”, but perhaps “from machines that make a noise or talk and that don’t need any attention unless it be to change a battery once in a while and to press the start button and adjust the volume and tone”⁴¹. “*Human life is reduced to digital life, an*

³⁹ ARENDT, *Thought and Moral Considerations*, cit., pp. 137ss. e spec. p. 163.

⁴⁰ ARENDT, *Collective Responsibility*, in ARENDT, *Responsibility and Judgement*, cit., p. 135.

⁴¹ V. ANDREOLI, *Killing Silence: the Solitude of the i-Pod*, in *Life and Thought*, 4/2006, pp. 113-114.

inhuman experience in which there is space for emotions, but there is a total absence of feelings”. “Feeling is a bond that involves one’s personality, one’s inner needs, the need for love, the need for help, whereas emotion is something superficial, the automatic response of a machine to the stimulus it receives”⁴².

4.4 Another important tile in the mosaic of a culture of necessary rules must, I think, consist in attacking and combating the nihilistic quantitative thinking – which would be better described as non-thinking – that feeds the corruptive cancer. The reduction of everything and everyone to the single current measure of quantity and money must be met by generating quality and displaying it in our actions. Because quality, too, like corrupt and corrupting quantity, like treating everything as a saleable commodity, can be diffusive and, in this case, beneficially contagious.

Here we come across the electrifying idea expressed years ago in a famous book by Robert Pirsig. “Whatever work you do, if you transform what you are doing into an art, in all probability you will discover you have become for others an interesting person and not an object. This is because your decisions, based on quality, change you too. Or rather: not only will they change both you and the job, but will also change others, because quality is like a wave. That quality job you thought no-one would notice will be noticed, and how, and those who see it feel a little better: probably they will communicate this feeling to others and in this way quality will continue to spread”⁴³.

4.5 Everything said up to this point can be summarised in a single word: humanism. Recently in the Italian press there was an authoritative call once again for an essential humanistic component in the training for every profession. “Humanistic talents”, it was said, “are useful in business and in politics”⁴⁴. We could also say that they are even indispensable when

⁴² ANDREOLI, *Killing Silence: the Solitude of the i-Pod*, cit., p. 114.

⁴³ R. M. PIRSIG, *Zen and the Art of Maintaining a Motorcycle*, Milan, 1981, p. 341.

⁴⁴ Cf. C. SEGRE, *Humanism the True Science. Historical culture is our future. But Italy doesn’t know it*, in *Corriere della Sera*, 27 October 2006, p. 53. “Now, we know that the immediate fungibility of humanistic research is not great; but we also know that there exists another even greater fungibility of studies that is manifested however over the long term. The short-term future overshadows the great historical future. Legislators have trouble understanding why humanists,

it comes to understanding the problems of businesses and politics and coming up with long-term remedies for the social evil of corruption.

Humanism, in this as in every other field of life and science, means paying attention to the human *qualities* at play within the person, rather than his biceps or scattered fragments; considering the individual, unique and unrepeatable, rather than “counting heads” and measuring quantities or interchangeable replacements. This in the sense in which a discerning reviewer recently commented on the inspiration for Carlo M. Martini’s latest book⁴⁵ and defined the “Christian being”, not “conduct or duty that is valid for a few hours, for a few acts, for a few rules to observe” and “instead a permanent inner state that regulates all of one’s actions, words and existence”. “It’s a bit like a mother who is not a mother just for a few acts or a certain period, but always, according to the all-powerful law of love (not for nothing did the woman in the Song of Solomon confess: “I slept, but my heart was awake”, because even in sleep one remains in love)”⁴⁶.

An example of firm day-to-day humanism was perhaps to be found a few years ago by the three women (Cynthia Cooper of *Worldcom*, Coleen Rowley of the *FBI*, Sherron Watkins of *Enron*) who were *Time Magazine*’s “persons of the year” for 2002⁴⁷, after an incredible sequence of financial scandals and political revelations that had sorely tested Americans’ confidence in their public and private institutions: these were three *whistleblowers* who had felt the moral need to report illegality or serious irregularities in their respective organizations⁴⁸. We should remember that

despite using many modern electronic inventions, base their research on manuscripts and books, on libraries which are the custodians of our past (...). The talents developed by humanistic teaching are useful in business and politics as is demonstrated by the careers of many managers and statesmen, even at the top level. For this reason, a graduate or Ph.D. in human sciences is often preferred to those with a more technical background who might seem more immediately useful. And the demand for our graduates in the United States, so much further advanced in scientific research, is largely due to this open mentality. As proof of this, there is an ever greater tendency in America to accompany technical disciplines with philological-literary instruction, with the aim of developing the capabilities mentioned above”.

⁴⁵ C. M. MARTINI, *The Sermon on the Mount*, Milan, 2006.

⁴⁶ G. RAVASI, *Instructions from Jesus*, in *Il Sole-24 Ore, Sunday*, 12 November 2006, p. 27.

⁴⁷ *Time*, 30 December 2002-6 January 2003, pp. 36-62.

⁴⁸ Cf. *Time*, cit. p. 61.

the Convention we have been discussing in recent days stipulates that there should be adequate protection not only for witnesses, experts and victims who furnish proof of crimes under the convention⁴⁹, but also for anyone who “in good faith and on reasonable grounds” reports facts concerning such crimes to the authorities.

A reflection as to the inhibitors, the antibodies to be built up in the social body to combat the culture of corruption must address the generation and proliferation of this kind of mentality which is ready to say a firm no to illegal activities observed in the workplace (private companies, public administration, politics), but above all must pose questions as to the type of education and training that can generate such a mentality.

⁴⁹ Article 32. Protection of witnesses, experts and victims

1. Each State Party shall take appropriate measures in accordance with its domestic legal system and within its means to provide effective protection from potential retaliation or intimidation for witnesses and experts who give testimony concerning offences established in accordance with this Convention and, as appropriate, for their relatives and other persons close to them. 2. The measures envisaged in paragraph 1 of this article may include, inter alia, without prejudice to the rights of the defendant, including the right to due process: (a) Establishing procedures for the physical protection of such persons, such as, to the extent necessary and feasible, relocating them and permitting, where appropriate, non-disclosure or limitations on the disclosure of information concerning the identity and whereabouts of such persons; 18 (b) Providing evidentiary rules to permit witnesses and experts to give testimony in a manner that ensures the safety of such persons, such as permitting testimony to be given through the use of communications technology such as video or other adequate means. 3. States Parties shall consider entering into agreements or arrangements with other States for the relocation of persons referred to in paragraph 1 of this article. 4. The provisions of this article shall also apply to victims insofar as they are witnesses. 5. Each State Party shall, subject to its domestic law, enable the views and concerns of victims to be presented and considered at appropriate stages of criminal proceedings against offenders in a manner not prejudicial to the rights of the defence.

Article 33. Protection of reporting persons

Each State Party shall consider incorporating into its domestic legal system appropriate measures to provide protection against any unjustified treatment for any person who reports in good faith and on reasonable grounds to the competent authorities any facts concerning offences established in accordance with this Convention.

On this point, there was a significant passage in the interview with Cynthia Cooper in that same edition of *Time*. To the question as to what led her to report the irregularities in spite of the inertia of top management (and given that “it’s the value system at the top”, “the leaders set the tone”, as Sherron Watkins had said a few paragraphs earlier), she replied: “I think it comes down to the values and ethics one learns during the course of one’s life. My mother exerted an extraordinary influence over me: ‘Never let yourself be intimidated; always think of the consequences of your actions’. I think this can be an alarm bell for the whole country. All Americans – teachers, mothers, fathers, university professors, company managers – have a responsibility to make a contribution to guaranteeing the strength of the country’s ethical and moral fabric”.

It is not so comforting to learn from research carried out on students in business schools that a majority of them in interviews express the conviction that ethical behaviour can have a negative impact on their personal careers⁵⁰. Yet I don’t think businesses have to fear a loss of cohesion and productivity because of rules that provide effective protection for those who decide to report illegal activities they observe within those organizations. Specially if such protection is part of a set of initiatives designed to implement, but also to publicize, management’s determination to create an ethical climate in the company. An American study concludes that corporations considered highly ethical are six times as likely to obtain the loyalty of their managers, while 79% of employees who are unconvinced of the integrity of their bosses view their jobs as oppressive or uninteresting and want to quit as soon as possible⁵¹.

5. The above mainly has to do with what universities should do and teach in order to generate the “inhibitors” of corruption’s “angiogenesis”; now I’d like to speak about what universities should *be* in order to put these things into practice, to raise *their* “shield of Perseus” against “Medusa”. I think universities must be, and no less importantly must be seen to be, above all “institutions of thought”, and thus able to create in the “fresh

⁵⁰ T.J. RAKSITIS, *The Business Challenge: Confronting the Ethics Issue*, in *Kiwanis Magazine*, September 1990, p. 30, which reported 71% of responses from a sample of students interviewed at the University of Virginia Darden Graduate School of Business Administration were of this type.

⁵¹ Cf. A *Walker report*, 1999, p. 99, as cited in S. ROSOFF – H. PONTELL – R. TILLMAN, *Profit Without Honor*, 4th edition, Upper Saddle River, NJ, 2006, p. 584.

minds of the young” a resource of great value for every society and for democracy: an “institutional” mentality or thought process. Precisely that kind of mentality that Cynthia Cooper seems to have embodied in a critical moment of her life, when she found the strength to use her “no” to enrich the moral assets (not the kind that can be represented on a balance sheet) not only of her corporation, but of our society.

If we continue to reflect, with Kafka, “in complete silence and solitude”, upon the language we use so that “the world will offer itself for unmasking”, we meet this word dense with meaning: “institution”. Institutions “are”, but also allow one to “be”, to “be” alone with oneself, for example. Institutions have to do with thought, with what is above all a “form of *silent* dialogue between me and me”. Institutions, before becoming guarantors of the rule of law and of democracy, guarantee our inner life, our language, the quality of our actions, of our humanity. They, because they are free and autonomous, being spared from that ‘global unity’ that would suck them in, divide them up and regiment them, can represent “a valid counterweight to the inevitable oscillations in a social and political context that lives in history and gradually modifies opinions and convictions, preferences and choices”⁵². It is *also* in a plurality of independent centres, of institutions that are genuinely institutions so that, being *stable and durable* while all about them boils the maelstrom of ever changeable and contingent interests, they offer a certain guarantee of durability that we find the antidote to or, at least, the brake on the affirmation of those “hard times” for the moral ego and the ethical standards of society produced by the nihilistic and lethal drift of a “life lived as a series of self-contained episodes and the resultant fluidity of inter-human relations”, of that mental habit so well exemplified in Bill Gates’s mania for getting rid of things loved up to a moment before⁵³.

I have said that corruption generates, but above all feeds off, fear, vulnerability, the insecurity of persons and social groups. This is not, mostly, an elementary insecurity linked to the fear of losing the basic means of sustenance (one’s job, one’s home etc.); mostly it is a question of the perception of losing a more immaterial but no less precious asset: one’s *identity*, one’s *status*, one’s *self-respect* resources largely linked to recognition by one’s peer group or a wider public.

⁵² G. LUNATI, *Not Everything is Permitted the People*, “Corriere della Sera”, 9 March 2003, p. 31.

⁵³ BAUMAN-TESTER, *Society, Ethics and Policies*, pp. 101-102.

Precisely in order to limit the perception of insecurity and hence to increase tolerance of the loss of social identity, a role no less important than the psychological and cultural variables is played by the credibility of the juridical and extra-juridical rules current in the community. It is above all the perception of the *objective nature* of these rules that gives meaning to the actions of those involved and, above all, allows them to foresee (and so to perceive as “innocuous”) the conduct of their peers. In some measure this factor of security takes pre-eminence over all other factors in the prevention of corruption, since from it will depend the threshold beyond which a material or social diminution will begin to be perceived as a threat to survival. In other words: a system of rules concretely operating in the social body may offer levels of satisfaction of one’s sense of security which can reasonably protect one from loss of *status*; the objective *power* of legality has in fact the ability to substitute or diminish the drive to pursue positions of personal power for the purposes of self-preservation.

We could also say that the perception that a set of ethical-juridical norms is really in force allows everyone to soften the aggressiveness that may be evident in the behaviour of others, to take advantage of the smooth, soothing character of what is regulated and uniform, as opposed to the sharp furtherance of selfish interests which is likely to provoke an antagonistic position by anyone who *feels* threatened in the “struggle for power”⁵⁴. The corruptive choice then becomes a remoter likelihood the less

⁵⁴ Cf. Z. BAUMAN, *The Individualized Society*, It. trans. *La società individualizzata. Come cambia la nostra esperienza*, Bologna, 2002, p. 48, where he refers to Michel Crozier’s study on the “bureaucratic phenomenon”. “The strategy of the power struggle consists in making oneself the unknown quantity in the calculations of others, at the same time preventing others from playing an analogous role in one’s own calculations. In simpler terms, that means that domination is achieved on the one hand by abolishing the rules that limit one’s own freedom of choice and on the other imposing the greatest number possible of restrictive rules on the conduct of others. The greater my freedom of manoeuvre, the greater is my power; the more limited my freedom of choice, the smaller is my chance of success in the power struggle. From this analysis, “order” emerges as a competitive and “essentially contested” concept. Concepts of order vary radically within the same social context; what is order to rulers looks very like chaos to their subjects. In the struggle for power it is always the other party one wants to make more “orderly” and predictable; it is always the steps of others one would like to see reduced to a routine and deprived of any element of contingency or surprise, while one reserves the right

it is seen as a *remedy* for being the loser from public and private conduct outside the space regulated by objective laws where those are generally complied with and are seen to be complied with.

One of the fundamental approaches that education policies should pursue in order to suffocate the “fearful” angiogenesis of the cancer of corruption should be, I believe, a dedication to the building and consolidation of a culture of confidence and of institutions or, rather, of a culture of confidence in institutions. Which means setting oneself the far from easy task of promoting the conditions whereby reasonable confidence *can* be placed in institutions and, correspondingly, institutions are able to engender that confidence.

In effect, the function of the State and of the “basic indispensable institutions”⁵⁵ linked to it is to guarantee above all this particular sense of security, and to guarantee the choices of action of its citizens, who are free because they are confident that social rules are in operation and they can foresee with reasonable certainty the equally regulated behaviour of their fellow-citizens. This is the “well-ordered society” Rawls speaks of, in which there are no strong psychological trends inducing citizens to “reduce their own freedom in the name of greater economic wellbeing, whether absolute or relative”⁵⁶.

to ignore routine and proceed in an extravagant manner. Given the struggle for power, the process of construction of order is necessarily conflictual”.

⁵⁵ Cf. J. RAWLS, *Justice as Fairness: a Restatement*, It. trans., *Giustizia come equità*, Milan, 2001, pp. 66-67: as regards the “social bases” of self-respect, Rawls himself complains of having overlooked in his *Theory of Justice*: “the aspects of basic institutions which are normally indispensable for citizens to have a clear sense of their worth as persons and to pursue their objectives having confidence in themselves”.

⁵⁶ RAWLS, *A Theory of Justice*, p. 442ss. As Rawls observes, “the significance for our well-being of further economic and social benefits diminishes in relation to our interest in liberty, that grows stronger as the conditions for the exercise of equal freedoms are more fully realized”. And “naturally, it does not follow that in a just society nobody is concerned with questions of *status*. The description of self-respect as perhaps the most important of assets has emphasized the great significance of the way we think about what others think of us. But in an asset-oriented society, the need for *status* is satisfied by the public recognition of just institutions, together with the full and diversified inner existence of the numerous free communities of interest permitted by equal freedom. In a just society, the basis of self-respect is not one’s income but the distribution, solemnly declared, of basic rights and freedoms. And since this distribution is

The existence of genuinely independent institutions, *stable and durable* while all about them boils the maelstrom of ever changeable and contingent interests, offering us every guarantee of permanence; representing the antidote to or, at least, the brake on the affirmation of those “hard times” for the moral ego and the ethical standards of society produced by the nihilistic and lethal drift of a life, as Zygmunt Bauman writes, “lived as a series of self-contained episodes” resulting in fluidity and evanescence of inter-human relations”, and erode the space and time for thought. We too often forget the extent to which even confidence in ourselves can depend on this durability and the confidence in the institutions that guarantee it. According to a reflection of Alain Peyrefitte, quoted by Z. Bauman, it is this confidence that provides a durable framework in which to take note, to use as a reference and on the basis of which to evaluate life, which is much shorter than the individual actors and their relationships. Indeed there is no true confidence (and certainly no true confidence in ourselves) without the ‘long term’ and its institutional manifestations. Instability of society’s institutions (which is manifested in all the situations where the person who controls them is seen to be using them for his own personal or partisan interests) and their transitory character cause an implosion of confidence: “When one leg is wobbly, the whole stool will collapse”.

It is significant that in a study carried out by Cambridge University in 2004 on a sample of 20,000 citizens of the Old Continent residing in the 15 States that in 2004 made up the European Union⁵⁷, the Italians were the most unhappy nationality and they were also to be found in fourth-last place in a parallel classification based on the degree of satisfaction and

equal, everyone, when there is a meeting to conduct the common affairs of the wider society, possesses a similar guaranteed *status*. Nobody tends to seek, beyond the Constitutional affirmation of equality, further political ways of guaranteeing *status*. Nor, on the other hand, are men willing to accept a less than equal freedom. This fact, for example, would place them in a position of disadvantage and, from a strategic point of view, would weaken their political position. It would also have the effect of publicly sanctioning their inferiority, according to the definition given by the basic structure of society. This subordinate ranking in the public sphere, if experienced when attempting to take part in political and economic life, and felt when dealing with those who have greater freedom, would be truly humiliating and bad for one’s self-esteem”.

⁵⁷ The results of this study were published e.g. by *Corriere della sera* on 18 April 2007.

contentment of European peoples⁵⁸. And it is significant that in the study this unenviable condition was above all correlated with a lack of confidence in one's own institutions and laws: having confidence in the society in which one lives is particularly important, given that the countries (like Denmark) that obtain the best results are also those that have great confidence in their institutions and social system.

Universities can make their contribution to maintaining confidence in institutions that are worthy of it, above all by remembering they are institutions themselves, even if of a special kind: institutions of thought and culture. And I believe that that contribution must also extend to promoting and encouraging the growth of the institutional mentality. Perhaps a university, as an institution of thought, as a "mental condition", "as reason perpetuating itself"⁵⁹, should be held to the values of which Pirsig wrote: that "the place to improve the world is first of all in one's own heart, in one's own head and in one's own hands; from there, one can move on to the outside"⁶⁰. Universities, like other cultural institutions in a society and

⁵⁸ The happiest people in Europe were the Danes, followed by the Finns and the Irish. The Danes' happiness reached 8.3 on a scale of 1 to 10, while the Finns and the Irish came in at 8.1 and 7.98 respectively. The Italians, last in the classification, scored 6.27.

⁵⁹ PIRSIG, *Zen and the Art of Maintaining a Motorcycle*, cit., pp. 149 – 150. "A true university has no specific campus, it has no possessions, it does not pay salaries and does not receive material contributions. A true university is a mental condition. It is that great heritage of traditional thought that has come down to us through the centuries and that does not exist in any specific place; it is renewed through the centuries by a body of initiates traditionally called teachers, but even this title is not part of the true university. That is the body of reason that perpetuates itself. Beyond this mental condition, "reason", there is a legal entity that unfortunately carries the same name but is something else entirely. It is a non-profit company, a public entity with a specific address that has possessions, pays salaries and receives material contributions and consequently can be subject to pressures from outside. But this university, the legal entity, cannot teach, does not produce knowledge and does not assess ideas. It is just a building, the location of the church, the place in which favourable conditions have been created for the existence of the church".

⁶⁰ PIRSIG, *Zen and the Art of Maintaining a Motorcycle*, cit., p. 287: "I believe that if we want to change the world so as to live better, we shouldn't discuss relations of a political nature, inevitably dualistic and full of subjects and objects, or of their reciprocal relations; nor should we adopt programs full of things that others must do. That kind of approach, in my opinion, starts from the end, mistaking it for the beginning. Programs of a political nature are

perhaps more so, are a “source of social confidence”, because in their essence they must produce but also represent culture which is “the terrain for the development of empathy”, or the individual’s capacity to “include the rest of humanity in his thinking”⁶¹.

The functioning of a democratic and therefore human system, has a desperate need for institutions that are reliable not only on account of their legal underpinnings, but above all on account of the individuals who enter them by way of *persuasion*, in the sense that Carlo Michelstaedter attributed to the word in his best-known work⁶²: that is to say, moved by the force of life, in full possession of their own present and therefore of their own person, without the need to consume themselves – in order to know they exist – in the pursuit of a result that is always one step ahead. They alone will be convinced of the durable importance of institutions *per se*, here and now (not as a function of the interests of those who happen to be ‘occupying’ them or those who, directly or indirectly, designated their components), and, thanks to this conviction, will have the capacity to enliven them and make them human.

It is not so rare, even in countries low down in *Transparency International*’s classification⁶³, to run into persons who express and spread around them this mentality that we might call ‘institutional’: the persuasion in what they do and the enthusiasm in advancing the institution they belong to, for the good of all and not for their own personal advancement. We find such people in the schools, in the universities, in the police force, in the *carabinieri*, in the fire brigade, in the courts and even in politics. One does not need a higher degree in order to sense the presence of these ‘persuaded’ personages who are not subject to the myth of power. In the first place, one tends to notice their language. These are persons who would never give in to the temptation to accuse their critics of being politicised; nor would they

important end-products of social quality, but they are effective only if the underlying structure of social values is valid. Social values are just only if individual ones are just. The place to improve the world is first of all in one’s own heart, in one’s own head and in one’s own hands; from there, one can move on to the outside. Others may speak of how to improve the destiny of humanity. I only want to speak of how to repair a motorcycle. I believe what I have to say has more lasting value”.

⁶¹ RIFKIN, *The Era of Access*, cit., p. 326.

⁶² C. MICHESTAEDTER, *Persuasion and Rhetoric*, Milan, 2002⁹.

⁶³ Cf. *Transparency International Corruption Perceptions Index 2006*.

use arguments (or laws for that matter) of a personal nature, precisely because they are persuaded and so are above all interested in the welfare of the collective entity in which and for which they work, in the solution of the *real* problems these entities have to deal with. It is people like these we should trust, beyond any other consideration, when we vote or when we express our preference on any democratic occasion, from the election of a member of the residents' committee of an apartment block on up to the election of the highest office-holders of the State.

6. The tasks of universities in making their contribution to a culture inimical to the socio-cultural and institutional "angiogenesis" of corruption involve first and foremost a sensitivity to the problem on the part of all members of the academic staff, beginning with lecturers who are, as Pirsig would say, within the "university as a mental condition", certainly the heart of the "body of reason that perpetuates itself".

To arrive at such a mobilization or at least awareness in the academic world, I think we need to adopt the same methods whereby public opinion and political institutions can be motivated to adopt effective measures: by reawakening the perception of the damage to their very existence deriving from certain phenomena; a perception that, in every sentient rational being, tends to stimulate defensive, preventive responses.

Cesare Beccaria teaches us not only about the juridical wisdom necessary for the reform of the laws, but also the psychology of the persons who must carry out those reforms or who, as a part of civil society, must play their part in creating the conditions for their implementation. There are eloquent passages to this effect in *Of Crimes and Punishment* where the idea stands out that it is not the "seriousness of the offence" (which "results from the inscrutable malice of the heart"), but "the damage caused to the nation" that is "the only true measure of a crime"⁶⁴. Or where he says that "the guilty party's awareness is not the yardstick for the punishment, but the *public harm*, that is the greater when perpetrated by those in a favoured position"⁶⁵ and advises, in another celebrated passage: "Ensure that the laws be less favourable to classes of men than to men themselves. Ensure that men fear them, and fear only them. Fear of the law is salutary, but fear of man by man is fatal and fertile terrain for crime"⁶⁶.

⁶⁴ BECCARIA, *Of Crimes and Punishment*, cit., § VII, p. 23.

⁶⁵ BECCARIA *Of Crimes and Punishment*, cit., § XXI, p. 50 ss.. Our italics.

⁶⁶ BECCARIA, *Of Crimes and Punishment*, cit., § XLI, p. 97.

Every category, class or social group tends to take more notice of the harm that involves it/them directly rather than the more nuanced and rarefied harm that may be caused to the community. So in order to develop a sharpened awareness of the problem of corruption in academic circles, the best way seems to be to demonstrate the degree to which it profoundly damages the university itself; or rather, how much it may harm the quality of life of those whose best efforts, often with great passion and *persuasion*, are dedicated to the university.

On this point, I should like to come back to the results of the already mentioned research into the “costs of corruption”⁶⁷. Though this is a serious work of economic analysis, it draws attention above all to the fact that “the costs of corruption in the broadest sense” are “not only the partially measurable ones of a strictly economic nature, but also and in the long term more importantly, the indirect ones caused by the devastating and unmeasurable effects on a society’s “intangible assets”: the credibility of politics, confidence in institutions, the fabric of civil society, with serious repercussions too on people’s daily lives”. That statement is corroborated by a striking collection of data, including data I’d like to draw attention to because related to education and training⁶⁸. The study analysed the micro-economic effects of corruption⁶⁹, showing what a burden it is for society, leading to serious loss of efficiency, and finding a correlation among a number of variables relating to qualitative aspects of *governance* and internal (or “domestic”) corruption in a country, as well as a relationship between corruption and domestic competitiveness⁷⁰. The study also pointed out “the dynamics that underlie the determination of the economic system’s macro-variables”, with “particular attention to the effects of corruption on the increase of wealth in the world and the channels through which the depressive effects of corruption work”: channels amongst which education is considered.

⁶⁷ ARNONE -ILIOPULOS, *Corruption Costs*, cit., spec. pp. 87 ss.

⁶⁸ ARNONE-ILIOPULOS, *Corruption Costs*, cit., p. 3.

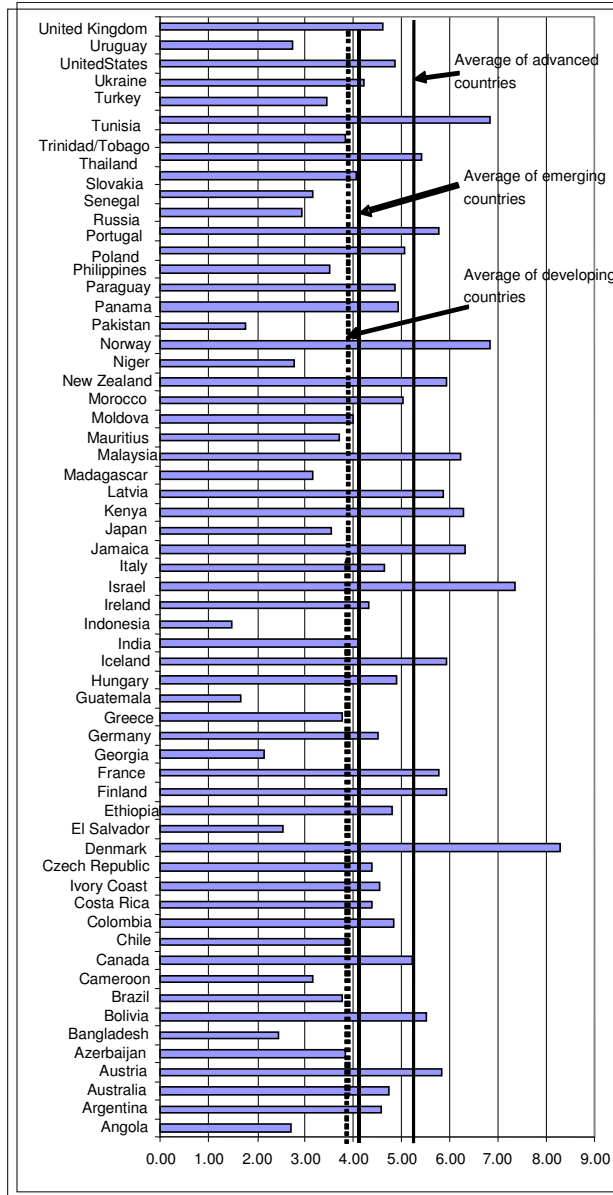
⁶⁹ ARNONE-ILIOPULOS, *Corruption Costs*, cit., pp. 35ss., 63.

⁷⁰ Cf. ARNONE-ILIOPULOS, *Corruption Costs*, cit., pp. 63 “Such relationships send an unequivocal message to policy-makers by clarifying that corruption represents a limitation on the competitiveness of business and a restraint on economic development. Economic policy may be particularly effective in stimulating a country’s competitiveness if it starts a process of reforms that can improve the quality of governance”.

The report's conclusions are eloquent in this regard⁷¹. Considering that "a country's literacy level is one of the determining factors for economic growth" and that "in general corruption is associated with low levels of public revenues", "it is evident that if a country's revenues fall, the resources available for social services are compressed". Above all, however, empirical evidence shows that "with an increase in corruption, there is a drop in direct investment in education. In general, the greater a country's domestic corruption, the more resources are dedicated to activities leading to personal benefits; the greatest benefits are to be had in areas where economic and political power are particularly concentrated (where large sums of money are moving about). Since education does not have those characteristics, it is a particularly ill-favoured area in systems that are "pervaded by corruption".

⁷¹ ARNONE-ILIOPILOS, *Corruption Costs*, cit., p. 87ss.

FIGURE 2: Education Spending, 2000



SOURCES: ARNONE and ILIOPULOS tabulation of IMF data.

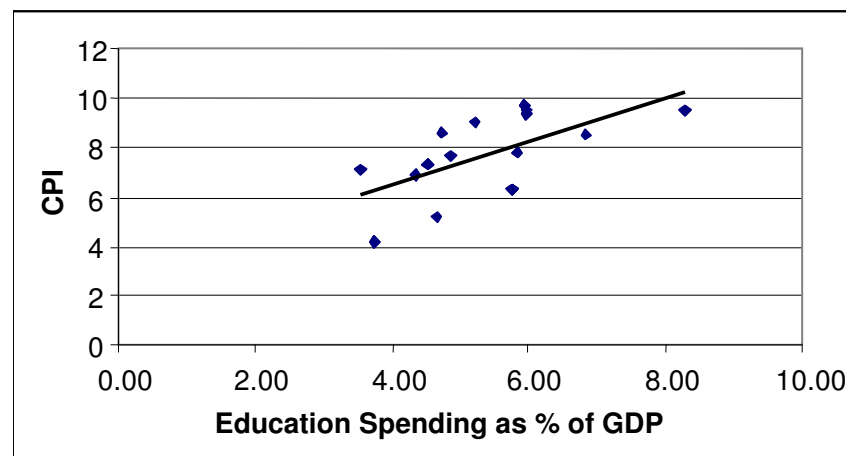
“Figure 2 shows the expenditure levels for education for a representative sample of countries worldwide. Of the advanced economies, Denmark is the country that dedicates the greatest share of public resources to education; at the other end of the spectrum we find Japan and Greece, with levels of public expenditure for education (% of GDP) lower than the average of developing countries. As for emerging economies, Israel is the State that spends most on education, with levels well in excess of the average of the advanced countries. Tunisia, too, that belongs to the developing country category, seems to be spending on education both much more than the average of its group and more than the average of advanced countries”.

The allocation of resources for education depends on the more general availability of resources for public expenditure. If it goes without saying that “the level of public resources is lower than it would be in the total absence of corruption”, it is more significant that the empirical evidence indicates that corruption also influences the decision process regarding expenditure choices, creating distortions in the allocation of resources and the composition of the expenditure⁷². “Both in the case where the cost of public services grows, and in the case where quality is compromised, incentives are created to lower the demand for services by the public. It has been calculated for example that a one-unit improvement in the corruption index is associated with a 26% increase in students deciding to further their schooling rather than abandon their studies. Moreover, empirical evidence confirms the existence of a negative correlation between the quantity of public services on offer and the level of domestic corruption and finds a further relationship between the quality of health services and education on the one hand, and the level of corruption on the other”. “The other side of the coin of the tendency for corrupt States to direct public resources toward areas where more profits are to be made is the fact that the social services where such profits cannot be made are neglected. So one may suppose that in those areas public expenditure is particularly low”. “Health and education are the sectors that suffer most from corruption; these are the areas where corrupt governments tend to cut funding. Various studies confirm the existence of a negative relationship between health spending and the degree of corruption in a country; and between domestic corruption and education spending. In particular, the

⁷² ARNONE-ILIOPILOS, *Corruption Costs*, cit., p. 98.

relationship between education spending and the level of corruption has a coefficient of -0.6: i.e. a one-unit improvement in the corruption index relative to its long-term level increases the education spending/GDP ratio by 0.6 percent. This relationship holds for different functional forms and is also valid for various subsets of the sample”.

FIGURE 3: Corruption and Public Expenditure on Education in Advanced Countries



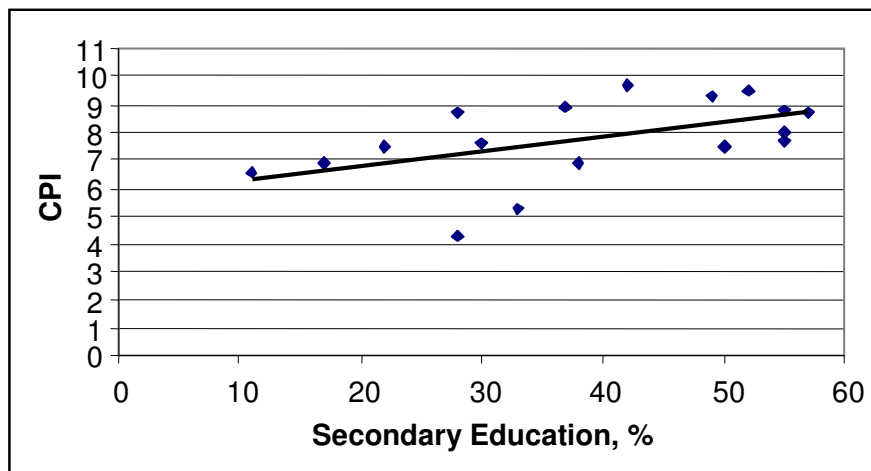
SOURCES: ARNONE-ILIOPULOS tabulation of TI/IMF data.

CPI=10 indicates absence of corruption, while CPI=0 indicates the maximum level of corruption.

“Figure 3 shows the relationship between CPI and education spending for the group of advanced countries; the subdivision of the sample into three different categories reflects an attempt to eliminate the effect of the wealth of the individual countries on public expenditure. In general, the richest countries tend to dedicate greater resources to public expenditure than the others. The sample considered is not as broad as the samples previously analysed because internationally comparable data on fiscal policies are relatively scarce. The relationship between CPI and education spending is very strong for the whole of the sample considered; the least corrupt countries are also the countries that dedicate most resources to education spending”.

This analysis was also carried out on the “causal factors that characterize the relationship between corruption and the level of education”. If a reduction in education spending is one of the effects of corruption, we also observe that “public expenditure for education (and so, in general, the level of education) is not only influenced by the level of corruption, but the level of education itself is one of the factors determining the degree of domestic corruption”. “The level of education acts upon the degree of corruption through important transmission channels; a high level of education is associated with a good quality of politicians and institutions. More aware and informed citizens are able to choose a better class of leaders and to control their activities; these conditions have a strong impact on the quality of the institutions and are effective restraints on the spread of bad governance. An improvement in the quality of governance is stimulated and this has further positive effects on the level of domestic corruption; it is therefore reasonable to think that ‘..the correlation between development and good results in the political system exists because the higher levels of education improve the level of political institutions’”.

FIGURE 4: Corruption and Population with Secondary Education – 2003



SOURCES: ARNONE and ILIOPULOS tabulation of TI/OECD data.
 CPI=10 indicates absence of corruption, while CPI=0 indicates the maximum level of corruption.

“Figure 4 shows the empirical evidence to be found in a sample of OECD countries; the chart compares the level of domestic corruption and the percentage of the population having completed a secondary school education. The data show that low levels of domestic corruption are associated with high percentages of the population having a secondary education. The preceding considerations, then, are also confirmed by recent empirical evidence”.

7. After the reflections on the content and, above all, the overall educational inspiration that academic institutions should find and generate within themselves to reawaken in a *durable* way an awareness in civil society as to the problem of corruption, I'd like to illustrate briefly a few operational ideas as to the way in which universities could better organize themselves for the task. These are obviously only indicative suggestions from amongst the many that could be proposed to orient the tasks of an institution of thought and culture.

7.1 The first “operative” suggestion is also the most obvious, even if not always the easiest to implement within the organizational practices of an academic system: it is simply that of consistently living the idea of the university as a free *institution* of thought. Universities are places of essential training. They are, for many young people, their first mature, significant contact with an institution, their first taste and experience of publicly applied rules. It is evident then that the prime task of a university determined to generate institutional confidence and an institutional mentality is that of giving a good example, being, but also being seen to be, immune from more or less concealed and subtle forms of corruption.

By this I do not refer to the obvious requirement that faculty and administrators should avoid any corruptive temptation. There are forms of corruption that mostly do not reach the level of criminal offence, to which could be applied the broad English term *corruption* (as distinct from the more restricted *bribery*): recommendations and nepotism; preferential pathways reserved for no objective transparent reason; acceptance of gifts of excessive pecuniary value; allowing teaching and scientific work on behalf of the university to take a back seat compared with outside, professional or other interests; the propensity (particularly prevalent in small provincial universities, but not only there) to be conditioned by local bigwigs, even merely giving students to believe that one or other of them is preferred to others simply by being close to a local power-broker. Corruption is a denial of legality, which means above all respect for the principle of equality: at no time, then, during his or her contact with the

institution of the university must a student have the feeling of being a victim even of indirect forms of discrimination.

7.2 In its role as an *institution*, the university must be and show itself to be a “living” entity, enabling those who work there in any role to “live the experience”. What does this mean? It must be a place where teachers and students can find adequate support for their efforts and provide a climate that can communicate faith in the tasks undertaken. This means many things, beginning with decent buildings and concrete possibilities for integration. It also means adequate library facilities. Some may say that books and libraries are out of date. Though I personally have a high regard for the potential of technology, I think a library still has great value, not only symbolically and for learning purposes, but also as a tangible sign of being rooted in culture and history, of continuity with the community of learning, as Rifkin so well expressed it when he said that access to the knowledge available in cyberspace and in virtual worlds, however essential, must be “accompanied by access to the collective knowledge and wisdom of the local communities in which the student is integrated”.

7.3 We must avoid overuse, in pursuing the student clientele or in fund-raising, of the *outsourcing* of culture. I am convinced that universities need a substantial nucleus of people who “stay” in the university, who dedicate their time *principally* to the university. I think we need to take care in finding the right balance between full-and part-time teaching staff, between employees and contractors.

One of the least noticed, but no less pervasive, channels whereby a form of corruption may insinuate itself into the university institution is, in my opinion, the progressive acceptance of the idea that one must depend, for one’s educational mission, on a massive use of personnel and resources from industry and the professions. Certainly, universities must be open this kind of exchange, but they must retain the initiative and maintain the central role of the institution with respect to contributions from outside, however valuable they may be.

7.4 The university being, as has been said, a cultural institution dedicated to generating social confidence, it should not neglect, in any of its courses (even in those of a more technical-practical nature), a humanistic component in the training of its students. An inclination toward corruption is furthered by the tendency to translate relationships with people and institutions into terms of costs and profits. The “quantitative mindset”, with its related willingness to accept what is bad (perhaps just

because one wants to convince oneself it is the “lesser evil”), presupposes a loss of unitary perspective of the human being and his relationships: forgetting that, as in the well-known phrase of Protagoras, “man is the measure of all things” and not that every man can adapt to any measure, at any price. An individual will tend to sell himself more easily if a deficit of humanistic culture, an absence of inner space edified by thought, makes him a mark for the generous attentions of whoever has the power (either economic or political) to define social roles and functions.

7.5 The spreading of knowledge about corruption and the cultural and structural conditions that may encourage it, may be greatly helped by courses on legality organized by the universities, as I myself have witnessed, set up by the faculties (for example the Faculty of Law) with the assistance of inter-faculty entities such as those that deal with orientation activities.

Scholastic orientation is a long and complex process that touches on the whole of the person and not just segments of his or her training that can simply be “filled in” with merely notional elements of character. While orientation (before and during university courses) is intended to assist in the most appropriate choice of course or profession for the student, it cannot ignore that formation of the student as a person and as a citizen in a democratic society, in a constitutional State, that a young person is called upon to develop during the same years. It is the aware completion of this passage that will in large measure condition the young person’s attitude to making those choices in a lasting manner, because they really answer to his or her human uniqueness, defined as being and feeling like a person with skills and rights, as a “decent” and “dignified” person, worthy of respect and social recognition.

In the orientation that universities make available to secondary school students, courses or conferences can be added for a broader civic education. It is extremely useful in this regard to involve at the same time and in the same place students from the final year of high school and students who are already following university courses. This putting together in the same auditorium of learners of different scholastic provenance and degrees of maturity is *per se* an expression of democratic legality, in terms of sharing and intergenerational communication of experience and knowledge, of accepting responsibility for common commitments (irrespective of “category”, “label” or age group) and of respect for the individual student, who is expected to be able to receive and understand even high-level cultural content. This is a challenge for the teaching staff of the faculties, given that orientation lectures will have to hit

the right communications note as a function of the knowledge and interests of the audience, to reach and cause to think a public composed both of young people who cannot be presumed to have acquired the basics of legal training and of university students who already have some idea of the subjects presented, but for whom this set of meetings will in any case represent an important and motivating opportunity for joint training, irrespective of their areas of specialization.

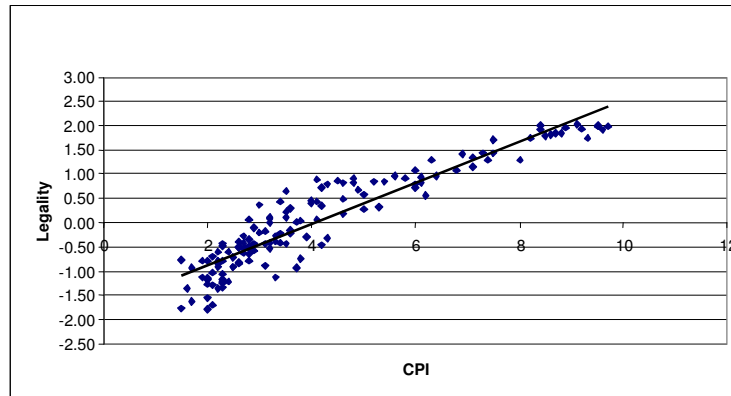
The wide range of subjects treated and, at the same time, their firm anchoring by each lecturer (despite a diversity of scientific, cultural and professional expertise) to the common theme of democratic legality, would give the project the character of a tangible account of the interdisciplinary method, expressing itself in the form of an intense and constructive convergence of much wisdom in the resolution of problems perceived and experienced as common. Furthermore, courses in legality can also contribute to the scholastic activities in high schools, covering the well-known lacunae in “civil education”.

In these courses it is essential to offer a translation into concrete and comprehensible meanings of a concept, that of legality, that may seem worn and too generic to resonate amongst the young in terms of comprehensible individual behaviour that they can relate to their daily experience. It must be pointed out that “the degree of legality in a society is an indication of the effectiveness of the set of rules that govern it”, that “if the laws are not obeyed, society is pervaded by a state of uncertainty”, “respect for the rights established by the legal system is not guaranteed”, leading to the spread of lack of confidence and uncertainty⁷³. It is important to document, for example, as was done in the economic study cited above, the relationship existing between a county’s legality index (the so-called *rule of law*), and the corruption perception index (the *CPI* produced by *Transparency International*), which shows a positive and very clear correlation: for no fewer than 143 countries worldwide, high levels of legality are associated with low levels of corruption⁷⁴.

⁷³ ARNONE-ILIOPULOS, *Corruption Costs*, cit., p. 134 ss.

⁷⁴ Cf. ARNONE-ILIOPULOS, *Corruption Costs*, cit., spec. tables on p. 135-136.

FIGURE 5: Corruption and Legality



SOURCES: ARNONE and Iliopoulos tabulation of TI data, and BM Governance Indicators, Kaufmann, Kraay and Mastruzzi, 2004.

CPI=10 indicates absence of corruption, while CPI=0 indicates the maximum level of corruption.

7.6 Besides lessons in legality, there are numerous university courses (in economics, law, sociology, criminology) in which the theme of corruption would be pertinent and in which therefore the risks and preventive techniques relating to this crime should be adequately accommodated. For this task the universities should certainly invite the contribution of magistrates, investigators, accountants and all the professional and institutional figures having proven technical and operational experience in the fight against corruption, including members of specialist authorities that have been set up in recent years in various countries, so long as they have a track-record of significant inquiries, conducted in total independence from the executive branch of government.

During the most intense period of study and reflection on the problem of corruption following the sweeping series of Italian legal inquiries in the early Nineties (now known in Italian parlance as the “Clean Hands” operation, begun in 1992 after the first revelations about “tangentopoli” [“Bribesville”] in Milan), there was great interest in the anti-corruption organs and authorities set up in a number of countries. The Convention we are discussing today foresees the creation of specialist units for the fight against corruption, having an essential requisite, often

overlooked in certain experiences of anti-corruption authorities: that of the “necessary independence”⁷⁵.

The wealth of experience of these authorities – I remember in particular the curiosity aroused at the time by the *ICAC (Independent Commission against Corruption)* in Australia⁷⁶ and Hong Kong⁷⁷ – whatever may be the (sometimes highly sceptical) opinion of scholars as to their effectiveness, has led to an awareness of the need to oppose an extraordinarily vast, complex and wide-reaching phenomenon like corruption with an equally flexible and diversified web of interventions and a feeling that it would be

⁷⁵ Cf. Article 36 of the Convention dedicated to *Specialized authorities*: “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.” There is reason to doubt of this independence at least regarding the original terms of reference of the *Alto commissario per la prevenzione e il contrasto della corruzione nella pubblica amministrazione [High Commissioner for the Prevention and Combating of Corruption in Public Administration]*, reporting directly to the Prime Minister. For various critical observations on this figure, see A. VANNUCCI, *La corruzione nel sistema politico italiano a dieci anni da ‘mani pulite’*, cit., p. 68 ss.

⁷⁶ Cf. *Independent Commission against Corruption Act, 1988 No.35*. This institution is still operating. For up-to-date documentation, see the commission’s official website: <http://www.icac.nsw.gov.au/>.

⁷⁷ Cf. *Independent Commission against Corruption Ordinance* of 15 February 1974, which set up the commission of that name in the Crown Colony of Hong Kong. The normative framework within which this commission was called upon to operate was the *Prevention of Bribery Ordinance*, introduced on 14 May 1971, but heavily amended in subsequent years. Besides a detailed definition of the terminology used and the various procedural norms, it contained examples of the different forms of corruption to be punished. Amongst the other public bodies set up specifically for the fight against corruption and other crimes associated with the public service, we might also note the *Office of Inspector General (IG)* of the *New York City School Construction Authority (SCA)* whose brief is to watch over the use of the 4.3 billion dollars destined for the school building program in New York.

useful for these to be coordinated by a responsible institution. In a number of official documents of those authorities the weapon to be used against corruption was compared to a “trident”, able to act equally on an operational level, in the area of prevention-consulting and, last but not least, in education-information⁷⁸.

In the context of this paper, it seems to me particularly significant to observe in their work the attention paid to the need to reawaken and reinforce in society an awareness of the problem of corruption, as well as to express, even “symbolically”, the determination and commitment of public bodies in the fight against the phenomenon.⁷⁹ It was made clear – as has now been enunciated by the United Nations Convention – that the education-information effort directed at the community was indispensable in increasing the effectiveness both of prevention and repression of the corruptive phenomenon, by stimulating for example a willingness to report, thus helping in the containment of the so-called dark zone. Besides their actual effectiveness in the political and criminal arenas, such broad-based “moral and pedagogical” initiatives are of interest because they demonstrate awareness of a strict link between the crime-producing factors of corruption and the overall value system of a given society, what has been called its cultural universe.

In this framework, it was thought important not only to communicate to the community information as to the characteristics and negative value of criminal conduct, but also to advise of the initiatives undertaken to combat it and hence the credibility of the available punishments, by way of a sort of promotion of the image of the institution in the eyes of the public. An image rendered more credible by the timely communication to the community of the results obtained, specially as regards the responsibility of persons in high public office, considering the phenomenon’s tendency to

⁷⁸ Thus, for example, Hong Kong’s ICAC was made up of three departments: operations (for investigations and arrests), prevention (for advice to administrative offices) and community relations (for the education of the public). New York’s IG, instead, spoke of a “two-pronged approach” (*deterrence and opportunity blocking*): see THACHER, *op. cit.*, p. 8s.

⁷⁹ The Australian ICAC’s reports – clearly written and with recommendations and comments and distributed through the press and libraries - informed the public of the details of corruption, calling the community’s attention to the seriousness of the phenomenon.

spread “top-down” through insidious forms of imitation and replication⁸⁰. As Robert Klitgaard said some years ago in a conference on corruption organized by ISPAC, an anti-corruption strategy, in order to be successful but also to be convincing in the eyes of the public, must “*begin by frying the big fish*”⁸¹. A thought that Beccaria, too, could have subscribed to (given his idea that public harm “is the greater when perpetrated by those in a favoured position”)⁸²; he might also have another idea of his confirmed, the one with which I began my paper: that education is not only “the surest”, but also the “most difficult means for preventing crime”.

⁸⁰ The fact, for example, that in its first years of activity Hong Kong’s ICAC struck at important personages served to increase its authority and credibility in the eyes of the public.

⁸¹ R. KLITGAARD, *Roles for International Organisations in the Fight against Corruption*, in *Responding to Corruption*, Ed. P. Bernasconi, Documents of the XIIIth International Congress on Social Defence, Lecce (Italy) 1996, p. 368.

⁸² BECCARIA, *Of Crimes and Punishment*, chap. XXI, p. 51.

MULTISTAKEHOLDER INITIATIVES TO COMBAT MONEY LAUNDERING AND BRIBERY

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1. Introduction

Intensified economic globalisation has had positive and negative effects. It has left nation states struggling to deal with the negative fallout¹. National regulation against abuses has, however, proven increasingly ineffective, especially since companies have the freedom to move their hazardous activities to under-regulated areas². States have stepped up cooperation and coordination on a bilateral as well as a multilateral basis: international organisations and treaties become more and more relevant to the regulation of international trade relations³. However, the traditional instruments of international law are frequently considered too cumbersome and slow. Increasingly international law is created by unconventional means: ‘task forces’⁴ prove to be far more expedient, since they prefer ‘soft law’ to treaty law⁵. Political enforcement by peer pressure becomes more relevant than by juridical instruments (e.g. courts and tribunals)⁶. Furthermore, regulation goes well beyond lawmaking by legislators and government bodies; non-state actors contribute extensively, especially in

¹ HAUFLER 2001:11; Jenkins 2001:2 et seq.

² HAUFLER 2001:1, 7.

³ BRÜTSCH/LEHMKUHL 2005: ch. 2.

⁴ Originally a US concept: introducing an *ad hoc* multiagency structure to deal with a specific problem in the international area, cf. especially the Financial Action Task Force on Money Laundering and the Chemical Action Task Force on Precursor Chemicals for Illicit Drug Production.

⁵ BLACK 2001:11 and see note 3.

⁶ BRÜTSCH/LEHMKUHL 2005: introduction.

the area of regulating international trade relations.

However, after a phase of enthusiasm for self-regulation⁷, some of the drawbacks have now become apparent. Effectiveness depends largely on independent monitoring and complaint procedures, transparency is not always guaranteed. Furthermore, doubts remain about whether self-regulatory instruments are able to go beyond the narrowly defined self-interest of those in control.

In more recent times, therefore, – short of reverting fully to state regulation – self-regulatory instruments are conceptualised as multi-stakeholder initiatives (see ch. 4.3. below) or as instruments of coregulation (see ch. 4.2. below), coopting the different interest groups into the mechanisms themselves or linking self-regulation to state regulation. This paper follows up on two recent examples of so-called ‘multi-stakeholder initiatives’ and discusses their creation, the respective political and legal context and gives some details on their operation in order to analyse them as current examples of the role of non-state actors in regulation. Finally, the paper addresses some of the critique levelled against these initiatives and discusses the challenges.

2. The Examples

On the one hand the so-called ‘Wolfsberg Principles’, a multi-stakeholder initiative in the financial services industry aimed at standardising customer due diligence procedures, is presented. On the other hand the ‘Partnering Against Corruption Initiative (PACI)’ is put into its wider context.

2.1. Wolfsberg

In 1999, after a series of reputational disasters for the banking industry – in the US especially the ‘Salinas’ and the ‘Bank of New York-scandals’, in Europe the fallout of the various ‘Abacha’ cases – two leading banks could be convinced by the NGO Transparency International and the think tank Basel Institute on Governance to form the nucleus of a group whose aim it was to develop customer due diligence standards in private banking. With the help of these protagonists, the group rapidly grew to the

⁷ HAUFLER 2001:7 et seq.

now twelve key industry players, controlling roughly 6070% of the world market in private banking. The Wolfsberg AntiMoney Laundering Principles on Private Banking – the Group is named after the UBS conference centre ‘Wolfsberg’ where these first standards were written in autumn 2000⁸ – were rapidly followed by further standards on preventing the financing of terrorism, on correspondent banking, anti-money laundering issues in the context of investment and commercial banking and texts relating to the risk-based approach. In 2002, the AML Principles on Private Banking were updated in the light of recent developments. After initial hesitation the relevant national financial regulators and their international organisations, especially the ‘Basel Committee on Banking Supervision’ as well as the ‘Financial Action Task Force on Money Laundering’, met at the ‘Wolfsberg Forum’, an event that now takes place regularly every year. The Wolfsberg initiative has managed to establish itself as a key policy interlocutor with the regulators and international bodies; the standards are increasingly referenced and quoted even by non-members as ‘best practices’ of the industry. However, the group has not grown since 2000 and it has not established monitoring mechanisms of its own; obviously the area is highly supervised by regulators, who sometimes refer to the Wolfsberg standards in their decisions. Furthermore, the annual ‘Wolfsberg Forum’ serves as a sounding board and as a means to include about 50 of the largest banks worldwide into the discourse on standards.

2.2. Partnering Against Corruption Initiative (PACI)

On 28 February 2005, at the Annual Meeting of the World Economic Forum in Davos, the representatives of three sectorial groups of companies participating in the World Economic Forum went on stage and published an industry code against corruption, the so-called ‘Partnering Against Corruption Principles for Countering Bribery’: the presidents and CEOs of now about 110 companies in the construction and engineering industry, in the mining business as well as some Oil and Gas corporations signed a compact, which had been proposed by a working group made up of industry representatives and facilitators of the World Economic Forum, the NGO Transparency International and the Basel Institute on Governance. Whereas the Wolfsberg Principles focus on customer due diligence and the prevention of money laundering in the financial services industry, the PACI

⁸ PIETH/AIOLFI 2003:259 et seq.

Principles establish the foundations for corporate compliance codes to prevent bribery. They, in particular, deal with definitional aspects of issues such as gifts, political and charitable contributions, so-called facilitation payments and with the treatment of third parties, both 'upstream' and 'downstream'. In order to prevent indirect bribery the code gives an answer to the question of how far the responsibility for due diligence in the selection and instruction of suppliers, agents, subsidiaries, joint venture partners and other contractual partners should reach from an industry standpoint.

The group is open to further participants and all protagonists currently lobby for the inclusion of additional signatories, especially as some big players in the oil and gas industry have so far been reticent to sign up. The three sectorial group leaders within the Davos framework which presented the initiative to the media promised in public to help introduce a monitoring mechanism for the initiative, thereby deliberately putting their reputation at risk.

3. The Context

From the 1970s onwards the pace of economic globalisation intensified and TNCs were increasingly criticised for their tendency to exploit under-regulated and economically or politically dependent areas. At first, states in the South attempted to counteract uncontrolled selfinterest by public regulation in a nation state context. Soon they had to realise, however, that this approach was economically no longer sustainable, and a general move towards deregulation, motivated in the South by the need to attract investors set in⁹. International organisations like the World Bank, the IMF and the OECD supported this drive towards deregulation in the 1980s, even if there were some attempts to prevent some of the worst excesses of globalisation, e.g. by the OECD with its Guidelines on Multinationals of 1977, revised on 27 June 2000.

In 1990, after the East-West détente, a new phase in the history of globalisation commenced: its positive and negative impacts became more and more visible, and states as well as international organisations were forced to take countermeasures, especially against ecological damage and

⁹ JENKINS 2001:1 et seq.

the exploitation of the labour force¹⁰.

An intensive discourse about the extent to which these tasks could be managed by self-regulation set in, and in several instances companies and groups of companies started experimenting with social accountability initiatives, together with NGOs. The acceleration of globalisation made society more vulnerable to organised crime, terrorism and new dimensions of transnational economic crime due to the liberalisation of goods and services as well as the new means of data transmission and travel simplified crossborder transactions¹¹. An era of re-regulation set in. This time, however, the driving forces were not so much nation states, but international organisations and members of the civil society. Whereas NGOs proved forceful in pushing even the largest TNCs to reconsider their environmental and labour policies, the fight against economic and organised crime remained primarily a state function. In particular the 1990s brought about a regulatory boost in the area of money laundering and corruption prevention. The following chapter gives a quick overview of this development and specifically addresses the issue of the main actors in regulation.

3.1. Combating Money Laundering

3.1.1. Public Sector Initiatives

Originally a limited concept, introduced in the core area of fighting organised crime by the UN Convention against illegal drugs, money laundering legislation was rapidly extended to include other predicate crimes. Initial attempts to harmonise criminal law, especially by defining the offence, introducing forfeiture rules and a minimum standard with respect to mutual legal assistance, were soon supplemented by regulatory and preventive rules, in particular on ‘know your customer’ policy¹². The political change was brought about not so much by conventions but by ‘soft law’, especially by the ‘Forty Recommendations’ of an informal group called ‘Financial Action Task Force on Money Laundering’ (FATF) created by G7 and later extended to the OECD scope and beyond. The rules on customer identification predated action against money laundering and were originally developed within a self-regulatory context. In Switzerland, in

¹⁰ Cf. HAUFLE 2001:14, 17; JENKINS 2001:19 et seq.; UTTING 2002:75 et seq.

¹¹ Cf. PASSAS 1999:399 et seq.

¹² Cf. PIETH 2004:23 et seq.; PINI 2004: 227 et seq. 13 CAPUS 2004:123.

1977, after the so-called ‘Chiasso scandal’¹³, the primary role of such an instrument was to prevent state regulation. In 1988, the standards had just been elevated from a national to an international model text, when the FATF picked them up and integrated this approach into its work to develop a series of Anti-Money Laundering Recommendations that were to be adopted in their first version in 1990. AML legislation is, therefore, from the outset a mixture of ‘hard law’ and ‘soft law’, of traditional government-led ‘hierarchical’ regulation and self-regulation as well as mixed, negotiated solutions. Clearly, the emergence of the FATF was an effort within the wider agenda of countries in the North to control financial flows worldwide. To some extent it could be explained to the countries of the South as serving their interests in tracing stolen assets.

Since then, the standards against money laundering have been broadened in every sense, and the scope of predicate offences in the Recommendations of the FATF has been enlarged to tackle all (serious) offences. The professions addressed in the preventive concepts have been drastically extended to include all kinds of ‘gatekeepers’, a category that reaches far beyond fiduciaries and traditional financial intermediaries to include lawyers, precious metal dealers etc. The geographic scope of the AML initiatives now spans the world, well beyond the FATF and its satellite organisations. Those jurisdictions which were perceived as un-cooperative were put on a black list and coerced into cooperation. International recommendations have continuously and studiously been implemented in national law, especially since the FATF has engaged its constituency in a rigorous peer evaluation process. The ratings may have dramatic economic effects as they decide on the position of companies domiciled in a specific country. They may also influence the cost of transactions with certain financial institutions. Countries and institutions blacklisted may find it difficult to do business with the rest of the (more) regulated world.

Why would, under these circumstances, a group of key competitors in private banking – one of the areas most at risk – get together and draft a private business standard on customer due diligence?

3.1.2. Private Sector Initiatives

a. Reasons

In order to situate the Wolfsberg Group of private banks correctly in

¹³ PIETH 2004:23 et seq.

the multitude of self-regulation instruments it needs to be stressed that the domain the Principles deal with had already been heavily regulated, and more regulation was just about to come. The 'Basel Committee on Banking Supervision' was at the time preparing its new customer due diligence paper, a set of politically, if not legally, binding 'recommendations' to member states. Bankers perceived these moves as yet another threat of overregulation by less than sensitive regulators. Instead, the Wolfsberg process was to prepare the ground for a change of paradigm towards a 'risk-based approach', engaging the responsibility of the profession in a far more in depth way than the 'rule-based approach' traditionally adopted by regulators. A risk-based approach allows financial institutions to find solutions more closely attuned to their needs¹⁴. Therefore the Wolfsberg papers must primarily be seen as offers to regulators to enter into collective negotiations on standards and standard setting procedures.

The main advantage to be drawn from the process both by legislators and banks was the fact that the Principles brought about a harmonisation of standards amongst key competitors – especially the US, European and Japanese companies whose activities were based on rather diverging regulatory environments – far more expediently than through inter-governmental negotiations. Additionally, the Principles had a direct impact even on under-regulated offshore centres, as they also apply to all subsidiaries of the participants, wherever they do business. One of the major tasks of Wolfsberg is, therefore, to reduce the risk of regulatory arbitrage amongst the big players in private banking – a procedure extended to other forms of banking later on.

Of course, a standard of this type improves the public perception of a company. The primary goals of the Wolfsberg standards are, however, of an even more directly pecuniary nature: agreeing amongst competitors and above all with key regulators on 'best practices' allows to reduce risk and costs. If the standards on customer identification seem high in comparison with everyday practice in the industry today they also put a limit on what needs to be done and, by defining adequate compliance with the new standards, help manage legal risks. They are, above all, an instrument for expectation management.

¹⁴ PIETH 2004:23 et seq.

The Wolfsberg banks would, however, have been unable to come together without the help of facilitators from civil society and former representatives of the FATF. What was in the deal for them? Going back to the original motivation for the initiative, their goal was the reduction of the availability of services to corrupt officials. Making it more difficult to launder corruption funds was considered an essential condition to effectively combat bribery. Following this logic the Wolfsberg Group currently considers a further statement with which to address the specific risk of becoming a conduit for corrupt transactions.

b. How does the Wolfsberg Group operate?

The Wolfsberg Group meets up to four times a year under a rotating dual chairmanship, traditionally made up of a representative of both a European and US bank. The structure of the meetings is very informal, decisions are prepared in working groups and also intensively discussed in the plenary. Decisions are taken by unanimity, after consultations of the responsible bodies in every member institution, typically the board.

*Government/ International Organisation
Wolfsberg Group Private Sector Civil Society*

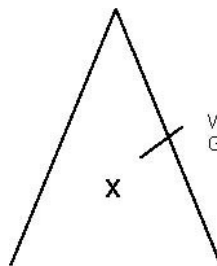


FIGURE 1: *Original actors constellation of the Wolfsberg Group.*

*Government/ International Organisation
Wolfsberg Group Private Sector Civil Society*

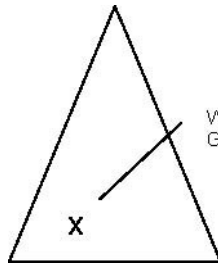


FIGURE 2: *Contemporary actors constellation of the Wolfsberg Group: the current shift changes the balance of the Group considerably.*

c. Critique

As must be expected from a private initiative with such public impact, the Wolfsberg Group did not go unchallenged: it has been criticised in particular for its ‘elitist’ approach and for not monitoring the compliance with its standards. When it comes to monitoring it must, however, be pointed out that banks are under the tight supervision of regulators. Offering detailed language on customer due diligence issues to regulators may easily backfire if something ‘goes wrong’: Wolfsberg banks could find themselves sanctioned by regulators on the basis of their own private standards.

As to the elitist approach, the Group has deliberately decided to remain small in order to maintain its discussion culture and to be able to take decisions by unanimity. However, the Wolfsberg Forum, especially in its most recent form, has allowed to reach out to other institutions substantially: the papers produced by the Wolfsberg Group during the last years were subjected to the scrutiny of about 50 of the largest banks worldwide and their key regulators. Their comments are integrated into the final version of these texts.

d. Recent Developments

In the original phase leading up to the first standards, Wolfsberg was very much a multi-stakeholder group, initiated by civil society members, advised by former officials and by farsighted members of the private sector. Since Wolfsberg has managed to establish itself as accepted interlocutor with regulators, there is a tendency to move towards a pure private sector group. A shift in topics, but also in the participants delegated by banking institutions indicates a move away from policy orientated activities towards a technical emphasis. Not all participants are equally aware that losing the multi-stakeholder element would imply the risk of transforming the Group into a mere lobbying institution for multinational banking interests. Using the power triangle with government/intergovernmental input, private sector efforts and civil society engagement forming the three corners, the influence of the various actors can be visualised. The original Wolfsberg Group was based very strongly on private sector and civil society contributions; whereas the public interest manifested itself indirectly through the regulatory environment and former members of the FATF and national FIUs as 'translators' and 'motivators'.

As a pure private sector group, Wolfsberg would lose a lot of its appeal: it would become vulnerable to all criticism directed at traditional instruments of self-regulation, implying that they are self-serving, undemocratic, intransparent and ineffective because of the lack of control by noninvolved observers or by the representatives of public interest (cf. Figure 1).

e. Summary

Wolfsberg is more than a pure private sector representation. As a multi-stakeholder group it has gained credibility, both because the key institutions in private banking were ready to sign up and to submit to an intensive group process and also because representatives of NGOs and academia have participated. The motivation of the private sector to participate, however, has always been hinged on more direct economic interests: preventing a next regulatory push or at least influencing its direction and establishing a level playing field amongst key competitors in order to marginalise those who fall below the benchmark and ameliorating the reputation of the sector altogether. In summary, they have become a standard setting power, despite the fact that they are purely private and not necessarily representative for the industry as a whole.

3.2. Combating Corruption

3.2.1. Public Sector Initiatives

Although the negative consequences of corruption, especially transnational bribery in Third World countries, was obvious long before the 1990s, earlier efforts to draft international treaties failed due to North-South and East-West differences¹⁵. The East-West détente around 1990 changed the landscape dramatically. As formerly ‘controlled’ territories opened up to international commerce, the need to reduce the risk of unfair competition amongst exporters became paramount. At the same time it was more obvious that endemic corruption in the local justice systems and administrations in the East and the South made investors vulnerable. It was, therefore, ultimately the concurrent effect of first world interests together with NGO pressure that allowed to move corruption up on the political agenda in the 1990s¹⁶. The OECD started its work on transnational commercial corruption in 1989 and adopted a first Recommendation in 1994; it revised the Recommendation in 1997 and shortly afterwards adopted a Convention focusing on the criminal law aspects of transnational bribery. Much of this work has been accomplished in a sparring relationship between the NGO Transparency International, founded in 1993, and the OECD Working Group on Bribery.

Especially in the 1990s several regional organisations (Organisation of American States, Council of Europe, European Union etc.) developed their own anticorruption conventions, some of which cover a vast area of topics. The most recent brick in the anticorruption building is the comprehensive UN Convention Against Corruption, which entered into force in December 2005.

Concurrently Multilateral Development Banks (MDBs) as well as bi- and multi-lateral development agencies stepped up to the efforts to prevent bribery dramatically. The various instruments create a complex web of anti-corruption rules, sometimes causing difficulties for national legislators attempting to implement them all at once. They follow very different rationales: whereas the OECD initiative is primarily directed at fostering a level playing field for exporters, the regional texts seek to harmonise law in order to enable mutual legal assistance amongst neighbours. In the context of the Council of Europe, an additional aim was to upgrade Eastern

¹⁵ EIGEN/PIETH 1999:1 et seq.

¹⁶ Cf. AIOLFI/PIETH in: FIJNAUT/HUBERTS 2002:350 et seq.; SACERDOTI 2000:29 et seq.; EIGEN in: PIETH/EIGEN 1999:293 et seq.

European legal standard to help enable the enlargement of the European Union. The EU started off following a very narrow remit of protecting its own financial interests and gradually broadened the approach to corruption within the Community's Member States in general¹⁷.

Only at first sight the evolution on anticorruption has followed the traditional ways of international law more closely than that on money laundering: the OECD standards on corruption evolved primarily with the help of Recommendations, merely in the last minute criminal law rules were translated from the so-called Agreed Common Elements into a legally binding instrument. The key instrument used to make soft law hard, here the peer review process was combined with treaty law. The OECD Convention and the AML instruments have another point in common: they do not request unification of criminal law, but rather adopt the principle of 'functional equivalence', which allows Member States a substantial margin of appreciation¹⁸.

3.2.2. OECD-ICC Industry Standards

Already in 1977, when the UN was involved in a first attempt to draft an anticorruption treaty, the International Chamber of Commerce (ICC) developed a code of conduct meant to supplement such UN Convention. Since this Convention was not finalised in due course, the ICC text remained dead letter. When the OECD Convention was signed in 1997 the code obtained a new 'raison d'être'. Correspondingly it was revised in 1996, in 1999 and again in 2005. Its main focus is prevention of corruption, and it addresses some delicate issues, like the relations to third parties. It remains, however, rather generic and does not focus on any sector in particular. The ICC Code of Conduct does not foresee a formal process of adherence and membership.

Equally generic are the business principles developed by Transparency International together with a core group of businesses. In many points this text goes beyond the current ICC standard. The language, however, does not always apply the same precision in definition as a purely legal text would. Furthermore, both the ICC and the Transparency International Business Principles (TIBP) do not require actual declarations of commitment by companies. A further 'industry standard' on corruption emerged when the UN decided, after the adoption of its Anti-Corruption

¹⁷ SALAZAR 2003:137 et seq.

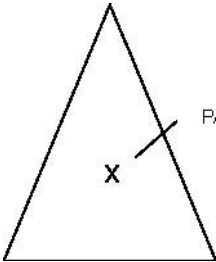
¹⁸ AIOLFI/PIETH 2002:351 et seq.

Convention in 2003, to add a ‘Tenth Principle’ to the ‘Global Compact’. This text is, on the face of it, merely a Statement of Principle without any detail. It does, however, require an annual self-declaration on implementation.

Following the Wolfsberg example, after 2000, a series of sectorial industry groups were created to define specific anticorruption standards. They were all initiated by civil society and co-chaired by industry and NGO members. It was believed that corruption prevention raised different problems in each sector (the construction, the defence, the extractive industries, the power systems manufacturers, the pharmaceutical industry, the insurance sector, etc.). While this may be true for some particular issues, like the treatment of so-called ‘signature bonuses’ in the oil industry, the problems dealt with in the industry standards tend to gravitate towards a common denominator of topics: issues relating to the definition of corruption, especially distinctions within the ‘grey area’ of donations, hospitality and facilitations payments on the one hand, and the treatment of third parties and intermediaries on the other hand. Since most of these standards are still in the making, no specific reference is made here before their actual publication.

The benefit of sectorial groups was rather seen in the build up of confidence in the disciplining effect of face-to-face groups of big companies. Such compacts are useful in oligopolistic markets such as those for turbines, fast trains, oil and gas, mining, aircraft manufacture etc.

*Government/ International Organisation
PACI*



Private Sector Civil Society
FIGURE 3: *Actors Constellation PACI*

Even without a formalised monitoring, complaints or arbitration-procedure such groups can allow companies who compete for huge contracts that can sometimes decide over the success or failure of entire corporations to meet in a secure environment and to agree on a no-corruption policy. These groups are ideally facilitated by disinterested parties. Many such groups currently work on texts. However, the companies are often shy to carry the actual process through to the signature stage. Apparently, the issue of corruption is – in many sectors and many areas of the world – still too hot a topic.

Overall, the main consequence of public sector activities has been to raise the risk for the private sector and for managers. Especially companies and managers in the North now face criminal, civil, administrative and fiscal sanctions for bribery, also of foreign officials. They are motivated to make sure that their key competitors implement similarly expensive compliance concepts. Industry standards, when they provide sufficient detail and include a monitoring mechanism, are considered useful. They allow the members of the group to present themselves as cooperative and sound business partners. Foremost, industry standards are, however, an instrument of expectation management.

3.2.3. Partnering Against Corruption Initiative (PACI)

a. Davos

A group of three facilitating bodies, the World Economic Forum (WEF), Transparency International (TI) and the Basel Institute on Governance, was asked by key players in the construction sector to create a multi-stakeholder group on corruption. The idea was launched by Alan Boeckmann, President of Fluor, at the WEF Annual Meeting in 2003. A working group made up of 15 Engineering and Construction company representatives and the facilitators adapted the TI Business Principles to the needs of the sector. The text was then adopted for signature by member companies of the WEF's 'E&C Governor's Group' at the Davos meeting in 2004. Concurrently, other company groups showed an interest in making similar efforts, especially the metals and mining and the oil and gas groups. For the Davos meeting in 2005, intensive lobbying by all parties made it possible to enlarge the scope of participants substantially. The E&C text was from then on used for all three sectors and so far a total of over 110 companies have signed it.

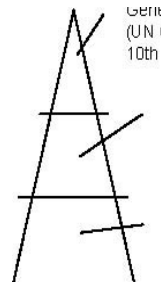
The next immediate challenge for the companies in question is the development of a follow-up mechanism as announced by the chairmen of

the three Governors' Groups participating at the press conference in January 2005.

b. Situating PACI

Situating PACI on our 'power diagram' shows a slightly different picture than that for the Wolfsberg Group. Public influence is stronger here, not only due to the strict regulatory environment (Convention texts as opposed to Recommendations), but the direct participation of officials in the international fora during the actual process. Furthermore, the civil society element is stronger than in Wolfsberg, the WEF acts as a neutral convenor, TI as a pressure group on the topic and the Basel Institute on Governance as the technician of the multi-stakeholder concept.

Generic framework (UN Global Compact 10th Principle)



Cross-industry standards (e.g. TI Business Principles, ICC Rules, PACI)

Sector-specific industry standards (e.g. Wolfsberg)

FIGURE 4: *Global Compact: Norms, Principles, Text.*

c. Monitoring

There is a widespread agreement that the follow-up issue is decisive for the credibility of any attempt at self-regulation¹⁹. A broad variety of options is available. Monitoring can be informal. This will be the case where companies do not actually sign but merely publicly declare that they follow a specific standard. But even where an actual Group has been

¹⁹ 19 Australian Task Force 2000:51et seq.; HAUFLE 2001:8; JENKINS 2001:27; UTTING 2002:82.

constituted, e.g. Wolfsberg, monitoring can remain informal.

Formalised monitoring mechanisms can either be based on self or mutual evaluation by group members or independent third party monitoring. According to the construction a softer form can be selected or, in the extreme case, certification by a professional certifier (e.g. ISO) could be applied, and certification could even be made a condition for participation. Which model the group chooses – group or third party monitoring – depends on the make up of the group: a small group of market leaders in an oligopolistic market will most likely rely on the group process; a large group consisting of SMEs or a mixture of larger and smaller companies will more likely opt for third party monitoring.

Monitoring focuses on the abstract compliance with standards. Another approach would be to base the evaluation of compliance on complaints heard by a tribunal. Some tribunals even have the authority to impose private monetary sanctions. An example on a national basis is the Swiss bankers' agreement on customer due diligence.

The choice of an adequate monitoring mechanism for PACI is currently under discussion and will possibly be decided on at an upcoming WEF Davos meeting.

d. The future of PACI

Situating PACI. It is planned to expand PACI yet further and to invite the participation of other sectors. Already now, a serious difficulty arises from the many competing anticorruption instruments in the private sector (including the ICC, TI Business Principles, PACI, Global Compact and the various sectorial groups' compacts). In many respects, ICC, TI BPs and PACI ought to be treated as equivalents. They are no longer specific to a certain sector, they are generic in so far as they cover the issue of bribery prevention on a midlevel of abstraction.

The Global Compact should not be seen as a competing instrument at all: with its one sentence statement and its broad constituency, its role is rather that of an umbrella text. The Global Compact should consider ICC, TI BPs, PACI, International Federation of Consulting Engineers (FIDIC) and the like as attempts to translate the basic principle of the Global Compact Tenth Principle into more concrete language. Ideally, the semi-abstract standards would merge. In December 2005, they went as far as to reach a consensus to mutually accept each other as equivalents.

Apart from these instruments there will probably remain some more focused compacts, like the Aeronautic Industry's text on the selection, employment and remuneration of agents ('Clovis Principles'). Furthermore, industry-specific groups of the Wolfsberg type, i.e. small groups of strong

oligopolistic competitors, will be necessary in certain sectors to make a real difference (e.g. Power Systems). Relevant constituency. Another problem that PACI currently faces is how to make the group grow. Even though the text was very successful in securing signatures, some major competitors in the engineering and construction industry as well as, especially, the oil and gas sector still have not signed. In fact, in the oil and gas industry some of the largest TNCs still refrain from joining the group for a variety of reasons: some companies maintain that their standards go way beyond the PACI standards, some are unconvinced that signing will be good for their reputation and finally, several others hold back for as long as their main competitors have not joined yet. Facilitators currently face the arduous task of trying to convince the timid.

4. Analysis

4.1. *The Advent and the Demise of Self-Regulation*

The history of self-regulation has been told many times over the last two decades while the issue has become very prominent²⁰. Most authors mention the deregulation and privatisation processes of the 1980s as a crucial starting point²¹. In search of concepts to contain the negative impact of uncontrolled economic globalisation, the Nation State was out of its depth, and intergovernmental regulation frequently turned out to be a very cumbersome process.

Not only the private sector itself, but also public entities encouraged self-regulation. High hopes were expressed: self-regulation was supposed to be cheaper, more flexible, less burdensome; it was expected to mobilise expertise, particularly that available in the private sector; and the likelihood of the participants to follow their own rules seemed higher, as 'principle and agent are collapsed into one'²². Especially Australia sought to reduce the cost of (public) regulation by farming out as much regulation as possible to the private sector. Laws tried to restrict state regulation in favour of self-regulation; the public sector supplied minimal standards and

²⁰ BLACK 2001:4 et seq.; BRÜTSCH/LEHMKUHL 2005: ch. 2, 12 et seq.; HAUFLE 2001:7 et seq., esp. 10; JENKINS 2001; KNILL/LEHMKUHL 2002; UTTING 2002.

²¹ HAUFLE 2001:7 et seq.; JENKINS 2001:4; UTTING 2002:61 et seq.

²² BLACK 2001:16.

checklists for sound self-regulation²³. NGOs increasingly favoured self-regulatory instruments over complex and nontransparent international treaty negotiations. While this approach opens the door to NGOs to influence the rules, it raises issues of legitimacy within civil society. In lieu of the elected parliament, private companies and self-appointed single issue representatives dominate this type of regulation.

No wonder that self-regulation very rapidly lost its appeal, and critical opinions of the concept gained in prominence: self-regulation came to be considered ineffective²⁴, nontransparent²⁵, self-serving²⁶ and undemocratic²⁷.

4.2. Co-Regulation

Instead of fully reverting to ‘Command and Control’ (CAC) type regulation²⁸ a new paradigm has emerged: non-state regulators have definitely pushed their way into regulation, even in traditional CAC areas like criminal law. They are increasingly integrated into decision making bodies, e.g. in financial services supervision.

We currently witness the emergence of ‘hybrid regulatory networks’ and new forms of mixed regulation or ‘co-regulation’²⁹. There clearly is a link between the less hierarchical forms of regulation applied by the international task forces referred to above, the soft law and peer review arrangements, and the entry of non-state actors into international regulation. The civil society and the private sector play a decisive role not only in rule-making, but also in the application of rules: monitoring mechanisms controlling implementation of the AML and anticorruption rules of international bodies frequently rely on the cooperation of non-state actors.

²³ Australian Task Force 2000:59 et seq.

²⁴ BLACK 2001:10; JENKINS 2001:26; KLAUSER 1994:53; RUCH 2004:449.

²⁵ MARTI 2000:582; MINOGUE 2001:14; RUCH 2004:409; TSINGOU 2001.

²⁶ MINOGUE 2001:9 et seq.; PITOFSKY 1998:1; RUCH 2004:449.

²⁷ DELMAS MARTY 2004:260; KLAUSER 1994:52; MARTI 2000:580; TSINGOU 2001.

²⁸ BLACK 2002:2 et seq.

²⁹ BLACK 2001,6 et seq.; BRÜTSCH/LEHMKUHL 2005: ch. 2; HAUFLE 2001:12.

4.3. Multi-stakeholder Initiatives

Multi-stakeholder initiatives were first developed in the area of labour practices and the protection of the environment³⁰. Frequently, they are partnerships between the private sector and NGOs or between private and public actors, i.e. so-called public-private initiatives or partnerships³¹. They were considered a viable ‘third way’ between government regulation and corporate self-regulation³². In many cases, the impetus to form such initiatives came from civil society, but this is not a fundamental element of their definition. The aim of this ‘third’ approach is to overcome some of the merited criticism of traditional self-regulation: if the non-industry members of the group want to do their job well, they have to assume a control-function from within and will ensure that the agenda of the group is not entirely dominated by business interests. They also have to insist on the establishment of a credible monitoring or complaints procedure to enforce the standards. It is their task to make sure that the group respects general interests and to seek ways of convincing the participating companies that commercial interests run in parallel to public interests, at least with a long term perspective in mind. This is obviously a tall order for groups and individuals who typically have little economic power to back them up. Their power basis is either public opinion, potential consumer reaction³³ or simply the force of the argument. In this respect it has helped, both in the Wolfsberg and the PACI experience, to establish a link to the public sector in order to allow to influence the agendas of international organisations, since the strongest motivator for the private sector to embark on a self-regulatory experiment has traditionally been the anticipation of public regulation³⁴.

³⁰ Cf. for details UTTING 2001; also HAUFLE 2001:14, 17; JENKINS 2001:19 et seq.

³¹ UTTING 2001:61 et seq.

³² UTTING 2001:66.

³³ HAUFLE 2001:9, 11, 23.

³⁴ Australian Task Force 2000:7; BLACK 2001:9 et seq.; HAUFLE 2001:3, 22 et seq.

5. Conclusion

Wolfsberg and PACI are representatives of a new era of regulation. They are not entirely driven by a private agenda: on the contrary, AML and anticorruption are key issues in the fight against transnational corporate crime. Heavy public regulation attempts to control these activities, and the private sector is recruited into the fight on a preventive level. It is, however, in the interest of the business world to manage (legal and reputational) risks. Their own efforts in translating the standards onto an operational level serve the purpose of levelling the playing field vis à vis competitors and of controlling the cost of risk management. On the other hand, these standards are not simply part of a hierarchical regulatory structure: with a 'risk-based approach' to money laundering and with the rules on employing intermediaries to prevent corruption, the private sector genuinely contributes to the fight against transnational economic crime by its own means, and as such reaches beyond what public rules expect from them.

Overall, Wolfsberg and PACI are elements of a system of co-regulation in the emerging international legal framework against commercial crime.

Civil society is probably in the most difficult situation, since its representatives are often the main initiators and motivators of the initiatives, at least in its early stages. If the initiatives do take off, civil society is rapidly considered as superfluous, even though the initiative will change its character without them. On the other hand, the means of civil society groups to set these processes in motion are frequently weak, sometimes crude and the outcome is usually uncertain.

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THE ROLE OF THE PRIVATE SECTOR IN SUPPORTING
FINANCIAL REGULATORS, BANKS AND FINANCIAL
INSTITUTIONS IN MONITORING PEPs AND REPORTING
SUSPICIOUS TRANSACTIONS

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Why the focus must be on banks and financial institutions

Corrupt practices can be triggered by conditions relating to social, material and political insecurity, the fear of missed opportunity, a lack of social and moral example, but the most common cause is simple avarice, with temptation exacerbated by the perceived ability of the perpetrator to ‘get away with it’.

That places a high degree of responsibility on the banking and financial sector to exercise its privileged position and thus assist in curbing such corruption, for the following reasons:

- The product of successful corrupt practices is often expressed in terms of cash or financial assets, in amounts often too large to be handled outside of the banking or financial system. Thus it stands to reason that banks and financial institutions will most probably at

¹ I am writing this paper in the capacity of both a mainstream banker and outsourcing practitioner, drawing on my practical general management experience in both these industries, gained in the Middle East and Asia. This paper represents only my personal views and opinions. It may or may not be reflective of the views of my former employer Lloyds TSB Bank. I do not position that it is, either way, nor would I suggest that any aspect should be considered to be attributable to anyone but myself, in my personal capacity.

some point have handled most if not all of the proceeds of at least the larger corrupt transactions.

- Once a corrupt transaction has been executed and the perpetrator has 'got away with it', the confidence of that perpetrator will rise. Leopards do not change their spots. The dishonest character trait that drove the perpetrator to engage in the first exercise and with the added confidence born of proven success will increase the temptation for the perpetrator to plan and execute yet more corrupt transactions. If left unchecked the result will likely equate to an uncontrolled feeding frenzy of corruption.
- Experience has shown that in many countries, particularly those with less developed and/or less internally respected governance, ethical codes and structures, those corrupt individuals who find themselves most able to exploit an ability to 'get away with it' are often in positions of political power.
- Similarly, in many countries those in political power are often more affluent than the general populace, either due to the economic resources they used in their effort to win power in the first place, or by the rewards of previous corruption, they will most often have and seek to actively use bank accounts and also avail themselves of the other facilities of financial institutions.
- And in more developed countries it is practically certain that those in political power will use bank accounts as a matter of daily routine.

Whilst no one is suggesting that all politically exposed people or PEPs are by nature or practice corrupt, some most certainly are and in the overall interests of containing and defeating this problem the wider body of PEPs need to be identified and have their banking and financial transactions regularly monitored. Otherwise, banks and other financial institutions will almost inevitably be at the risk of providing the necessary machinery for the facilitation of corrupt transactions.

This places banks and financial institutions in a unique and powerful zone where, if they have the inclination to do so, they are able to install and operate the tools necessary to assist detect, throttle and defeat the attempt by corrupt parties to use their essential facilities as tools and conduits for the furtherance of corrupt activities.

Why the focus must also be on the financial regulator

Banks and financial institutions are profit making entities, mostly working in an intensively competitive environment. Many are unlikely to spend time and resources in overly focusing on the policing of customers' activities in their accounts, particularly if this is a costly and resource consuming exercise and additionally there is a perception that this focus and the accompanying preventative measures may tilt the level of the commercial playing field to their disadvantage.

Additionally the logistical extent and complexity of the challenge should not be over-estimated. As a pictorial example, I have been told that if one were to consider that each individual payment instruction executed by a major European domestic / international bank were to be represented by a single sheet of A4, and if all the sheets representing such transactions were placed in a pile, then in the period of only one week, the pile of paper would reach around 35000 feet, high enough to make contact with a jet aircraft on an international flight!! And that is repeated more than 50 times a year!

Within that mass of transactions there might be a small selection of corrupt transactions, or none, or many. So the identification problem is a huge challenge for any individual bank and for any regulatory jurisdiction, but it can and must be met, if that bank or jurisdiction is not to be eventually identified as inadequate in its focus and controls.

This is where the financial regulator needs to step in, to ensure that the playing field in this respect is level amongst all the banks and financial institutions in its jurisdiction, the highest standards of identification and reporting are uniformly executed by those banks and financial institutions and to provide help, advice and training, backed up by a compliance inspection/verification regime with accompanying painful penalties for non compliance.

In a rapid and aggressive commercial environment a financial regulator can only exercise its powers really effectively and swim against a tide of commercial resistance, if it has the firm backing of its Government to reinforce its position, together with the backing of appropriate legislation to provide empowerment.

Given the nature of market competition, the financial regulator is thus unlikely to be market popular, and neither should it seek to be.

Neither does the background of Government and legislative support have to be non critical of the financial regulator's policies and position and indeed should not be.

The financial regulator whilst sensitive to commercial considerations and not steeped in dogmatism, should always be efficient, consistent and totally sure of why a particular policy is in place and be ready and willing to defend its policies in a transparent and accountable manner.

But nevertheless an underpin of Government support is essential and is a real necessity if the financial regulator is going to ably protect the financial reputation of its country and the integrity of the financial services industry within its jurisdiction.

Where should a regime of focus start?

A Conference of this type, dealing with the specifics of the UN Convention against Corruption, must obviously be focused on the creation of a *regime of dynamic traction*.

It must create this *dynamic traction* around its specific subject and aims, *converting aspiration into doable reality*. If not, the exact situation of disappointment, crushed expectations and apathy which ISPAC in its preamble to this Conference states that it fears, will become reality and an important opportunity will be lost.

Consequently this conference needs to act by formulating and formatting ways of delivering and applying well directed, realistic but firm pressure to governments by the full range of stakeholders constituting the composition of this UN Convention and see to it that such pressure is cascaded to financial regulators and downwards, to ensure that those financial regulators also in turn ensure that the banks and financial institutions in their jurisdiction adopt the appropriate agendas, actions and driven commitment to create or re energise focus on their anti corruption precautions and measures.

The basic agendas are the identification by banks and financial institutions of PEP accounts, checking for suspicious activity, identifying and investigating likely corrupt money flows through those accounts, ensuring that the banks and financial institutions report any such suspicious cash and/or trade flows and in liaison with the financial regulator or its agents, close down suspect banking and/or financial relationships.

But to do that bodies such as this Conference need to hammer out, agree, adopt and then imprint harmonised and sensible, practical qualifications for the definition of PEPs, also setting minimum standards and actions/regulations expected of the financial regulator, banks and financial institutions, all of which can be transmitted via cascaded

communication to those banks and financial institutions themselves and be intrinsically woven into their daily operational compliance structures.

The cascade of focus and action

Bodies such as this Conference need to spearhead pressure and focus on financial regulators to provide their banks and financial institutions with training, education, and to lobby for necessary additional legislation in order to ensure that the ongoing ability and the determination to investigate and control PEP activity is always present, together with clear instructions to a designated investigative body for the statutory submission of suspicious transaction reports (STRs), with the minimum expected standards of execution well communicated and clearly understood.

A real focus must also be created on the vital issue of energising the effectiveness of the STRs submission regime by seeking to uplift the quality of the STRs submitted and at all costs avoiding the onset of the morale sapping situation where the task of preparing and submitting SARs degenerates into a box ticking exercise, with success measured by the total volume of submissions and not by the quality of the individual submissions made.

Recent encouraging developments in regulatory focus

When faced with a complex multifaceted challenge such as controlling and cutting off the flow of the proceeds of corruption, it is perhaps easy for a financial regulator to adopt a prescriptive approach, seeking to build legislation and predefined structures for almost all scenarios, with heavy penalties for those banks and financial institutions who err, or who are generally non compliant.

However, such a rigid and prescriptive approach runs a real risk of obscuring the fundamental reason for the required actions in the first instance, while its enforcement can cause resentment from banks, financial institutions and a range of business partners, as the time and resource consuming “box ticking” exercise gets underway and sometimes for no clearly communicated purpose.

For example, the UK financial regulator the FSA, is seeking to progressively switch its focus. This is from prescriptive and detailed requirements to a regime where the issues and broad principles are

dominant, thus cutting down on the need to focus so much on the detail of what is required, but rather around the spirit of it. This type of “hearts and minds” approach is designed to create an environment conducive to more dynamic traction and one that is more effectively inclusive than can be created by a heavy handed, prescriptive exercise lacking holistic focus.

But is the financial regulator always best equipped for the task?

In some well grounded and established jurisdictions and where pertinent legislation exists such as the UK’s Proceeds of Crime Act 2000 and 2002, whilst political and commercial debate will always be rightfully present, the financial regulator can effectively stipulate its requirements to the banks and financial institutions within its jurisdiction and expect compliance, investigating with the option of naming and shaming and sometimes fining, those persons and institutions who do not comply.

In those cases the financial regulators may already be adequately tooled and equipped for the challenge.

Also, in those adequately tooled and equipped cases there are most often well established protocols and conduits in place for the submission and handling of STRs.

But, put bluntly, are all financial regulators in this happy state, equipped to identify and guide the installation of best in class training and monitoring systems within their banks and financial institutions and then have the ability to dynamically police and verify the activation and usage of these systems?

Again bluntly, are all financial regulators adequately equipped and skilled to install and maintain a consistent environment of “hearts and minds dedication” adequate to ensure the identification, monitoring and reporting of suspicious or corrupt money flows?

Are all financial regulators and their Agents really best equipped to sift through and identify for further action, the many STRs passed to them?

Realistically in a range of smaller or newer jurisdictions the financial regulator possibly may not yet have the skills, experience infrastructure resource to install and manage the level of best in class regime that is necessary to satisfy evolving international standards.

Outsourcing to private sector experts; a solution to be considered

This concept may come as a startling surprise to some. However, my past experiences as both a main stream banker managing all aspects of a commercial banking institution's regional functions and as an outsourcing CEO responsible for the daily, practical execution of a major bank's significant entry into an offshored outsourcing environment, convinces me that it is technically an entirely doable concept, worthy of serious consideration as a standard solution.

The recent advances in the outsourcing and offshoring industry and the relentless progress of the capabilities and skills of that industry up the value chain, provide a new, dynamic and potent solution for now and into the tomorrow. However it must always and unswervingly be ensured that such an exercise is not dumbed down by an attempt to engage a standard outsource vendor. In all cases there must be the exclusive use of a specialist vendor, capable of engaging and applying specialist expertise, cutting edge knowledge and effective preventative execution in the various fields of PEP abuse, money laundering and terrorist financing. And that vendor must have robustly sustainable levels of highly skilled staff backed by cutting edge predictive and other information technology (IT) systems.

The case for outsourcing

So, within the multifaceted sophistication increasingly offered by the modern outsourcing industry it is practically quite feasible for the financial regulator's responsibilities for installing corruption and indeed AML and CFT prevention regimes within its banks and financial institutions, together with training and audit regimes, to be outsourced to such specialist vendors, the 'Outsource Provider' against strict performance level SLAs (Service Level Agreements).

This frees up the financial regulator for other tasks but without any relinquishment of responsibility or control i.e. the Outsource Provider works directly under contract to the financial regulator, is responsible to the financial regulator and is in close communication and collaboration with the financial regulator, under its contractual terms.

Specific areas for outsourcing services

- There is a case for the outsourcing to the Outsource Provider of the process of identification, selection and the negotiation of the procurement and the installation of appropriate software and databases, predictive and otherwise, in banks and financial institutions, to enhance their ability to identify and track suspicious transactions, across a broad range of possible PEP, money laundering (ML) and terrorist finance (TF) money movements.
- Similarly, comprehensive training regimes can be rolled out by the Outsource Provider in a consistent manner to the financial regulator and identically to all the banks and financial institutions within a financial regulator's jurisdiction, providing cutting edge techniques and the most up to date knowledge available, enabling the distinct advantage of the delivery of a broad consistency in the quality of training, technology and application. This primary training can be backed up by the Outsource Provider via regular refresher courses to the financial regulator and all of the banks within its jurisdiction, at whatever frequency is contractually agreed, again ensuring valuable consistency in the delivery and distribution of quality up to date knowledge.
- Similarly, in contract with the financial regulator and the designated body to whom STRs are filed, the Outsource Provider is able to act as first processor for such STRs, assess their quality, filter out the least potent reports, highlight the most potent and advise the financial regulator and its designated investigative entity accordingly, together with providing statistics primarily with respect to the quality and secondly the volume of STRs received from each bank and financial institution, the quality and volume being compared relatively to a matrix of the quality and volume of the submissions of peer banks weighted for each peer bank's total transactional volumes. The purpose being not to engage in a pointless box ticking numbers game, but rather to effectively track the level of quality engagement and quality commitment being shown across the entire banking and financial jurisdiction.
- The Outsourcer Provider can provide a specialist manned "Help Desk" facility on behalf of the financial regulator, available for access by all the banks and financial institutions within its jurisdiction, thus ensuring the provision of consistent standards of advice across the entire banking and financial sector within the

jurisdiction, keeping banks and financial institutions apprised of new relevant legislation, new developments, pertinent case studies, new software developments in the field of anti corruption, AML and CFT etc, etc and empowering and enabling a possibly previously inadequate level of performance to be raised to an unquestioned international and cutting edge standard of excellence.

In summary

In order to create *real dynamic traction*, some possible suggestions for this Conference to focus on:

- The harmonisation of approach and the definition of a PEP, together with a practical road map for banks and financial institutions to follow in the assessment of PEP risks and preventative action.
- Instigating appropriate protocols to apply influence and pressure on governments with such pressure to be demonstrably cascaded down to the financial regulators and those banks and financial institutions within the respective jurisdiction.
- Where appropriate consider the outsourcing by financial regulators to specialist Outsource Providers of certain of the educational and preventative functions around the management of PEP, AML and CFT risks.
- The use of specialist Outsource Providers to install and maintain vibrantly effective software tools and ongoing training regimes to help prevent banks and other financial institutions from inadvertently facilitating the furtherance of corruption through the provision of a financial conduit.
- The use of specialist Outsource Providers to supply the financial regulator and its banks and other financial institutions with up to date advice and guidance, both generally pertinent and also focused and matched to a specific jurisdiction, via a centralised help desk service.
- Seek to persuade financial regulators to switch their focus from a prescriptive box ticking regime to one based around broad based principles and which seeks to win hearts and minds, creating the active environment of desire to achieve the right result.
- Create an annual internationally acclaimed award for the financial regulator and jurisdiction that tops the practical prevention (not box

ticking) table and also of say the top four banks and financial institutions in that area.

- Name the bottom players also and adversely highlight the financial regulator within whose regime they fall.

CONCLUSIONS AND RECOMMENDATIONS

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Following a well established tradition, ISPAC has convened an international meeting in the wonderful setting of Courmayeur, in order to meet the challenge of properly implementing UNCAC. As repeatedly emphasised by every speaker, this is an effort for which all stakeholders should join forces and work together, so that the principles embodied in the U.N. Convention become “a way of life”, a part of a new culture of legality which rejects any form of corrupt practices. This Meeting, through its various sessions devoted to the role of Government, multilateral organizations, the media, civil society and academia, as well as the private sector, has been extremely rich with in depth-discussions, as well as extremely multi-faceted in terms of the various cultural and professional perspectives, experiences and practices that have been reviewed. Attempting to draw general conclusions and recommendations from the presentations, submitted papers and discussion would not do justice to the conference. Rather, this chapter considers some of the most important issues that have been raised especially during the concluding session of the conference which aimed at getting further feedback from the audience on the major accomplishments of this Meeting and next steps we need to take.

One of the most useful achievements was to bring in and listen to a wide range of stakeholders offering their perspectives. Both very knowledgeable and less knowledgeable participants in the audience were able to obtain the “big picture” of what is involved in this project, of what are the implications of effective anti-corruption policies and strategies, as well as of the importance of ensuring a proper implementation of UNCAC.

Each of the stakeholder groups also suggested that we need to watch ourselves. Self-control is one of the tasks, but we also need to watch each other. How do we do this? There is a technical part, such as technical assistance and development cooperation, areas where we need a degree of consistency and uniformity, as well as vision on what the major aspects and components of an anti-corruption strategy should be, in line with the UNCAC, while recognizing the specificities and differences that exist from place to place.

There was emphasis on the importance of both cultures and structures. On the one hand, we need to focus on various sets of attitudes and values, and the way in which they interact or relate to each other. On the other hand, we must pay attention to ways in which actors and groups diversely interact with each other, domestically and internationally. Many changes and adjustments will be required, sometimes more radical than in other cases. At the same time, we have been cautioned to be pragmatic. We need an approach that will be consistent and fair, but also realistic. We must have realistic ends and not expect that we are can get things done overnight. Certain adjustments may represent a higher priority in some countries than in others. All efforts should be integrated into long term strategies.

This is why it would be very useful to have a road map based on knowledge and data. Solid analysis is also critical, because we all have to learn, teach, try and adjust as we embark on this long journey. These are necessary ingredients to get the process started and to enhance its legitimacy: the firm belief in the rightness of the rules and the principles that guide our behaviour. This will enhance the credibility of the process and ensure that it is sustainable and successful in the long-term.

Every speaker also emphasized the fact that we cannot do that on our own; we need to work together, coordinate and collaborate. As Mr. Stockdale noted, “*we need something now for dynamic traction going forward, we need that help-desk which is going to be to the benefit of all of us*”. In this connection, the idea we discussed informally was about the need to create a mechanism, a process that will bring together these different stakeholders, their diverse perspectives and interests. There should be meetings on a regular basis (every 6 – 12 months, for example), to discuss issues that come to the group from different areas or regions, to draw on each other’s experience.

This process cannot be dominated by the North or by the South. It has to be a true dialogue among all stakeholders and between rich and developing countries, a mutual and fair process, where everyone comes to

own the final conclusions. Again, that is the only thing that is going to help with legitimacy and credibility in the long term. If we have such a group that will bring together representatives from each of the respective stakeholders, meeting on a regular basis to learn, to find out what concrete initiatives and projects are being undertaken, to discuss, elaborate and set the agenda for future activities. Such an effective feedback mechanism would feed into the knowledge base and other projects discussed in Prof. Passas' chapter and help to tackle one by one the various problems, issues, challenges and good practices as they emerge. Mr. Haugsveit (Norway's Ministry of Foreign Affairs) stressed how this mechanism would not only lend additional legitimacy to the process but will also enrich it by receiving and making use of experiences and insights emanating from developing countries.

Moreover, we will not reinvent the wheel and avoid falling into traps and difficulties already encountered in some parts of the world. The effective implementation of the UNCAC will thus proceed in a pragmatic, realistic, consistent, fair and mutually reinforcing fashion. National, regional and international policy organizations and for a have been discussing related issues including risk analysis, evidence-based policy-making and prioritisation, threat and vulnerability studies, identification and elimination of paths of least resistance followed by corrupt actors, as well as the prevention, investigation, prosecution and asset return. It was recognized by the conference participants that we have such a proliferation of ideas, initiatives, policy recommendations and activities on critical components in the global anti-corruption project that it would make sense to divide labour and ensure that the anti-corruption community takes advantage of all information and advances, while not spreading itself thin and getting overwhelmed. The knowledge base (see Passas chapter as well as the Stockdale chapter referring to a similar vehicle in the private sector that could serve as a global 'help desk' and the Forti chapter on educators' contributions) could furnish a vehicle or mechanism to accomplish this goal and generate consensual knowledge, which – as everyone at the conference agreed – is fundamental.

Mrs. Brassiolo (President of Transparency International, Italy) added her voice in favour of this project while asking who should take the primary responsibility to organize and facilitate this project. She noted that Transparency International has national Chapters all over the world and a relatively good feedback on what is going on about corruption in different countries. She thought it would be useful to have a 'seat' for this process or a group where each Chapter and organization can report on experiences from around the world?

Mrs Ozaki (Director, Division on Treaty Affairs, United Nations Office for Drugs and Crime) reminded the audience that a process in support of the UNCAC implementation is already in place as part of the functions of the Conference of States Parties. The UNCAC constitutes the universal framework for this work not only by governments, but also by the private sector and NGOs, as well as development agencies. While the Conference of States Parties is mainly inter-governmental in nature, UNODC is trying to make this process as open as possible to every possible stakeholder.

It was generally agreed that the tasks are numerous and a division of labour would be highly desirable as all stakeholders represented at the ISPAC conference pledged contributions and assistance to UNODC so that it can more easily discharge this daunting responsibility. Possible sites for contributions to the knowledge base or centre of knowledge include Northeastern University's Institute for Global Governance and Security in Boston (represented by Prof. Passas) as well as the International Centre for Asset Recovery at the Basel Institute of Governance (represented by Prof. Pieth) and the U4 Anti-Corruption Resource Centre in Oslo. The contributions to the knowledge base should draw on talent from everywhere in a decentralized way, through mutual learning experiences from all countries, cultures and legal systems. Ms. Malvido (International Society of Victimology), noting that organizations represented at the conference have different mandates and tasks, they could sign a partnership with the project so as to have specific tasks related to the implementation of the UNCAC.

Mr. Ulrich stressed the importance of continuous feedback and assessment of efforts. We do need to provide a sense of performance and progress. He noted that he would find it very useful if he could reiterate this to his fellow Members of Parliament and state that "a new process is going to be established and we – as parliamentarians – would feed into it in a responsible way, in order to get a reaction from other sectors of society, if we are doing well or not".

Performance indicators are essential also as they can add to the momentum of anti-corruption efforts as well as strengthen the credibility and legitimacy of the whole process. TA providers, implementers of the UNCAC, political debates and actions by all sections of society (including think tanks, NGOs, academia) would greatly benefit from them as well. Passas added that we must have a combination of quantitative as well as qualitative measures of success. When we just count people behind bars or assets frozen, then we might misjudge how much the preventive work has

been successful. Mr Hill (USA) observed that, as we start to gather the necessary data and enthusiasm for the fight against corruption grows, the measures that countries are likely to use would be the number of convictions and the press reports that they get showing the progress made in this fight. When those become the measurement – since corruption is fairly difficult to prove unless you do not get your evidence through secret witnesses or wire taps – a number of dangers may emerge, haunting the basic values of our democratic societies. Professor Hulsman (Netherlands) noted the need to focus both on victims and wrong-doers and drew attention to the technical ways in which we can assess progress in this field, especially when we do not focus only at certain headline criminal cases. He suggested that there are many ways in which that can be gauged, including victims surveys and research conducted in many countries, while evaluating also the quality of that research, so that we can see what gains we have made with respect to prevention. Sometimes, too strong an emphasis on criminal cases, which may take years before final verdicts, may prevent us from gaining such useful insights into the problem.

Professor Maoz (Tel Aviv University) noted the waste of resources when we work separately and recommended the assignment of one or more points of contact from each country, who would know how best to use the resources from the universities, academic centres or NGOs, with a view to coordinating the collection of data.

Ms. Tsitsoura (Greece) emphasized the social aspects of corruption. Why is corruption increasing, instead of decreasing? She also cited the lack of respect for human rights and stated that corruption is also a way to violate human rights, including the right to life, property and liberty. Thus, governments and organizations, as well as all interested persons, should examine corruption under this angle too. Along similar lines, Mr. Hill recommended that we also think of putting together codes of ethics for law enforcement officers and prosecutors, so we have certain guidelines to be followed. The media should also use a system of guidelines, so that information on corruption is gathered and distributed responsibly.

Ms. McLaughlin (Director of Human Trafficking Task Force, Boston, USA) agreed with these points and suggest that we work with the International Association of Chiefs of Police and Interpol and others who have already worked in that arena, in order to ensure that such codes are widely applied. She also endorsed Ms De la Luz Lima's (UN Liaison Committee, the World Society of Victimology) view about the need to focus attention on victims and community prevention as well as the nexus between corruption with other serious crimes, such as human trafficking. It

is not just the individual impact on victims that is bad enough; but, when we have victims go through various countries (origin, transit or destination) and see public officials, police officials in particular border guards, immigration and customs enforcement agents being bought off, it demoralizes them paralyzing whatever remote willingness they had to report. It is not simply a question of post-traumatic stress, or their ability to come forward and denounce their victimizers. All this renders our work in policing or victims' services or prosecution terribly difficult, because we cannot get the people to come in and disclose information. She further referred to an article about a businessman in a given country who was asked to pay a bribe in order to begin a business. Since he refused, for 7 or 8 months he was left without any income. The report on this case made a tremendous impact in the USA and he became a hero and a symbol of the victims at the same time. Such voices need to be heard; such stories, profiles of courage, must be placed in the front pages of newspapers to pay homage and admire those people who do the right thing.

Mr Haugstveit (Norway) noted how he was unsure what it meant to discuss the UNCAC as a way of life. After more than two days of debates, he fully appreciated it and the multi-disciplinary, multi-perspective approach to the implementation of the convention. He observed that it is imperative that we approach the follow-up of the U.N. Convention in the broadest possible way, using a multi-disciplinary approach. Corruption affects not only societies but also individuals in many different ways. Therefore, this broad approach is very much needed since it affects so many parts of our society and many aspects of our life. That is why a meeting like this one is so much important. He further noted that he went to Courmayeur after the Conference of States Parties in Jordan. He was not very satisfied, nor very disappointed. He thought that the Conference had a realistic outcome. We had higher expectations. We had hoped for better results, but at the same time we saw it would not be realistic to move forward at a high speed. We are moving forward, we must say that. We should convey this message not only to the ISPAC conference audience, but also to the general public: We did take steps ahead, even if at a rather slow pace.

At the same time, he added that there is resistance to moving forward more rapidly. There is also a lack of acceptance for what many see as obvious, that there is a strong link between the fight against corruption and efforts to promote development. That was an issue that was discussed at the

Conference of the States Parties, where not everyone accepted that this link is there¹.

There is also a resistance to working broadly on this issue, using a multi-disciplinary approach. Of course legal expertise is absolutely necessary, it is probably the most important expertise we could use in moving forward on these issues, but we do need to bring in other kinds of expertise as well. Everyone who has spoken here agrees on that. That, unfortunately, was not a common understanding at the Conference of the States Parties.

The good news is that there many governments, probably most of the States Parties, are interested in moving forward, while others are impatient to do so. What is needed now is some ideas as to how we could proceed, putting some pressure on Governments, on politicians, on people working in the public sector, in ministries and on members of Parliament. Mr Haugstveit called for pressure on public officials and critical assessments of their work. This is why he appreciated very much the participation of the private sector, the media and the civil society at the ISPAC conference. We have to keep up with this work, as presented at this conference and reflected in this book, and bring good ideas forward convey them to a broader audience.

Mr Matsheza (at the time with UNODC, now United Nations Development Programme)

I felt that most of the issues that addressed at the conference confirmed the complexity of the work it takes to implement the UNCAC and make it easier. Technical assistance delivery around the world should take into account the multi-disciplinary angles presented here.

Ms Melup (Asia Crime Prevention Foundation) pointed to concrete ways and occasions of translating the UNCAC into actual practice. One of them is the session of the Commission on Crime Prevention and Criminal Justice, where governments can introduce draft resolutions which then usually go to the Economic and Social Council and some of them even to the General Assembly for final approval. These opportunities should be

¹ Since that conference, another meeting took place in Montevideo, where this issue was the very centre of attention (see Passas, N. (2007). *Development Efforts and the UN Convention against Corruption*: Paper prepared on behalf of the Ministry of Foreign Affairs of Finland for the International Cooperation Workshop on Technical Assistance for the Implementation of the United Nations Convention against Corruption in Montevideo, Uruguay.

properly used to present new initiatives and channel support for follow-up action.

A new coalition for Information Technology has been established under the Department of the Economic and Social Affairs in New York, which could be helpful in connection with the promotion of the ratification and implementation of the U.N. Convention against Corruption.

There are also the results of recent events such as the Global World Conference on Crime Prevention and Justice, which was held in Jakarta under the auspices of the Asia Crime Prevention Foundation. The Conference looked at the implementation of the results of the Bangkok 11th U.N. Crime and Justice Congress, and among the items of the agenda there was the implementation of the UNCAC. The Jakarta Declaration, adopted by the Conference, can be accessed online. In addition, the Asian Crime Prevention Foundation has developed guidelines on the use of the criminal justice system for the reduction of extreme poverty and the role of the anti-corruption activities in that context.

Furthermore, there has been the establishment of the International Association of Anti-Corruption Authorities, of which Eduardo Vetere is one of its Vice-Presidents, along with Minoru Shikita, who is the Chairman of the Asia Crime Prevention Foundation. This is another very valuable agent that can be used to this effect, especially after their very successful International Conference in Beijing in 2006.

She went on to note that Norway is the seat of a U.N. Institute on Good Governance and also a seat of a futurology institute. Both of them can be used to advance our objectives. A presidential library and an ethic centre has just been established in Trinidad and Tobago, under the auspices of the former President of the Country, Honourable Robinson, who was also instrumental to the establishment of the International Criminal Court and is on the Board of the Victim Trust Fund under the International Criminal Court. That is a very new model of what can be done as an ethic centre in propagating the principles of the U.N. Convention.

The last point made by Ms Melup was about victims. A meeting in Vienna at the end of November 2006 reviewed the questionnaire on victims, in pursuance of the U.N. Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power. While the questionnaire is quite detailed and very interesting, unfortunately the part on the victims of abuse of power is quite weak. ISPAC had pursued this issue in the past, including at the Colloquia organized by the Centro Nazionale in Bellagio and in San Sebastian some years ago. All this seems to be lost somehow but must be recuperated, as it can integrate all relevant contributions with the involvement of all interested stakeholders.

All comments by conference participants demonstrate the complexity and the difficulties of the subject-matter. But they also demonstrate that there are very strong expectations in order to transform into reality what is now an international legal text which has been developed in less than two years – a record time in U.N. history! A new universal instrument that also entered into force at a record speed, and whose implementation mechanisms have already been set into motion through the Conference of States Parties.

We may conclude with seven main points. Firstly, it is needless to say that we need now the widest possible support from all the institutions involved, ranging from the more formal to the less formal ones, as well as all those individuals and organizations who have the task of providing the necessary follow-up – whether those are national authorities against corruption or prosecutors, judges, parliamentarians, law professors, teachers, educators, journalists, businessmen or other responsible members of the civil society in general – because *unless we manage to put enough pressure on Government representatives, we run the risk of not seeing the changes we all want.*

Obviously, this is no easy task because, as Justice Holmes noted, *“men must turn square corners when they deal with government”*. However, it is possible and even feasible when considering that so many Governments – and we hope that their number will increase in the future – have subscribed to a legal obligation to implement the U.N. Convention, by taking all *“necessary measures”* (Article 65, paragraph 1) to make sure that this is going to occur. And our colleague from Norway has just reminded us, so passionately and eloquently, that such a pressure is always needed; it is more than essential; it is indispensable! For this reason we will have to organize ourselves in order to properly channel our efforts. We will have at our disposal one year time, till the next session of the Conference of the States Parties, to promote a minimum of implementation of the Convention in terms of proper review of its main provisions and in terms of at least starting that monitoring process which would help us to assess whatever progress is being made. To do so, we have to set into motion – as Mr Stockdale emphasised – *those dynamic tractions to transform our expectations into reality.* Only in this way we will have some real chances that the U.N. Convention becomes alive, an operating tool that can really affect behaviour, and not simply a dry statement of commitments which may run the risk of remaining a set of noble aspirations.

Secondly, *we have to strive to involve all interested stakeholders, in order to stimulate the behavioural and cultural changes that we envisage.*

In this connection – as the discussion here demonstrated – the role to be played by all non-state actors, particularly the press and the media in general, is tremendously important in order to make the public aware that those international agreements that have been made in recent years at the regional and global levels should not remain sterile documents to be placed on our bookshelves, but should actually be applied to have some sort of impact in the real life of the citizens of our countries. It is not simply a question of seeing an increase in the numbers of convictions, once those who are responsible for acts of corruption have been brought to justice, or of reading more accurate and extensive investigative reports on corruption cases. We should convincingly press our respective national authorities to do much more in the field of prevention.

Let us not forget, in this respect, that the provisions on prevention constitute an extremely important chapter of the U.N. Convention, requiring the existence of National Bodies or Authorities fully independent and specifically charged with the task of coordinating policies at the national level, as well as a number of other broad and extensive measures, including the full participation of all civil society organizations, transparency and accountability. In this respect, thanks our due to Transparency International for the significant study they have recently completed in order to show the urgency for an early implementation of the Convention. Its “Report on Follow-up Process for UN Convention Against Corruption” – submitted to Conference of States Parties – demonstrates the importance of a systematic monitoring process to ensure timely and effective implementation by national governments, not only in terms of additional ratifications or accessions with the view of increasing the level of its universal application, but especially in terms of monitoring and review in order to sustain momentum, enhance credibility and promote public confidence in UNCAC, underlying also in this respect the crucial role of the Conference of States Parties which should establish “*any appropriate mechanism or body to assist in the effective implementation of the Convention*” (article 63, paragraph 7).

A growing number of international organizations were actively involved in the Conference at the Dead Sea, during which several joint events were successfully conducted with them. The conclusions and recommendations agreed upon during such events are no doubt of great relevance to our discussion along with the Beijing Declaration, unanimously adopted in October 2006 by the first International Conference of the Anti-Corruption Authorities. All these initiatives constitute very positive developments that should be properly acknowledged, because they can be of great help in the future implementation of the UNCAC. They

show, indeed, that the Convention is already being implemented in the real life!

This is why we fully agree that we should not feel disappointed and frustrated, but we should be optimistic and confident in what we are doing, proceeding with pragmatism and realism. We agree with those who noted that it would have been impossible to get more at the inaugural session of the Conference of States Parties in Amman. However, if we have a roadmap on how to organize and channel our efforts, if we are able to start that process of consensus knowledge creation and dissemination and if we are successful in putting enough pressure on governments so that they do not forget that the Conference is open to both intergovernmental and non-governmental participation, we will eventually manage to see that there is more effective national and international action in connection with implementation, including monitoring and review. In this respect, there was also a general consensus that technical assistance is essential and that it should be more effectively coordinated and financed, based on the principles of cost-effectiveness and quality control.

The third point thus is that we must *at least try, and try hard, before saying that we have failed in accomplishing our tasks. And this is my third point.* Therefore, having considered here the various issues – from the role of the concerned authorities, the private sector, the academic and scientific community, the press and the media in general, to the role of the parliamentarians and what everybody can do individually and collectively to pursue our goals – no doubt we can all go back to our respective countries with enough energy and awareness to continue working together in a more orderly and organized fashion, as a real coalition of minds, hearts, arms and hands, following a basic roadmap and a global framework for national and international action.

Fourthly, we all know that that corruption has very deleterious and damaging effects, not only on the rule of law, democracy and respect for human rights, but also on governance and development. That has been said for a number of years and has also been gradually recognized at various levels. However, not always such links are very clear or evident if there are people who believe that corruption can be considered as a crime without victims. Then, we have to conclude that, in spite of the progress made, we have yet a long way to go! Accordingly, we should all feel the duty to provide whatever substantive and scientific contribution in order to dispel these doubts and these biases that still exist. Basically, what we need is a change of attitudes and values that can only be affected if we manage to foster and strengthen new alliances – as we explored during this ISPAC

conference – towards a culture of legality, supremacy of the rule of law and respect of human rights. And, since many speakers in their interventions stressed this issue, let me simply quote from the conclusions of the International Conference on “Anticorruption Measures, Good Governance and Human Rights”, convened by the Office of the High Commissioner for Human Rights and held in Warsaw on 8 and 9 November 2006: “*effective anticorruption measures and the protection of human rights are not conflicting goals, but complementary and mutually reinforcing ones*”. Accordingly, adoption and application of broad and effective anticorruption measures – in compliance with the provisions of the UNCAC – are essential elements for the defence and protection of human rights.

But how can we promote, foster and strengthen a culture of legality? We all have to continue to raise public awareness of the fundamental importance of positive cultural values. In this connection, the role of education is crucial, also because the negative effects of corruption on health and education can be absolutely disastrous. Yesterday, the very prestigious Beccaria Medal was awarded to our dear friend Simone Rozès, former President of the International Society for Social Defence and former Chairperson of the U.N. Committee on Crime Prevention and Control. And, in the words of Beccaria – as Prof. Gabrio Forti reminded us – “*the surest but most difficult way to prevent crimes is by perfecting education, which should consist in directing the fresh mind of youth away from evil by the infallible way of necessity and inconvenience, instead of the uncertain means of command*”.

Drawing on this seminal idea, which should be deemed doubly pertinent to the prevention of what is considered to be one of the most harmful and deeply cultural crimes such as corruption, many more educational and teaching resources should be devoted to address this issue. Considering that corruption has become a new sort of cancer no less for political and administrative integrity than for human and educational development, due to the close links between high rates of corruption and low investments in education and human development in so many countries, then the school, the university and all academic institutions in general should be vested with the responsibility of articulating concrete proposals to include in their respective teaching courses and syllabuses specific elements that can practically bolster a new culture of legality and confidence in the rule of law, locally, nationally and internationally.

Fifthly, therefore, we *should give much more relevance to all those social and cultural aspects which have been mentioned at the conference and in this book*, following not only a legal approach, which is actually

very important for the enforcement of the provisions of the U.N. Convention, but a much broader multidisciplinary approach with massive investments on preventive measures related to education, which are the only ones that can affect any real change into society.

Since we met in Courmayeur, which was so much loved by our dear friend Adolfo Beria di Argentine, it is appropriate to recall some of his words pronounced during the XIII International Congress on Social Defence on “Responding to Corruption”, held in Lecce more than ten years ago. In his introductory remarks to the Congress, he noted that “*corruption – which has been constantly increasing in both developed and developing countries – has become a vital issue on the world’s agenda, both at the level of public opinion and of institutions. An analysis of the phenomena and a study of the measures to combat it, cannot fail to present a challenge of major cultural, scientific and political importance, especially at the international level*”. We have seen how this challenge has been faced at various levels during these last ten years and we should feel satisfied that a new global Convention is in place. But now this Convention must be widely applied, it must be effectively implemented, so that progress in the fight against corruption can be properly monitored, taking into account – again using Beria’s words – that “*opposition to corruption must be the result of a permanent ongoing strategy and not a just an extraordinary, or even worse, occasional interventions*”. Corruption is a phenomenon that is so multifaceted, that unless in its fight are strategically involved all concerned sectors and agencies, the apparent beneficial effects of partial interventions – say, for example, more effective action by the police – may be wiped out if we do not properly address other sectors – such as the judiciary. In other words, there are no quick fixes: continuity of action, persistence and consistency of operations, as well as appropriate coordination among all the relevant actors, are the prerequisites of any effective strategy. In fact, to conclude with Beria’s words, “*corruption demands a finer honing of the traditional instruments of Criminal Law, the study of a regulatory system, which can successfully combat money laundering and impound the proceeds of crime. It demands consideration of measures to deal with the criminal liability of administrators and auditors, especially in relation to the fiduciary duties attaching to company accounting. Above all it demands more efficient international co-operation in penal matters, which today is manifestly inadequate in the field of judicial investigations into corruption*”.

Also in this respect, we should not forget that another very important chapter of the Convention is devoted exactly to international cooperation in

criminal matters, i.e. mutual legal assistance, extradition, transfer of criminal proceedings, joint investigations etc. But, unless the official authorities will start changing their traditional methods in cooperating among each others in those issues, there is the risk that whatever advances are made in the fields of prevention or asset recovery at the national level may be foiled when we move our action at the international and trans-border levels. *Accordingly – and this is our sixth concluding point – we need more agile and flexible methods of international cooperation, based on greater confidence and mutual trust and drawing on the provisions of the UNCAC.*

Again, all this implies the need to provide qualified technical assistance on those issues, but implies also a much more active participation of the concerned national authorities in the Conference of States Parties. And, by “concerned national authorities” we mean not only diplomatic representatives but, above all, those dedicated professionals who are in the frontline in the fight against corruption, as the only ones with the required professional background, experience and expertise who can authoritatively discuss all different matters related to the implementation of the U.N. Convention.

Finally, stressing once more the *importance of broad strategic alliances at a global level*, so as to enhance the potential of existing synergies, let it be only by joining our efforts and unifying our actions, under a common strategy, that we can ensure that the U.N. Convention against Corruption becomes a way of life. In doing so, we will also play our part in counteracting against a phenomenon that not only disrupts law and order, undermining democracy, breeding social, economic and political crises, trapping millions of people in hunger and misery, distorting trade, discouraging investment and exploiting our natural resources, but also represents one of the greatest despairs that may affect our communities, *“the despair and the doubt that living honestly is perfectly useless”....*

APPENDIX

DAC NETWORK ON GOVERNANCE POLICY PAPER
ON ANTI-CORRUPTION
SETTING AN AGENDA FOR COLLECTIVE ACTION

This paper, which was prepared by the GOVNET's anti-corruption task team, was approved by the DAC on 22 September 2006. This final revised version takes into account comments made by the DAC at that meeting as well as written comments. It is now submitted to DAC Members for FINAL APPROVAL under written procedure. Any further questions or concerns should reach the Secretariat by 14 November.

As agreed by the DAC, key issues and proposals made in this paper will be discussed at the SLM in December 2006.

EXECUTIVE SUMMARY

The context in which anti-corruption efforts are undertaken is changing. The risks associated with a piecemeal response, in which various donor organisations act in a deliberate but uncoordinated way, are set to increase. At the same time, new opportunities for collective action are emerging. While a number of bilateral donors have strengthened or developed anti-corruption strategies, this paper argues that the DAC is well placed to draw these together into a coherent agenda. At the global level, this agenda for donor action complements the enhanced anti-corruption strategy being developed by the World Bank, while proposing to take collective action and harmonisation one step further.

The paper sets out opportunities for collective action in a number of areas where a concerted approach seems essential if the multiple risks associated with corruption are to be successfully managed. It proposes specific actions to be taken by the DAC to help donors move forward with this agenda.

Reinvigorating anti-corruption at the country level

To be consistent with the spirit of the Paris Declaration and the GOVNET Draft Principles for Donor Action in Anti-Corruption, action on corruption needs to be centred on more comprehensive initiatives at the country level. This, however, calls for an approach that views corruption in

the context of the wider political economy of public-sector governance in each country. The background to this proposal is the growing recognition that corruption is invariably an outcome of unresolved problems in the wider governance system of the country.

The design of anti-corruption efforts should be tailored to the circumstances of partner countries. This is consonant with the Paris Declaration commitments on alignment with country approaches and the GOVNET Principle on fostering a country-led anti-corruption vision. Depending on the particular pattern of actors, capacities and accountabilities in governance systems, different constraints and opportunities will be present for forging country reform coalitions and anti-corruption alliances. *Concerted action is required to promote shared understanding of the challenge of fighting corruption, develop effective responses and ensure that all important entry points for anti-corruption action are properly covered by the country-level reform coalition as a whole.* Corruption is the result, at least in part, of a dysfunctional governance system, and a number of areas of governance have been regarded as worthwhile focuses for reform activities. What has generally been lacking, however, is systematic and sufficiently sustained coverage of areas where powerfully complementary efforts are necessary to address endemic corruption which often has its roots in the political system. At the same time, it is recognized that leadership and political commitment are essential to effective anti-corruption efforts, and donors must face the challenge of how to respond when government capacity may not be the only constraint to reform. In general, corruption must be addressed in a systemic and comprehensive way, taking the wider governance context into consideration. In supporting governance reforms, donors have traditionally focused on strengthening bureaucratic capability, such as public financial management and administrative reform. Good governance is not just about government. It is also about political parties, parliament, the judiciary, the media and civil society. It is about how citizens, leaders and public institutions relate to each other in order to make things happen (DFID White Paper 2006). This means that in all cases, other efforts are needed to build strong constituencies for reform and greater demand for good governance. Areas identified as likely to need more coherent action include: support for initiatives to build broader constituencies and alliances for change (support for media, civil society, parliaments, including through possible joint funding windows); assessment of corruption and anti-corruption opportunities and identifying and tackling the drivers of political corruption.

Towards more concerted donor action

Both the Paris Declaration commitments on aid effectiveness and the GOVNET Anti-Corruption Principles leave a specific and important place for harmonisation of donor efforts. *This paper identifies four areas in which donor action on a one-by-one basis is likely to be ineffective and where, therefore, a concerted approach is necessary.*

The paper proposes that the DAC facilitate the fast-tracking of joint corruption assessments, beginning with pilot exercises in selected countries. The proposed assessments will be expected to analyse specific areas of corruption risk and governance failure in order to develop action plans suited to the circumstances and capable of being carried forward in a country-led way. Whenever possible, such assessments should be made jointly by a group of donors and key members of an existing or prospective local reform coalition and utilise any existing analysis. Tools that are suitable to guide assessment work already exist, or are in the final stages of development.

It is proposed that the DAC also signal its support for anti-corruption benchmarks and targets that can be agreed at country level and used to monitor progress. Following the success of Public Expenditure and Financial Accountability (PEFA) in the field of public financial management and recent progress in establishing joint benchmarking on procurement systems, there is now a place for an initiative of a similar kind covering the broader field of governance and anti-corruption. Such benchmarks would assist the work of country-level reform coalitions. They would complement the various international indicator sets currently available, being more specific (e.g. sector by sector) and more geared to collective action requirements at country level.

The need to ensure that all important entry points for reform effort are catered for poses a challenge to donor coordination at country level. Not all donor organisations are able to play an active role in the critical areas affecting the demand for better governance. *In all countries where the corruption risk is high, there therefore needs to be an agreed division of labour in which different donors undertake to apply their best intellectual and practical efforts to different parts of the governance context of corruption.* DAC guidance or good practice should promote a collective approach to this task in each country.

There is also a growing need for common response principles applicable in the unavoidable situations where efforts to improve the governance framework are unsuccessful or inappropriate and where

corruption is seriously affecting poverty reduction efforts. In 2006 DAC Ministers and Heads of Agency discussed ideas concerning more harmonised responses to poor governance, particularly corruption. The themes discussed included the need for more serious advance preparation and dialogue, and the desirability of graduated responses that minimise the damage to recipient planning and institutional development. *This paper proposes that the DAC develop these ideas into good-practice principles for SLM/HLM approval and roll-out to the country level.*

Tackling the global incentive environment

As DAC members redefine their approach to combating corruption in partner countries, it will be crucial for them to acknowledge forcefully that corruption is not just a developing country problem.

For this reason, it will be important in the next few years for the DAC to provide active support to the OECD Working Group on Bribery in pushing forward the implementation of the OECD Convention on Bribery of Foreign Public Officials. The DAC could also add its voice to those calling for the ratification of the UN Convention Against Corruption (UNCAC) by its members and other UN member countries. The DAC recognises the importance of adequate and efficient review of compliance with UNCAC. In this respect, it emphasises the interest to the donor community of proposals at the Conference of States Parties in December 2006 for information-gathering with respect to compliance and related needs for technical assistance. Initiatives such as Publish What You Pay and the seizing or freezing of stolen assets can be useful in influencing incentives and demonstrating seriousness to partners. *By helping global actions to curb transnational corruption while also working with country-level reform coalitions, donors may be able to create important synergies between the different levels of anti-corruption effort.*

Efforts to change the international incentive environment for corruption do not need to be restricted to tighter controls and greater legal redress. Indeed, these efforts may be more effective if they are accompanied by initiatives to improve the positive side of the incentive structure. The recently proposed Global Integrity Alliance illustrates a type of complementary initiative that promises to transform the incentive environment in a positive way by building a global movement for integrity, leadership and state-building. The GIA proposes concerted actions to identify, engage with and support reformist leaders in order to catalyse

change and set higher standards of ethics in public service. *It suggests a way forward that the DAC should commend to its members.*

Summary of proposed actions by the DAC

To promote a concerted approach to anti-corruption work at country level
... it is proposed that the DAC:

- Facilitate joint assessments of corruption and the wider governance context in high-risk countries in close co-operation with other organisations, beginning with pilot exercises in selected countries which build on any existing work.
- Signal its support for anti-corruption benchmarks and targets that can be agreed jointly by donors and partners at country level and used to monitor progress.
- Endorse as good practice the close coordination of donor governance and anti-corruption work at the country level.
- Develop a set of good-practice principles (a “voluntary code of conduct”), to be endorsed by Ministers and rolled out at country level, on coordinated donor responses to deteriorating corruption contexts.

To tackle the global incentive environment for corruption
... it is proposed that the DAC:

- Encourage its members to advocate more concerted and systematic action within their own governments to implement and enforce international conventions to tackle the supply side of corruption (*eg the offering of bribes by the private sector*).
- Support UN-led processes and efforts to encourage members to ratify and implement UNCAC while also encouraging DAC members to combine and integrate their joint anti-corruption initiatives with other ongoing efforts to implement and monitor UNCAC on the ground.
- Emphasise the interest to the donor community of proposals at the UNCAC Conference of the States Parties in December 2006 for information-gathering with respect to compliance and related needs for technical assistance.
- Support international initiatives such as the proposed Global Integrity Alliance as a positive way forward in transforming the international incentive environment for integrity and good governance.

I. INTRODUCTION

1. *The time has come for the DAC to support an agenda for collective action on corruption.* The DAC's role in anti-corruption efforts has evolved in various steps over the past decade¹. However, the context in which anti-corruption efforts are undertaken is changing in ways that underline the need for an approach that is both more sophisticated and more concerted. The risks associated with a piecemeal response, in which the various donor organisations act in a deliberate but uncoordinated way, are set to increase. At the same time, new opportunities are emerging for collective action by development actors. The DAC is well placed to draw these together into a coherent agenda.

The changing context of anti-corruption efforts

2. Five new elements in the context are especially important

- *The prospect of very significant increases of aid – possibly an additional \$50 billion per year by 2010 and beyond – has raised the stakes for both donors and partner countries.* As donors are pressed to disburse larger amounts of development assistance more quickly, effective governance and anti-corruption provisions will assume growing importance. This is of vital concern to both recipients and donors. Governance and anti-corruption efforts have emerged as central elements of the framework of mutual accountability required

¹ The DAC's initial focus was work to strengthen and harmonise donors' efforts in aid-funded procurement. In 1996, with the Recommendation on Aid Funded Procurement (DCD/DAC(96)11/FINAL), DAC members agreed to introduce anti-corruption provisions in bilateral aid-funded procurement. The anti-corruption provision of the Recommendation was adopted by all DAC donors and was later integrated into the OECD Revised Recommendation of the Council on Combating Bribery. In 2003, the GOVNET reviewed donors' lessons learned in the fight against corruption (DCD/DAC/GOVNET(2003)1). The report concluded that donors have made little progress in addressing corruption. Limited capacity, competing priorities and piecemeal approaches have constrained any strategic impact at the field level, beyond one or two well known small-scale examples.

for scaling-up aid. Since both donor and recipient countries contribute to corruption, it is right that they should be held jointly responsible for addressing it. At the same time, there is no substitute for strengthening country systems. While stronger safeguards are needed in the management of projects, “ringfencing” individual projects will not be a sufficient response when some donors are increasingly making use of programme-based approaches and budget support.

- *In this context, there has been a progressive recognition that corruption poses several types of risk to the enterprise of international development.* Initially, attention was focused primarily on fiduciary risk – the risk that donor resources will not be used for the intended purposes. A growing concern has been with development effectiveness – the risk that corruption will undermine the achievement of economic growth and poverty reduction by its corrosive effects on government performance and private investment. Lately, donors have become concerned, in addition, with reputational risks – including the risk that aid to countries with corrupt leaders will tarnish donors’ reputations and undermine the case for aid. The confluence of these three risks has focused attention on corruption as a core concern.
- At the country level, donor-driven perspectives have given way to approaches that place donors in a role that supports developing countries’ own anti-corruption efforts. The 2005 Paris Declaration establishes the principle that setting development objectives is primarily the responsibility of developing countries, with donors playing a supporting role. The Principles for Donor Action in Anti-Corruption developed and endorsed by GOVNET lead with the same idea (“Principle No. 1: we will collectively foster, follow and fit the local vision”)². Experience shows that combating entrenched networks of corruption requires a multi-sectoral coalition, including reformers from government, political parties, civil society and the private sector. However, operationalising these commitments in countries where the government leadership is itself corrupt poses a substantial challenge. But even in these contexts, the preferred

² DCD/DAC/GOVNET(2005)6. The Principles, developed and endorsed by GOVNET, were presented for information to the DAC in September 2005 and received strong support. The DAC agreed the Principles would formally be approved at the same time as a GOVNET AC policy paper.

approach is to support domestic coalitions for reform with objectives and methods that suit the circumstances of the country.

- *At the same time, donors have been learning to approach anti-corruption work in the framework of a wider appreciation of countries' governance challenges and political economy issues.* There is growing recognition that importing formal institutional models from OECD countries (such as anti-corruption commissions) into developing countries regardless of the governance context is unwise. As suggested by the National Integrity System concept a decade ago, there is a need to analyse carefully the broader governance conditions that generate high corruption risks and, on this basis, identify entry points and ways of working with domestic reform coalitions that are likely to be effective in the specific country context. This must include an in depth understanding of how the political system functions.
- *Last but not least, there is growing recognition of the responsibilities of OECD governments in the control of corruption.* In the words of the GOVNET *Draft Principles*, "Donors recognise that corruption is a two-way street. Action is needed in donor countries to bear down on corrupt practices by home-based companies doing business internationally" (Principle 2). Since the entry into force of the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions, the OECD has set high standards for effective anti-bribery systems in member and non-member countries. More recently, the 2003 UN Convention Against Corruption (UNCAC), has provided a coherent, rules-based and, in part, binding framework for addressing corruption. Active promotion of these initiatives is of vital importance.

3. Donors are aware of these changes in the context of anti-corruption work. Many are taking new initiatives in response to events that have highlighted corruption dangers (e.g. the call from the Development Committee in early 2006 for the World Bank to develop an anti-corruption strategy to help support efforts to achieve the MDGs). However, single-agency initiatives will not be effective on their own.

4. *There are at least four reasons why action against corruption needs to include a strong element of collective or concerted action:*

- First, the *Paris Declaration* and the GOVNET principles suggest that anti-corruption efforts should be country-led. Combating entrenched networks of corruption requires strong collective efforts by coalitions of reformers from different sectors in society acting in coordinated ways. However, it is unlikely that this will become a reality unless donors form more effective partnerships in support of local coalitions of reform, based on joint assessments of country situations.
- Second, at the country level, it is clear that to be successful anti-corruption efforts have to be multi-stranded – acting on both the demand for and supply of more effective and accountable governance. Not all donors are able to act on all of the relevant issues, so only a concerted approach will cover the field and be effective.
- Third, there is growing evidence that uncoordinated and *ad hoc* donor responses to signs of increasing corruption risk are responsible for giving off “mixed signals” and weakening the effect of any attempts by particular donors to stand firm or apply sanctions.
- Finally, the impact of important global milestones such as the OECD Convention and UNCAC may be dissipated unless there is a concerted effort to promote ratification, implementation and monitoring by countries, and to make linkages with existing country-level governance and anticorruption efforts.

Purpose and scope of the paper

5. These concerns provide the backdrop for this paper. *The paper sets out opportunities for collective action in a number of areas where a concerted approach seems essential if the multiple risks associated with corruption are to be successfully managed.* These “collective action frontiers” imply not only donors working together, but also donors working in concert with other parts of OECD governments, and joint efforts to build coalitions for change at both global and country levels. The proposals require a clear signal of support from the DAC, but once approved they will require decisions and increased efforts and resources from DAC members.

6. *The paper is not intended to deal with all aspects of donor efforts to fight corruption.* Instead, it aims to be forward looking and action oriented. It

concentrates on outlining a limited number of priority actions where there are opportunities for donors to work more effectively together with each other and with partners. These proposals suggest concrete ways of operationalising the three sets of GOVNET Anti-Corruption Principles: 1) fostering, following and fitting the local vision; 2) addressing the supply side of corruption (the offering of bribes, especially by companies based in OECD countries); and 3) marshalling lessons and measuring progress.

7. The paper has three substantive sections, each of which makes the case for a sub-set of collective anti-corruption activities. Section II argues for an effort to reinvigorate country-level anticorruption work, with greater attention to identifying points of entry and possibilities for coalition-building that are appropriate in different sorts of governance situation. Section III focuses more specifically on the need for concerted action by donors at country level, including joint assessment and benchmarking, greater coordination and more harmonised response mechanisms. Section IV outlines recent initiatives that address different aspects of the global incentive environment for corruption. It suggests how the DAC could help these to succeed in ways that create useful synergies with country-level work. Section V draws the action proposals together and suggests next steps to be taken by the DAC.

II. REINVIGORATING ANTI-CORRUPTION EFFORTS AT COUNTRY LEVEL

8. To be consistent with the Paris Declaration and the GOVNET Principles for Donor Action in Anti-Corruption, concerted action on corruption needs to be centred on initiatives at the country level. This implies the operationalisation of an approach that places the problem of corruption in the context of the wider political economy of governance in each country. It also calls for donor efforts to be rooted in and not detached from the building of local coalitions for change. In this perspective, there are multiple entry points for anti-corruption work, and multiple opportunities for developing reform coalitions that are capable of being effective. But the opportunities and the constraints will vary according to the country context.

Putting corruption in the context of governance

9. *The background to this proposal is the growing recognition that corruption cannot be treated as a problem on its own.* In developing countries, widespread corruption is invariably a symptom or outcome of unresolved problems in the wider governance system of the country. That is, the many political, economic, social and institutional features of an effective and accountable governance system are not fully in place. Political Corruption is often embedded in the functioning of the political system and the interactions between formal institutions and informal processes. Thus, addressing corruption as a public governance problem is essential. This approach has been at the heart of the OECD's work with nonmember countries over the last decade³.

10. There are various ways of elaborating conceptually a holistic, governance-centred approach to corruption. Recent synthesis work by the World Bank sets out some of the issues in a succinct way and may be used to illustrate the more general point. *Box 1* summarises this thinking.

*Box 1. Development, governance and corruption:
Lessons from global experience*

- *An effective and legitimate state* is crucial for growth and poverty reduction
- For an effective and legitimate state, *good governance is a cross-cutting priority* for:
 - Building a *sound investment climate* for growth (macroeconomic stability, rule of law, regulatory system, physical & financial infrastructure)
 - Empowering people to make growth inclusive through *effective delivery of basic services* (education, health, social protection)
 - *Promoting accountability*, social inclusion and protecting human rights (e.g use of Transparency International's National Integrity Systems)
 - *Fostering political competition* (supporting elections, strengthening parliaments)

³ For example, it is at the core of the Action Plan of the ADB-OECD anti-corruption initiative for Asia and the Pacific (2001).

- *This requires a four-pronged strategy:*
 - Match role of the state to its institutional and fiscal capability – including level and composition of public finances
 - Strengthen state capability –capacity, accountability and responsiveness
 - Support the capacity of non-state actors (e.g., civil society, private sector, media) that can act as external monitors of accountability,
 - Encourage political representation and accountability (elections, parliaments, freedom of information, judiciaries)

Governance and corruption: Not the same thing

Governance:
The manner in which the state
acquires and exercises its authority
to provide public goods and services

Corruption:
Using public office for
private gain

- *Corruption is an outcome* — a consequence of the failure of accountability relationships in the governance system.
- Poor *delivery of services* and weak investment climate are *other outcomes* of bad governance.

Source: Adapted from World Bank, 2006.

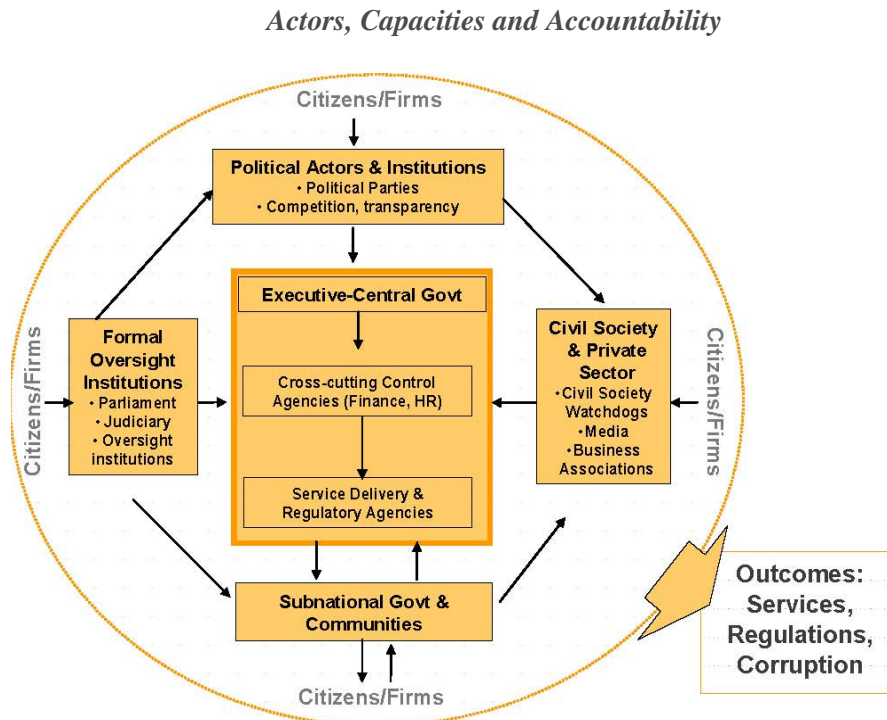
11. The box gives some attention to the meaning of terms. Although the terms corruption and bad governance are often used interchangeably, it is important to see them as distinct though related. *Public sector governance* refers to the way the state acquires and exercises authority to provide and manage public goods and services – including both public capacities and accountabilities. More broadly, governance refers to the way society manages its own affairs, involving principles of transparency, accountability, participation and legitimacy. It includes an important political dimension which should not be underestimated when attempting reforms. *Corruption* is usually defined as the abuse of public office for private gain⁴, however, it is most helpfully viewed as an *outcome*, the consequence of any of a number of the failures in accountability

⁴ Transparency International prefer the “abuse of entrusted power for private gain”, to capture corruption in private and civil spheres.

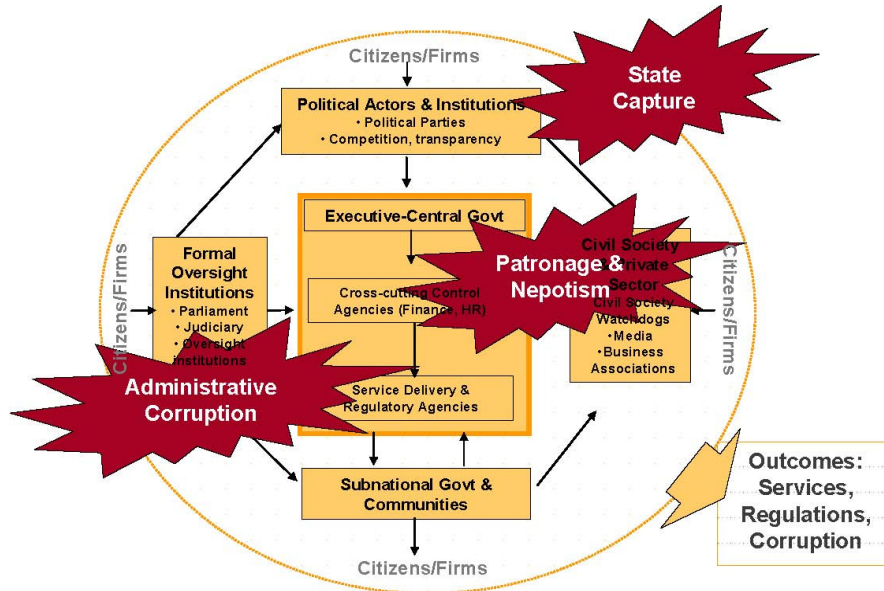
relationships which characterise a national governance system.

12. *Figure 1* elaborates on this last point, showing the kinds of governance breakdown or absences of effective institutions that can generate a high propensity to corruption. They include a breakdown in the citizen-politician relationship – or, more profoundly, the absence of a real “social contract” underlying the relationship between the state and citizens – leading to state capture or the predominance of patronage or nepotism. They also include failures in bureaucratic checks and balances, leading to administrative corruption.

FIGURE 1. Anti-corruption in a governance framework



When Accountability Breaks Down



Source: World Bank, 2006.

13. It follows from this analysis that improving governance requires interventions to strengthen both the supply side and the demand side of governance. If the supply side is government capacity, the demand for better governance includes accountability requirements arising from non-executive institutions such as a free press, effective legislative oversight, an independent judiciary, regular elections and a vibrant civil society. Bilateral donors also have a comparative advantage to engage and address the political drivers of corruption. This dimension is often overlooked but is essential to improve the effectiveness and legitimacy of a country's governance system. Thus, key features of a governance system that may call for attention include (but may not be restricted to):

- *Political accountability*: political competition and contestation, fair and open elections, broad-based political parties, transparency and regulation of party financing, asset disclosure rules.
- *Institutional checks and balances*: independent judiciary, legislative oversight, independent accountability institutions (e.g., supreme audits).

- *Effective public sector management*: a meritocratic civil service with adequate pay, participative budgeting, transparency and competition in public procurement (e.g., e-procurement), transparent fiscal reporting.
- *Oversight by civil society and media*: freedom of press, access to information, civil society watchdogs, report cards and client surveys.
- *A transparent private sector interface*: streamlined regulations, transparency in extractive industries, break-up of monopolies.
- *Local participation and community empowerment*: oversight by parent-teacher associations and user groups, citizen involvement in the budget cycle at national and local levels, supported by public expenditure tracking systems.

14. *Countries vary in the nature of their governance systems, in the entry points they offer to reformers and hence in their trajectories of change.* Thus, different measures combined in different ways will be most effective as the basis of anti-corruption work, as well as for state-building generally, in different situations. A principal challenge for low-income countries is how to break out of the trap of clientelism, where the state functions not to serve the interests of the poor or the general public, but to favour the patronage needs of narrow elites. Historically, some countries have focused first on strengthening bureaucratic capabilities, whereas political opening in others has focused attention first on strengthening check and balance institutions. Traditional loyalties and accountabilities have been used as levers of modernisation in some but not all cases. There is no blueprint or agreed best route for getting out of the vicious circle of governance failure, weak demand for improvement and lack of political will to combat corruption that characterises many low-income countries.

15. Seeing corruption as an outcome of governance failures implies an approach to country level working that is flexible and responsive to the particular governance circumstances in which a country finds itself. This agrees with the lessons of experience suggesting that standardised and narrowly focused anticorruption initiatives, such as those involving the establishment of Anti-Corruption Commissions, tend to have limited penetration (*Box 2*).

*Box 2. The importance of context:
Anti-Corruption Commissions (ACCs)*

Case studies of experience with ACCs highlight the difficulty of transferring institutional arrangements that operate efficiently in one country to another. One reason governments have established anti-corruption commissions in spite of evidence of their failure in most countries is that they are responding simultaneously to multiple constituencies. The performance of countries like Argentina, Bangladesh, Brazil, Thailand, Tanzania, Uganda, and India that have enacted anti-corruption reforms bespeaks the difficulty of enacting meaningful policies. It is evident that policymakers' incentives in those countries do not include offending entrenched constituents who may oppose sustainable anti-corruption reforms. One method to slow reforms is an anti-corruption commission that communicates a willingness to fight venality while postponing difficult acts.

Source: Adapted from John R. Heilbrunn, "Anti-Corruption Commissions: Panacea or Real Medicine to Fight Corruption", Washington, DC: World Bank Institute, 2004.

16. Tailoring the focus of anti-corruption efforts to the specific governance conditions of a country poses a difficult but worthwhile task. Donors are present in a rather wide range of actual governance situations in which the state is more or less effective and accountable, has more or less access to natural-resource revenues and the associated temptations, and is more or less stable or fragile. That implies devoting serious attention to understanding the nature of the governance system and identifying the challenges that are most pressing in the circumstances.

17. *The need to be flexible and responsive applies equally to coalition building.* How to apply the *Paris Declaration* commitments and the *GOVNET Draft Principle* of fostering the local anti-corruption vision should be determined by the country circumstances. Depending on the particular pattern of actors, capacities and accountabilities in governance systems, different constraints and opportunities will be present for forging country reform coalitions and anti-corruption alliances. There will be different possibilities for engaging government and other constitutional bodies, and roles for different parts of the private sector and civil society.

Entry points for action on the causes of corruption

18. It is not suggested that donors and reformers already know well “what works” in addressing the various typical weaknesses of governance systems. It has also to be recognised that, as a general rule, donor-supported initiatives tend to work only when the underlying political and leadership conditions are conducive. However, the following are *examples of entry points for improving governance and reducing corruption that have been used in different country-specific circumstances with varying degrees of success*.

- *Strengthening public-sector capability.* Here, a principal focus has been and will continue to be the strengthening of public financial management and procurement systems, as a crucial underpinning for better use of public resources and for scaling-up budget support. Reforms in public financial management can be monitored through actionable indicators, such as the Public Expenditure and Financial Accountability (PEFA) performance measurement framework. Benchmarking public procurement systems against agreed international standards is also being taken forward, with support from the DAC’s Joint Venture on Procurement. On the other hand, reforms of public administration and the civil service to improve meritocracy, pay and effectiveness need to reflect lessons of experience that suggest limited returns from across-the-board reforms unless there is strong political will and policy coherence. In most settings, only modest reforms agendas are likely to yield results. These efforts have to be complemented by some degree of oversight from civil society.
- *Sector-specific governance and anti-corruption reforms.* In many countries the most pervasive governance and corruption problems are concentrated in a few sectors, so that targeted efforts make good sense. Sector approaches or SWAPs provide donors with a great degree of sector-wide knowledge and understanding. Lead donors in SWAPs and sector working groups are well placed to take a lead on transparency/accountability issues in the sector, liaising with the relevant government and donor groups on governance standards in the country. “Sector by sector” corruption risk analyses undertaken on behalf of sector groups would be an efficient means of mainstreaming corruption prevention, usefully complementing more general, cross-cutting efforts.

- *Strengthening local governance.* Local governance reforms can help build local capacity, enhance downward accountability, and strengthen civic oversight in how resources are used.
- *Strengthening institutions of accountability and demand for better governance.* Across a range of settings, governance and anticorruption reforms require strengthened oversight institutions of the state (independent judiciary, legislative oversight). Programmes intended to facilitate parliamentary action against corruption include the Global Organisation of Parliamentarians Against Corruption (GOPAC), formed in Ottawa in 2002. Media freedom and freedom of expression including the freedom to receive information are priority areas, as are efforts to promote civil society participation and oversight for greater accountability. An example of international support for civil society initiatives in this area is the Partnership for Transparency Fund (*Box 3*).

Box 3. The Partnership for Transparency Fund

In order to help strengthen external accountability, transparency and build local demand for governance reform there is a need for scaled-up assistance to civil society organizations. One such organization is the Partnership for Transparency Fund (PTF), an international NGO dedicated to helping civil society play an effective role in the design, implementation and monitoring of national anti-corruption programs. PTF provides financing of up to \$25,000 for specific, discrete and time-bound activities or projects initiated by civil society organizations aimed at fighting corruption.

Examples of activities supported by PTF include:

- Supporting *Argentina's* Center for the Implementation of Public Policies Promoting Equity and Growth (CIPEC) to work with six ministries in implementing the country's Freedom of Information Act;
- Supporting a pilot project in *Costa Rica* to map forest resources in an ecologically sensitive area and to use the map to develop an anti-forest corruption plan.
- Assisting Transparency in *India* to work with the Delhi state government to establish and make effective Citizens Charters (brief public documents that provide the essential information that citizens need to know about the services or functions of a public agency), overseen by independent Ombudsmen.

- Assisting *Pakistan's* NEDIANS, an association of professional engineers, in working with the Karachi Water Supply and Sewerage Board to establish an Integrity Pact for the public tendering and implementation of a \$100 million water supply expansion scheme, leading to estimated savings on the engineering contract of \$2 million
- Supporting a media campaign in *Nicaragua* to reduce the highly excessive pensions and perks of retired presidents and top officials, leading to the introduction of new legislation.
- Supporting Government Watch (G-Watch) of the *Philippines* Ateneo School of Government to monitor the Department of Education's delivery of textbooks to schools, including a partnership involving 15,000 Boy Scouts and Girl Scouts and partnering with Coca Cola Company to assist delivery of textbooks to schools.

And

- Funding of a pilot project in *Tanzania's* Mwanza Region to track local government expenditures on education and health services.

Source: <http://www.partnershipfortransparency.info/>

- *Reforming taxation systems and strengthening tax administration.* This can help both to reduce corruption and simultaneously to strengthen demand for accountability. In particular, rationalising tax exemptions, reducing evasion and avoidance, tackling economic informality and addressing the particular difficulties associated with nature-resource revenues⁵ are needed to close important corruption loopholes. Traditionally, donors have supported the strengthening of tax administration in order to improve tax collection, improve revenue and control corruption in tax administration. However, reforming tax policies and systems can also strengthen demand for greater transparency and accountability from tax-paying citizens. Such reforms are part of the broader process of state building and establishing citizenship rights. They are necessary to anchor the fiscal pact that underpins the social contract in modern states.
- *Tackling political drivers of governance and corruption problems through enhanced transparency and accountability around election*

⁵ Measures to control abuse of natural-resource revenues are discussed in Section IV below.

expenditures. There is an active debate on party and especially electoral campaign finance in many countries, and there are arguments on both sides about proposals for state funding to prevent democratic competition from intensifying pressures towards corruption (*see Box 4*). However, money has a corrosive impact on politics, therefore the reform of political financing is a critical task, complementing measures to increase transparency.

Box 4. Promoting transparency in political finance

Political finance is a key source of corruption risk, with systemic effects on the quality of governance, the efficacy of public institutions and the functioning of the political system. The influence of money on politics has increased significantly in recent years, as the costs of electoral campaigns have skyrocketed, increasing pressures on incumbents to recoup expenditures by illegal means. Financing politics includes not only funding electoral campaigns but also supporting political party activity between elections. Reforming political finance embraces a wide series of issues such as laws and regulations, enforcement mechanisms (in particular electoral commissions), and rules on disclosure, ceilings on expenditure, and assessing direct and indirect funding options.

Tackling the drivers of corruption in political systems requires a multi-pronged approach which acknowledges the dynamics of power and politics. For example, there may be a tension between controlling corruption and promoting political competition and contention. The manner in which this delicate balance is resolved is necessarily context and country specific, depending on the stage of democratisation the country is in. For example, in post-conflict countries, fragile states and transitional regimes, increasing political contention may need to take precedence.

Source: DFID, 2006.

- *Across-the-board support for transparency initiatives.* Reforms to strengthen transparency constitute a powerful cross-cutting priority that can strengthen governance and reduce corruption. Some promising examples include: freedom of information laws, fiscal/financial transparency, e-procurement, public disclosure of incomes and assets of senior government officials (*see Box 5*), public

disclosure of political campaign contributions, public disclosure of parliamentary votes, transparency on the ownership and financial status of banks, and publication of governance diagnostics and public expenditure tracking surveys.

Box 5. The advantages of income and asset disclosure

More and more governments are requiring senior officials to disclose their income and assets. The traditional reason for requiring elected and appointed officials to disclose their income and assets is to curb corruption. For example a significant and unexplained increase in an employee's wealth may be a sign of bribe taking or other illicit conduct. More broadly, when officials' finances are open to public inspection, rumours about their corrupt dealings are quickly put to rest. Indeed, income and asset disclosure's most important function may well be to bolster citizen confidence in those who govern them.

A real advantage to building an anti-corruption enforcement strategy around income and asset disclosure is that it lessens the threat to civil liberties and abuse of enforcement tools that can result from an aggressive campaign to root out bribery. Bribery is a difficult crime to prove, and police and prosecutors often must turn to wiretapping, eavesdropping, undercover operations, and other techniques that can be abused. The filing of a false declaration provides a much easier case to make.

Source: World Bank, 2006.

19. Donors and local campaigners have been active in several of the areas indicated above, with a degree of success in some cases, for some time. *What has generally been lacking, however, is systematic and sufficiently sustained coverage of areas where powerfully complementary efforts are necessary for real change to occur.*

20. For example, progress in improving administrative aspects of public financial management systems is unlikely to be sustained if there is not also a build-up of demand for public financial accountability from parliament, the media or citizen groups. Some other areas that have received a great deal of donor attention with little resulting progress – such as the development of a meritocratic civil-service – are recognised to have lacked support from sufficiently strong demand-side pressures for performance

enhancement or from political leadership. *For this reason, it is important that the most promising entry points for action – particularly those on both the supply- and the demand-side of the equation – are properly covered by the reform effort as a whole.*

21. *On the demand side for better governance, identifying the appropriate changes to pursue is very challenging, but would be less so if support were more carefully coordinated.* Effective support to the demand side of governance depends on rejecting blueprints based on different country experiences, getting to know the actors that are relevant in the local circumstances and finding ways of encouraging them that do not produce distortions and counter-productive effects. Ways need to be found to avoid creating an artificial NGO industry in anti-corruption. Donor support, especially if it takes a financial form, needs to be channelled in ways that foster nascent home-grown initiatives without destroying their roots in the society and culture. In some countries, the way to do this may be to establish a joint funding window, with suitable governance rules and safeguards against donor distortions, to support initiatives to build constituencies for change. Identifying the right actors and the real drivers of progressive change in a country can be facilitated by conducting ex-ante political economy analyses.

III. TOWARDS MORE CONCERTED DONOR ACTION

22. *The more robust country-level anti-corruption partnerships proposed in Section II will not work without closer cooperation among donors.* While promoting the alignment of external support with country-led activities, both the *Paris Declaration* commitments and the *GOVNET Draft Principles for Donor Action in Anti-Corruption* leave a specific and important place for harmonisation of donor efforts. In the field of aid harmonisation, the DAC has specific responsibilities and comparative advantages in setting a framework of guidance for action by donors.

Two types of anti-corruption effort

23. *It is important to distinguish between two types of actions that donor agencies can take to minimise the risks arising from corruption:*

- those whose effectiveness is *not* compromised by being done by each

organisation separately (although the benefits will be greater the more organisations that undertake them); and

- those that will *only* be effective if they are undertaken jointly or in a strongly coordinated way.

24. This paper is primarily concerned with proposing actions of the second sort. Actions of the first sort are nevertheless important. They include:

- Greater use of corruption assessments based on standard aggregate indicators and/or more specific governance country assessments in the formulation of Country Assistance Strategies. Along with a range of other analytical inputs such as Power and Drivers of Change reports, the European Commission's Governance Profile⁶ and PEFA assessments, corruption assessments may need to be given more of a role than previously in medium-term choices about levels and modalities of support.
- *More rigorous controls on fraud and corruption in donor-financed projects and programmes.* Whether country or donor systems are primarily being used, the integrity of a donor agency's aid delivery system remains a significant factor in the fight against corruption. Agency staff have a responsibility to set a good example as well as to maintain the highest standards at home. Those efforts should take place in accordance with the OECD Convention and with Article VI. of its Revised Recommendation.
- Examples of preventive measures already in use include:
 - An e-learning course on anti-corruption hosted by U4, a joint initiative of the Netherlands, Germany, Canada, UK, Norway and Sweden.

⁶ Under the 10th European Development Fund, the EC has set aside an incentive envelope of EUR 2.7 billion to foster efforts by African, Caribbean and Pacific Countries to engage decisively in governance reforms. Governance Profiles will be used to guide dialogue at country level to assess the governance situation and the relevance, ambition and credibility of governments' commitments to reform. Benchmarks and targets are to be agreed, with involvement of Member States of the EU and other donors, and these will influence the use of "incentive tranches" of EC funding. Profiles are expected to draw on existing data and surveys, especially those developed by the World Bank Institute. Where countries have completed the African Peer Review Mechanism process, the profile will be based on the APRM report.

- An external hotline to receive corruption allegations (DANIDA).
- Development of strategies to prevent diversion of resources from high-risk projects (World Bank).
- Strengthening internal investigation units with the necessary staff, skills and resources (World Bank).

25. Exchange of information and good-practice suggestions on prevention measures of these kinds should be encouraged by the DAC. Some steps on these lines have been taken by DAC members. In 2005, the Nordic+ donors (DFID, DANIDA, Netherlands (DGIS), NORAD, FINNIDA and Sida) undertook a stock-taking of measures to prevent corruption in ODA-funded projects at the initiative of the Netherlands. This included a review of the types of initiatives listed above and identified some specific and general gaps in practice (e.g. no agency operates a central database where corruption allegations are collected). *The stocktaking also supported the argument of this paper, that there are some areas in which donor action on a one-by-one basis is likely to be ineffective.*

26. The remainder of this section makes four proposals for action by the DAC to encourage a more concerted approach by in-country donors. It is suggested that the DAC should:

1. Facilitate joint anti-corruption assessments at country level, taking the local governance context as a starting point.
2. Encourage donors at country level to work with partners on the development of anti-corruption benchmarks.
3. Promote as good practice a greater coordination of donor governance and anti-corruption work in each country.
4. Develop guidance on harmonised responses by donors to deteriorating governance and corruption conditions in a country.

Although they are of general relevance, they apply particularly where donors are moving strongly in the direction of direct budget support and other programme approaches.

Joint corruption assessments

It is proposed that the DAC facilitate joint assessments of corruption of the wider governance context, beginning with pilot exercises in selected countries.

27. *The DAC should provide backing and encouragement to the fast-tracking of joint corruption assessments, where possible in close coordination with other organisations.* These assessments should be integral to broader governance assessments and emphasize the cross-cutting nature of corruption. The piloting of joint assessment approaches has already been proposed by a number of agencies, taking into account the existing modalities of working on governance issues in particular countries. An initial, exploratory multi-donor GOVNET mission to Cameroon has already taken place⁷. Future pilot exercises are expected to be undertaken with local partners and with government agreement. They are intended to analyse the broad political economy of corruption and anti-corruption reform, as well as specific areas of corruption risk and governance failure in order to develop action plans suited to the circumstances and capable of being carried forward in a country-led way.

28. *A number of tools that are suitable to guide joint assessment work already exist, or are in the final stages of development.* Relevant diagnostic tools include surveys of households, businesses and public officials to identify areas of greatest corruption risk; public expenditure tracking surveys to identify potential leakages; Public Financial Management (PFM) assessments (including Highly Indebted Poor Countries (HIPC) expenditure tracking and Public Expenditure and Financial Accountability (PEFA) indicators), procurement system assessment tools, Governance Profiles, Integrity System country studies, African Peer Review Mechanism (APRM) reports, and Power and Drivers of change analyses. In addition, a specific instrument for integrating assessment of corruption risks sector by sector and analysis of the political economy of possible reform will shortly be available from USAID (*Box 6*).

⁷ Ghana has been suggested as another possible country with which to conduct such joint assessments, which would be conducted by DANIDA, USAID, DFID and GTZ. GTZ might finance a drivers of change study which would complement this effort.

Box 6. Example of anti-corruption assessment methodology: USAID

USAID has developed a corruption assessment methodology that evaluates both the strengths and weaknesses in the formal institutional and legal frameworks of a country as well as the wider set of interests and dynamics that structure opportunities and constraints for anticorruption efforts. Using an analytical framework based on the “corruption syndromes” analysis of Michael Johnston, the methodology first identifies key aspects of political and economic systems, which then point toward likely participants, institutions and motivations behind corrupt behavior, particularly at the elite level. These considerations help highlight relevant strategic approaches to reform (e.g., economic deregulation, public participation and oversight, horizontal checks and balances, etc.) and help illuminate important considerations like political will for reform. Additional steps examine institutional and legal strengths and weaknesses (both formal and in practice) and use a range of lenses to identify priority areas for assistance and tactical options for supporting reform in light of the strategic concerns. While particular lenses such as pre-existing investments, availability of funds and comparative advantage may be unique to a given donor, the methodology itself is flexible and would allow for multiple donors to identify tactical and strategic approaches. Draft versions of the methodology have been pilot-tested in Mozambique and Ukraine. The assessment framework is designed to allow for quick analysis with relatively small teams of analysts and to produce targeted, strategic recommendations for field based missions.

Source: USAID, 2006.

With DAC support, joint assessment exercises could serve to reinvigorate country-level anticorruption work, in a holistic and joined-up way, in all countries where the corruption risks are moderate to high. An initial step would be for the DAC to give its blessing to processes in which a set of assessment instruments are shared and piloted in a small set of countries, and then considered collectively for wider application. Obviously, to the extent possible such assessments should be made jointly by a group of

donors and key members of an existing or prospective reform coalition⁸. They should draw on existing analysis carried out by the IFIs, other donors and NGOs in order to avoid duplication. Undertaking the assessment jointly would not necessarily imply agreement between the partners on the final conclusions to be drawn from the assessment.

Joint benchmarking

It is proposed that the DAC signal its support for existing anti-corruption benchmarks and targets that can be agreed jointly by donors and partners at country level and used to monitor progress.

29. Following the recent successes for joint assessment in the fields of public financial management (PEFA) and procurement systems (JV on Procurement), there is now a place for initiatives of a similar kind covering the broader field of governance and anti-corruption. Although benchmarking in the area of corruption is difficult, the challenge should be taken up. *The proposed benchmarking and target setting, using existing tools and data whenever possible would assist the work of country-level reform coalitions, providing the basis for specific agreements, follow-up arrangements and capacity development.* Such benchmarks should also be country-generated whenever feasible. They would be expected to draw on and add value to the joint country assessments described above, as well as other existing assessment instruments (e.g. public integrity indices). These benchmarks would also enable stakeholders to focus more broadly on governance indicators and measures rather than take a restrictive approach and solely focus on corruption. Specific attention should be put on following transparency and accountability benchmarks at the country level.

30. The benchmarks proposed would complement the various governance indicator sets currently available. The World Bank (Global Monitoring Report 2006, p. 124) distinguishes between: 1) specific and disaggregated measures of the quality of key governance subsystems; and 2) broad, aggregated measures to show systematic patterns underlying the complexity of individual subsystems. The broad, aggregated indicator sets

⁸ To some degree, it may be necessary for an assessment to be made of the corruption and governance situations before it will be clear what scale and type of coalition building will be feasible. However, in few countries will the starting situation be a completely blank page in this respect.

serve very useful purposes, including providing standardised measures that can be used by individual development agencies in aid programming and selectivity. They may be actionable in a certain sense (for example, surveys of the measure of the overall quality of democracy provide political incentives for reform). However, there is a case for supplementing them with more specific benchmarks, including those arising from sector-by-sector assessments.

31. Benchmarks of this sort would serve as practical tools for building alliances and tracking progress in particular areas that seem locally amenable to reform with help from donors. Key features of their utilisation would be a strong action orientation – indicators being selected that assist in setting realistic targets for joint campaigns – and a high degree of joint commitment to follow-up and review over a period.

Greater coordination of donor governance and anti-corruption work in each country

It is proposed that the DAC endorse as good practice the close coordination of donor governance and anti-corruption work at the country level.

32. *A prerequisite for effective action at country level is coordinated delineation of responsibilities among the in-country donors for supporting action on the governance context of corruption.* Section II argued that it is essential that the most promising entry points – on both the supply and the demand sides of better governance – are properly covered by the reform effort as a whole. This is because experience suggests that complementary improvements are necessary for success. Yet not all donor organisations are able to play an active role in all of the critical areas. Therefore, only a concerted approach will do.

33. In all countries where the corruption risk is high, there needs to be an agreed division of labour in which different donors undertake to apply their best intellectual and practical efforts to different parts of the governance context for corruption. This implies that specific agencies are identified to take the lead on particular aspects of the governance context, including those affecting the demand for good governance. It might include the designation of lead donors to work on political corruption, to organise a joint financing window designed to support appropriate demand-side

interventions, or to undertake any other tasks considered important to the overall effectiveness of the country reform coalition and its anti-corruption effort. In addition, specific coordination and dialogue mechanisms should be encouraged such as the Partnership for Governance Reform in Indonesia⁹. These process arrangements to improve harmonisation can also facilitate political dialogue with partner countries.

34. It is proposed that the DAC promotes this type of collective approach to anti-corruption work and the setting of coordination mechanisms as good practice.

Common response principles

It is proposed that the DAC develop a set of good-practice principles (a “voluntary code of conduct”), to be endorsed by Ministers and rolled out at country level, on co-ordinated donor responses to deteriorating corruption contexts.

35. In spite of the success that donors and their allies may have in working on the underlying causes of corruption, there will be times when the incidence of corruption or other governance problems visibly increases in a particular country or sector. It matters how donors respond to such signs of particular difficulty. Here again, donor action will only be effective if it is undertaken in a more strongly coordinated way than at present. There have been several instances where a strong negative signal by one donor has been undermined because another donor has taken a more lenient stance. *At the very minimum, it is important to avoid “mixed signals” of this kind – both in situations where governance is deteriorating or where it has stagnated.*

36. In 2006 DAC Ministers and Heads of Agency discussed ideas concerning more coordinated responses to poor governance, particularly corruption. *Box 7* summarises the main themes emerging from the discussion.

⁹ See www.partnership.or.id/

Box 7. More coordinated donor responses to corruption

At the 2006 DAC Ministerial meeting, Ministers and Heads of Agencies confirmed a desire to move towards more effective collective responses to political governance, particularly corruption. Notwithstanding every donor's sovereign right to respond to events in ways that it sees fit, common themes included:

- *The need for transparent and honest dialogue mechanisms at the country level.* It should be recalled that the Millennium Declaration is a compact in which donors have promised more aid while partner countries have agreed to secure the governance conditions for its effective use.
- *The value of collective donor positions on corruption* (for example, those delivered through EU political dialogue mechanisms). These are more effective than piecemeal responses, particularly when rhetoric is backed up by consistent action. There is considerable work to do with non-DAC donors to bring them into the dialogue over collective responses.
- *Avoiding disproportionate reactions to isolated corruption scandals.* The trends and trajectories of political governance are what matter when considering responses, particularly the suspension or withdrawal of aid. Better indicators may be needed for detecting adverse trends in good time.
- *The importance of alerting partner countries of likely donor responses according to different poor governance, and better governance, scenarios.* The more donors provide predictable aid (e.g. via budget support), the more they may be perceived to be supporters of the partner government of the day. Partners need to be made aware of the dilemmas that donors may face as a consequence of this, and how they may be constrained to respond. This should be done in good time, and not after the adverse trends are already visible.
- *The desirability of avoiding "all or nothing" reactions to corruption in the provision of aid.* This applies particularly when aid is increasingly financing the recurrent costs of front line health workers or teachers, so that the negative impacts on poverty reduction of reduced funding are direct.

- *A graduated response to signs of increased corruption risk.* The long term goal is to promote accountability between citizens and governments in partner countries. Depending on the severity of the events and overall governance trends, a graduated response may be the most consistent with that goal. A graduated response (translated into a “voluntary code of conduct”) might involve: as a first-level response, reducing *future* aid levels; as a second-level response, *switching* instruments in-year (as donors have done in Ethiopia); and as a third-level response and last resort, cutting *current-year* expenditures.
- *Zero tolerance for corruption in aid funded programmes.* To be less than rigorous in pursuing this principle would significantly weaken the case for aid within the publics of OECD countries.

Source: DAC Secretariat, 2006.

37. *The major themes of the 2006 discussion could provide the basis for a set of good practice principles endorsed by DAC Ministers and rolled out at country level.* To elaborate on the seven themes summarised in the box, the proposed good practices could include:

- *The need for more serious advance preparation and discussion, including a joint discussion with country partners, of possible coordinated responses to various types of governance trend.* Together with increased sharing of information within Development Partners’ and governance working groups, well-prepared dialogue would help to avoid the almost inevitable mixed signals that follow when responses are separate, *ad hoc* and reactive. It would also restrain individual donors from over-reacting to particular incidents under the pressure of sharpened political concerns and media attention at home, inducing a healthy focus on wider contexts and trends of governance change in the affected countries. Finally, alerting partner countries to the probable consequences of different scenarios of better or worse governance could improve the dialogue about accountability.
- The value of agreement on graduated responses which minimise the damage to recipient planning and institutional development caused by the additional volatility in aid flows. As well as distinguishing *levels* of response, so that immediate cuts in funding are not a first resort, the option should be available of varying modalities of delivery in such a way that the recurrent costs of front-line services

are protected. Following the suggestion in 2006, a first level of response might be to reduce future aid levels, so that current provision is unaffected but a clear signal is given; the second might involve switching between forms of aid delivery within year, so that services are protected but resources for central expenditure are reduced; while a third option of cuts within year would be reserved only for the gravest types of situation. This illustrates one set of possibilities for operationalising a graduated-response principle.

38. It is proposed, therefore, that the DAC actively promote more harmonised donor responses to indications of increased corruption risk in a country. *SLM/HLM approval should be sought for a set of good-practice principles drawing on the themes of the 2006 meeting as elaborated above.* It would be important for this effort to embrace not only bilateral DAC members and the World Bank, but also UN agencies involved in the fight against corruption and the regional development banks.

IV. TACKLING THE GLOBAL INCENTIVE ENVIRONMENT

39. *As DAC members redefine their approach to combating corruption in partner countries, it will be crucial for them to acknowledge forcefully that corruption is not just a developing country problem.* As recognised by the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions (1999), corruption is fuelled by transnational corporations based in OECD countries which offer bribes to developing country politicians and bureaucrats in exchange for preferential treatment and benefits. This helps to form the perverse incentive environment that determines the level of corruption in developing countries.

40. It is important that the DAC encourages its members to continue to advocate for concerted and systematic action within their own governments to implement and enforce the OECD Convention against Bribery and other global initiatives intended to restrict bribery. The DAC supports the Working Group on Bribery's efforts to ensure the world's major exporters join the Convention, so that citizens and companies both from the North and the South are subjected to the same anti-corruption regulations. It can do this by reflecting awareness of these initiatives more fully in its guidance on good practice in development assistance. It may also wish to

take the lead in supporting initiatives directed more specifically at the elites of developing countries, which aim to transform the incentive environment in a positive way by building a global movement for integrity and leadership. In both areas, there are strong synergies to be captured by linking up global and country coalitions for change.

Dealing with the supply side of corruption

The DAC supports the work of the Working Group on Bribery to monitor the implementation and enforcement of the OECD Convention to tackle the supply side of corruption.

The DAC should support UN-led efforts to promote the ratification of UNCAC by its member countries and other UN member countries and encourage its members to combine and integrate their joint anti-corruption initiatives and other on-going efforts to monitor and implement UNCAC on the ground. It emphasises the interest to the donor community of proposals at the Conference of the States Parties in December 2006 for information-gathering with respect to compliance and related needs for technical assistance.

41. OECD governments have recognised the need to take serious action within their own countries to help in the fight against corruption in developing countries. The DAC commends the work of *the Working Group on Bribery*, (which is the peer review mechanism in charge of monitoring the implementation of the OECD Convention (Box 8)) and recognises its complementarity to the DAC's own anti-corruption efforts.

42. Apart from the OECD Convention, a number of other international conventions and agreements are relevant to curbing transnational corruption. The most important of these are the UN Convention Against Corruption (UNCAC; 2003) and the Financial Action Task Force (1989). The FATF is an intergovernmental body whose purpose is the development and promotion of national and international policies to combat money laundering and terrorist financing. The FATF has published 40 + 9

Recommendations in order to meet this objective¹⁰. The scope and potential impact of the more recent UNCAC is broader, as explained in *Box 9*.

43. Any concerted attempt at tackling corruption in high-risk countries will need to involve efforts on the home front, as highlighted by the GOVNET Anti-corruption Principle 2. *One way for the DAC to take this principle forward within its mandate would be to issue a strong appeal to its members and partners for ratification and implementation of UNCAC and related regional instruments, such as the African Convention on Corruption.* This would be consistent with the policy coherence principles of the DAC, as well as with the Whole of Government approaches adopted by members such as Australia. It would be even more squarely within the DAC's mandate to promote UNCAC's implementation and monitoring at country level, using the holistic, governance-oriented approach set out in Section III.

Box 8. The OECD Convention on Combating Bribery

The OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions is exclusively focused on the supply side of the bribery of foreign public officials and the sanctions for such activity. The Convention is an instrument which permits OECD and other countries to move in a coordinated manner to adopt national legislation to criminalise bribery of foreign officials. It entered into force in 1999.

- Sectors covered: Public sector corruption, specifically foreign public officials.
- Corruption offences covered: Covers specifically bribery of foreign public officials. "Bribery" and "foreign public official" are defined broadly.
- Measures: Criminalisation and mutual legal assistance measures, as well as requirements regarding company accounting. Criminal and civil sanctions.
- Level of obligation: Mandatory provisions.

¹⁰ See http://www.fatf-gafi.org/pages/0,2987,en_32250379_32235720_1_1_1_1_1,00.html 23.

- **Monitoring Arrangements:** Under OECD Convention art. 12, the Parties are required to carry out follow-up to monitor and promote the Convention. The OECD Working Group on Bribery in International Business Transactions is responsible for this work. It consists of experts from all 36 participating countries. It has developed two phases for monitoring compliance with the Convention's obligations. In both phases of the review process there has been provision for active civil society participation. In the first phase, the Working Group evaluates the adequacy of countries' national implementing legislation in relation to the requirements of the Convention. In the second phase, it assesses whether a country is applying and enforcing this legislation effectively. This phase includes country visits in which a team of examiners meets with government representatives as well as with civil society and private sector representatives. The evaluation system includes both self-evaluation (countries respond to a questionnaire) and mutual evaluation (each country is examined in turn by the Working Group, with teams made up of members from different participating countries). For each country reviewed, the Working Group adopts and publishes a report, which includes an evaluation of the country's performance. This report is published on the OECD website.

Sources: U4 anti-corruption Resource Center:
<http://www.u4.no/themes/conventions/oecdconvention.cfm>;
 and OECD webpages: <http://www.oecd.org/corruption>

Box 9. United Nations Convention Against Corruption (UNCAC)

- **Adopted:** 31 October 2003 by the UN General Assembly; entry into force: 14 December 2005.
- **Signatories:** 140; ratifications: 59.
- **Ratifications from OECD countries:** 6 (of which 4 are DAC members).
- **Level of obligation:** a mixture of mandatory and discretionary provisions.

The UN Convention Against Corruption (UNCAC) was negotiated and agreed among approximately 129 nations. It represents international consensus about what states should do in the areas of corruption prevention

and criminalisation, as well as international cooperation and asset recovery. It has four pillars:

- *Preventative measures*: anticorruption policies and bodies; for the public sector, merit-based recruitment, codes of conduct, financial transparency and accountability, and participation of civil society; for the private sector, conflict of interest, regulatory abuse, and corporate governance.
- *Criminalization and law enforcement*: a comprehensive list of predicate offenses, with criminalization mandatory for some and recommended for others; waivers of bank secrecy; tax treatment of bribes; whistle-blower protection; and civil remedial actions.
- *Asset recovery*: standards for return of property, direct recovery of property through civil action, and recovery of assets through international confiscation procedures.
- *International cooperation and monitoring*: mutual legal assistance; cooperation in investigations, prosecutions, and judicial proceedings and in the collection of evidence and the tracing, seizure, confiscation, and recovery of proceeds of crime; and a monitoring mechanism to be decided by the Conference of State Parties.

Monitoring Arrangements and proposals to address the recovery of stolen assets: The first Conference of State Parties to the Convention is to be convened within a year after entry into force of the Convention (currently planned for December 2006). The responsibilities of the Conference include reviewing the implementation of the Convention and making recommendations to improve it. The Conference may put into effect supplemental review mechanisms to assess the measures taken by States Parties (and difficulties encountered) in implementing the Convention, and will look into mechanisms to allow the recovery of stolen assets.

Source: U4 anti-corruption Resource Center, <http://www.u4.no/themes/conventions/unconvention.cfm>; and Global Monitoring Report, 2006: 182.

44. Efforts on the home front call for a more active and comprehensive involvement of the private sector, from transnational firms to small and medium enterprises (SMEs), especially at the local level. There are good examples of initiatives of this sort by individual donor countries, which could be more widely emulated. For example, DANIDA has opened a special Anti-Corruption Portal for SMEs working in developing countries,

recognising that large firms are already well informed and conscious of corporate social responsibilities. But in keeping with its focus on collective action, this paper does not enter into the details of single-agency initiatives. Instead, it concentrates on what the DAC could do to support and take benefit from worthwhile international initiatives by initiating dialogue and undertaking complementary work amongst DAC donors.

45. *Within this framework, it should give strong support to more specialised joint activities such as the Kimberley Process, the Publish What You Pay initiative and the Extractive Industries Transparency Initiative (Box 10).* Other mechanisms that could be considered further include the Netherlands' proposal of a special trust fund to support countries in litigation for the repatriation of stolen monies, and the Irish experience with the Criminal Assets Bureau, which relies on seizure of illegally acquired assets rather than the prosecution route for which evidence of sufficient quality is often lacking. Selective visa bans and the freezing of assets banked in OECD countries have also been used as a more agile alternative to blanket reprisals and ineffective conditionalities by some donor governments. This requires close coordination between development agencies and diplomatic missions in-country. Sufficiently widespread use of a combination of instruments of these kinds could have a significant cumulative impact on the incentives to be corrupt.

Box 10. Promoting transparency in economic sectors

Promoting greater transparency in government finances and the private sector decisively contributes to improving corporate social responsibility and curbing both the demand for and supply of corruption in critical, yet sensitive economic sectors. Many countries are rich in oil, gas, and minerals, and studies have shown that when governance is good, these can generate large revenues to foster economic growth and reduce poverty. However when governance is weak, they may instead cause poverty, corruption and conflict, the so called "resource curse". The Extractive Industries Transparency Initiative (EITI) aims to defeat this "curse" by improving transparency and accountability. Launched in 2002 by Tony Blair, the EITI is a global coalition of companies, governments, and civil society organisations which supports improved transparency and governance in resource rich countries through the full publication of company payments and government revenues from oil, gas, and mining.

Some twenty countries either have endorsed or are actively implementing EITI across the world, from Peru to Trinidad and Tobago, Azerbaijan, Nigeria and East Timor.

Source: www.eitransparency.org and DFID, 2006.

46. An active DAC engagement with these global initiatives would provide, among other things, a platform for carrying the global anti-corruption dialogue into the process of building country-level reform coalitions. At country level, the perception that the North is half-hearted in delivering on its side of the anti-corruption bargain is not uncommonly a de-motivating factor for local allies. *Reversing this state of affairs could create useful synergies between global and country anti-corruption efforts.*

47. Synergies and linkages between global and country level efforts have particular application in post-conflict reconstruction situations, such as that of Liberia (*Box 11*). In Liberia, it is reckoned that the interaction of diverse country, regional and global partners has helped to ease the country's transition. This is especially valuable because of the continuing fragility of the state. However, the principle that country and international alliances can reinforce each other is a general one, with application to local coalition building in a wide range of country circumstances.

Box 11. Global-local partnership for economic governance in Liberia

Since the signing of the 2003 peace agreement, Liberia has made progress in re-establishing security across the country and carrying out democratic elections. Deterioration in the economic governance environment, however, has constrained economic and social reconstruction efforts and poses risks for the completion of a successful transition. Recognising these risks, Liberia's key partners (UN, EU, ECOWAS, AU, United States, IMF and the World Bank) engaged in an intensive dialogue with the transitional government on the urgent need to improve economic governance. This partnership brought unusually strong links between: regional initiatives under the auspices of ECOWAS and the African Union to bring a durable peace to Liberia; discussions at the Security Council on the links between the success of the UN peace-keeping mission and the underlying economic and governance situation; and technical work carried out by the IMF, the Bank, the EU and ECOWAS.

The collaboration resulted in the initiation of the Governance and Economic Management Assistance Program (GEMAP), implementation of which will be guided by a committee comprised of both national and international community representatives. The situation in Liberia remains fragile, but the interaction of diverse country, regional, and global partners with the transitional government is producing an inclusive, closely coordinated effort to support the transition.

Source: World Bank, *Fragile States: Good practice in Country Assistance Strategies*, 2005.

Promoting coherent collective action against corruption

Together with innovative pilots to build reform coalitions and facilitate transformational leadership at country level, as outlined in Sections II and III of this paper, international initiatives such as the Global Integrity Alliance suggest a way forward that the DAC should support.

48. *There is no reason why efforts to change the international incentive environment for corruption needs to emphasise only tighter controls, assigning blame and restitution mechanisms.* Indeed, these efforts will be more effective if they are accompanied by initiatives to improve the positive side of the incentive structure. A recent and innovative initiative on these lines is the proposal to forge a Global Integrity Alliance (GIA). The inception of the GIA in its current form was first discussed publicly at the World Ethics Forum (WEF), held at Oxford University in April, 2006. Many WEF participants agreed that reform champions often fail, or are forced to give up their crusades, because they lack the strong support bases necessary to counter established networks that perpetuate the status quo.

49. The fundamental idea behind the GIA is that building strong and sustainable alliances of leaders and support networks to promote a public ethics and integrity agenda, and to support leaders that champion change, is critical to building capable and accountable states and fostering a level playing field in the private sector. Without ethical, effective leadership and institutions that encourage and respond to demands for improved governance and equitable growth, development aspirations are unlikely to be met.

50. The GIA (whose mission is explained in *box 12*) is first and foremost an *approach* to addressing seemingly intractable problems of governance and integrity failures across the world. At the core of the approach is the activation and empowerment of leaders across sectors to act in self-directed coalitions pursuing significant reform in the public sector. Second, the GIA is a *platform* for a multiplicity of individuals, communities, national and international organizations, and states to share ideas and resources for joint action; standing for integrity and good governance in all spheres of society, but especially in the public sector. Although for practical purposes, the GIA may take on some attributes of conventional organizations – for example by establishing an administrative secretariat – it is essentially a self-regulating, independent movement made up of individuals, groups, and alliances across the world and in which the state, organized groups in civil society, and the donor community can participate, but that no one group can control. In its work with leaders, the GIA will focus on building broad-based *alliances* for change, rather than concentrating all attention on individual leaders, although working with leaders and building their individual and collective capacities is a critical part of effective coalitions.

Box 12. Strengthening governance and fighting corruption through ethics and leadership: the Global Integrity Alliance

The GIA's mission is to promote ethical and effective leadership that contributes to good governance practices across sectors, which lead to improved development outcomes.

The GIA will pursue its mission in the following ways:

Networking Leaders:

1. Facilitating networking opportunities for public and private actors to collaborate on efforts targeted at achieving regional and national goals on good governance and in supporting ethical values and actions;
2. Creating a coordination mechanism for joint global, regional, national, and local initiatives to support ethical leadership;
3. Creating mechanisms for exiting leaders to reinvest their knowledge and expertise into future ethical leaders; and,
4. Encouraging “good” leaders as opposed to rulers or power wielders by publicly recognizing positive developments in ethical leadership.

Empowering/Strengthening Alliances:

1. Guiding operational mechanisms related to the GIA agenda through direct and indirect support of global, regional, national, and sector-wide alliances;
2. Enhancing mechanisms to encourage the entry of good leaders into public life;
3. Building capacity for ethical leadership through mentoring and peer-to-peer learning initiatives; and,
4. Supporting change agents, who often work against tremendous odds, through the development of networks and coalitions.

Learning about/Sharing Information on Ethical and Effective Leadership:

1. Developing a platform for interested parties to share and exchange ideas and experiences in promoting ethical and effective leadership, transparency, and accountability; and,
2. Compiling information, conducting research, and disseminating resources to assist stakeholders with the pursuit of good governance through ethical leadership.

Source: GIA Concept Note September 2006.

51. At a practical level, the GIA represents an important opportunity for the international community to engage via a coordinated, alliance-based approach in support of ethical leaders. In addition to recognising the importance of establishing broad-based alliances to support ethical leadership through their own new and ongoing programming, the donor community can, as a coordinated group, use the structure of the GIA to provide a platform for: the recognition of ethical leaders across the developing world; the exchange of experiences among existing and emerging ethical leaders; mentoring; capacity building; the formation of strategic alliances in support of ethical leadership amongst international practitioners, the private sector and the academic community; and bringing the issue of the importance of ethics and integrity into broad, global public discourse.

52. Initiatives such as the GIA indicate the scope for concerted actions to identify, engage with and support reformist leaders in order to catalyse change and set higher standards of ethics in public service. Donors working together at both the global and the country levels may be able to influence

the incentive environment for national leaders more powerfully than they imagine by contributing to the growth of a new ethic of public service and state-building.

53. It is expected that the GIA it will be formally launched in 2007. In the meantime, the interim GIA hopes to undertake a small number of country pilots and may approach DAC members for support¹¹.

V. CONCLUSIONS AND NEXT STEPS

54. The analysis in this paper shows that tackling corruption needs to be a priority for the DAC, since it requires concerted action by the donor community. For a number of powerful reasons, vigorous action by individual agencies is an insufficient response to the multiple fiduciary, developmental and reputational risks posed by corruption in today's world. Firm DAC guidance on good practice in this area could contribute in important ways to the concerted action that is needed, globally and at country level.

55. The paper has shown the need for joint activities and coordinated complementary actions. It has considered: 1) the need to reinvigorate anti-corruption efforts at the country level, based on a holistic, governance-oriented approach; 2) the importance of a greater degree of concerted action by donors and local reformers at country level, including joint assessment and benchmarking, greater coordination of support and more harmonised response mechanisms; and 3) working with others to improve the global incentive environment for corruption and improved governance. *The spotlight has been focused on a small number of particular initiatives that fall within the competences of the DAC, meet an urgent need and could make a significant difference to the overall effectiveness of anti-corruption efforts.*

56. Priority actions proposed for the DAC have been highlighted in Sections III and IV. They fall into two groups:

¹¹ In this development phase, DAC members are invited to contact the interim Secretariat at the Ethics Resource Centre, based in Washington, at the following email address <abby@ethics.org>.

A concerted approach at country level

It is proposed that the DAC:

- facilitate joint assessment of corruption and the wider governance context in high-risk countries in close co-operation with other organisations, beginning with pilot exercises in selected countries;
- signal its support for anti-corruption benchmarks and targets that can be agreed jointly by donors and partners at country level and used to monitor progress;
- endorse as good practice the close coordination of donor governance and anti-corruption work at the country level;
- develop a set of good-practice principles (“voluntary code of conduct”), to be endorsed by Ministers and rolled out at country level, on co-ordinated donor responses to deteriorating corruption contexts.

Tackling the global incentive environment

It is proposed that the DAC:

- encourage its members to continue to advocate for concerted and systematic action within their own governments to implement and enforce international conventions to tackle the supply side of corruption (*eg the offering of bribes by the private sector*);
- support UN-led processes and efforts to encourage DAC members to ratify and implement UNCAC while encouraging DAC members to combine and integrate their joint anti-corruption initiatives with other ongoing efforts to implement and monitor mechanisms UNCAC on the ground;
- and emphasise the interest to the donor community of proposals at the UNCAC Conference of States Parties in December 2006 for information-gathering with respect to compliance and related needs for technical assistance;
- support international initiatives such as the proposed Global Integrity Alliance as a positive way forward in transforming the international incentive environment for integrity and good governance.

Implementation issues

57. DAC approval of the recommendations in this paper will trigger an intensive implementation effort for DAC donors over the 2007/8 biennium with a primary focus at the country level. *Multi donor governance and anti-corruption assessment* missions are a key instrument to progress meaningful debate about country level governance bench-marking, closer coordination and harmonisation on corruption issues while combining support to implementing international conventions with other ongoing joint anticorruption initiatives on the ground. SLM/HLM approval of specific code of conduct on coordinated *donor response principles to deteriorating corruption contexts* would provide significant incentives for these to be used at the country level. In capitals, the DAC's political *support for ratification and implementation of UNCAC* and other international initiatives (such as the *Global Integrity Alliance* as it matures) will have significant impact in capitals. More broadly, DAC members are well placed to *encourage better policy coherence* within their own governments by helping to connect the OECD development agenda with the other OECD instruments and conventions relating to better governance.

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