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Status of the U.N. Convention against Corruption and Challenges for its implementation.
Speech by Abel Fleitas Ortiz de Rozas

Head of the Anticorruption Office - Argentina

I would like to give my warm thanks to the Supreme Procuratorate of the People's Republic of China for inviting us to this Conference and for giving us an opportunity to discuss a subject of great importance to all our countries.

1. The UNCAC

I believe that, by meeting here today, we are complying with the purposes stated by the U.N. Convention against Corruption:

- Promoting measures to prevent and combat Corruption.
- Supporting international cooperation and technical assistance, and
- Promoting integrity, accountability and proper management of public affairs.

Throughout these last ten years, public awareness has increased and significant progress has been made in international anticorruption legislation.

In this light, we can mention the Inter-American Convention against Corruption and the (O.E.C.D.) Convention on Bribery of Foreign Officials.

The U.N. Convention is one of the recent developments which further advance international understanding and cooperation and it is an instrument of deeper content and wider scope. Since it is the first convention on corruption that is adressed to the whole world.

I think that the following items included in the UN Convention are worth remarking:

- The importance given to preventive measures, which include the right of access to public information and the control of conflict of interests among public officials, transparency in public procurement systems, among others.
- The need of promoting active participation of civil society regarding information, prevention and control of acts of corruption.
- The fight against corruption within the private sector, which is not separate from that of the public sector, since they mutually feed and reinforce each other.
- The description of acts of corruption which should be criminalized by domestic laws
- The incorporation of criminal liability of legal persons
- The promotion of international Cooperation to facilitate investigations and the recovery of the

proceeds of such crimes.

This meeting provides an opportunity to exchange experiences, to focus on obstacles and difficulties, and to improve our action in the struggle against corruption.

It is a great challenge to all of us to have the capacity of making significant changes. I mean real and practical changes in order to prevent, control and punish acts of corruption which cause a huge harm to our peoples.

I know that there might be successes and failures in the performance of our task. But I strongly believe that we can go beyond written documents, and make positive changes in our societies.

And the constitution of I.A.A.C.A. will be helpful in the achievement of that goal.

2. Prevention

We should pay close attention to Chapter II of the Convention which is devoted to preventive measures.

Any transparency policy should consider, among other things,

- A system of reception and supervision of financial disclosure statements filed by public officials.
- The analysis and determination of cases involving conflict of interests and incompa-tibilities of officials.
- Access to governmental information to all citizens.
- Control over money laundering activities.
- The provision of counseling to areas of the administration to prevent acts of corruption in public procurements.

3. Corruption and society

Corruption causes substantial damage to a government's public policies, social welfare and economic development.

It is a challenge to take effective steps towards integrity and transparency in an accountable and measurable manner.
The participation of society is instrumental to achieve such goal.

Working on such society, its social culture and values, is a daring aim.

There was a time during which in Argentina the public opinion did not conceive corruption as a priority subject.

However, that situation has changed (so did international conscience), since the topic of corruption became an item of the public agenda and acquired considerable importance in the political arena. It is in that context that the argentine Anticorruption Office was created.

Corruption appears in the political, economic and social spheres, and in some cases, a "culture of corruption" is created. By "culture" I mean the existence of a permanent and repeated practice by social and political actors which becomes a kind of underlying or non written rule.

The citizens' awareness involves not only their concern about corruption but also their commitment towards a demand for transparency.

This is an ambiguous perspective: on the one hand, the problem of corruption acquired a privileged

place among citizens' primary concerns, in our country.

But on the other, those citizens have not assumed such a strict attitude when it comes to comply with the rule of law.

This is a serious fact and it deserves to be taken into account, for corruption is a problem which is not exclusive to the public sector, to the officials, magistrates or representatives. Corruption is a problem which also has foundations in our societies.

So, we have to work on the elements which discourage the commission of a corrupt crime.

Among such discouraging elements we find, first of all, the own awareness of the public official, the businessman and the citizen himself.

Then, we should work on the social reaction to corruption, that is to say, the social disapproval of that kind of acts.

Finally, as an ultimate resource whenever the own conscience or social disapproval are not sufficient, we may resort to the punishment as set forth by the criminal law.

Corruption exists in all societies, and the possibility of committing a corrupt act exists in every person, but the question is how societies react to corruption. I believe that this is precisely what differentiates the most transparent countries from those which are not.

One problem faced while working on such reality, is:

How can we measure corruption and the progress accomplished in connection with transparency? I believe there are different perspectives from which to analyze this subject:

One is its perception.

Sometimes, perception, that is, the sense we have about corruption, differs from reality. Why? Because perception of social actors varies for reasons not related to this subject.

Here we face another challenge: How should we measure corruption and transparency in terms of reality?

In this meeting we have an opportunity to discuss the development of instruments to fulfil this task.

4. Challenges within the legal system

The drafting of anticorruption legislation and the creation of efficient entities of application are necessary.

But it takes time for the institutions to build an effective profile in the prevention and fight against corruption.

For all our countries, the approval of internacional conventions imply:

- A commitment to make legislative reforms.
- A frame of reference for interpretation and application of the laws by judges.
- A program for joint and coordinated action by public agencies and private entities.
- The support of international cooperation for the investigation of crimes and recovery of assets.

5. Investigation and punishment

In every anti-corruption policy it is necessary to effectively punish criminal acts.

Our investigations area has achieved successes in a great number of investigations conducted during all these years, involving public officials from all levels and governments.

I consider it useful to mention some difficulties faced by this area:

- The power of defendants: former public officials being accused of having misappropriated millions of dollars, can afford to hire the services of the best law firms and the best experts.
- We should increase social awareness regarding the important role played by reporting persons and witnesses, and improve their protection.
- Important investigations depend on international cooperation especially on information about bank accounts and off shore companies and it is often difficult and time consuming to access to such information.

Whenever we talk about punishment, its consideration by the law is not sufficient: its infliction is what really matters.

The term *infliction* refers to the possibility of setting a case for trial and the entering of a judgment to determine the case.

To conclude, I will quote the words of an expert who said that in order to fight corruption effectively it is necessary to make systematic reforms, to facilitate control and investigations and to fry some big fish.

In my opinion this is what we need.

We are working on systematic reforms, together with other controlling entities, to deepen and facilitate investigations, and to catch and fry some big fish, who obviously offer resistance…

The U.N.C.A.C. represents a big step, and this meeting is, without question, an element that will provide support in the carrying out of our task.

But this is a never ending task; the important thing is that we are progressing and consolidating efforts to surpass obstacles and to move forward in this fight.

Thank you.

Australia

Speech by Hon Jerrold Cripps QC, Commissioner, Independent Commission Against Corruption (ICAC) New South Wales, Australia.

Status of United Nations Against Corruption (UNAC) and Challenges for its Implementation

On the 9th December 2003 Australia became a signatory to the United Nationals Convention Against Corruption and on the 7th December 2005 the treaty was ratified by the Australian Government.

The treaty obliges Parties, amongst other things, to implement and maintain anti-corruption policies and to establish independent bodies to implement those anti-corruption policies.

Like all civilised countries Australia has stringent anti-corruption criminal laws. Bribery is a serious offence. Fraud on the revenue is a serious offence. However experience taught us that confining the fight against corruption to the enforcement of the criminal laws with their practices and procedures was less than successful.

People charged with criminal offences have certain privileges and immunities. For example every citizen has the privilege against self-incrimination and has a common-law entitlement referred to as legal professional privilege. These privileges allow people to refuse to answer self-incriminating questions and preclude prosecutorial and investigating authorities having access to their legal affairs.

These impediments together with what has been described as the "victimless" nature of corrupt conduct makes it extremely difficult to detect corruption much less to punish it. But although most forms of public corruption have no immediate identifiable victims the consequences of public officials soliciting and receiving bribes has self-evident adverse consequences for the society in which it takes place.

During the 80's a New South Wales Minister of the Crown and a New South Wales judicial officer were convicted and jailed for accepting bribes. To most people at the time this was unheard of behaviour by important public figures. And it was thought by the Parliament that, bearing in mind the difficulties of detection and conviction, if two very senior public figures had taken bribes it was likely or probable that corruption was much more systemic and serious than had previously been supposed.

As a result in 1988 the New South Wales Parliament introduced legislation establishing the Independent Commission Against Corruption (ICAC) preceding the United Nations mandate by almost 20 years.

The jurisdiction of the Commission is directed to exposing and preventing corruption by public officials in the public sector. It also extends to examining the conduct of people in the private sector who endeavour to corrupt public officials or whose conduct might cause public officials to improperly discharge official functions. Any person may make a complaint to the Commission about a matter that may concern corrupt conduct.

The Commission was not established as a law enforcement or prosecuting agency (although it does have a secondary function to collect legally admissible evidence). It has no asset recovery function. It is a stand-alone institution.

The definition of corrupt conduct in the legislation is extremely wide. It extends to dishonest or partial conduct and the misuse of official information any of which may (but not must) result in

criminal conviction or disciplinary proceedings. However and because the legislation is so broad the Parliament has directed the Commission to concentrate on serious and systemic corruption. The Commission would not, for example, investigate the stealing of petty cash notwithstanding that it would meet the definition of corrupt conduct. If such a claim were made to it, it would be referred to the police.

As I have said, the Commission has jurisdiction over people in the public service. These include members of parliament and members of the judiciary. The Commission is independent (as it's name implies) of government and although it relies on government for the material support to discharge its functions to date that support has been forthcoming. Of course Parliament may change the law and the judiciary may judicially review the discharge by the Commission of its functions. But embers of parliament and members of the judiciary are amenable to the Commission's jurisdiction. In the past 15 years members of parliament (including ministers of the Crown) have been investigated and findings of corrupt conduct have been made. There have been o investigations, and hence no findings of corrupt conduct, against members of the judiciary. However it is to be remembered that judges are themselves amenable to investigation by the Judicial Commission of New South Wales - an institution separate from the Commission.

Unlike the Hong Kong Commission (after which the New South Wales ICAC was named) the Commission confines its activity to the investigation and exposure of corrupt conduct and the making of corruption prevention recommendations to various government departments. As I have mentioned it has a secondary function to assemble evidence that may be admissible in the prosecution of a person for criminal offence against the law of the State in connection with corrupt conduct and to furnish that evidence to the Director of Public Prosecutions.

Australia has a very strong tradition of adhering to what might be described as long-standing constitutional privileges for people who are charged with or suspected of committing criminal offences. The two most significant safe-guards against the possible oppression by the State are the privilege against self-incrimination and what has been called legal professional privilege. The privilege against self-incrimination entitles a person to object to answering questions on the grounds that the answers they give might have the tendency to incriminate them. Legal professional privilege operates to deny relevant authorities information which may be highly relevant to whether people have engaged in criminal conduct.

These privileges are available to citizens in criminal prosecutions and civil trials. They are not, however, available to people subject to an investigation by the Commission. Because the "privileged" information can be used by the Commission the legislation makes it clear that the Commission is not to make findings that people have been guilty of criminal offences although of course it is empowered to make declarations of corrupt conduct. Of course the making of declarations of corrupt conduct have serious consequences for people the subject of the declarations. For example a senior public servant would be unlikely to remain employed in the public sector or to get another job in the public sector if such a declaration were made.

As I have said its powers the Commission has been given what amounts to almost unprecedented

powers of coercion and compulsion. Of course the Commission cannot use physical duress and torture to extract information. However, people can be compelled to attend and must answer relevant questions and produce documents. They may not refuse to answer questions or produce documents on the ground that the answers or production may tend to incriminate them and they may not refuse to answer questions concerning their legal affairs. If they refuse to answer questions or if they answer the questions untruthfully they are subject to significant criminal sanctions.

As a matter of balance the Parliament has said, in effect, that if incriminating evidence arises from answers given or documents produced about which the person interviewed has objected that evidence may not be used against the objector in a subsequent criminal trial. However, as I have said, the answer can be used for the purpose of enabling the Commission to make a declaration of corrupt conduct. Moreover, if a person is charged with telling lies to the Commission or not answering questions, the questions and answers can be used against that person in a subsequent prosecution for an offence of failing to answer or to answer truthfully questions asked whether or not any objection has been made.

The removal of the two privileges referred to above, together with the covert powers given to the Commission are necessary, in my opinion, if the Commission is to discharge the function Parliament wishes it to carry out. The Commission can for example use listening devices and can intercept telephone conversations when that action is authorised. The information it obtains from listening devices and telephone interceptions may be used for the purpose of determining whether or not corrupt conduct has occurred.

Moreover, information obtained from these sources is available to prosecuting authorities as evidence if criminal proceedings are commenced. The Commission is authorised to undertake controlled operations and the information obtained from those operations may be available for use in evidence in later criminal proceedings.

Moreover and although an appropriate objection may preclude the use of the questions and answers in criminal proceedings the legislation does not prevent prosecuting authorities from having regard to the knowledge obtained and use it to collect legally admissible evidence to prove what they know to be true.

But of significance to people at this conference is the circumstance that New South Wales has had such a Commission operating with these powers since 1988 and Commissions with similar powers have since been created in other States of Australia. Notwithstanding the abrogation of the privileges and immunities I have referred to, such material as is available to Commission (by surveys and the like) suggest that as an institution it is immensely popular. This is, I think, because most people recognise the corrosive and damaging effects corruption has on the economic health and integrity of our society.

Although, as I have said, the Commission has no jurisdiction over what I might call private sector corruption - that is when no public official or public authority is directly or indirectly involved the effects of its finding of "naming and shaming" public officials is self-evidently significant.

A standing Royal Commission having the coercive powers that the Commission has was not introduced lightly by the Parliament. It is said that such a body could not be established in the United States for constitutional reasons. Whether that is so or not there is no doubt that in countries that have inherited the Westminster system and the rule of law, the notion of a standing Royal Commission with extensive coercive powers was viewed with some trepidation. But it is a measure of the recognition of what corruption can do to a society that the people have determined through their parliamentary representatives that it is necessary to have a standing Commission directing its efforts to the disclosure and prevention of corruption.

The Commission has responded to the legislative mandate of the New South Wales Parliament and, as events have turned out, to the international obligations imposed by the convention the subject of this conference. The essential raison d'être of the Commission is to prevent corruption. It does that by exposing corrupt conduct and making recommendations to government as to how corruption or corrupt practices can be avoided.

Barbados

1BARBADOS LEGISLATIVE CAPACITYTO COMBAT CORRUPTION

INTRODUCTION

Corruption in the Caribbean in recent times tends to be associated with drug related activities. Although corruption is not exclusively drug based, it remains the dominant form in existence violating both laws and norms. Corruption takes the form of both acts of commission and omission. Public servants are rather visible in operations whereby laws are breached and accepted behavioural norms in social, economic and political terms are violated. Ideologically, corruption may be classified into three categories namely; sporadic, systematic and institutionalised.

Sporadic corruption is characterised by individual corrupt practices without any broad base. Small groups of persons acting together or individually accept bribes or kickbacks without necessarily sharing the takings or such knowledge of the activities.

Systematic corruption is where corrupt practices are widespread but not necessarily organised. As a result, corruption may be widespread but not everyone is corrupt. Institutionalised corruption is where there is a pyramid approach with the bulk of the money going to the top. Institutionalised corruption envisages that a hierarchical payoff system is in existence whereby lower level officials who receive the money hand it over upwards in the chain. Institutionalised corruption exists when individuals within an organisation become complicit with a criminal activity such as drug dealing and the institution acts as a shield against transparency and accountability.

THE COMMON LAW OFFENCES

At Common Law, "'where a person in the position of trust to perform a public duty takes a bribe to act corruptly in discharging that duty, it is an offence in both parties". (See Archbold 2000, 31-129). This definition is wide enough to include persons involved in the administration of justice such

as a juror, a justice and a coroner.

The offer of a bribe is an attempt to bribe and is therefore an offence. The purchase and sale of public offices is considered to be bribery at common law.

The offence of bribery is punishable by fine and /or imprisonment.

THE PREVENTION OF CORRUPTION ACT, CAP. 144

The Prevention of Corruption Act, Cap. 144 came into force in Barbados on the 21st June, 1929.

This Act contains ten sections which essentially deal with the corrupt soliciting or acceptance of a bribe by a public officer or a servant of the Crown as an inducement to do or forbearing to do any matter in which the Crown or public body is involved. The person who offers the bribe is equally guilty of an offence.

This Act makes it an offence for an agent who corruptly accepts or agrees to accept any inducement to do or forbear to do any act in relation to his principal's business. It is an offence for an agent to offer an inducement to gain some advantage for his principal's business.

The punishment for corruption under this Act includes fine, imprisonment, forfeiture of any public office held at the date of corruption, forfeiture of any right and claim to compensation or pension and being adjudged incapable of being elected or appointed to any public office for a period of time or being banned for life.

The maximum term of imprisonment, which can be imposed under this Act, is 7 years imprisonment. This penalty can be imposed where a person is convicted for an offence that involved a contract to execute work with the Crown or any Government Department or any public body.

Having reviewed the provisions of the Prevention of Corruption Act it is clear that the Act is limited to corrupt transactions done by servants of the Crown and or public officers in the course of their employment. The Common law has a wider scope since it goes beyond employees of the Crown and public bodies to include persons who are engaged to perform public duties. For example, under this Act a juror cannot be charged for accepting a bribe to return a perverse verdict since that juror is not considered an employee of the Crown by virtue of performing that service. In order to charge that juror one would have to resort to the common law. This is illustrated by the unreported local case of Denzil Grant Appeal Nos. 40,41 and 48 of 2001 (Supra).

I would therefore recommend that any reference in the Prevention of Corruption Act, to "any member, office or servant of the crown or of a public body" be amended to include persons performing public duties. One advantage of making the bribery or acceptance of bribes by persons performing duties statutory offences is that provision can be made for stiffer penalties for such offences. The penalty for these offences under the common law is considered to be inadequate.

PRIVATE SECTOR CORRUPTION

Much of the discussion on corruption related to public sector employees and officials. However, the private sector may equally be infested with corrupt practices. Globalization and trade liberalisation have introduced less controls and the private sector is deemed to be the engine of economic growth and development. As a result, both on and off shore banks, non banking deposit taking institutions, rental car agencies, travel agents, shipping brokers, farms, cash business such as supermarkets and warehouse type retailers are all vulnerable to corruption. Private sector corruption could be equally detrimental to good governance. The loss of revenue through customs duties, value added taxes and income tax could easily constitute a wholesale piracy of the revenue. As a consequence, there could be an impact on the level of resources available for developmental purposes such as health, education welfare and social infrastructure.

THE INTER-AMERICAN CONVENTION AGAINST CORRUPTION

The Inter-American Convention Against Corruption was adopted on the 29th March, 1996, by

Member States of the Organization of American States. This Convention was signed by Barbados on the 6th April, 2001.

The purposes of this Convention as stated in Article II are two fold:

(a) To promote and strengthen the development by each of the States Parties of the mechanisms needed to prevent, detect, punish and eradicate corruption; and

(b) To promote, facilitate and regulate cooperation among the States Parties to ensure the effectiveness of measures and actions to prevent, detect, punish and eradicate corruption in the performance of public functions and acts of corruption, specifically related to such performance. The importance of co-operation between States on matters involving corruption and any other type of crime in today's hi-tech society cannot be underscored with the advent of transnational crime.

Barbados' legislation on corruption deals with corruption on a domestic level. Therefore it would be absolutely necessary for the legislation to be amended to facilitate the creation of new offences as it relates to corruption on a transnational level.

Article XIII calls on each State Party to make these offences under the Convention extraditable offences in extradition treaty between States Parties.

In my opinion these offences can be dealt with under Barbados' Extradition Act, Cap. 189 and or the Mutual Assistance Act, Cap. 140 A.

Article XVIII deals with the designation of a Central Authority which shall be responsible for making and receiving the requests for assistance and co-operation referred to in the Convention. In Barbados the Central Authority may be the Attorney General.

The United Nations Convention against Corruption

The purpose and objective of the Draft Convention is similar in many respects to that of the Inter-American Convention against Corruption and therefore I do not propose to give a detailed analysis of its provisions. There are however certain provisions which may be included in our legislation.

Article 10 deals with the funding of political parties. It recommends that State Party should adopt, maintain and strengthen measures and regulations concerning the funding of political parties. The purpose of these measures is inter alia:

(a) To prevent conflicts of interest and the exercise of improper influence; and

(b) To proscribe the use of funds acquired through illegal and corrupt practices to finance political parties.

BACKGROUND TO BARBADOS' SIGNATURE OF THE
UN CONVENTION AGAINST CORRUPTION

Resolution 55/61 of December 4, 2000, UN General Assembly established an Ad Hoc Committee for the Negotiation of an International High Level Instrument Against Corruption, independent of the United Nations Convention against Transnational Organised Crime.

Barbados was represented at four of the seven sessions of the Ad Hoc Committee during the period January 2002 - October 2003 by Mr. Louis Tull Q.C., M.P. who also served as CARICOM's Regional negotiator at the sessions.

The Committee was mandated to adopt a comprehensive, multi-disciplinary approach, and to consider inter alia, protection if sovereignty preventative measures, criminalisation, sanctions and remedies, confiscation and seizure, jurisdictions, protection of witnesses and persons, promoting and strengthening international cooperation, preventing and combating the transfer

of funds of illicit origin derived from acts of corruption including laundering of funds, technical assistance and collection, analysis and exchange of information.

The High Level Political Conference held in Mexico from December 9th - 11th, 2003, was attended by Mr. Louis Tull, Q.C., M.P., who signed the Convention on behalf of the Government of Barbados. The only other CARICOM countries participating were Haiti and Trinidad and Tobago, however a total of one hundred and nine (109) states sent representatives, of whom ninety-five (95) signed the Convention Among countries signing were USA, UK and Russia Federation, and it was determined that the Convention would be open for signature until December 9, 2005. Mr. Tull's report on the Conference was submitted to the Cabinet.

In Barbados the Election Offences and Controversies Act, Chapter 3, Section 6 states:

(1) A person is guilty of corrupt practice who is guilty of bribery
(2) A person is guilty of bribery who, directly or indirectly, by himself or by any other person or his behalf,
    (a) Gives any money or procures any office to or for any elector or to for any other person on behalf of any elector or to or for any other person in order to induce any elector to vote or refrain from voting;
    (b) Corruptly makes any gift or procurement as is specified in paragraph (a) on account of any elector having voted or refrained from voting.....

Barbados does not have any legislation which requires declaration of donations exceeding a specified limit made to political parties but there is legislation, which creates offences of corrupt practices in relation to elections.

In my opinion the Election Offences and Controversies Act satisfies the objective of Article 10 of the Draft Convention save and except where it relates to declaration of donations exceeding a specified limit. This may perhaps be inserted in our legislation.

Article 14 deals with measures to be implemented to combat money laundering. The measures suggested are adequately addressed in the Money Laundering (Prevention and Control) Act, 1998-38.

This Act provides mechanisms for banking or lending institutions to detect suspicious transaction which may be an attempt by some person or company to invest money acquired as a result of some illegal activity or activities. If there is reasonable suspicion that there is an attempt to invest proceeds of crime, the lending institution is required to notify the Financial Investigation Unit. If an investigation is launched, an application can be made to the Court for an order to freeze suspicious account(s).

PROPOSALS FOR REFORM

The preparation of a legislative proposal on the issue of the following aspects of corruption is crucial:

(a) acts of corruption
(b) transnational bribery
(c) illicit enrichment
(d) progressive development

PROPOSED CARICOM CORRUPTION PREVENTION BILL

The preparation by CARICOM of Model legislation in the form of a proposed Corruption Prevention Bill by Regional Chief Parliamentary Counsel forms the basis for the drafting of domestic

legislation against corruption on Barbados.

This Bill distinguishes itself from the earlier legislation in that it is more comprehensive, for while reiterating the basic sanctions in the existing legislation against public servants for improperly accepting inducements, it also makes provision for the establishment of a Corruption Convention Commission; for financial disclosure of affairs by persons in public life e.g.

- assets, income and liabilities
- office or offices held
- assets of spouse and children below 18 years
- gifts in value exceeding one thousand US dollars given to him/her

A similar declaration is required of election candidates and legislators.

Equally important is the fact that provision is also made in the Draft Bill for persons in the private sector to be sanctioned if convicted of an act outside stipulated procedure in relation to their commercial activities.

It also includes extensive provisions for bribers, freezing, confiscation and seizure, (already included in Barbados' legislation), and provisions is also made to cover protection of Freedom of Expression against corruption and for a Code of Conduct for person holding public office.

POSITION OF BARBADOS

Barbados is among the first CARICOM countries to sign the UN Convention Against Corruption. Barbados has also signed the Inter American Convention against Corruption, which predates the UN Convention. A first draft of the Barbados Prevention of Corruption Bill has been prepared by the Chirf Parliamentary Counsel for inclusion in Barbados' domestic legislation.

The draft Prevention of Corruption Bill is expected to be submitted to the Parliament this year. The Government of Barbados is committed to doing all in its power to eradicate the scourage of corruption at the national level, in the public and
private sectors.

Consideration must be had of the *Inter-American Convention against Corruption,* and the UN Convention, the criminal, fiscal and administrative law of Barbados and other Conventions signed by Barbados on the issue of corruption and co-operation in legal matters are pivotal to a successful fight to contain the scourge of public and private sector corruption.

SUMMARY

Corruption slows and impedes the consolidation of democratic institutions, and weakens the rule of law. It undermines the confidence of people in their government. Around the world, corruption diverts resources from productive use, distorts economies, reduces growth, and causes enormous social tension. High levels of corruption make it more difficult for countries to grow and develop. It is all too often linked with trans-border criminal activity, including drug trafficking, organized crime, and money laundering.

Drug Trafficking Organizations (DTO) and other criminal syndicates, with enormous resources to draw upon, have a nearly open-ended capacity to corrupt. International criminals spare no expense to corrupt government and law enforcement officials in countries that serve as their base of operations or as critical avenues for transshipment of drugs, arms, precursor chemicals, or bulk cash.

THE FIRST ANNUAL CONFERENCE AND GENERAL MEETING OF THE INTERNATIONAL ASSOCIATION OF ANTI-CORRUPTION AUTHORITIES

SUNDAY 22ND - THURSDAY OCTOBER, 2006
BEIJING CHINA
International Cooperation for the Effective Implementation of
The United Nations Convention Against Corruption
BARBADOS LEGISLATIVE CAPACITY
TO COMBAT CORRUPTION
PREPARED BY
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Belgium

I

Central Office against Corruption

1. GENERALITIES

In Belgium, the Central Office against Corruption is the competent service dealing with the fight against corruption and other related offences, such as the misappropriation of public funds, conflicts of interest and embezzlement committed by persons who hold a public office. The service also tackles fraud with public contracts and fraud with government grants and subsidies.

The Central Office against Corruption is a "central" service, which is part of the Directorate Economic and Financial Crime (ECOFIN) of the Belgian Federal Judicial Police, and which can carry out investigations all over the Belgian territory. In addition to this central service, the different judicial police services in the districts have ECOFIN units that also carry out investigations into corruption. The central service and the services in the districts often co-operate in some investigations. It should be noted that the Central Office against Corruption's priority task is carrying out particularly complex investigations requiring a very high level of expertise or being of a very delicate nature.

Historically speaking, the origins of the Central Office against Corruption date back to the former Higher Supervisory Committee, which had to carry out the judicial inquiries that are now assigned to the Central Office against Corruption. Besides its judicial powers, the Committee also had administrative powers, unlike the Central Office against Corruption today. In 1998, the investigators of the Committee first joined the ranks of the Judicial Police before being integrated in the new Federal Police following the 2001 police reform. Moreover, other police officers coming from various horizons have since joined the ranks of the Central Office against Corruption. The office employs about 60 investigators.

2. MAIN TASK

The principal task assigned to the Central Office against Corruption remains – whether on order and/or on demand of the judicial authorities– the detection of (or the support at detecting) public and private corruption and related offences (misappropriation of public funds, conflicts of interest and embezzlement, etc.), as incriminated by the Law of 10 February 1999.

These investigations can be carried out, as circumstances require, whether autonomously by the Central Office against Corruption or in support or in collaboration of the local judicial police units.

The Law of 29 November 2001, publicized on 23 February 2002, enables us to wiretapping within the framework of an inquiry into corruption. The Central Office against Corruption has ever since successfully applied this method.

3. PRIORITIES

a) Fraud with public contracts

The results of the strategic analysis of corruption, carried out by the Central Office against Corruption within the framework of the National Security Plan of the years 2001-2002, have surely been decisive at setting this priority. It is indeed clear from the analysis that corruption mostly appears within the framework of the adjudication or of the implementation of public works and contracts.

Fraud on the occasion of public works can imply different offences, such as:

- (active and passive) corruption;

- price arrangements and the like, which disturb competition;

- intellectual forgeries (meaning forgeries implying the falsification of the content of documents) and fictive public contracts.

Spontaneous denunciations of such irregularities from the public administrations are rather rare. One of the recommendations emphasized by the aforementioned strategic analysis was to examine and explore the fragile spots of public orders that make them vulnerable to illegal activities. The Central Office against Corruption has already initiated such an analysis.

b) Private corruption

In the Framework Instruction Integral Security of 30 and 31 March 2004 the Government takes into consideration the corruption used as a counterstrategy by criminal organizations. Thus attention has been focused on the modification and extension of the Law of 10 February 1999 on the penalization of corruption, which introduces the idea of 'private corruption' into Belgian Law.

The Framework Instruction states that priority must be given to fighting private corruption if there are clear indications that such an offence is perpetrated by organized crime. It is indeed through corruption of private companies that a criminal organization infiltrates local economy.

4. OPERATIONAL RESULTS IN 2005

The year 2005 saw several, very mediatized, inquiries into the sector of public housing (La Carolorégienne, Les Habitations sociales de Binche, Toit & Moi, etc.). The Central Office against Corruption made important efforts to bring these inquiries to a favorable conclusion, autonomously as well as in support of the Federal Judicial Police district units.

The Central Office against Corruption in 2005 also investigated into irregularities perpetrated by officials of the State-controlled Building Company. The efforts its investigators made during the whole year led to several arrests and house searches at the beginning of 2006.

A certain number of investigators moreover worked the whole year (and even the previous years) full-time on other (equally important) cases, wherein eventually positive results can be expected. This is particularly the case of the inquiry into the Berlaymont building in Brussels (European Headquarters), The Crown Gardens and the sale of Mirage airplanes to Chile.

In 2005 a (probably important) case of private corruption is investigated concerning football match wagers. The Federal Prosecutor's Office and the Brussels Federal Judicial Police are for the moment investigating the matter.

We finally point out that local anti-corruption unities created within the judicial police of the cities of Ghent and Hasselt (judicial resort of Antwerp) in 2005 have started up some important investigations into corruption (6 in Ghent and 8 in Hasselt). This seems to prove that it is possible to enhance the prosecution of corruption offences whenever one is prepared to allocate sufficient resources for that purpose.

5. General results

Case and investigation figures

	2004	2005	Evolution
Number of police records	2.304	2.514	+ 9 %
Number of magistrate notes	704	881	+ 25 %
Number of registered investigations, inclusive the dismissed ones	87	103	+ 18 %
Number of effectively investigated cases	74	82	+ 11 %
Number of inquiries into or concerning the European institutions	15	8	- 47 %
Number of cases investigated by the Subsidies Unit	35	41	+ 17 %
Number of cases investigated by the Public Orders Unit	39	44	+ 13 %
Number of cases investigated by the Financial Investigations Unit	34	69	+ 103 %

These last figures also refer to the investigations opened before 2004 or 2005.

6. International co-operation

International Organizations show a lively interest in the phenomenon of corruption. The efforts of the

Member States (Belgium among others) are assessed at regular intervals. This evidently must influence upon national legislation relative to corruption and its correct and effective application.

The transfer of competence to the European Union over important items and the establishment of the European Commission and of the European Administration in Brussels of course enhance the European impact and increase the number of investigations into European officials.

It should be stressed here that these investigations are subject to European rules and usually are extremely sophisticated. Co-operation with OLAF as a consequence is necessary, as this European office is an expert in this field.

Corruption cases often require rogatory commissions to be executed, sometimes in countries where an efficient execution of them in sophisticated or delicate cases is not always evident. The efforts made by all partners concerned nevertheless can make these rogatory commissions successful. The Federal prosecutor's Office plays an eminent role herein.

Our land has moreover concluded bilateral treaties or conventions on police co-operation, especially with different new Member States of the European Union. Belgium has for instance promised to provide training for foreign specialized services.

In addition, it must be emphasized that in recent years fighting against corruption is considered to be a priority by several International Institutions such as:

- The United Nations (UN);
- Transparency International (TI);
- The World Bank;
- The Organisation for Economic Co-operation and Development (OECD);
- The international Monetary Fund (IMF);
- The World Trade Organization (WTO);
- The European Union (EU);
- Europe Group of States Against Corruption (GRECO) of the European Council;
- etc.

All these organizations take initiatives that have to be turned into (whether or not coercive) recommendations for the competent organs in the different countries. These recommendations stimulate the penalization of corruption (as quickly and efficiently and in so coordinated a way possible). In Belgium such recommendations have had great impact (and continue to do so) upon adapting legislation. An example here is the Law of 10 February 1999 modifying some articles on corruption in the Belgian Penal Code.

Our land is at regular intervals surveyed in structured assessments about the publication and the implementation of anti-corruption laws. So in October 2005 the Second Phase of the OECD report was publicized concerning the implementation in Belgium of the Convention of 17 December 1997 on Combating Bribery of Foreign Public Officials in International Business Transactions on the one hand, and of the 1997 Recommendation for combating corruption in international business transactions on the other hand.

The OECD is delighted about the efforts our country makes for overcoming supranational corruption. We take opportunity to stress here that DJF-Ecofin and the Central Office against Corruption play an important role in these assessments.

7. THE ROLE OF THE FEDERAL PROSECUTOR'S OFFICE

The Federal Prosecutor's Office only plays a role in the fight against corruption, when the investigation:

- surpasses the territorial limits of different judicial districts and consequently falls under the authority of different prosecutors;
- requires a complex international mutual assistance;
- relates to offences perpetrated abroad.

For an explanation of the place of the Federal Prosecutor's Office

II

Office of the Belgian Federal Prosecutor

Basis for creation

The Belgian Federal Prosecutor's Office was established in response to various problems articulated by the parliamentary commissions under the domain of justice and police. The commissions cited deficiencies specifically pertaining to the coordination of legal proceedings in connection with criminal matters outside the jurisdictions of a specific judicial district or beyond national borders. In addition to addressing this problem, the Federal Prosecutor was also tasked with addressing the area of complex and specialized investigations and the functions of police.

The Federal Prosecutor's Office became operational on May 21, 2002.

Functions and areas of responsibility

Under Belgian law, four essential functions have been imposed on the Federal Prosecutor's Office: to institute appropriate criminal proceedings, to oversee, monitor and coordinate criminal proceedings, to facilitate international cooperation and to supervise the activities and functions of the federal police. In furtherance of this, the Federal Prosecutor's Office received national jurisdictions and competence.

- **Institute criminal proceeding**

The Federal Prosecutor's Office has authority to institute criminal proceedings within the context of a limited list of criminal offences to include:

1. Crimes and offences involving State security,
2. Threats of attack, or theft of nuclear material, theft or extortion of nuclear material, and punishable offences involving the external protection of nuclear material,
3. Trafficking and smuggling of human beings,
4. Arms trafficking,
5. Serious violations of international human rights,
6. Formation of Criminal associations or organizations.

Support for criminal proceedings can also be instituted on the following basis :

7. Offences committed with violence against persons or material interests by persons motivated by ideological or political reasons, achieved through the use of terror, intimidation or threats.
8. When offences concern different national jurisdictions or possess an international dimension.

- **Coordination of criminal proceedings**

The objective of this function is the mutual prevention and resolution of conflicts between judicial authorities concerning competencies. The Federal Prosecutor's Office will intervene to assist in centralizing criminal proceedings for any offences in a specific prosecutor's office. This centralization can also be extended to an examining magistrate with the intent of improving the distribution and exchange of information.

- **Facilitation of International Cooperation**

At the request of Belgian and foreign authorities, the Federal Prosecutor's Office renders assistance to facilitate the execution of mutual assistance requests for alls offences. This facilitation entails conferring jurisdictional and practical information, accelerating transmission to appropriate authorities, and coordinating their execution within Belgium. The Federal Prosecutor's Office also helps in the coordination of investigations on an international level.

The Federal Prosecutor's Office serves as the central point of contact for various judicial authorities and international institutions to include; The International Tribunals, European Judicial Network, EUROJUST, EUROPOL, OLAF, INTERPOL, and others.

The Federal Prosecutor's Office possesses the authority to grant cross-border operations involving Belgium as a destination, source, or transit country.

- **Supervision of Federal police functions**

Federal Prosecutor responsibility in this area involves three components :

- Ensure that specialized judicial missions are executed in accordance with the directives of

judicial authorities,
- Oversee the functioning of the anti-corruption unit (OCRC) ;
- Preside over and manage the organization responsible for all functions associated with the information management system.

- **Particular missions**

1. The federal prosecutor is the president of the Committee for the protection of witnesses that is qualified to decide as to the protection measures to apply**.**

2. The federal prosecutor office is competent to prosecute the crimes against humanity.

3. The federal prosecutor controls the use of special techniques by the federal police.

4. Since the 1st of January 2004 (suppression of the military jurisdictions) the federal prosecutor office is in charge with the crimes committed abroad by the members of the Belgian army.

How it functions

The Federal Prosecutor's Office can involve itself, or commit to a case, in a variety of ways: pursuant to a request or notification by the prosecutor and general prosecutor, in pursuit of its own records or subsequent to a complaint or direct denunciation on
Behalf of international institutions or foreign judicial authorities and based on information provided by the general judicial direction of the Federal Police.

The Federal Prosecutor decides to charge himself with a particular case. The specialized services division of the general directions of the Federal Police has been given the responsibility for supporting the Federal Prosecutor in the coordination of international cooperation tasks and analysis of particular criminal phenomena.

When conducting investigations, the Federal Prosecutor's Office avails itself to the investigative services and resources of the Federal Police, specifically district services, the central office for combating corruption, and the organized economic and financial delinquency unit.

Composition of Office

The Federal Prosecutor's Office is composed of the Federal Prosecutor, twenty-two federal magistrates and an administrative support staff.

Contact information

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Additional details

* *law of December 22d 1998 on the vertical integration of the Public Prosecutor, the federal prosecutor's office and the council of prosecutors, published in the Moniteur belge/ Belgisch Staatsblad of February 10th 1999,*

* *law of June 21st 2001 modifying different dispositions concerning the federal prosecutor's office, published in the Moniteur belge /Belgisch Staatsblad of July 20th 2001,*

* common circular of the minister of Justice and the Board of the general on the federal prosecutor's office, published in the Moniteur belge/Belgisch Staatsblad of May 25th 2002.

These laws and the preparations thereof can be consulted on the website of the Ministry of Justice : www.just.fgov.be - click « Moniteur belge ».

III

Prevention and detection : Corruption in Belgium amongst officials with police powers

Introduction

The Belgian Committee P is a Standing Police Monitoring Committee responsible for the external monitoring of all Belgian police forces, officers, and officials vested with police powers. The Belgian police are made up of 38,000 members and the government services, of more than 1,000 officials with police powers.

Committee P is, first and foremost, an external supervisory body depending on, and serving Parliament. It cooperates with the judicial authorities and the various other inspectorates and monitoring bodies working for the executive. Committee P has authority over police officers carrying out the work as well as over the police management.

The law and sound common sense dictate that Committee P should keep in sight two fundamental concerns: first, the need to ensure that police officers and officials with police powers respect – and see to it that others respect – citizen's constitutional rights and civil liberties; second, the need to ensure that, in order to act more efficiently, the actions and operations of both levels of the police forces (local and federal) are governed by an approach shared not only with each other, but also with all the other participating social players.

Committee P conducts inquiries into:
- all police activities and methods;
- internal police guidelines, rules and regulations;
- the activities and methods of the General Inspectorate of the Federal and Local police and of the internal inspection bodies.

The main concerns consist of promoting the smooth functioning of the police structure, encouraging such improvements and help reinforce the positive aspect of the modus operandi of the police and the intervention by officials with police powers.

The investigation on corruption of officials with police powers is part of the above-mentioned mission and concerns. Corruption of officials with police powers directly affects the confidence of citizens in their police and government and has a strong impact on the efficiency of these organisations.

Corruption amongst officials vested with police powers has scarcely been the subject of scientific research. With a view to such a research and in preparation of a thematic investigation, Committee P has made a study of literature about the phenomenon and carried out an analysis of the complaints and judicial cases it has been informed of, or it has investigated.
The analysis has been limited to corruption as defined by the criminal law (corruption consists of offering or giving money or any other advantage in order to have a lawful act which is normally not subject to payment, or an illicit act, carried out. One has to make a distinction between active and passive corruption of officials. Corruption in the private sector is punishable too but the sentence will be heavier for a public servant such as a police officer. The latter will be fined between 100 and 150,000 euros and/or be sentenced to a term of 6 months to 10 years (Art. 248 Penal Code).

A special unit of the federal police (the Anti-corruption Unit) conducts most of the inquiries into corruption on behalf of the state prosecutors.

Thanks to the received information, the Standing Committee P can gain an overall picture of corruption cases amongst the police forces.
The amount of cases involving corruption has tripled between 2000 (11) and 2005 (35) but the total number of them (148) is not that high on a six-year period. Committee P defines corruption in a broader way than the Belgian criminal procedure in the sense that it includes embezzlement, extortion and interest into it. The cases involving so-called “strategic” corruption represent more then one third of the global amount of judicial cases. This is about cases where officials with police powers holding key positions abuse their function in order to have durable and lucrative relations with the underworld. These cases are to be found on both levels of the integrated police. In all the cases involving strategic corruption, the informant wants to stay anonymous.

The analysis shows that the extension of the “corruption” concept by the Belgian anti-corruption Act of 10 February 1999 is not the reason for the tripling of the cases reported to Committee P.
Thirty percent of the judicial cases from the period 2000-2005 are still being investigated. These files are particularly complex. The majority of them have been rounded up by the Investigation Department of the Standing Committee P but still await a judgement by the judicial bodies.
A sentence has been given in almost 30% of the closed cases.

The recovery of criminal assets and the promotion of the use of financial investigation as an integral part of criminal investigation are of considerable matter.
There has been a Unit in Belgium processing the financial data (CTIF) since 1st January 1993. It was created in compliance with a Directive of the Council of Europe (91/308/EEC of 10 June 1991 and the Directive 2005/60/EC). This unit has bilateral and even multilateral cooperation contacts with 68 foreign Disclosure Offices. The CTIF eventually joined the Financial Action Task Force (FATF) created in July 1989, an organisation that currently has 33 members.

Under the law, companies and private individuals are compelled to give information about all amounts of money generated by corruption and embezzlement manipulation by public servants.
The Penal Code makes provision for a special seizure on: all goods that make up the criminal offence or those that have been used or meant to commit the offence, if they belong to the convicted; all goods that result from the offence; all proprietary advantages directly got from the offence as well as all assets and securities that have substituted them and the yield gained from the investment of these advantages. If those goods can not be found amongst the convicted person's patrimony, the judge shall estimate their monetary value and pronounce the seizure of an equivalent amount of money.
Any third party who received goods or money through corruption will be considered as the receiver of stolen goods and these will be seized as well.

Foreign studies and experiences clearly indicate that an independent body vested with police powers is essential to have a clear view of the phenomenon and to successfully carry out complex investigations against officials with police powers. Special investigation techniques are essential in these matters.

The same studies demonstrate that making these corruption offences public is not that evident because of some typical facets of the police culture, mainly the internal solidarity and the will to cover up these offences. In order to avoid such situations, Article 26 of the law on Committee P holds that every member of a police force who notices that a colleague of him has committed a corruption offence, has to write a report and send it to the Investigation Department of Committee P within 14 days.

Since the Act of 29 November 2001, corruption has also been put on the list of offences in accordance with Art. 90ter of the Code of criminal procedure. Hereby it is possible, since the beginning of 2002, to launch a proactive investigation, telephone surveillance or wire tap and to use all special investigation methods that are deemed necessary in fighting corruption.

The Royal Decree concerning the deontological rules for the police only deals with the larger concept of integrity and dignity of the profession but does not duly emphasize the corruption phenomenon as such.

Recommendations

Police officers are particularly exposed to corruption because of their frequent direct contacts with the underworld and the fact that their frustration about the working rules can be more easily manipulated. In Belgium, where our police system undergoes fundamental reforms, one needs to keep a vigilant eye on this.
In anticipation of the results of a thematic investigation, it is necessary to give special attention to and be aware of the phenomenon during the training courses.
One has to make clear that failing to report corrupt behaviour of colleagues is as serious and bad as the corrupt behaviour itself. By remaining silent, one contributes to the decline of confidence in police and government.
Especially the exemplar function by executives has to be underlined.

Perspectives

The Standing Committee P intends to start a thematic investigation in order to gain a better view of the phenomenon of corruption amongst officials with police power. For this purpose, it shall apply the following methodology.

In a first phase there will be an evaluation of the existing directives and measures in this matter. We will also exchange data and knowledge with external partners from the judicial, police and scientific world.

In a second phase there will be an analysis of the circumstances that can cause corruption to happen, and of the development of corruption-indicators. This in order to make the various persons involved aware of the phenomenon in cooperation with other partners, and in order to hand tools to the services and officials with

police powers.

It would be useful to consider in the medium term the creation of a “centre of knowledge”.
Concerning the judicial cases, it is interesting that our independent body should develop into a specialized organ so as to successfully investigate complex cases of strategic corruption amongst police officers and officials with police powers using special means of investigation.

Belarus

By Mr. Shablyko

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Secretary General of the International
Association of Anti-Corruption Authorities

Friday, October 6, 2006

Dear Mr. Director-General,

In addition to our letter ref. № 25-1513-2006 dated September 27, 2006 please find enclosed the speech of the Prosecutor General of the Republic of Belarus Petr Miklashevich (in Russian and English) at the First Annual Conference of the International Association of Anti-Corruption Authorities, to be held in Beijing, from 22 to 26 October 2006.

Enclosure: on 13 pages.

Yours sincerely,

/signature/

O.Shablyko
Head of the International Legal Department
of the Prosecutor's Office of the Republic of
Belarus

/Official Seal of the Prosecutor's Office of the Republic of Belarus/

SPEECHof the Prosecutor General of the Republic of Belarus Petr Miklashevich at the First Annual Conference of the International Association of Anti-Corruption Authorities

October 23, 2006, Beijing

Dear Mr. President!
Dear ladies and gentlemen!

On behalf of the Prosecutor's Office of the Republic of Belarus let me greet all participants of the First Annual Conference of the International Association of Anti-Corruption Authorities.

I express my sincere gratitude to the Prosecutor General of the People's Republic of China Mr. Jia Chunwang for the invitation to participate in such a representative and important international forum.

I tender thanks to the Supreme People's Procuratorate of the People's Republic of China an the UN Office on Drugs and Crime for organization of the Conference and a warm friendly welcome.

The signing in 2003 of the UN Convention against corruption and realization of the idea of creating the International Association of Anti-Corruption Authorities are the results of a profound consciousness by the international community of the serious danger of corruption. Having turned into a transnational phenomenon, it has become one of the most serious threats to democracy, human rights and universally recognized ethical values.

Supporting and developing the initiatives of combating corruption at local, regional and international levels, the Republic of Belarus was one of the first Participating States to ratify the UN Convention against corruption.

Properly fulfilling its international obligations, Belarus has already taken a number measures aimed at bringing its national legislation in accordance with the provisions of the Convention. First of all, it is revealed in the Law "On combating corruption" adopted by the Parliament of the Republic of Belarus on July 20, 2006.

The Law is a legal foundation for forming and realizing the anticorruption policy of the State in order to further enhance the efficiency of combating corruption and its prevention.

According to the Law, combating corruption is realized on the basis of applying a complex of measures fully corresponding with the UN Convention against corruption. The most important are:

first, criminological research of crimes related to corruption in order to reveal the causes of corruption, estimate them and forecast development of the situation for taking opportune effective measures to prevent corruption;

second, planning and coordination of activities of the law-enforcement and other State authorities in combating corruption;

third, elaboration and realization of economic measures of combating corruption attended by eliminating the preconditions of its existence.

At legislative level a system of measures for preventing corruption has been defined. They consist in regulating restrictions for the public officials and equal persons, excluding joint public service for the relatives, realizing financial control over the public officials' income and property.

With a view to implement the provisions of the Law "On combating corruption" a number of legislative drafts aimed at making more efficient criminal and administrative legislation is now under consideration of the Parliament.

In Belarus goal-seeking activity aimed at preventing and eliminating corruption was and still is a

priority of the State policy, successively and definitely carried out by the President of the Republic of Belarus Alexander Grigorievich Lukashenko.

Long before signing the UN Convention against corruption Belarus adopted in 1997 the Law "On measures of combating organized crime and corruption" providing strengthening of responsibility for the public officials involved in corruption. Special units of combating corruption were created in the prosecutor's office, internal affairs and State security bodies. The Prosecutor's Office is designated coordinator of the anticorruption activity at the national level.

In 2002 the State program for reinforcement of combating corruption was approved by Decree of the President of the Republic of Belarus. Following this Program a complex system of legal-organizational, social-economic, educational, educative and other measures is being effected.

In 2003 the Law "On public service in the Republic of Belarus" was adopted. In accordance with the Law those persons, who join public service for the first time, undergo probation. It also establishes restrictions for the public officials, which impede corruption acts, including submission of a declaration of income and property as well as some other measures.

This year the Head of our State issued a special Decree aimed at eliminating bureaucratization of the administrative machinery, regulating administrative procedures in order to prevent corruption actions of the public officials.

The Prosecutor's Office together with other State authorities has been regularly taking a number of actions for eliminating corruption in the field of the national economy, revealing corruption in the public administration bodies.

As a result of measures taken at the national level the number of corruption crimes has reduced this year by more than 23 %. First of all, the matter concerns bribery, abuse of authority and official powers by the public officials.

Dear ladies and gentlemen!

All of us could already appreciate an extreme importance, urgency and universality of the UN Convention against corruption. This international treaty enables the Participating States to use it as a legal ground for cooperation in the field of extradition.

In this connection I shall dwell on some problems arisen in the practice of international legal cooperation in combating corruption.

The institute of extradition did not become a purely legal means yet and sometimes extradition of guilty persons is defined by political reasons based on the character and level of relationship between the states.

Refusal to extradite a requested person because of granting him asylum is quite often connected with political motivation. In such cases application of international standards in the field of human rights protection is, in our opinion, contrary to the obligations assumed in accordance with the provisions of the Convention of refugees because this international treaty excludes granting of asylum to a person who has committed a grave crime of nonpolitical character.

Such approaches to extradition do not make possible to realize the universally recognized principle of inevitability of responsibility for the committed crime.

Dear ladies and gentlemen!

The international community has elaborated and embodied in the UN Convention against corruption universal, mutually acceptable approaches to combating corruption. And today it is extremely important to ensure a conscientious fulfillment by the Participating States of the assumed obligations. Much depends in this extremely important case on anticorruption authorities, which are represented by the participants of our Conference.

Thank for your attention and wish all of you a fruitful work.

Botswana

Overview and historical background of the Directorate on Corruption and Economic Crime (DCEC)

(Botswana – Southern Africa)

Presented by: Mr. Tymon M. Katlholo

Director- DCEC

iaaca 2006

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Historical Background

Ladies and gentlemen, I would like to share with you the DCEC's twelve years experience in the war against corruption in Botswana. Twelve years since the government of Botswana boldly and deliberately took a decision to set up an anti- corruption unit in response to a series of societal problems that manifested themselves into clear indicators of corruption. DCEC was born in September 1994 in order to respond to among other issues, the findings of three presidential commissions of inquiry into misappropriation of huge amounts of money. These were;

1. The 1991 inquiry into the supply of teaching materials in primary schools that concluded that a tender amounting to some P27,000,000.00 (US$ 4, 281,201) was inappropriately awarded.

2. The 1991 inquiry into the allocation of land in the peri-urban precincts of Gaborone city which established that officers responsible for allocating land were pressurized into making corrupt and improper decisions about land

3. The 1992 inquiry into Botswana Housing Corporation (BHC) that revealed collusive tendering practices leading to the fraudulent award of tenders and conflicts of interest where member of the board of directors of the corporation received loans from construction companies doing business with the BHC...

The DCEC was established along the lines of the Independent Commission Against Corruption (ICAC) of Hong Kong, after benchmarking against other countries. It has adopted the 'three-pronged strategy' which has proved to be effective and now internationally accepted as an effective tool in the fight against corruption. These are investigation, corruption prevention and public education.

Structure

The DCEC is a department of the State President Ministry and carries out its mandate as an operationally autonomous body. It is headed by the Director, assisted by one deputy. Five Assistant Directors, each of whom heads a distinct branch responsible for a specific task. The headquarters is in the Gaborone city, and there is an office in Francistown which takes care of the northern part of the country. Plans are advanced to set up another office further north of the country, (Maun) in the hub of the tourism capital of the country.

Highlights

- In 2000, Parliament effected an amendment to the proceeds of Serious Crimes Act of 1990to give the DCEC an additional mandate to investigate money laundering and to collate financial intelligence. This piece of legislation is used together with the Extradition Act of 1990 and the legal Mutual Assistance Act, as money laundering is both a national and transnational crime. Cases of money laundering, involving P5.2 million (US$ 824, 528) are before the courts.

- Regionally Botswana is a member of Eastern and Southern African Anti –Money laundering Group (ESAAMLG), a consortium of fourteen eastern and southern African countries with international organizations such as World Bank, IMF and Commonwealth Secretariat participating as collaborating partners in addressing issues pertaining to the financing of terrorism international campaign against corruption.

- In 2001the DCEC introduced an oracle based software programme to manage investigation cases and to keep statistics for trends and pattern analysis.

- Transparency International Corruption Perception Index continues to rank Botswana as the least corrupt in Africa.

Challenges

- HIV /AIDS pandemic continues to threaten the national economy in that a substantial percentage of the development budget is diverted towards the management of the scourge. The scourge has impacted on the DCEC operations in that a number of cases have been closed or withdrawn from the courts as key witnesses and suspects are either dead or sick. Highly skilled and trained officers are also either affected or infected, some sick, some dying and some taking care of their sick relatives. This has affected productivity and case completion rate.

- Strengthening of the legal framework - the Corruption and Economic Crime Act is not considered adequate enough to deal with issues of insider trading, whistle blowing and cyber crime. A shortfall that needs urgent attention in order to tackle corruption.

- Delays at the Directorate of Public Prosecutions (DPP) continue to pose a challenge for the DCEC, where upon cases are first delayed during the examination of dockets, before they are registered with courts and are further delayed after being registered with the courts, whereupon trial dates may be set six to seven months after registration. These delays have been attributed to shortage of staff at the DPP and at courts.

- Emerging trends in 'e-corruption' committed through electronic devices such as email, facsimile, internet and telephone. Botswana is yet to adopt the international criteria prescribed by United Nations in such cases. This challenge can not be divorced from the associated problem of jurisdiction outside territorial boundaries.

- Difficulty in extraditing suspects who skip bail and went abroad remains a challenge. The problem also involves bail conditions for foreigners and cooperation between states, sharing of crime data and harmonization of laws.

- The transnational nature of corruption and lack of cooperation by some jurisdictions.

- One of the challenges of DCEC is that the nation has a serious perception of corruption. That it is rampant in the country, while in fact, the reality is the reverse.

- Sophistication and complexity of emerging trends and patterns of corruption cases

- Outdated procurement procedures at local authority level

Conclusion

In conclusion, ladies and gentlemen, corruption is a complex issue which has no 'quick fix'. It is a journey and a long journey indeed. It needs proper planning, determination, resilience and above all, political will. It is my ardent hope and expectation that at the end of this conference, we will give impetus and reshape the focus of strategies and cooperation in the fight against corruption.

N.B.
Laws of Botswana can be accessed at www.agc.gov.bw under the legislative drafting division.

Cambodia

I

Prevention and Detection: Strengthening Domestic Systems for Effective Asset Recovery

Excellencies,
Distinguished Guests,
Ladies and Gentlemen,

Cambodia greatly appreciates being part of this conference and I would also like to extend my deepest thanks to the Secretary General of the IAACA for inviting us and giving us this great opportunity to participate in this very important conference and meeting. However, we are here not to share with you all the great experiences we have done but certainly to learn from your good works and make use of your experiences. Here, we would also like to share some of the things we have done so far on this issue.

First of all, as you may know, Cambodia had a long civil war for more than two decades. It bred authoritarianism, deprivation of freedom, incompetence, social injustice and corruption. These phenomena are the fundamental sources of human rights abuses, causing the abused people to be rebellious. So when the people have no full rights and powers, national development cannot succeed. Besides, through the past experiences in our country, corruption itself is a cause of riot, revolt, conflict and even war. Therefore, corruption is a social worm that we all have to fight against it, if we want progress for the nation, the happiness of the people and the world.

In short, it is very needed to eliminate corruption but it is not an easy task. Each country must have the political will to do it and national leaders must have the courage to vigorously lead the way. Our national leaders should make their personal affairs transparent by way of example. Over-all, the elimination of corruption must be done from the top to bottom. We cannot prevent the lower ranking officials from being corrupt if higher ranking ones are corrupt. So the first effective measure to eliminate corruption is to the establish the Law on Anti-Corruption which must provide for "Asset Declaration" for every national leader of the three branches of government and, in fact, all public officials. There must also be an independent organ to combat and monitor corruption, a watchdog agency, so that we can gradually carry out further development.

As a result of the Cambodian political will and commitment to fight corruption, the Royal Government is drafting the Law on Anti-Corruption, referred to the UNCAC, in which all state officials are required to declare their assets and liabilities, regardless of whether they are inside or outside the country and submit, in person, such declaration to the Supreme National Council for Anti-Corruption which will also be established upon this draft law.

The Supreme National Council for Anti-Corruption will receive information and complaints, including the anonymous ones, regarding corruption, the official in charge of investigation shall take actions to investigate the allegation. In cases where sufficient evidence is found, the case shall be established for prosecution. It means that the case is brought to the competent prosecutor for prosecution because the decision to prosecute can only be made by the prosecutor or general

prosecutor who is the prosecuting authority. During the investigation, the investigator has power to search, invite the suspect and other involved persons for interview and has power to arrest as judicial police in according with criminal procedure law in force. The investigator also has right to seize any exhibit against the suspect and other involved persons. The investigator also has the right to seize any evidence. In addition, if the investigator reasonably believes that any offense existed, he or she can ask the court for search warrant to check any bank or other financial accounts potentially related to the offense.

In case where a person is being investigated for, charged with, or tried for a corruption offense, the court may issue an order to freeze proceeds of corruption, liabilities, properties, or any instruments used or to be used involving any corruption offense. However, where the court finds that the assets of suspect are derived from legitimate sources, the court must nullify his or her freezing order and release those assets to that person.

Upon a conviction for a corruption related offence, the court may issue a confiscation order to seize proceeds of corruption including properties, instruments and materials that are subjects of corruption. Where the above proceeds of corruption have been changed from their original character or location, they nonetheless become subjects of confiscation. Any interest or any income from those proceeds of corruption shall also be subjects for confiscation. In the case where instruments or proceeds of corruption are found to be kept in other countries, the State shall take measures to demand the repatriation of that property by means of international cooperation.

In addition, for those persons convicted of corrupt practices, the punishment may include a prison term of one month to ten years and a monetary fine of double the amount of money obtained from corruption according to the amount of money or the property value. The punishment will be even more severe when the corrupt practices have been committed by officials of the Supreme National Council for Anti-Corruption or judges who are the corruption fighters.

Excellencies, Distinguished Guests, Ladies and Gentlemen,

In conclusion, while waiting the new draft law of Anti-Corruption, we have been implementing the article 37, 38 and 58 of the criminal law already in force related to corruption for those who commit a corruption or bribery offence. Moreover, the criminal procedure law also allows the prosecutor general or the prosecutor in each province or municipality to prosecute a corrupt offender after receiving information or complaint regarding corruption. Then, the court can investigate and try that offence. While the court finds guilty of the accused person, the court can punish that person in prison and a fine and also can confiscate proceeds of corruption including assets. The new law will strengthen these existing powers.

Furthermore, the Royal Government of Cambodia has recently issued a Sub-decree on the establishment of Anti-Corruption Authority that carries out the duties; to research for strategies to prevent and abolish corruption and submit recommendations to the government; to disseminate anti-corruption information and promote public support in preventing and combating corruption; to receive and consider all complaints alleging corrupt practices and to investigate all such complaints in accordance with criminal law procedure in force by submitting the case to the court.

Finally, I would like to extend once again my deep thanks to your Excellencies, Distinguished Guests, Ladies and Gentlemen for your kind attention!

II

Speech in the Beijing Conference, October 2006

International Assistance for the efficient Implementation of the United Nations Convention against Corruption

Colombia, as the United Nations has done, recognizes the relationship among drug trafficking, money laundering, corruption and terrorism. Therefore, Colombia, facing this vivid link, searches for the consolidation of stronger laws and international cooperation to put a halt to this kind of delinquency that threatens security, development and hinders obtaining peace.

Conventions against corruption contain measures aimed at having instruments, including international cooperation, which, in the first place, foster an efficient investigation and sanction of offenses typified by member states in accordance with the convention; and secondly, directed to diminishing the consequences of the behaviors which have been classified as offenses and are part of corruption. Like the Constitution, today criminal law provides special relevance not only to the sanction for the commission of the offense but also advocates the reinstatement of the law.

One of the most important instruments for Colombia is the United Nations Convention against Corruption signed in 2003, incorporated to the internal law through Act 970 of 2005 and pronounced its constitutionality through resolution (sentencia C-172 of 2006). There, it is admitted that corruption is another mechanism through which organized delinquency, terrorism, traffic of narcotics and people, money laundering, guarantee the continuity of their criminal action; hence, this scourge must be fought with strong and special strategies, which comprise a strict and internal legislation, committed authorities in the investigation and sanction of corruption acts and the international aid.

TYPOLOGIES ON CORRUPTION MATTERS IN ACCORDANCE WITH INTERNATIONAL CONVENTIONS

The United Nations Convention against Corruption, signed during the conference held in Mérida in the year 2003, demands preventive measures and penalization of the most common forms of corruption both in the public and private sectors. It also foresees measures that allow the repatriation of funds from illicit sources derived from corruption, including money laundering.

It is worth noting that the convention has an undeniable identity of purposes with the Inter-American Convention against Corruption, incorporated to the Colombian legislation through Act 412 of 1997, whose approval was declared by the Constitutional Court through decision (sentencia C-397) issued in 1998.

Now, it is clear that corruption has diverse classification. Depending on the space in which it is originated, it is possible to establish three kinds: a) The one that happens in the State, which can be

administrative or political; b) The one that occurs in the private sector; and c) the one that happens in the sectors of the community or the non-state public sector.

Bearing in mind the framework of the conference, the administrative corruption of the State will be an issue of discussion. Then, we will focus our attention on corruption behaviors in the public sector.

The convention foresees the responsibility of the states to adopt legislative measures to typify certain behaviors as offenses. For instance, bribery of national and foreign public servants and officials from public international organizations (articles 15, 16 and 17); embezzlement, misappropriation, deviation of goods by public servants (art. 17); traffic of influences or pulling strings (art. 18); abuse of authorities and functions in order to obtain undue benefit (art. 19); illicit enrichment of public servants (art. 21); bribery of people holding executive posts or holding post in private sectors (art. 22); misappropriation or embezzlement of goods in the private sector (art. 22); money laundering derived from offenses foreseen by the convention (art. 23); concealing or retaining goods voluntarily, even knowing they derived from such offenses (art. 24); and obstruction to justice regarding processes being carried out by virtue of the investigation and prosecution of the offenses mentioned (art. 25).

In Colombia, the following offenses are established:

1. Bribery of national public servants.
2. Bribery of foreign public servants and officials from public international organizations.
3. Embezzlement or undue misappropriation or other ways of deviation of goods by public servants.
4. Traffic of influences or pulling strings.
5. Abuse of functions or responsibilities.
6. Illicit enrichment.

It is possible to affirm that these behaviors of corruption are typified in the Colombian Criminal Code, within the offenses against public administration, being the legal foundations for the Office of the Attorney General of the Republic of Colombia (Fiscalía General de la Nación) to make a series of diverse charges within the investigations carried out and therefore release the corresponding indictments.

Thus, behaviors of bribery are fitted and adapted in our Criminal Code:

Firstly, the offense of bribery for giving and offering (article 407 CP, Colombian Criminal Code) which contains the behavior of the private individual who gives or offers money or any other benefit to a public servant to delay or omit any action inherent to his/her post; execute one contrary to his/her official responsibilities or that must execute in development of his/her duties.

Similarly, the United Nations Convention against Corruption typifies behaviors predicable of public servants, described with the verbs request and accept. The behavior of requesting in the Colombian legislation is provided by article 404 under the denomination of concussion, though in our legislation it has a wider scope for the typical adaptation of the behavior; whereas the criminal law foresees as punitive the behavior of the public servant who taking advantage of his/her post or functions constrains or induces someone to give, promise or, as it is stated by the convention, request.

With regard to the acceptance, the Criminal Code develops the following behaviors: proper and improper bribery [“el cohecho propio y el cohecho impropio” (articles 405 and 406)] that are

differentiated by the act: one for delaying or omitting one proper, and another for carrying out one contrary. Besides, the Criminal Code reproaches the behavior of a public servant who receives money or any other benefit from a person who has an issue under his/her knowledge.

The convention also foresees bribery of foreign public servants and officials from public international organizations. It deals with two situations: the first one refers to a promise, offering or concession to a foreign public official, which is typified in article 433 of the Colombian Criminal Code under the denomination of Transnational Bribery. On the other hand, foresees as punitive behavior the request or acceptance by foreign public servants and officials from public international organizations. There is a gap regarding this issue in the Colombian legislation since this behavior is not penalized.

Besides, concerning the misappropriation of goods by public servants, it is worth noting that this offense is the most common in Colombian and it is simultaneous, especially, with the offense of undue signing of state contracts. Well, it seems to be the most widely used mechanism of corruption to appropriate goods from the State. The Colombian legislation intends to cover all possible ways of occurrence and considers the offenses of embezzlement for appropriation, use, different official application, involuntary or by omission committed by the holding agent, among others ("peculado por apropiación, el peculado por uso, por aplicación oficial diferente, el peculado culposo y omisión de agente retenedor"). In respect to private individuals who do not exercise public duties, and therefore do not have the qualifications requested by the kinds for the active subject, the Colombian legislation foresees, within the offenses against financial patrimony, the type of qualified breach of trust ("abuso de confianza calificado").

Similarly, it establishes the behaviors of traffic of influences or pulling strings of public servers, abuse or taking advantage of authority and illicit enrichment, as required by international instruments.

One issue which is worth noting is that the convention does not set forth any criminal sanction for behaviors related concretely to the contract matter. In spite of this fact, the description of the offense of undue signing of contract has a wide regulation in the Colombian internal regulation, since it is a recurrent modality to take possession of state monies. Hence, they are behaviors of special attention within inquiries and investigations carried out by the Office of the Attorney General ("Fiscalía General de la Nación"), and in their execution prevails the phenomenon called "white collar delinquency."

Lastly, regarding the internal legislation, it is opportune to point out that these behaviors are also provided as disciplinary conducts with exemplary sanctions in Act 734 of 2002, Unique Disciplinary Code ("Código Disciplinario Único").

STRUCTURE OF THE COLOMBIAN STATE IN THE FIGHT AGAINST CORRUPTION

The Constitution of 1991 created a jurisdictional, autonomous and independent entity, the Office of the Attorney General ("Fiscalía General de la Nación"), in charge of investigating and accusing presumed infractors of the criminal law.

Furthermore, there control bodies such as the Office of the Inspector General (Procuraduría General de la Nación) and the Office of the Comptroller (Contraloría General de la República) in charge of also investigating and penalizing corruption behaviors. In Colombia, the Office of the Inspector General (Procuraduría General de la Nación) judges the behavior possibly infractor of duties in the orbit of a special subjection relation, that is, duties which possess implication effect in the exercise of

a public or administrative responsibility; i.e., faces the behavior of those who have public duties subject to a special functional responsibility and determines if during their development the rights were threatened, prohibitions have been made or the regimen of conflict of interest have been violated.

Hence, the judicial consequences derived from responsibility findings in this orbit will seek for the removal of those public servants who eventually might have been sanctioned temporarily or definitely, or who are subject to pecuniary penalties or both.

The Office of the Comptroller (Contraloría General de la República) exercises a fiscal control aimed at determining the patrimony detriment of the State and imposing sanctions to reach recuperation.

The Office of the Attorney General of the Republic of Colombia (Fiscalía General de la Nación), which was mentioned in detail above, investigates from a criminal perspective the behaviors that might attempt or place at stake the judicial goods such as the Public Administration and Administration of Justice, requesting before proper judges to impose detention measures and procedures to forfeit goods derived from illicit activities, among others.

Then, in Colombia a behavior considered as corruption can, without implying a violation of the principle of *non bis in idem,* receive some reproach from criminal, disciplinary and fiscal perspectives, even in occasions can involved the three, in addition to the jurisdictional political-constitutional-disciplinary process of disinvestiture, process that examines the compliance with all the responsibilities emanated from the democratic-representative principle and whose judicial consequence (sanction) pursues the conservation of representative democracy and which only hinders the return to the service by popular election but no through any other ways.

At government level there is a Presidential Program of Modernization, Transparency and Fight against Corruption, it is a division of the executive which channels complaints and sues file in such branch of public power and keeps in contact the different investigative bodies of the country. This office deals with defining a public policy that the Government must adopt in respect to the fight against corruption. Recently, a National Counter-corruption Plan was created.

ROLE OF THE OFFICE OF THE ATTORNEY GENERAL OF THE REPUBLIC OF COLOMBIA (FISCALÍA GENERAL DE LA NACIÓN)

Taking into account the proliferation of offenses against Public Administration through the Colombian territory, a persistent impunity, a social discontent that affect the image of the country nationally and internationally, and specially in terms of administration of justice, the investigating and control institutions, among them the Office of the Attorney General of the Republic of Colombia (Fiscalía General de la Nación) have made efforts to carry out more efficiently the mission of judicial organisms for the sake of a penal and criminal policy in the fight against corruption.

Corruption is a phenomenon present nowadays in many facets which requires actions in the internal scope of each country and carries them to an extreme with special attention on actions in the internal environment in connection with international cooperation matters to fight.

These two actions of combat, we could say that in Colombia, are filed at the Office of the Attorney General of the Republic of Colombia (Fiscalía General de la Nación) when corruption violates the written rules and regulations in force, emanated by the public authority, contained in the Political

Constitution or laws or Acts, specially Act 599 of the year 2000, Criminal Code, normativity that establishes the precepts or orders which abstractly comprise the criminal regulations and set forth the rules which guide and discipline human behaviors, making possible to understand corruption from this perspective as those behaviors derived from legal provisions.

The Office of the Attorney General of the Republic of Colombia (Fiscalía General de la Nación), as of the time the Constitution of the year 1991 being the duty of the State "avoidance of offenses as a way to protect the society", is forced, in accordance with the provisions of article 250, modified by legislative act 03 of the year 2002, to exercise the criminal action and conduct the investigation of the facts that constitute the features of an offense that is heard by this entity through a complaint, special request, dispute or exofficio, provided that there are enough reasons and factic circumstances which indicate the possible existence of such an offense.

Legislative act generated the issuance of Act 906 de 2004, which implemented gradually the accusatory system, implying a new structure in the Colombian criminal procedure. A judicial tradition is split in terms of the investigation and prosecution model of criminal behaviors. The Attorney General does not conduct proceedings to clear up facts, assess or adopt or make decisions which might eventually limit the fundamental rights. The Office of the Attorney General of the Republic of Colombia (Fiscalía General de la Nación) has to inquire and investigate criminal behaviors, secure probatory material elements or with evidentiary vocation, which will constitute evidence when conducted during oral public trials, with immediacy and concentration, subject to contradiction, in an adversary process and before the judge who heard the case.

It is a great challenge for the Office of the Attorney General of the Republic of Colombia (Fiscalía General de la Nación) the application of the new criminal procedure with agile proceedings to put delinquency and organized crime to a halt, without pushing aside the criminal proceedings being conducted in accordance with the former criminal procedure that imply the commitment to unload judicial offices by January 1, 2008. Also aware that the delay in judicial processes generates impunity and consequently the increase of corruption since the message is not addressed to the community in respect to the compulsory content of rules and regulations and mandates provided by our criminal body of laws.

But this delinquency and organized crime that generate corruption must also be fought with international tools; hence, international assistance is vital to share information, evidence, extraditions, technical assistance and, especially important, to achieve the recovery of assets derived from illicit activities. Recovery of assets set forth under the United Nations Convention against Corruption (CAC) as a very important tool to fight scourge. In this sense, necessarily the countries that have signed and ratified the international conventions must adapt and adjust their internal body of laws to the suggestions made by the international instruments. This, in Colombia, is also developed by the constitutional postulates that seek transparency in the exercise of public duty as essential condition for the due functioning of the democratic system[1].

Then, the Special National Unit of Crimes against Public Administration through Resolution 0227 of the year 1998, setting as a goal the investigation of behaviors that violate or put at stake the judicial welfare of public administration, bearing in mind the particularity of the facts, its seriousness, the complexity, the social impact and the commitment of high amounts of the treasury funds. The assignment of the case is done directly by the Attorney General of the Republic of Colombia, who in person makes a follow-up to all the investigations being carried out.

[1] Constitutional Court, Resolution (Sentencia C-172 of 1996)

The Special National Unit of Crimes against Public Administration is back up by the judicial police made up of the Prosecutor General's Corps of Technical Investigators (Cuerpo Técnico de Investigaciones, C.T.I.); Administrative Department of Security (Departamento Administrativo de Seguridad, D.A.S.); and the Colombian National Police (Policía Nacional, DIJIN), which excels with a group of special investigators in crimes against public administration comprised by different professions such as lawyers, accountants, economists, business administrators, architect and civil engineers. Moreover, support is provided to carry out investigation techniques such as undercover operations, search and seizures to gather evidentiary material elements.

Besides, it is worth remarking the structure of each public administration unit in the different sectional offices of the Office of the Attorney General of the Republic of Colombia (Fiscalía General de la Nación), whose investigations are subject of follow-up conducted by the National Direction of Prosecutors' Office (Dirección Nacional de Fiscalías). They are units exclusively devoted to public administration that count on special personnel.

Finally, it is necessary to highlight that the Office of the Attorney General of the Republic of Colombia (Fiscalía General de la Nación) does not work alone in the fight against corruption but it counts on the important support provided by control organisms. In deed, an interinstitutional work has been developed regarding the fight against administrative corruption in Colombia.

Under this guideline, the Office of the Attorney General of the Republic of Colombia (Fiscalía General de la Nación) signed a covenant with the Office of the Inspector General (Procuraduría General de la Nación) and the Office of the Comptroller (Contraloría General de la República) in the framework of article 113 of the Political Constitution, which sets forth the harmonious cooperation that there must be among the organisms of the State to attain these objectives. In this sense, the agreement is aimed at carrying out joint investigations within the competence framework of the each institution.

This interinstitutional mission has enabled the logistic assistance among the entities, saved efforts, guaranteed results, and has become a great state barrier against this kind of criminality.

RECOVERY OF ASSETS

In the fight against corruption on the side of the Office of the Attorney General of the Republic of Colombia (Fiscalía General de la Nación), it is worth mentioning the measures adopted to recover assets derived from the offense.

International instruments, especially the United Nations Convention against Corruption (CAC), establish the concepts of preventive attachment, seizure and forfeiture, and set this paragraph as a fundamental principle of the convention aimed at recovering assets derived from the offense.

This international instrument suggests that preventive attachment and seizure be allowed for the sake of forfeiture:

- The product of the offense or goods which value corresponds to such product.
- Equipment or any other instruments used or destined to the commission of the offense.
- The product transformed or converted partially or totally.

- Product of the offense mixed with a licit source.
- Incomes derived from the offense or goods transformed or converted or intermingled.
- Seizure of banking, financial or commercial documents.

It is also suggested that member states consider the possibility to request the infractor to show the licit origin of the presumed product of the offense or any other properties subject to forfeiture.

And adopting measures to rule the administration of attached, seized or forfeited properties regarding competent authorities.

In this respect, the Colombian legislation rules within the criminal process the precautionary measures on goods subject to forfeiture, which proceeds on the properties and resources of the criminally responsible individual that originated or derived directly or indirectly from the offense, mixed, concealed, equivalent properties, in accordance with article 82.

Precautionary measures are material such as seizure and occupation. The measure can also be judicial as the request to suspend the power to dispose properties and resources (articles 83, 84 and 85).

On the other hand, precautionary measures on the properties of the accused individual are ruled to protect the right to compensation or indemnity for damages and harm caused by the offense, so it is necessary to establish the attachment and seizure of properties in a sufficient amount (art. 92).

Besides, a special fund is ruled for the administration of properties subject to measures for the purpose of seizure at the discretion of the Office of the Attorney General of the Republic of Colombia (Fiscalía General de la Nación) (art. 86).

Finally, and as an independent action of the criminal process, the figure of extinction of domain is set forth autonomously over the properties procured illicitly, action defined and ruled under Act 793 of the year 2002.

In accordance with public corruption, the extinction of domain action establishes as illicit activities among others: “behaviors committed, in detriment of the public funds, and which correspond to the offenses of embezzlement, undue interest in signing contracts, contracts signed without complying with all the legal requirements….”

International instruments recommend the need to limit quickly and timely the financing of criminal organizations in order to counteract their capacity of action. This forced the State to adopt measures against the properties and resources derived directly or indirectly from illicit activities.

First, Act 333 of the year 1996 – extinction of domain regulation - was issued. But through time, it was noticed that there were certain failures to extinct the properties since it was practically subject to the luck of the criminal process and they were endless before reaching a resolution with the verdict showing the illicitness of the activity carried out by the indicted or convicted.

This aspect made the Colombian Government considered that “criminal enterprises due to their capacity of aggression and involvement with other forms of organized delinquency have consolidated a power that represents an unpredictable and imminent hazard that originates a serious disturbance of public order on Colombian territory”. Therefore, and having being declared the internal state of public unrest throughout the Colombian territory, Legislative Decree 1975 dated September 2002 is

issued. This decree replaces Act 333 of the year 1996 and rules the action and proceeding of the extinction of domain.

Decree issued during an exceptional state that later complied with its legislative proceeding, passing the new law of extinction of domain, based on constitutional articles 34 and 58.

Article 34 develops a general principle of law: "nobody is allowed to obtain benefit or take advantage or derive any rights from crime or fraud." Thus, in this article it is precisely admitted through judicial resolution to declare extinct the properties acquired by illicit enrichment in detriment of public funds and with serious deterioration of social moral.

Then, the Constitution sets material limits to the process of procuring properties and the State is given a judicial tool to make effective the postulate through which crime, fraud and immorality do not generate rights.

On the other hand, article 58 provides the right of ownership acquired in a licit manner and according to legal provisions, without harm and detriment to private individuals or the State. It also warns that ownership is a social function which implies obligations.

Therefore, our legal order protects the right of ownership acquired licitly and pursuant to legal provisions. Thereby, whoever is the holder of the ownership title acquired irregularly or illicitly, it only has an aspect of right susceptible to be weakened at any time.

This legislation has provided prosecutors with effective tools to pursue the property owned by delinquency. There is a National Unit of Money Laundering and Assets Forfeiture in charge of these processes, but the task is not so easy since crime reaches specialty day by day and transcends frontiers. It is important then to insist on legal assistance and cooperation and the subscription of agreements dealing with property to make possible the observance of these international instruments which allow the extension and scope of the effects of the forfeiture action abroad member states.

It is important to draw attention to the extended cooperation to be provided among countries to avoid the diversion of resources toward well-known tax paradise where this pursuit is frustrated.

INTERNATIONAL ASSISTANCE

The Colombian legislator has made great efforts to adjust the international requirements to our domestic legislation. The Criminal Procedure Code provides a specific chapter which rules international assistance dealing with evidence; parameters are established to request legal assistance from foreign authorities and transfer of witnesses and experts; assist in the investigation of crimes of international nature; and to open the possibility of executing in Colombia the extinction of domain orders released by competent foreign authorities. Provisions that facilitate the task of district attorneys while filing inquiries and investigations and allow them to decipher the behavior of transnational delinquency.

It is acknowledged that the corruption phenomena affects all countries and crosses frontiers. Hence, the need of implementing and applying mutual assistance mechanisms to prevent, prosecute and repress this kind of criminal behaviors.

International judicial assistance is at present an efficient mechanism to administer justice in a material

sense. Several mechanisms have been designed and applied. It is time to analyze which these mechanisms are, which their basis is and how they have been implemented in Colombia.

Legal mutual assistance is legally supported on international instruments and the statement that cooperation has to be provided independently from political, financial and social systems with the purpose of keeping peace, and international safety and encouraging progress and stability of populations.

The International Community has provided that the states cooperate among them to carry out their relevant purposes, the prevention and prosecution of crimes in their different forms become a motive to live together peacefully and have fair order, which are the essential purposes of the State.

Colombia has subscribed multi-lateral and bilateral judicial assistance covenants with different countries to achieve its goal of fighting and sanctioning infringers of the criminal law. Thereby, it is essential the subscription of the Memorandum of Understanding to strengthen the mutual legal assistance between the Office of the Attorney General of the People's Republic of China and the Office of the Attorney General of Colombia.

Now, it is important to remember that there are two procedural systems in Colombia at this time: a mixed system and an accusatory system which is progressively going to be applied on all the Colombian territory. The judicial cooperation remains under the same criteria in the criteria.

The general principle of cooperation provided by Act 906 is different from what is provided by Act 600 of 2000, because of the incorporation of the possibility of attending requests made to national authorities by the jurisdiction of the International Criminal Court.

Further, it is established the possibility of fulfilling directly the requirements of INTERPOL red notices under the condition of remanding individuals in said position to the custody of the Office of the Attorney General of the Republic of Colombia with extradition purposes.

Likewise, the double-jeopardy principle is added, which is repeated in the terms above referred to, in the amend, and the possibility of creating joint operations units among different countries pursuant to the provisions of domestic law and under the direction and coordination of the Colombian Attorney General. In any event, such proceedings are carried out under the observance and absolute respect for the requirements of territorial jurisdiction governing such events.

It is worth noting that criminal assistance can be provided even if the behavior is not described by domestic law, unless it is against the value and principles provided by the Colombian Political Constitution.

Judges, prosecutors and judicial police units are empowered to request foreign authorities and international agencies, according to channels established for such effect, the provision of any material evidentiary elements or the practice of judicial proceedings. Besides, the Colombian Procedural Law, in support of the use of technical means, provides the possibility to transfer individuals that may act as witnesses or experts on foreign territory as well as to practice proceedings on their site by granting prior authorization to foreign authorities entitled to perform them.

Within this context, it is worth noting that it is possible, with the authorization of the Colombian Attorney General, the attendance of foreign judicial authorities to practice relevant judicial

proceedings with the assistance of the Public Ministry and under the coordination of the delegate district attorney in charge.

In addition to cooperation mechanisms such as letters rogatory and letters requisitory, the Colombian legislation based on the international experience and the treaties signed provides cooperation techniques through specialized operations to participate and obtain useful information in order to clarify the facts object of the investigation. It is possible the participation of authorities from various countries in such techniques, which implies mutual assistance.

Pursuant to such proceedings, operations have raised from different international instruments such as the 2003 Mérida Convention. Within the investigation mechanisms, there have been consolidated investigations techniques, particularly where it deals with the discovery and dismantling of international organizations, such as it is the case of infiltrations.

Infiltration consist of introducing an undercover agent - that cannot become an inciter - into a criminal organization in order to obtain useful information within an inquiry or investigation prior study assessment, decision and authorization of the district attorney in charge. This is a very useful tool to investigate corruption nets inside public entities as in the event of granting service charges in exchange of money or changing criminal or police records in exchange of payment, or altering freight charges or receipt for taxes or liens.

IMPLEMENTATION OF THE CONVENTION

The purpose of this meeting is to seek an effective international cooperation that allows the implementation of the United Nations Convention against Corruption, such as:

(i) To promote and strengthen the steps to prevent corruption acts. With this purpose, Colombia counts on the Office of the Inspector's General (Procuraduría General de la Nación) as the agency in charge of supervising those who hold public posts, not only to impose disciplinary sanctions but to seek that public function be developed observing the principles of transparence, morality and ethics. Training is conducted at a national level. Colombia also counts on Committees of Community Inspectors (Veedurías ciudadanas). Nevertheless, there is not a corruption observatory to systematize which is the most frequent corruption behavior. Besides, it is intended to create a risk map per regions and sectors.

(ii) Concerning the efficient and effective fight against corruption, the Office of the Attorney General of the Republic of Colombia (Fiscalía General de la Nación) criminally investigates such behaviors. It is important to point out, as it was formerly stated, that the Colombian legislation includes all requirements provided by the convention, describes the behaviors of embezzlement, bribery, misappropriation of property, traffic of influences and illicit enrichment. In addition, it punishes other behaviors that attempt against public administration.

(iii) With the purpose of encouraging, facilitating and supporting international cooperation and technical assistance in the prevention and fight against corruption, including the recovery of assets, as stated, Colombia has subscribed instruments that allow the country to cooperate and obtain assistance from different nations, being of great importance the agreement of understanding between the Office of the Attorney General of China and the Office of the Attorney General of Colombia (Fiscalía General de la Nación).

On the other hand, in furtherance of its mission, in addition to the Extinction of Domain Unit, the Office of the Attorney General of the Republic of Colombia (Fiscalía General de la Nación) counts on the cooperation of the Special Administrative Unit of Financial Information Analysis, UIAF ("Unidad Administrativa Especial de Información Análisis Financiero), which allows the institution to be informed about operations, mainly related to assets laundering issues. Besides, this tool has allowed the National Counter–Corruption Unit to gather valuable intelligence information concerning operations carried out by individuals who are investigated for corruption.

(iv) With regard to the purpose of encouraging the obligation of submitting statement of accounts and due management of issues and public property, mayors and governors in Colombia submit the Colombian Congress their statements of account to the community and public authorities present annual reports focused on their management to.

COLOMBIAN EXPERIENCE IN THE INVESTIGATION OF CRIMES

Public order situation in Colombia is not ignored or a secret at an international level. There are various actors in our country that take part in developing corruption acts. Lately, it has been observed how public funds are diverted to outlaw groups, which implies taking one side against any of the actors of the armed conflict.

The involvement of paramilitary groups, guerrilla, and drug traffickers in the investigation has generated some risk to those who have the mission of administering justice, as well as to those who may cooperate by providing information to advance in the investigations. Hence, it is important to create a strong victims and witnesses protection programs, as well as to offer guarantees to all judicial officers.

Colombia is committed to fighting corruption, although it is a scourge that affects all countries, it particularly endangers developing countries such as our. Therefore, it is of great importance to joint efforts in the effective implementation of the convention to seek safety, development and peace.

III

SPEECH
By H.E. PRAK HAM
SECRETARY OF STATE
MINISTRY OF NATIONAL ASSEMBLY-SENATE RELATIONS AND INSPECTION
KINGDOM OF CAMBODIA
At the First Annual Conference and General Meeting of
The International Association of Anti-Corruption Authorities
In Beijing, China
From 22-26 October 2006

Your Excellencies
Distinguished Guests
Ladies and Gentlemen

Today is an auspicious occasion that all of us come from different corners of the world to attend this

First Annual Conference and General Meeting of the International Association of Anti-Corruption Authorities (IAACA) in Beijing, People Republic of China. Please kindly allow me to express my deep thank to the IAACA that gives the Kingdom of Cambodia an opportunity to share our views of Anti-Corruption.

First of All, let me give you a short introduction about the Kingdom of Cambodia. The Kingdom of Cambodia has a land area of 181,035 square kilometers in the southwestern part of the Indochina peninsula, about 20 % of which is used for agriculture. The capital city is Phnom Penh. The country administratively composed of 24 provinces, 185 districts and 1,621 communes. Cambodia's population was counted as 11.4 million at the 1998 census and is projected to grow to 14.8 million in 2006 (NIS 2000:24). As of the 1998 census the population growth rate was 2.5 % per annum. About 85 % of the population lived in rural areas.

Cambodia has traversed a long way since emerging in January 7th, 1979, from almost four years of its darkest period in history. From below ground zero, the country bounced back to normalcy and rebuilt destroyed institutions and capacity in various fields. Starting in 1993, faster development could take place with the resumption of long denied external assistance.

Three distinct periods of progress could be seen in Cambodia's recent past. The first was from 1979 to 1993 when it emerged from almost four years of genocidal oppression. Everything had to start from scratch, from below ground zero. With hope and perseverance, and even in conditions of international isolation, the country was rebuilt and reached a stable stage but scars and legacies still remain including in terms of skills and manpower shortages. The second was from 1993 to 1997, when in mid-1997, the country was suddenly overwhelmed by two unrelated crisis, externally the East Asia economic crisis and internally the sudden division and disruptions, both occurring almost simultaneously. The third, starting from 1998, with the formation of the second mandate of the Royal Government of Cambodia tills now, a period of peace, stability and uninterrupted growth and progress. Indeed, while most work up to 1997 were somewhat in the nature of rehabilitation or "Band-Aid" efforts, serious rebuilding work commenced in 1998, while the "hardware" by way of building physical infrastructure has been proceedings, the "software" of changing economic and legal system, reinforcing social capital and institutional development, is by its very nature time consuming.

In 2005, the GDP growth in Cambodia reached 13.4 % in real term, compared to 2-2.5 % in the early year estimation. Among traditional factors contributing to this increase are the garment exports and tourism which were external factor, and the constructions which were domestic factor. However, the key driven of this growth was agriculture. It jumped by 13.1 % growth, while rice and crop production played a key role with the increase of 27 %. Total rice exports, both registered and unregistered, amounted to more than 800,000 tons in 2005. In fact, it was for the first time that Cambodia was able to beat its own record in 1968 when it exported a total of 500,000 tons of rice. Good performance in paddy harvest in 2005 was though a result of very favorable weather condition; however, the other key reason of this high growth was the recent efforts of the Royal Government of Cambodia under the direct leadership of Samdech Prime Minister Hun Sen in developing and constructing irrigation system as well as in promoting agricultural productivity. In 2005, per capita GDP in Cambodia reached US$ 448, an increase of 33.9 % in real term compared to 2000. Samdech Prime Minister Hun Sen has managed sound macro-economic policy to provide a solid foundation for development of all sectors and an enabling environment for private sector to flourish.

Your Excellencies
Distinguished Guests

Ladies and Gentlemen
The very first major decision of the Royal Government of Cambodia (RGC) starting from the third term in 2004, was to adopt a holistic and comprehensive Rectangular Strategy for "growth, employment, equity and efficiency", following the Triangular Strategy, for addressing Governance and Socio-Economic Development issues and efforts. Rectangular Strategy provides a clear and focused framework to move the country forward on the path to fast socio-economic development. The core of the Rectangular Strategy is Good Governance focused at four reform areas: (1) Anti-Corruption, (2) Legal and Judicial Reform, (3) public administration reform including decentralization and de-concentration, and (4) reform of the armed forces, especially demobilization. Fighting corruption is the priority goal among other priority of the Royal Government of Cambodia. Corruption is a cancer of the world. Corruption is debilitating and to orderly growth. A variety of actions, in many areas including reforms and behavioral changes, are needed to combat corruption and instill a "Culture of Service" whereby public administration acts truly as an instrument of efficient, effective, speedy and impartial service to all Cambodians.

The priority goals are:
Reduce corruption significantly by 2010; and
Strengthen education, publication and dissemination of legal and related materials

The Strategy for drastic reduction and eventual elimination of corruption will follow a three-pronged approach__enforcement, prevention and public support/public education. Royal Government of Cambodia is determined to take concrete action that strike at the root causes of corruption by ensuring predictability, enhanced transparency and clear accountability in all its actions. Various proposed priority actions include:
Fast track passing of the comprehensive Anti-corruption Law, and make it conforms to best international practices
Build capacity of concerned institutions to effectively manage and enforce the Anti-corruption Law, including strengthening inspection tasks
Set up an independent and effective body to fight against corruption
Ensure the strictest and total enforcement of the law sparing no one from its provision, however highly placed
Strictly adhere to competitive public bidding and transparency in all contracts, leases or disposal of State assets
Make audit processes and public procurement more efficient and effective to address accountability and transparency
Continued to already commenced concrete efforts to incrementally increase the low level of remuneration of civil servants so that the temptation for corruption could be reduced
Streamline the delivery of public service to contain opportunities for corruption particularly in areas related to trade, commerce and investment
Establish a Citizens' Bureau as a watchdog mechanism to contain corruption
Develop and enforce code of ethics for the public sector arena for fighting corruption as was done in joining the Anti-Corruption Action Plan for Asia and the Pacific
Prevent and avoid any "waste" of public assets or resources, including incurring higher than necessary cost of production of goods and delivery of services, ensure in this regard that global competitive advantages are fully availed of for investments, avoiding those that are less competitive

Moreover, in order to strengthen the Anti-Corruption task force even more effectively and efficiently, the Royal Government of Cambodia has authorized the Ministry of National Assembly-Senate Relations and Inspection an important mission and mandate as the followings:

To conduct and govern all coordinating affairs,
To make relations with National Assembly and the Senate
To disseminate existing and new adopted Laws
To make inspection of all fields in the Kingdom of Cambodia in order to fight against corruption, power abuse, and misconducts.
Your Excellencies
Distinguished Guests
Ladies and Gentlemen
On behalf of the Ministry of National Assembly-Senate Relations and Inspection of the Royal Government of Cambodia and myself, I would like to take this opportunity to suggest a global cooperation and supports in order to fight against corruption. With these cooperation and supports I am sure that one day our world will become a neat and clean place for ourselves and our children to live on. At last but not least, I would like to wish you a good health, good luck and happiness.

Thank You.

Canada

1International Corruption and International Assistance

by

Inspector Stephen Foster
Commercial Crime Branch
Royal Canadian Mounted Police

I'm here as a representative of the Commissioner of the Royal Canadian Mounted Police. I think it only fitting that I start with a quote from him:

On May 25, 2001, Commissioner Zaccardelli made this statement in his Keynote address to the Federation of Canadian Municipalities:

"Globalization in and of itself is a good thing. It leads to the opening of borders, trade and cultural barriers and reduces the world to a "global village" which — at the conceptual level — can only enhance our understanding of each other across cultures.

But globalization also has a darker side. It provides the criminal element with the same opportunities. It leads to the rapid, and mostly unimpeded movement of people, goods and information across the world.

This in turn leads to transnational crime: which includes money-laundering, trafficking in drugs,

illegal weapons and human beings.

The fact that we are facing essentially the same policing challenges around the world today is further proof of the extent of globalization."

What the Commissioner said then is more true today than when he said it.

Corruption is a global problem. It is experienced in all countries to a greater or lesser extent. Corruption has its roots in culture. So, our leaders must be good role models and we must instill strong values and ethics in our youth.

Corruption, whether in government, financial institutions, big business or small business, adversely affects the public's confidence in the economic integrity of our countries. Wherever and whenever it occurs it needs to be reported to law enforcement so that appropriate action can be taken.

When corruption occurs it is almost always the result of a compromised control, an ineffective control or a lack of controls. However, it also results from a compromise of personal integrity. Corruption is driven not only by opportunity it is driven by greed.

Corruption, like other crimes, must be tackled at all levels - from big to small business, from financial to government institutions, from our young to our old.

To address the challenges of international policing, which includes corruption, we look to international cooperation. International cooperation gives law enforcement long arms. International cooperation is a two-way street.

Among the international crime fighters' tools are informal assistance, formal letters of request, and treaties. These tools must be used within our legal frameworks.

In Canada there are a variety of interrelated statutes which impact international cooperation. These statutes include the Constitution Act, the Criminal Code, the Mutual Legal Assistance in Criminal Matters Act, the Immigration Act, the Immigration and Refugee Protection Act, the Extradition Act, the Crimes Against Humanity and War Crimes Act, and the Canada Evidence Act.

Informal assistance is an often used international crime fighting tool. Informal assistance allows for police to police interaction. Police-to-police assistance includes providing general information and intelligence sharing, conducting basic inquiries and conducting basic interviews. Informal assistance does not include obtaining and acting on judicial authorizations such as search warrants. Informal assistance may be expected to be more common between neighbouring countries and English common law countries.

Mutual Legal Assistance Treaties and International Letters of Request are another tool in our international crime fighting tool bags. In Canada our act is the Mutual Legal Assistance in Criminal Matters Act. Under this Act Canada has a number of binational treaties with other countries. These treaties facilitate international cooperation on formal international letters of request.

Letters of request, also known as letters rogatory, are formal letters requesting assistance in obtaining evidence from outside the requesting country. In Canada such letters are prepared by our Department of Justice's International Assistance Group with input from the police.

For a foreign letter of request to be enforceable in Canada it must meet four jurisdictional requirements. The first requirement is that the mutual legal assistance agreement provides for assistance with respect to the subject matter of the request. The second requirement is that the Canadian court must be satisfied that the evidence is being sought for a matter which is before the foreign court. The third requirement is that the Canadian system could have issued such a similar letter of request. The fourth requirement is that the evidence sought is within the Canadian court's own jurisdiction.

Though a letter of request may meet these jurisdictional requirements it must still meet additional requirements which have been established by case law. The courts must have discretion in determining whether or not the letter of request should be enforced. In this regard the courts may consider: the relevance of the evidence being sought; whether the evidence is necessary; whether the evidence is available otherwise; whether, if documents are requested, they are described with sufficient precision; and, whether the request is contrary to public interest or Canadian public policy.

Extradition is another tool in our crime fighting bags. Extradition again requires international cooperation.

An "extradition agreement" is an agreement that is in force, to which Canada is a party, and which contains a provision respecting the extradition of persons.

An "extradition partner" is a State or entity with which Canada is a party to an extradition agreement or with which Canada has entered into a specific agreement. By special agreement extradition with a non-partner is possible. The Minister of Foreign Affairs may, with the agreement of the Minister, enter into a specific agreement with a State for the purpose of giving effect to a request for extradition in a particular case. If there is no extradition treaty or no specific agreement there can be no extradition.

On the request of an extradition partner, a person may be extradited from Canada in accordance with our Extradition Act and a relevant extradition agreement for the purpose of prosecuting, imposing a sentence, or enforcing a sentence. The offence in respect of which the extradition is requested must be punishable by the extradition partner, by imprisoning or otherwise depriving the person of their liberty for a maximum term of two years or more, or by a more severe punishment; and the conduct of the person, had it occurred in Canada, would have constituted an offence punishable in Canada by a maximum of two years or more in the case of an extradition agreement and a maximum of five years or more in the case of a specific agreement.

Extradition cases must pass the "dual criminality test". That is a person can only be extradited if the offence is a crime in Canada as well as in the country seeking the extradition.

Our Extradition Act does not require the potential sentences to be equal. This appears to present a problem for Canada because we do not have a death penalty but we receive extradition requests from countries which do have the death penalty. The problem is solved by Section 44(2) of the Act. Under Section 44(2) our minister of justice has the discretion to refuse extradition if the extradition partner could impose the death penalty under its own laws. However, such extradition requests may still be accommodated by our system. For such requests our minister of justice will seek assurances that the death penalty will not be imposed and may allow the extradition if the requesting country provides the assurances.

Coincidentally, Article 44 of the UNCAC deals with extradition. While the Convention includes a provision which deals with extradition, State Parties may or may not use the Convention as the basis for extradition.

Speaking of the Convention, another of the tools in our international crime fighters' bags is treaties. The United Nations Convention Against Corruption is one of the newest tools in our bags. It likely comes as no surprise to this audience that the Convention has been signed by 140 or more countries and ratified by 70 or more countries.

I have a relevant quote about the Convention from the UN's Anti-Corruption Toolkit, (September 2004)

"The United Nations Convention against Corruption represents a major step forward in the global fight against corruption, and in particular in the efforts of UN Member States to develop a common approach to both domestic efforts and international cooperation."

Chapter II of the Convention concerns prevention. Chapter III concerns criminalization and law enforcement. Chapter IV concerns international cooperation. Chapter V concerns asset recovery.

Chapter II focuses on public and private sector prevention. Article 5 calls for Parties to establish and promote effective corruption prevention practices. Prevention features promoted include: model preventive policies, anti-corruption enforcement bodies and enhanced transparency for election and political party financing. Public sector Finance, Human Resources, and Procurement systems and practices must promote efficiency, transparency, honesty, integrity and accountability. Features include: codes of conduct; financial and conflict of interest disclosures. Under the Convention Parties will pro-actively involve non-governmental and community-based organizations in raising public awareness about corruption and combating it.

Under Chapter III, Parties will have or establish offences covering a broad range of corruption. Some are mandatory and must exist or be established. Other offences are not legally required but must be considered by the Parties. This approach accommodates differences between legal systems. The mandatory offences featured are: Bribery of national officials (Art. 15.); Bribery of foreign public officials and officials of public international organizations (Art. 16.); Embezzlement, misappropriation or other diversion of property by a public official (Art. 17.); Laundering of proceeds of crime (Art. 23.); and, Obstruction of justice (Art. 25.).

The optional offences featured in the Convention are: Trading in influence (Art. 18.); Abuse of functions or position (Art. 19.); Illicit enrichment (Art. 20.); Bribery in the private sector (Art. 21.); Embezzlement in the private sector (Art. 22.); and, Concealment (Art. 24.);

Under Chapter IV Parties agree to full mutual cooperation in the fight against corruption including specific evidence gathering and sharing. Areas of cooperation featured include: prevention, investigation, prosecution, evidence gathering, evidence transferring, and extradition. Parties shall have a comprehensive domestic anti-money laundering regime for banks and non-bank financial institutions including: transaction reporting and tracing; freezing, seizure and confiscation capabilities; and, financial intelligence units.

Under Chapter V Parties agree to asset-recovery as a Convention feature. This Chapter features provisions on how cooperation and assistance will be rendered and funds / property returned to the requesting victim state, or to the owner, or to compensate the victims. The effective message to corrupt officials is that there is no place to hide corruption proceeds.

I now quote from the United Nations' web site:

"Every year, over $1 trillion is paid in bribes around the world, enriching the corrupt and robbing generations of a future. Each act of corruption contributes to global poverty, obstructs development and drives away investment." (United Nations, 2004)

Finally, in my own words: the first step in the fight against corruption is to recognize the urgency of the situation. The second step is international cooperation.

Chile

Mr. Chairman:

This afternoon I will make a few remarks about the General´s Comptroller Office of the Republic of Chile, the body I am representing in this meeting of IAACA in Beijing.

The General's Comptroller Office is an autonomous body, created en 1927, and has significant powers.

Appointment.

The Comptroller General of the Republic, the chief of the Service, is appointed by the President of the Republic, with the approval of the 3/5 of the members of the Senate; he will not be removable from office and his term is of eight years. Nevertheless, upon the case he is completing 75 years of age he is automatically ceased.

Powers:

1. Exercise control over the legality and constitucionality of the Administration actions.

In the exercise of this function, the Comptroller General will record the decrees and decisions that, in conformity with the law, must be processed by the Comptroller General's Office; when, in spite of his representation, the President of the Republic insists with the signatures of all his ministers, he shall send a copy of the concerned decrees to the House of Representatives.

Under no circumstance shall he take action on the decrees of expenditure exceeding the limit stipulated in the Constitution, and shall send a complete set of all relevant background material and papers of the case to the same House of Representatives.

It will also be the duty of the Comptroller General to record the decrees having force of law, and must state them whenever the law pertaining to delegated authority is exceeded or contravened or when these decrees are contrary to Constitutional provisions.

2. It will audit income and expenditure of the funds available with the exchequer, the municipalities and the other bodies and services as determined by law;.

In the same way, it will be his responsibility to inform about any other matter that relates to or may relate to the investment or commitment of public funds, whenever doubts arise on the correct application of the respective laws.

The Comptroller General has broad powers for auditing and surveying the Public services. Through this task he evaluates the internal control, do the accounts examination, practice the pertinent validation tests and checkup the working of the Public Services.

3.The General's Comptroller Office has under his power all matters relating to the Administrative Statute of the civil servants subjected to his supervision, cheking the legality of pertinent decrees and resolutions, carrying out inspections,etc.It will be the exclusive responsibility of the Comptroller to decide upon the salaries, bonuses, wages, allowances, severance pay, pension upon retirement, annuity, widow's pension of the civil servants.

4.It will examine and consider the accounts of persons who have under their charge the assets of public entities.

5.It will conduct the general accounting of the Nation. For these task it consolidates the accounting registers of the Public Services. One of the outcomes of this duty is the working out of the Annual Balance-Sheet of the State Finance's Administration.

6: It will carry out such other functions as are entrusted to it by the relevant constitutional organic law.

7. The Organization, the functioning and the powers of the Comptroller General of the Republic will be dealt with under the constitutional organic law.

Outcome

Eighty years of work of the General´s Comptroller Office has produced important results for the chilean State.

1.The Administration actions are examined in their legality by an independent body.

2.Every civil servant knows that he is under the control of this autonomous body. Integrity, rectitude, honesty in the Public Service is the aim of the GCO. Every public servant is accountable for his actions.

3.All the Public Services must observe the law in their expenses.

4. The existence and works of the GCO is an important factor in the fight against corruption in Chile.

5.International surveys assigns to Chile a low degree of corruption. This outcome is, partly, result of the effort of the GCO.

Thank you mister Chairman.

Article 88.- In the exercise of his function of controlling the legality of the Administration's actions, the Comptroller General will record the decrees and decisions.

China

Mainland

I The Criminal Law of the PRC from the Perspective of the United Nations Convention against Corruption

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[Abstract]: It is appropriate for the indirect application of the United Nations Convention against Corruption in China through its conversion into domestic laws. The stipulations on corruption crimes under the Criminal Law of the PRC and the United Convention against Corruption are generally in agreement, though with some differences. The Criminal Law of the PRC should consider the addition of corruption crimes concerning foreign public officials and officials of public international organizations and modifications of corresponding constitutions of the crimes, etc., in order to improve on the system for the suppression of embezzlement and bribery crimes.
[Key words]: the Criminal Law of the PRC; the United Nations Convention against Corruption; crimes of embezzlement and bribery

On December 10th, 2003, the Chinese Government signed the United Nations Convention against Corruption (hereinafter referred to as "the Convention"), which was adopted at the 58th General Assembly of the United Nations on October 31st, 2003. On December 27th, the Standing Committee of the National People's Congress adopted the decision to accede to the Convention. The Convention is ample and extensive in its scope covering such diverse legal disciplines as criminal law enforcement, criminal law, criminal procedural law and judicial assistance. For the State parties to the Convention, the accession to international treaties definitely incurs international obligations to link up between the domestic laws and treaties signed. This thesis undertakes to compare the several criminal issues involved and the Criminal Law of the PRC (hereinafter referred to as "the Criminal Law") with reference to the Convention from the perspectives of criminal theories and judicial practice in China and comes up with several legislative propositions for the improvement on the criminal law.

The Link-up between the Criminal Law and the Convention

It is the legal guarantee for the normal interactions between members of the international society to abide by the principle of pacta sunt servanda. In view of general practices of different countries, there are basically two ways to accept international treaties, i.e. conversion and incorporation. Conversion refers to the formulation of certain domestic laws in view of the specific content in the treaty thereby converting the treaty content into domestic law in order for its indirect application. Incorporation refers to the incorporation of international treaty into the domestic law system for its direct application according to the general stipulations of the Constitution and law. We maintain that the application of the Convention in China should be by way of indirect application through conversion.

First, the Convention is an international criminal treaty, the basic aims of which do not lie in the establishment of international criminal rules that transcend contracting State Parties. Rather, it undertakes to coordinate the inter-relationship between the countries in suppressing corruption so as to promote, facilitate and support international cooperation and technical aid in the prevention and suppression of corruption, to encourage clean government, accountability and proper administration of public affairs and management of public property, and to assist the contracting state parties in the more effective and forceful prevention and the suppression of corruption. By character it is public law and possesses the pre-condition for indirect application.

Second, the Convention may have great impact on Chinese criminal system. Its indirect application through conversion is better for the link-up between the Convention and the domestic laws. Though relevant legislation in China now has some differences with the contents of the Convention, China has now established a comparatively perfect criminal legal system. In 1997, China revised its criminal law and made detailed and strict stipulations. Legal operations also prove the Chinese criminal law basically satisfies anti-corruption needs, which is evidenced by good legal and societal effects. Offering the society a reasonable transition period for legal modifications is more beneficial for social stability and the smooth development of anti-corruption efforts than the direct application of the contents in the Convention.

Third, Chinese judicial traditions are based on the conviction and punishment of crimes in accordance with domestic laws rather than direct application of international law. In Chinese criminal jurisdiction, cases are tried only in accordance with the Criminal Law and no other laws and regulations can be used as direct legal basis for the conviction and punishment of crimes. Even if administrative and economic laws do have criminal stipulations, they can only be applied after they are converted into criminal clauses. Besides, the Convention cannot be directly applied

as it does not have statutory stipulations for conviction. Therefore, direct application through the incorporation method does not fit the actual circumstances in China. Only through modification of the Criminal Law through its conversion, gradually converting the contents of the Convention into our domestic laws can there be realization of coordination between the Convention and the Criminal Law, thus promoting the sound development of anti-corruption struggles in China.

The Comparison between the Criminal Law and the Convention

In Chapter III Criminalization and Law Enforcement of the Convention, nine corruption crimes are stipulated, i.e. bribery of national public officials, bribery of foreign public officials and officials of public international organizations, trading in influence, bribery in the private sector, etc. Whereas in Chapter VIII Crimes of Embezzlement and Bribery of the Criminal Law, twelve corruption crimes are stipulated, i.e. acceptance of bribery, introduction of bribery, and organizational acceptance of bribery. In view of the corruptive conducts in corporations and enterprises, Chapters III and V stipulate four corruptive crimes, i.e. bribery of personnel in corporations and enterprises, illegal possession by taking advantage of position, etc.

The comparison of the Criminal Law and the Convention shows that the two are generally compatible though with differences on some specific issues.

1. The Criminal Law is Generally Compatible with the Stipulations of the Convention.

First, the value orientations in the criminal policies are in agreement. Both the Criminal Law and the Convention are guided by the same set of criminal policies, i.e. closing the loopholes of law with complementary lenience and harshness. In the Criminal Law, sixteen crimes are stipulated that relate to corruption according to the nature of different subject, covering possible personnel who might be eligible for corruption and providing for a more perfectly laid-out criminal constitution, which is similar to the Convention in terms of policy orientation of closing the loopholes of law as the Convention stipulates nine elaborately established corruption crimes. While providing harsh punishment for all corruptive crimes, the Criminal Law and the Convention both make relevant stipulations for granting the criminals opportunities for making a fresh start by mitigating punishment for their cooperation with investigation, which embodies the criminal policy of complementary lenience and harshness.

Second, the types of corruption crimes are similar. The types of corruption crimes in the Convention and those in Chapter VIII of the Criminal Law are basically identical. The various circumstances of this type of crime can be established in accordance with the crime of embezzlement and bribery in the Criminal Law while the majority of the corruption crimes in the private sector as stipulated in the Convention may be covered under the crimes of offering bribes by personnel in corporations and enterprises, the crime of taking bribes by personnel in corporations and enterprises and the crime of illegal possession by taking advantage of position.

Third, part of the types of corruption crimes correlate. Part of the crimes in the Convention do not find direct stipulations in the Criminal Law, though indirectly embodied in other crimes stipulated in the Criminal Law. For example, the crime of trading in influence as stipulated in the Convention is not directly stipulated in the Criminal Law, though part of the contents are embodied in the crime of mediatory acceptance of bribes. According to the stipulations in the Criminal Law, when State functionaries solicit or accept bribes by taking advantage of influences of power and position or obtain benefits for others, they are to be convicted and punished according to the crime of mediatory acceptance of bribes in Article 388 of the Criminal Law.

Fourth, the punishment principles for corruption crimes by legal persons are the same. The corruption crimes by legal persons as stipulated in the Convention are in agreement with the conviction principles of organizational corruption crimes. According to the stipulations in the Criminal Law, solicitation and acceptance of bribes by state-owned organizations and offering bribes to state functionaries by organizations are to be convicted of the crimes of acceptance of bribe and crime of offering bribes respectively and punished accordingly. Apart from prosecuting the organizations, the person directly in charge shall also be prosecuted. This “dual punishment” principle is in agreement with the spirit of the stipulations in the Convention.

All the similarities show that the stipulations for the suppression of corruption crimes in the Criminal Law can realize the treaty aims of “preventing and combating corruption more efficiently and effectively.” And the anti-corruption practice has also proved this point.

2. The Differences between the Criminal Law and the Convention.

First, certain crimes in the Convention are not reflected in the Criminal Law. For example, the crimes of acceptance of bribes and offering bribes by foreign public officials and officials of public international organizations are stipulated in Article 16 of the Convention. The subjects of the crimes are foreign public officials, officials of public international organizations, citizens or legal persons offering the bribes. The subjects of the crime of acceptance of bribes stipulated in the Criminal Law are State functionaries, the objects of bribery are also State functionaries, excluding foreign public officials and officials of public international organizations.

Second, the content of bribery as stipulated in the Criminal Law is narrower in scope than it is in the Convention. The Criminal Law designates bribery as "money and/or property" while it is stipulated in the Convention as "undue advantages." "Undue advantages" cover not only money and/or property but also property related benefits, including non-property benefits, both tangible and intangible benefits, the scope of which is obviously wider than "money and/or property."

Third, the requirements in the constitution of acceptance of bribes under the Criminal Law are more than those stipulated in the Convention. The objective requirements for the constitution of the crime of acceptance of bribes are threefold, i.e. taking advantage of position, solicitation or acceptance of bribes, and obtaining benefits for another person while in the Convention, the objective requirements for the crime of acceptance of bribes are twofold, i.e. solicitation or acceptance of bribes as a condition for the public official to "act or refrain from acting in the exercise of his or her official duties," which is similar to "taking advantage of position" in the Criminal Law. Compared with the Convention, there is one more limiting requirement of "obtaining benefits for another person" in the Criminal Law.

Fourth, the requirements in the constitution of the crime of offering bribes under the Criminal Law are more restrictive than the stipulations in the Convention. The subjective in the crime of offering bribes intent as stipulated in the Criminal Law is "for the purpose of illegitimate benefits" while in the Convention it is "in order that the public official act or refrain from acting in the exercise of his or her official duties." The extension of "for the purpose of offering bribes" is obviously smaller than "in order that the public official act or refrain from acting in the exercise of his or her official duties."

Fifth, the subjects for the crime of organizational acceptance of bribes are fewer than those stipulated in the Convention. The subjects of organizational acceptance of bribes under the Criminal Law are State organs, state-owned companies, enterprises, institutions and people's organizations while according to the legal person liability principle as stipulated in the Convention, they are legal persons of any character, its scope being obviously wider than the stipulations in the Criminal Law.

Suggestions for Improving on the Criminal law in China

According to the Convention, "Each State Party shall take the necessary measures, including legislative and administrative measures, in accordance with fundamental principles of its domestic law, to ensure the implementation of its obligations under this Convention." With the ratification of the Convention by the Standing Committee of the National People's Congress of China on October 27th, 2005, it has become a realistic choice to improve on the system of suppressing bribery crimes and link up between the field of criminal law and the treaty. With regard to the differences between the Criminal Law and the Convention, we propose as follows,

1. The Addition of Bribery Crimes Involving Foreign Public Officials and Officials of Public International Organizations

Paragraph 1 of Article 16 in the Convention stipulates that the State Parties "shall" adopt legislative and other measures as may be necessary to establish a criminal offence the practice of bribery for foreign public officials and officials of public international organizations. Paragraph 2 stipulates that each State Party "shall consider" adopting such legislative and other measure as may be necessary to establish as a criminal offence the acceptance of bribers by foreign public officials and officials of public international organizations. Prior to the formulation of the Convention, the criminal offences of bribery of foreign public officials were stipulated both in the International Code of Conduct for Public Officials and the United Nations Declaration against Corruption and Bribery in International Business Transactions adopted by the general assembly resolutions. Therefore, it should be concluded that that the Convention is the finest expression of the above listed conventions, in conformity with the general developments in the suppression of

corruption throughout the world. The subjects of the crime of acceptance of bribes stipulated in the Criminal Law are State functionaries, the objects of bribery are also State functionaries. Neither the acceptance of bribes by foreign public officials and officials of public international organizations, nor the offering of bribes by foreign public off and officials of public international organizations are established as crimes. It is necessary to add the crimes of bribery involving foreign public officials and officials of public international organizations whether from the perspective of the implementation of treaty obligations or from the need to safeguard international exchange order in China.

It is the obligation of the State Parties to the convention to establish the crime of offering bribes by foreign public officials and officials of public international organizations. With China's entry into the WTO and the increase of international exchanges, more and more Chinese citizens and enterprises are participating in the ever-increasing international competition. Some citizens and enterprises attempt to offer bribes to foreign public officials and officials of public international organizations for the purpose of securing undue benefits. This not only damages the overall reputation of China but also serve as malignant temptation to other citizens and enterprises. The establishment of this crime is necessary for normalizing of conduct of Chinese citizens, legal persons and other organizations in international interactions, maintaining and safeguarding China's good international image. At the same time, it also shows the attitude and determination of the Chinese Government to fight against international crimes of bribery.

The establishment of bribery crimes by foreign public officials and officials of public international organizations can effectively resolve the predicament of non-conviction of acceptance of bribes by foreign public officials and officials of public international organizations, thus suppressing the corruptive conducts of foreign public officials and officials of public international officials within the territory of China and safeguarding the authority and dignity of Chinese Criminal Law.

2. The Modification of Descriptions in the Crime of Mediatory Acceptance of Bribes.

According to Article 18 of the Convention, trading in influence covers two types of conduct, i.e. first, the promise offering or giving to a public official or any other person, directly or indirectly, of an undue advantage in order that the public official or the person abuse his or her real or supposed influence with a view to obtaining from an administration or public authority of the State Party an undue advantage for the original instigator of the act or for any other person; second, the solicitation or acceptance by a public official or any other person, directly or indirectly, of an undue advantage for himself or herself or for any other person in order that the public official or the person abuse his or her real or supposed influence with a view to obtaining from an administration or public authority of the State Party an undue advantage.

The concept of "influence" in the Convention is twofold, i.e. first, the non-power influence on public officials due to blood, geographic or emotional factors; second, power influence directly based on the official duties beyond the scope of responsibilities. The misconducts whereby public officials abuse their power influence with a view to securing undue advantages are already covered in the crime of mediatory acceptance of bribes under the Criminal Law, i.e. in Article 388 of the Criminal Law: "any State functionary who, by taking advantage of his own functions through another State functionary's performance of his duties and solicits from the entrusting person or accepts the entrusting person's money or property shall be regarded as guilty of acceptance of bribes and punished for it." However, the misconducts whereby any person other than State functionary, by exercising his or her non-power influences on a public official, obtains undue advantage for the entrusting person and solicits or accepts undue advantage from the entrusting person can not be convicted according to the Criminal Law. Although the misconducts whereby any person other than a public official, by taking advantage of exercising the influence generated from blood, geographical or emotional factors on a public official, obtains an undue advantage for the entrusting person and solicits or accepts an undue advantage from the entrusting person, differ from the typical conducts of offering and accepting bribes, such misconducts should still be established as criminal offences since they result in severe detriment to the public reliance on the State organs and thus substantially endangering the society at large.

We believe that the meaning of trading in influence is fairly general and possibly it will lead to misunderstanding when used to designate a crime. Besides, the characteristics of the two trading in influence conducts can be more precisely reflected in the "mediation" according to Chinese criminal jurisprudence. On the basis of the existing mediatory acceptance of bribes in the Criminal Law, the modification of the description of the crime to include what is covered under trading in influence will be easier to understand and accept. Therefore, it is suggested that

misconducts whereby any person other than the State functionary, who takes advantage of his or her influence exercised on a public official, obtains an under benefit for the entrusting party, solicits or accepts benefits from the entrusting person should be established and stipulated as Paragraph 2 of Article 388 in the Criminal Law and convicted according the Paragraph 1 of the crime of mediatory acceptance of bribes.

3. Modification of Requirements for the Crimes in the Criminal Law.

1) Modification of the Definition of Bribery Content in Bribery Crimes.

Definition of the scope and variety of bribery directly determines the forcefulness of suppressing bribery crimes. “Bribery” is explicitly defined in the Convention as “undue advantages”. In the current Criminal Law of China, the content of “bribery” is directly defined as “money and/or property”. We are of the opinion that since the term “undue advantage” is a daily life usage and thus might be confused with the term “undue benefits”, we suggest that in the Criminal Law articles, the “money and/or property ” should be changed to “bribery” and the content of bribery should be interpreted according to the Convention. This is not only an effective measure to carry out the obligation under the Convention but also an actual need to further strengthen the suppression of corruption.

With social development and progress, mankind that are better off are no longer satisfied with low level material life demands. Rather they go for the various non-material and spiritual needs. We can go as far as to say that pursuits for property-related interests beyond money and/or property and non-property interests now occupy a more and more important position among the needs and desires of mankind. Correspondingly, bribery is deviating from the traditional direct deals between “power” and “private property” and exhibits diverse characteristics. For example, “power-sex transactions” and “power-money transactions” have become major forms of corruption.

As a matter of fact, property-related interests and non-property interests can be converted into money and/or property. To a certain extent, such property-related interests as offering free services, decoration of apartments, offering the right to use the apartment, paying for overseas trips are all carried out by the party who offers any of these to directly pay out money or offer property. They are but another form of property interest. Besides, the non-property interests can all be directly counted in money terms. Say, even if arrangement for overseas studies and offering sex services, can also be directly measured in money terms. All in all, in the broadest sense, all the different interests and benefits offered are undue private interests. The differences in the ways of satisfying private interests and needs do not have decisive implications for the conviction of bribery.

Obviously, expanding the scope of bribery is not only beneficial for the suppression of those obtaining undue benefits other than property by taking advantage of their duties but also in keeping with the general trend of anti-corruption legislation throughout the world.

2) Modification of the Requirement for “Obtaining Benefits for Another Person” in the Crime of Acceptance of Bribes.

Under the Convention, so long as the conducts of soliciting or accepting undue advantages are related to their positions, the crime of acceptance is established. According to Article 385 under the Criminal Law, there are basically two types of conducts for the acceptance of bribes: first, soliciting bribes, i.e. soliciting money and/or property by taking advantage of position; second, accepting bribes, i.e. illegally accepting money and/or property by taking advantage of position in return for obtaining benefits for another person. For the former, the actor only need to solicit money and/or property from another person by taking advantage of position to constitute the crime of acceptance of bribes while, for the latter, the actor must meet the two requirements of “accepting money and/or property from another person” and “by taking advantage of position in return for obtaining benefits for another person” at the same time to constitute the crime of acceptance of bribes. Such stipulations are to be challenged.

By nature, the crime of acceptance of bribes infringes upon the cleanliness and integrity of position. So long as public official accepts money and/or property from another person by taking advantage of position, he or she objectively tarnishes the cleanliness and integrity of position, which in essence constitutes the conduct of “accepting bribes”. The intent of “obtaining benefits for another person”, though at a certain extent affects the degree of culpability of the actor’s liability, does not affect the nature of the actor’s conduct constituting “acceptance of bribes.”

Therefore it is appropriate to take “obtaining benefits for another person” as a circumstance in meting out punishment.

In judicial practice, the establishment of “obtaining benefits for another person” in the Criminal Law as a requirement for the constitution of acceptance of bribes has resulted in some adverse influences in the prevention and suppression of corruptive transactions. This stipulation objectively alleviates and even relieves the actor of psychological stress and spiritual burden of accumulating wealth through various means available. Some even deliberately separate the time and space of accepting bribes and obtaining benefits for another person. Judicial departments are frustrated when ascertaining the legal nature of this “grey income” so that some actors will walk off seriously affecting the further development of anticorruption struggle.

Therefore, we think that removal of the requirement of “obtaining benefits for another person” from the constitution of the crime of acceptance of bribes is not only in keeping with the relevant stipulations of the Convention but also enhance the magnitude of preventing and suppressing corruption.

3) Modification of the Requirement of “for the Purpose of Securing Illegitimate Benefits” in the Constitution of the Crime of Offering Bribes.

From the nature of offering bribes, as long as the actor carries out the conduct of offering bribes, no matter whether the secured benefits are legitimate and regardless of intentions, not even considering what benefits are involved, it is power and money transaction. Suppose, say, if the actor has to have subjective intention of securing “illegitimate benefits” to be convicted, then, he or she cannot be convicted of offering bribes if he or she “offers bribes” in an attempt to secure “legitimate” benefits. Such stipulations will inevitably “indulge in” the person offering bribes at a certain extent, making it difficult to achieve preventive effects. Besides, the stipulation of the purpose for securing illegitimate benefits for the conviction of offering bribes has led to a series of problems, i.e. what constitute illegitimate benefits? How to judge illegitimate benefits? The phenomenon of the same crime with different punishments has occurred. From the perspective scientific constitution requirements, only when subjective intent which is enough to affect the social detriment of the conduct is established as crime or it is necessary to distinguish between crimes via the subjective intent, can the subjective intent be stipulated as the prerequisite for the crime. As this prerequisite can neither explain the extent of social detriment of offering bribes nor can perform the function of distinguishing between crimes, there can be no necessity to maintain it. Of course, in order to control the scope of suppressing the crime of offering bribes and to encourage the person offering bribes to cooperate in the trial of the case, the criminal policy of strict conviction and lenient punishment is to be adopted. For those persons offering bribes under extortion, they can be exempt from criminal punishment if no benefits have been obtained.

4) The Modification of the Subject Requirements for the Crime of Organizational Acceptance of Bribes

The subjects of the crime of organizational acceptance of bribes in the Criminal Law are State organs, State corporations, enterprises, institutions and people’s organizations. The conduct of accepting bribes by non State-owned organizations does not constitute the crime. This stipulation not only differs from that in the Convention but is also not in keeping with the further development of the political and economic reform in China. With the full implementation of reform of the organizations and share-holding system, a preponderance of State-owned enterprises and organizations are forced to compete as the main players in the market economy. If we should insist on the State-owned organizations to be the subject of the crime of organizational acceptance of bribes, the conducts of accepting bribes of certain organizations cannot be convicted. In the meantime, limiting the crime of organizational acceptance of bribes to State-owned organizations, the non State-owned organizations will not be convicted for lack of proper legal basis. Besides, there is inadequate theoretical support for the constitution of crime on the basis of ownership. We suggest that the subject of the crime of organizational acceptance of bribes should be modified to mean the “organizations” in the General Principles in the Criminal Law, i.e. corporations, enterprises, organizations, government organs and people’s organizations.

Apart from what is stated above, there are still several differences between the stipulations on the subject of corruption crimes and expressions of specific articles, etc. in the Convention and the Criminal Law, which are there for us to further explore for a link-up. Furthermore, it is necessary and feasible to introduce the special investigative measures granted to corruption crime

investigating departments by the Convention and stipulations in the criminal procedural field on the use of controlled delivery at the international level and the mechanism of assets recovery, etc., which are conducive to effective suppression of corruption and safeguarding the implementation of substantive laws. Accordingly, they need to be researched upon and converted for application in relevant laws.

II

International Mutual Legal Assistance in Criminal Matters in the Field of Anti-Corruption

Mr. SUO Weidong

Abstract: The harm of corruption and its relevant crimes has been recognized by international society. Mutual legal assistance in criminal matters, as an important application of law in the field of international cooperation on anti-corruption, has been playing an increasingly significant role on the stage of international anti-corruption. The United Nations Convention against Corruption provides a global framework for further fighting against corruption, and mutual legal assistance among sovereignty nations provides necessary approaches for international cooperation. The transnational character of corruption requires the enhancement of international mutual legal assistance in criminal matters. The status quo and especially so many problems with regard to international anti-corruption cooperation require further enhancement of international mutual legal assistance in criminal matters among sovereignty nations.

Keywords: Anti-Corruption, International Mutual legal Assistance in Criminal Matters, United Nations Convention against Corruption

Mutual legal assistance in criminal matters is defined as activities done by sovereignty nations to assist or implement certain criminal procedural or substantive rights for each other according to relevant international conventions or bilateral reciprocal agreements.[2] It roughly falls into six categories: service of legal documents, information circulation, investigation and evidence collection, extradition, transfer of criminal cases, recognition and implementation of foreign criminal judgments.[3] Mutual legal assistance in criminal matters, as an important application of law in the field of international cooperation on anti-corruption, has been playing an increasingly significant role on the stage of international anti-corruption. Given the United Nations Convention against Corruption as a global framework for further fighting against corruption, mutual legal assistance in criminal matters among sovereignty nations should be the significant content of international anti-corruption cooperation. Now, I would like to express my opinions to achieve common understanding on how to further enhance criminal legal assistance, promote international anti-corruption cooperation and effectively implement the United Nations Convention against Corruption.

1. The necessity and urgency to strengthen international mutual legal assistance in criminal matters in the view of the transnational character of corruption

Corruption and relevant crimes lead to enormous economic loss, undermine the integrity and effectiveness of the public management, frustrate people's trust on their government, sabotage the rule of law and democracy, impair fair economic competition, and retard the development of economy. Corruption and relevant offences may become ways to influence and infiltrate political, administrative and economic world when exploited by organized criminal groups. Corruption and relevant offences will become especially dangerous when committed in systematic and transnational ways. Therefore, it is necessary to take effective measures to combat national and transnational corruption and relevant crimes. On Oct. 31, 2003, the UN 58th conference passed the United Nations Convention against Corruption, which is the first special, complete and systematic legal document on international anti-corruption in the UN history. It reflects that the international community has obtained a common sense on the urgency of strengthening international cooperation on anti-corruption to some extent. For this concern, the necessity and

[2] CHENG Liangwen, Xingshi sifa xiezhu [Criminal Legal Assistance], Falü chubanshe [Law Press], 2003, p 9.
[3] MORISHITA Tadashi, Guoji xingfa rumen [An Introduction to International Criminal Law], trans. RUAN Qilin, Zhongguo renmin gong'an daxue chubanshe [Chinese People's Public Security University Press] 2004, p 128 and following pages.

urgency are mainly as follows:

1.1 The common requirement to establish a harmonious international society

The development tendency of human society is to pursue harmony and happiness together. Corruption and relevant crimes that abuse power to exchange advantages do harm to society, and the globalization of corruption further endangers the economy and social security of human society, challenges the civilization and legal system of international community. Only with concerted and hand-in-hand efforts of all countries can we obtain the harmony of human society. It is the objective requirement to maintain the worldwide harmony and order through legal approaches to punish international crimes including corruption.

1.2 The practical demand of the globalization of the world's economy

We are living in the constantly developing world. The globalization of the world's economy and the integration of regional economy make possible the free flow of knowledge, information, capital and human resources. The rapid development of the world's productivity also brings out various serious corruption and related crimes such as transnational money laundering, bribery etc,[4] which turns to be an international threat which draws common attention from many a country. Mutual legal assistance in criminal matters, as the extra-territory extension of one nation's jurisdiction, appears especially necessary for combating and controlling transnational corruption crimes, and establishing a nation's honest and clean administration system under the background of globalization of the world's economy.

1.3 The legal claim to respecting sovereignty

The standard of a modern lawful society is to solve various international disputes and conflicts through equal and legal methods. It is a basic rule to respect a nation's sovereignty in terms of International Law. Criminal jurisdiction is one of the important forms of sovereignty, while international mutual legal assistance in criminal matters is an effective approach to eliminate all kinds of barriers arising from political, economic and legal discrepancies. It on the one hand shows respect to sovereignty; while on the other hand effectively solves the problems of jurisdiction conflicts concerning international crimes. Thus, mutual legal assistance in criminal matters increasingly claims its diplomatic and judicial value in international society as one of the important contents with regard to international relations.

1.4 Satisfying the common desire for the protection of human rights

Every person has the equal right to possess the most comprehensive primary right of freedom which coexists with the similar right of freedom others possess.[5] The issue of human rights has been concerned by the international community all the time.[6] The principles such as non-extradition with death penalty, equality on nationalities, races, religions and political ideologies etc,[7] humanitarian consideration on age and health condition,[8] and the minimum security of the legal rights of people concerned,[9] reflect the principle of due procedure, and can be applied in the area of international anti-corruption cooperation as well. All these principles satisfy international society's common desire for the protection of human rights.

2. The development status quo of international mutual legal assistance with respect to anti-corruption

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[4] According to the calculation given by Denial Coffman, the Director of the Research Institute of Global Bank Administration, the loss to the world's economy caused by corruption reaches US$1500 billion every year, 5% of the world's GDP. About US$2000 billion involved in corruption are flowing cross borders, which is equal to 6% of the total amount of the world's GDP, US$33000 billion. See: UN Convention against Corruption and International Cooperation against Corruption, CHEN Lihu, Jiancha fengyun [Prosecutor Times], Issue No.22, p 44.

[5] John Rolls, On Justice, trans. HE Huaihong etc, China Social Science Press, 1988, p 292.

[6] Both the International Covenant on Civil and Political Rights and the Convention against Torture and Other Cruel, Inhuman and Degrading Treatment and Punishment provide that any person is free from torture, or other cruel, inhuman, and degrading treatment and punishment.

[7] The UN Convention against Corruption, Article 44 Extradition, 15 says, "Nothing in this Convention shall be interpreted as imposing an obligation to extradite if the requested State Party has substantial grounds for believing that the request has been made for the purpose of prosecuting or punishing a person on account of that person's sex, race, religion, nationality, ethnic origin or political opinions or that compliance with the request would cause prejudice to that person's position for any one of these reasons."

[8] Model Treaty on Extradition, Article 4 Optional grounds for refusal …… h. if extradition would be incompatible with humanitarian considerations in view of age, health or other personal circumstances of that person.

[9] This includes that the defendant's right to defense should be respected, and the reimbursement to the expense of witnesses and appraisers to appear in court, and the expense of appraising etc.

2.1 The mutual legal assistance against corruption among countries is progressively developing

2.1.1 The scope of mutual legal assistance against corruption is increasingly extending, which has already covered each criminal procedure from investigation, prosecution, trial to execution, and has developed into an integrative system. Assistance approaches are further strengthened, such as "delivery under control" which aims at some special crimes. Assistance modes are constantly innovated. One is that through treaties and reciprocal principles legal assistance could be provided mutually between countries; the other is the assistance that one country provides for ad hoc international criminal tribunals.

2.1.2 The mutual legal assistance against corruption has been developing from regions to world wide. From 1970s, countries are constantly developing their friendship under the principle of peaceful coexistence, and those with different social systems, ideologies and cultural backgrounds started to sign some international treaties on mutual legal assistance in criminal matters. Since 1990s, peace and development has become the main topic of the era. Communication and cooperation among countries further promote the development of mutual legal assistance towards more extensive area.[10] The field of international cooperation against corruption also extends accordingly. A large amount of articles regarding to mutual legal assistance have appeared in some regional conventions against corruption such as the Inter-American Anticorruption Convention, the Council of Europe Criminal Law Convention on Corruption, the African Union Convention on Preventing and Combating Corruption, the Anti-Corruption Action Plan for Asia and the Pacific etc. Many regional conventions on standardizing mutual legal assistance in criminal matters such as the European Convention on Extradition and the European Convention on Mutual Assistance on Criminal Matters also appeared.[11] Some global anti-corruption conventions such as the UN Convention against Transnational Organized Crimes and UN Convention against Corruption have been passed one after the other in recent years. Bilateral agreements on legal assistance in criminal matters are numerous.

2.1.3 The scope of human rights protection has been enlarged further. The nature of focusing more on the protection of human rights has appeared gradually in the process of mutual legal assistance. Issues such as political crime, military crime and death penalty, and refusal to provide mutual legal assistance in case of any charges or punishments due to race, religion, nationality or political concepts, or health and humanitarian considerations, are all focused on the protection of human rights.[12] This has been fully expressed and carried out in mutual legal assistance against corruption.

2.2 The achievements that China has obtained with respect to mutual legal assistance against corruption

China follows the diplomatic policy of peaceful coexistence. China is a nation with high sense of responsibility as a permanent member of the UN Security Council. China has made great efforts to combat and prevent transnational corruption crimes by actively promoting various mutual legal assistance activities in the field of anti-corruption, which are as follows:

2.2.1 Actively promoting diplomatic cooperation, signing international conventions and concluding international treaties. During recent years, Chinese government has been gradually strengthening approaches to pursue corrupt officials escaped abroad. One of the most effective measures is to issue Red Notice through the Interpol. China has concluded bilateral extradition agreements with 25 countries. China has concluded mutual legal assistance agreements with 49 countries until Jan. 2006.[13]

2.2.2 Actively performing domestic legislative activities, promoting the smooth mutual legal assistance. The Extradition Law of the People's Republic of China has been passed. It

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[10] For instance, as a new regional organization across Asia and Europe, the Shanghai Cooperation Organization is originated to meet the common demands and mutual cooperation to cope with rampant activities of national splitism, racial extremism, and international terrorism. The mutual legal assistance in criminal matters has become the impetus of relationship among countries.

[11] Europe develops the fastest after the World War II on international mutual legal assistance in criminal matters. It is the top in the world with regard to the amount and content of legal assistance in criminal matters. Since 1950s, the European Council has enacted a series of conventions in succession on legal assistance in criminal matters such as the European Convention on Extradition and the European Convention on Mutual Assistance in Criminal Matters.

[12] CHENG Liangwen, Xingshi sifa xiezhu [Legal Assistance in Criminal Matters], Fulü chubanshe [Law Press], 2003, p 62.

[13] HUANG Shuxian, Jiji tuijin fanfubai gouji hezuo [Actively Promoting Anti-Corruption International Cooperation], Qiushi [Exploring the Truth], Issue No.7, 2006.

standardizes the procedure of mutual legal assistance in criminal matters and is significant in the long run. The Supreme People's Procuratorate of the PRC strengthens international cooperation on anti-corruption by enacting The Notice on Related Issues Regarding Coping with Mutual Legal Assistance Cases by Prosecutor Offices.[14] On the aspect of criminal procedure, the Criminal Law requires higher level of jurisdiction and the first instance for all cases concerning foreign affairs, which shows China's serious and earnest attitude towards mutual legal assistance in criminal matters.

2.2.3 China has accumulated some experiences on the aspect of practice in mutual legal assistance against corruption in criminal matters. Three approaches on extradition have been explored: extradition through treaties concluded; extradition through international conventions; extradition through consultations. In recent years, China has been strengthening fugitive pursuing. Some suspects who escaped out of the main land of China or to foreign countries were extradited, and a large amount of assets related was recovered. In 2002, the People's Procuratorate of Jilin Province, with the assistance of Russia, successfully extradited the suspect WANG Debao from Russia according to the bilateral extradition agreement between two countries. Prosecutor offices close to the border of China and Russia held meetings periodically and investigated many case with the assistance from each other. In 2004, YU Zhendong, alleged to escape to America with a huge amount of money, was transferred to Chinese authority according to the mutual legal assistance agreement between China and US. Many suspects who escaped abroad have been pursued and arrested in recent years, which greatly frightens corrupt criminals, and maintains the nation's interest and the dignity of law.

2.3 Main problems in the practice of international mutual legal assistance against corruption

2.3.1 The influence of politics. From the view of practice, international mutual legal assistance may be conducted through diplomatic way under the reciprocal principle. However, it is probably influenced by political factors such as one country's attitude and degree of awareness towards mutual legal assistance in criminal matters, and criminal policies in relevant countries. With the development of the International Criminal Law, to some degree the abuse of the principle of non-extradition of political offenders and the right for refugees hinders the legal cooperation combating transnational corruption crimes.[15]

2.3.2 The conflicts among the protection of human rights, combating crime and maintaining sovereignty. Emphasizing too much on combating crime and protection of human rights, and misunderstanding of human rights and sovereignty would bring passive influence to mutual legal assistance against corruption. Especially discrepancies of the concepts on the right to existence and death penalty would have a direct impact on acceptance or refusal of legal assistance in criminal matters.

2.3.3 The effective connection of domestic and international legislation need to be improved. The unbalanced development of relating domestic legislations of each country, to some degree results in the inconsistency with international conventions, bilateral and multilateral agreements, which impedes the effective operation of legal assistance and affects the combat and control on transnational corruption crime.

2.3.4 Mutual legal assistance in criminal matters is unbalanced in development and utilization. Mutual legal assistance which originated in Europe develops rapidly among European countries and some other countries, tends to develop into various legal assistance modes cooperating with each other and developing together. While on the other hand, legal assistance just starts from scratch in most Asian, African and Latin American countries. The loophole of a legal system makes corruption crime out of control.[16]

3. The countermeasures to further strengthen mutual legal assistance in criminal matters against corruption

3.1 Implementing the tenet and basic principles of the UN Convention against Corruption

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[14] Such kind of enactments also include Notice on Implementing Legal Assistance between China and Foreign Nations, Regulations on Several Problems of Treating Cases Relating Foreign Affairs, Rules of Procuratorate's Implementing 'the Criminal Procedure Law of the PRC' (Chapter 11 is on legal assistance in criminal matters).

[15] ZHANG Zhihui, Guoji xingfa tonglun (zengbuben) [General Theory of Internaional Criminal Law] (Supplementary Edition), Zhongguo zhengfa daxue chubanshe [China University of Political Science and Law Press], 1999, p 341.

[16] ZHANG Xue, Guoji xingfa—xianzhuang yu zhanwang [International Criminal Law—the Status Quo and the Future], Qinghua University Press, 2005, the part of "Legal Assistance in Criminal Matters".

3.1.1 Corruption is a big challenge to all countries in the world. It not only threatens the environment, human rights, democratic system as well as fundamental rights and freedom of human beings, but also undermines the development and worsens the poverty condition of more people.[17] It requires us to promote, facilitate and support international cooperation and technical assistance in order to enhance the prevention and combating corruption effectively, which includes assets recovery, advocating integrity, responsibility questioning and proper management of public affairs and public property.

3.1.2 Mutual legal assistance in criminal matters is a kind of governmental activity to combat international crime. It should firstly be a kind of concept and reflects a kind of strategy and criminal policies to combat, control and prevent international crime. Such kind of concept substantially requires all countries in the world should perform actively in fighting against corruption, participate in mutual legal assistance, and firmly establish the concept of sovereignty, human rights, rule of law and cooperation.

3.1.3 The basic principles and spirits of the Convention should be loyally and kindly followed in the process of mutual legal assistance in criminal matters. The principles should include the principle of maintaining and respecting national sovereignty, the principle of reciprocity, the principle of dual criminality, the principle of *non bis in idem*, the rule of specialty, the principle that bank secrecy protection rule should not impede international cooperation, and the principle that all State Parties should provide the fullest cooperation and assistance so on and so forth.

3.2 Substantially enhancing the role of all kinds of international organizations in the field of international anti-corruption

3.2.1 As the most authoritative international organization, the United Nations together with affiliated organizations[18] should play a more important role by coordinating all parties involved, and form concerted efforts to combat transnational crime.[19] Effective cooperation between each country's anti-corruption authority and the Interpol should be explored and pursued in the field of punishing international corruption crime.

3.2.2 As regional organizations, the Organization of American States and the European Council are active in regional legal assistance in criminal matters, effectively promote the development of mutual legal assistance, and play an increasingly significant role in this field. More extensive and deep regional organization should be encouraged.

3.2.3 The cooperation among the UN, regional organizations and G8, APEC etc should be strengthened to make them play more important roles in mutual legal assistance in criminal matters. The contact and communication among the World Anti-Corruption Conference, International Association of Anti-Corruption Bureau and International Prosecutor Association should be enhanced. Anti-Corruption experience sharing, research on anti-corruption measures, and also including notice and transfer of anti-corruption information, training and communication of anti-corruption staff on specialties and skills, and anti-corruption investigation and prosecution etc should be improved in order to promote mutual understanding and enlarge cooperation areas on the basis of seeking common points while reserving difference.

3.3 Actively promote legislation and judicial practice in terms of mutual legal assistance in criminal matters against corruption

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[17] Peter Eigen, *Preface*, Controlling Corruption—Construting a National Anti-Corruption System, (En. Edtion) Jerrim Bope, trans. The Anti-Corruption Research Office of Institute of Public Administration, Qinghua University, China Fangzheng Press, 2002, p 14.

[18] For instance, the United Nations Congress of the Prevention of Crime and Treatment of Offenders has been playing a great role as one of the affiliated organizations of the UN. It has created some highly directive documents such as the Model Treaty on Extradition, the Model Treaty on mutual assistance in criminal matters, the Model Treaty on the transfer proceedings in Criminal Matters, the Model Treaty on the Transfer of Supervision of Offenders Conditionally Sentenced or Conditionally Released, the Model Agreement on the Transfer of Foreign Prisoners etc. Although these model treaties don't have direct effect on member countries like other international conventions and are not legally binding, their model effect has a good impetus for international society to develop standardized international legal assistance in criminal matters. See: Xingshi sifa xiezhu [Criminal Legal Assistance], CHENG Liangwen, Law Press, 2003, P54.

[19] The 8th United Nations Congress of the Prevention of Crime and Treatment of Offenders Conference passed a series of model treaties. These model treaties provide a beneficial framework for international legal assistance and cooperation in criminal matters, though not complete. Relevant issues see: Guoji xingfa pinglun (Diyi juan) [Comment on International Criminal Law] (Volume 1), ed. ZHAO Bingzhi, LU Jianping, Zhongguo renmin gong'an daxue chubanshe [Chinese People's Public Security University Press], 2006, P 16-17.

3.3.1Further clarify the definition of corruption crime to reduce and eliminate the uncertainty of political factors by strengthening the certainty of law through referring to the experience obtained and considering one country's own situation, endeavoring to make international and domestic legislation perfect together, and bringing various political factors into legal framework.

3.3.2 Corresponding to the relatively systematic and mature international legal system which consists of international conventions, regional agreements and bilateral agreements, each country should constantly improve domestic legislation on anti-corruption, enhance the implementation and nationalization of international legislations, loyally follow and fulfill commitments under agreements, to make the development of mutual legal assistance against corruption in balance worldwide.

3.3.3 Focus on enhancing the legal assistance with surrounding countries, constantly innovate the modes of legal assistance, reform traditional procedures, clarify the procedure of implementation on specific assistance conducts, and cooperate fully on information exchange, extradition of transnational corruption suspects, and monitoring assets recovery.

3.3.4 Each country should provide necessary logistics for effective investigation, prosecution and trial on corruption and relevant offences to assure the effective mutual legal assistance in criminal matters. Proper measures on the investigation of corruption crime should be provided by law. Each country should consider providing some stimulating approaches for cooperative persons in the process of investigation and prosecution. Such stimulating approaches may include exemption from or mitigation of criminal punishment. When applying the regulations on limitation period, sufficient time should be provided for the investigation, prosecution and trial of corruption offences. Proper personal protection should be provided, and especially the right to privacy, right to a fair trial and right of defense should be secured during the investigation, prosecution and trial of corruption and relevant offences. [20]

III

Some Rational Views on Preventing Corruption Under the New Situation in China

Wang Zhenhua

Corruption as degeneration of power behavior has become an intractable disease and malignant tumor in the field of operating public rights, seriously weakening the security and incorruptness of public administration, bringing serious threat to social order, economic development, ethic and moral, and even to regime stability. Along with the tendency of globalizing the world economy, corruption hasn't been a local problem in several countries any more, which can find the soil that generates corruption and the hotbed for growing further in various social systems and economic systems. Along with the modernization driving, corruption has stepped into the high-incidence period in the global range, and the criminologists even described the symbol of modernization into that the violence preponderating society is changed into property crimes preponderating society. As a developing large country, China currently stands at the key phase for speeding up the development on socialistic modernization, whose political and economic systems have fallen into coexistence and replacement stage of traditional and modern factors, thus causing the gradualness, complexity and tortuosity of system reform supply more opportunities given for arising corruption. Therefore, the special history background of institutional transition and social transformation caused a relatively severe actuality of corruption at present in China, and it has become an important political task with high sensitivity, challenge and far-reaching meaning for effectively preventing corruption faced by us. The severe corruption circumstance pushes us to give some overall rational views on currently preventing corruption in China based on the actuality of the Chinese society. The article will formulate from macro researches, micro studies, strategic choice, and tactical utilization to adoption of detailed means, striving for finding out the effective approaches with Chinese characteristics for preventing corruption.

I. Preventing corruption must insist on the "Systematic anti-corruption" strategy for overall elimination.

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[20] Guoji xingfa pinglun (Diyi juan) [Comment on International Criminal Law] (Volume 1), ed. ZHAO Bingzhi, LU Jianping, Zhongguo renmin gong'an daxue chubanshe [Chinese People's Public Security University Press], 2006, P 430.

Corruption is basically on breach of the governance program of our party, and our party has always actively studied and constituted long effective mechanism for corruption treatment, and improved step by step along with the deepening of anti-corruption understanding. A great number of corrupt senior officials at different periods had been punished according to the relevant laws, such as Liu Qingshan, Zhang Zishan at the initial period of establishment of Republic, and Chen Xitong, Cheng Kejie in recent years. Strength on punishing corruption has continuously increased, however, the result for strict punishment only can make the crime rate low down in a short period and corruption crimes quiet down for a while, and the crimes will be rampant and even become further worse once the rumor passes. The increase of corruption crimes on the same position, a bunk of cases "sheltering cases", have further exposed the shortage of simply relying on the punishment, which also promote us to newly comprehend the relationship between punishment and prevention. The purpose of punishment is to play a part of precaution and deterrent, punish one to warn others, prevent from the occurrence of defalcation and bribe, avoid from spreading corruption phenomena. In this sense, the punishment is means, the prevention is purpose, the punishment is the precondition and base, and the prevention is the consolidation and deepening of punishment. The prevention without punishment is very soft and limited; the punishment without prevention is aimless. In case of punishment without prevention, it will be impossible to punish effectively, whereas it will be impossible to prevent effectively. Based on re-understanding to the dialectic relationship between the punishment and prevention, it is not difficult to identify that preventing the occurrence of corruption phenomena is more difficult and complicated and with more important meaning than punishing the corruption phenomena. Corruption as a kind of complicated social phenomenon can not be only treated through punishment. It must combine the punishment with prevention, carry on both punishment and prevention, address both the symptoms and root causes, so as to promote the prevention level through punishment, solidify the result of punishment through prevention, and execute the integrated treatment. To prevent corruption must realize the transformation from only relying on the punishment to address both the symptoms and root causes and stress on treating the root causes. It is a necessary conclusion to be made through following the rule of epistemology of “practice—know—practice again—know again” for dialectical relationship between punishment and prevention.

The organic combination of punishment and prevention shows the dialectic unification between temporary solution and permanent cure, however, permanent cure shall start from the original cure. Tracing to the source, the original of corruption behavior consists of power, motivation and opportunity. As public officers hold rights to determine the distribution of several scarce resources, operators always take various benefits as fish bait in order to gain advantage in competition, so that the right becomes goods with uncertain price to sell and the capital of corruption; the public offices as the supply party during the corruption deal will be more interested in the corruption for the rich materials return, and at this time the behavior of corruption has stepped into the critical state; The shortage of system and supervision force and more other factors provide the opportunity for public right rent seeking to the moment, then at the this time the corruption behavior can be smoothly accomplished. From the dynamic analysis of the whole process, it is not difficult to know that the real scientific anti-corruption policy must start from the accomplished conditions for analyzing corruption, establish three defense lines along with the process of corruption behavior happening, collapse the three conditions as corruption reason, and cut off the chain of corruption behavior, which will collapse the corruption at the root, and basically control and prevent the occurrence of corruption. As an important strategy policy making decision on anti-corruption, in the Fourth Plenum of the 16th CPC Central Committee, putting forward "Decision on paying closely attention to establish and perfect the education system, supervision system for punishing and preventing corruption according to the market economic system of socialism" has shown a representation of scientific principle. It has accorded with the objective requirement for preventing corruption under the new circumstance, stressing on education, system and supervision together whose functions bring into overall effect, consolidating in the punishment and preventing corruption system: firstly, through strengthening the ideological education, make strong offensive of thinking education and firming the thinking moral defense line of “no be willing to corrupt; secondly, through stressing on the legislation and system construction of preventing corruption, tighten the system defense line for “no corruption”; finally, through perfecting multi-level supervision system, build up a defense line of supervision for “no dare to corrupt”. The practice program generally sketched a anti-corruption integrated system relying on the multi-administration on democracy, legal system and moral treatment, indicating that the anti-corruption of our country has stepped into a new stage of “system anti-corruption” from only relying on punishment to the high pressure primary formation for eliminating corruption through multi methods.

II. Preventing corruption must insist on both socialized prevention and specialized prevention

We must take the method of open social prevention to prevent corruption, which is determined by the serious status of our country's corruption problem under new situation and applicable with the leading system and working system on generally treating corruption with current Chinese characteristics. Aiming at complex reasons, we shall admit multi-level anti-corruption subjects to achieve the scope and strength of prevention. For division of labor to penalize corruption, we shall promote the capacity to anti-corruption for functional authority to ensure the degree and force of prevention. We shall not only cooperate with each department to absorb good points, but also do our own jobs well; exploit our advantages and avoid the unfavorable ones to implement the working system combining socialized participation and specialized division of labor; thus driving socialization with specialization and extending specialization with socialization.

Corruption is a complex social problem involving in all aspects as politics, economy, society, culture and system. The complexity of corruption determines the diversity of preventive means. To achieve the diversity of means, the polytrope of participating subject should be guaranteed. Corruption prevention is not a special duty for one department of one industry, but the common social responsibility being assumed by the whole society. The support and participation of mass is the endless source to launch this task. At the same time, any authority, organization or enterprises shall have the responsibility and obligation to apply anti-corruption and advocating the probity in Party's construction of a clean and honest administration in local department (industry) and to carry out the task in daily administration and function. In practice, the basic mode to develop socialized precaution is to establish regional preventive post criminal mechanism which takes the lead by party committee and absorbs executives in various industries to join in for the purpose of establishing net general layout to prevent corruption. The main part of prevention bases on what function advantages to undertake corresponding prevention responsibility with both division of labor and cooperation as well. So the regular information communication system will be established. The most advantage of this prevention mode lies in maximum coherent preventive source and enhancement join force and bring into entire efficacy, thus the transform can be reached from dispersed state to centralized management.

In our country, no matter from the position and the character as law supervision organ, it decides that the procurator authority not only acts as the main force to punish corruption but also acts as main force to prevent corruption. In virtue of working at forefront of anti-corruption for a long time, procurator authority accumulates abundant experiences concerning anti-corruption, which bring procurator authority great advantages to prevent corruption by profound and exact understanding regarding idealistic development, track of degeneration and leakage of institutional management and characteristics and developing trend of corruption. Procurator authority must have a foothold in improving specialization in the aspects of institution construction, system and organization to form complete content, efficient measurement, unhindered operation procedure and high-quality professional team. To persist on specialized path of development is not only the summing-up of successful experiences of supervision and prevention but also the inevitable request of developing trend of specialization and function under new circumstance. It is further conspicuous for procurator authority's channel of prevention value. Firstly, focus on execution of power of investigation and bring into specific preventive efficacy. To punish corruption severely is the smoothest means that procurator authority utilizes. Through the means of attack power, it is to increase corruption cost and decrease the motive to implement corruption. So from this point, attack power becomes a special preventive means. Secondly, focus on exercising the right of checking suggestion and strengthen the building of system. In consideration of cases, to propose amended suggestion to the unit and department existing corruption cases becomes the effective carrier for supervision authority to prevent corruption, and the widely-used and effective preventive means. The way carried by the supervision authority to help the unit where cases occurred analyze the reason of crime, sum up weak points and problems in the course of operating management, improve rules and regulations and honest and clean government measurement to facilitate the reform and improvement of legal system is rather effective to complete and perfect the system and mechanism through dealing with individual case. Thirdly, focus on legal system propaganda to improve public opinion atmosphere to prevent corruption for the society. The supervision authority develops legal system propaganda through dealing with information, criminal investigation, public prosecution and appeal to availably propagandize its experiences and practices relating to prevention of corruption to show its production of preventive corruption; reveals job crime timely; stops arising weak points of crime; educates citizens to observe disciplines and law; creates a strong public atmosphere of corruption prevention as well. Fourthly, focus on investigating and dealing with cases to develop prevention of individual case and strengthen social and legal effect. Prevention of individual case is the closest, direct and fundamental preventive means in connection with supervising function. "Five Ones" preventive mode of individual case summed up in the course of prevention enlarges the warning effect of individual case to become a praiseworthy preventive means through the process

design of “deal with a case, educate a great number of people and administer one region”. Fifthly, focus on analysis on prevention of cases of same type to exert “radiation effect” to expand the prevention. Sixthly, focus on supervision to key project items to undergo special prevention, ensure “high-quality project, excellent cadre” and promote the development of economic construction and maintenance of social stability.

When fully approving the preventive effect of supervision authority, we must clearly realize that the special prevention of supervision authority contains a certain limitation, i.e. it is far not enough at all for the self special prevention by supervision authority. Anti–Corruption works may only achieve complete satisfactory results under the leadership of the Government and Party Committees, depending on the cooperation of each department and the participation and support of each field of the society; adopting various means as politics, economy, law, culture, education, administration and others; mobilizing the power of the society to make comprehensive prevention to eliminate corruption.

III. “System Anti–Corruption” must be stick to supervision restriction of power in the prevention of corruption

Corruption is actually regarded as a kind of power crime, being the consequence of public power dissimilation. There is a direct relation between power crime and disadvantages of power system. The “absolutization” of power creates the “absolutization” of corruption. In view of the analysis of important domestic and overseas corruption cases, the inefficient supervision and control on power results in the development of corruption toward higher position. The nature to pursue to self-interest in human beings determines that there is a possibility for the holder of power to abuse of his power for personal gains. When the exercise of power lacks of necessary supervision and control and under the temptation of all interests, power is easy to become a special commodity, thus making this possibility into reality. Corruption is centrally shown as the abuse of power. Consequently, focus on the nature and source of corruption, stipulating a rigorous supervision system has become the most effective and powerful weapon to prevent corruption.

There are two ways to restrict public power. One is by human administration to control the expansion of power; the other is by law to stipulate and restrict the exercise of power. Comparing with human administration, legal system has some remarkable advantages. It overcomes the randomness, one-sidedness and limitation of human administration, achieving the obligatory and stability of policy and decree of nation. Therefore, the most effective way to stipulate and control the exercise of power and prevent corruption is to take advantage of the consequence of preventive research to make improvement for the laws and regulations, to set up and control power scientifically through system arrangement, rule design and specific operation, etc, thus minimizing the weak points arising in the system and eliminating corruption opportunity furthest.

At present, our country is at the period of system reform, structure adjustment and society reformation, in which integrity of supervision power is in short supply. Aiming at this present situation, institutionary construction should revolve around crucial sector of rights that government officials perform. Giving consideration to efficiency and integrity, lead, regulate and restrict government officials to perform power in the aspect of responsibility, restriction and penalization. Make institutionary construction penetrate every section of anti-corruption and promotion integrity. Try hard to establish reasonable operational mechanism with scientific configuration and strict procedure. Administrative power is the important public power, which refers to government image and common people’s benefit. On account of broad scope of free adjudication, it has been being severely afflicted area of anti-corruption, which should be regarded as key field of institutionary construction. To break ‘black box’ of administrative office, during the period of administrative reformations in following aspect as administrative examination and approval system, government purchasing system, government forward selection and administrative integrated execution law, it is important to regulate administrative power in accordance with the open, equitable and fair principle as well as promote government’s standardization and legality and establish decisive democracy as well as a public and fair operating system. Regard the supervision aiming at ‘the first in command’ as the main point to carry out whole process supervision from cadre selection to leaving post. By drafting cadre checking system and notification before taking up the post and checking system during and after the post, first in command’s “check and sign” system, property and income declaration system, select government officials, evaluate achievement and avoid from excessively centralized rights and expansion. Firmly grasp and draft Supervision Law and make administrative supervision and discipline department have regulations to follow. Consummate rights supervision from the aspect of institution. Added to this, as procurator authority and others with function of anti-corruption deal with corruption behaviors, it should be well done to help the unit with existence of an exposed criminal case establish relative regulations. In brief, it can eliminate system black hole

and not leave criminals any available opportunity to set warming limit in the process of rights usage, set supervision system in all sections and form ordered chain in the formation of regulation and system.

Prevention of corruption is a global war without border. The effect of *Convention Anti Corruption in UN* unfolds the prologue of global anti-corruption war, which provides a scientific original draft and lawful foundation stone aiming at administering and annihilating corruption. This will cause profound influence to current anti-corruption struggle of our country. In this war between justice and villainy without smoke of gunpowder, it needs courage. We must analyze current corruption condition, clear up work clew and broaden visual field and angle. Starting with researching source and cause of corruption, draft rounded meticulous anti-corruption strategy, consummate scientific and professional prevention means and adopt efficient strategy to prevent and try hard to grasp the main point to defeat the enemy and win the battle. Currently, all countries, basing native condition, seek catholicon to control corruption. We believe China's exploration on anti-corruption will leave other countries inspiration and worth-use experiences.

IV

Strengthening the Intelligence and Information of Anti-corruption and Promoting the Combat against Crimes of Corruption

Chen Yunlong

Combat against embezzlement, which is the responsibility of Anti-corruption Bureaus in all levels of Chinese procuratorates is an important component of the whole task of anti-corruption in China. Since the reform and opening up policy was adopted by china, combat against embezzlement has made great progress in the past years, along with a thorough development of Chinese anti-corruption campaign. However, due to the establishment of Anti-corruption Bureaus with short time, the foundation of Chinese Anti-corruption Bureaus and their work are still fairly weak. With the changing of corruption situation in China, combat against crimes of corruption is facing a huge challenge. Anti-corruption Bureaus of Chinese Procuratorates would play a more important role in the efforts to combat corruption with the development of the rule of law in China. Therefore, we must change our ideas, create new work mechanisms and make solid foundations for Anti-corruption Bureaus and their work. It is not only required by the changing situation of anti-corruption, but also needed by the Anti-corruption Bureaus to carry out their duties faithfully and to guarantee the healthy development of anti-corruption. The intelligence and information of anti-corruption is the basic work and has an important function in enhancing the work efficiency and promoting combat against crimes of corruption. This article will make a preliminary discussion about how to strengthen the intelligence and information of anti-corruption considering the current Chinese judicial status quo. And the intelligence and information of anti-corruption in this article is special for Anti-corruption Bureaus of Chinese procuratorates to combat crimes of corruption efficiently and effectively.

□. The basic concept and content of the anti-corruption intelligence and information work

The concept of anti-corruption intelligence has been proposed for many years in Chinese procuratorates. At the Fourth Anti-corruption Conference of National Procuratorates convened in 1994, the former procurator- general of the Supreme People's Procuratorate of China explicitly pointed out the proposition regarding strengthening the intelligence work for the first time, i.e. 'the intelligence construction is a necessary method used to fight economic crimes especially the crimes of embezzlement and bribery as well as the fundamental professional skill construction in the anti-corruption and investigation work. From now on, we should devote major efforts to strengthen, explore, put into practice and gradually set up a basal intelligence network supported by modern high-tech.' However, owing to lack of clear understanding of its essence, it was not highly valued by the anti-corruption bureau at all levels in China and little developments have been made since then. Currently the anti–bribery intelligence and information work in China has already left far behind with the requirement of anti–corruption campaign. The stagnant situation could be seen as follows: in the strategic aspect, the anti-corruption work which is "the fist" of procuratorate organs lacks intelligence support because there is no specialized department designed for taking charge of particularly the intelligence and information work, and that has

influenced the overall determination and management of decision-makers. Also, in the tactical aspect, because of the deficient conformity of all kinds of work mechanisms that help to collect intelligence and information in the Anti-corruption Bureaus at all levels, the intelligence and information is scattered and its comprehensive utilization is very low, which results to the lower performance of the intelligence and information as an important investigating resources. The mode of anti-corruption investigation has so far not been fulfilled its transformation from the passive and extensive condition to the initiative and beneficial result. Get to the root of the matter, the main reason that influenced the anti-corruption intelligence construction lies in no clear definition of the intelligence and information work, which has restricted this work to comprehensively deploy and develop. Therefore, it is very important to clarify the essence of the intelligence and information work so as to push it foreword effectively. Regarding this, the author thinks that it is necessary to understand accurately the concept and relationship among the anti-corruption intelligence and information, the anti-corruption intelligence and information work, the intelligence-led investigation.

1. The Anti-corruption intelligence and information

The anti-corruption intelligence and information refers to all the data and information that is collected publicly or secretly by procuratorate organs, and that after being carefully sorted and analyzed can be used for discovering of case clues, detecting of cases or decision-making on investigation. Based on different standards, there are different classifications. For example, it could be divided into the strategic intelligence and information and the tactical intelligence and information according to use value. The strategic intelligence and information concerns the overall situation of anti-corruption work, while the tactical intelligence and information is used to guide the investigation work directly to solve cases. Moreover, according to the method of collection, it could be divided into the public intelligence and information and the secret one. The public intelligence and information refers to those that can be obtained by conventional means, while the secret intelligence and information refers to those that is collected by secret personnel or through secret investigative methods. In addition, it could be divided into the type of clue, the type of proof and the type of foundation according to its attribute. The type of clue intelligence and information is about the case clue information. The type of proof intelligence and information plays vital role in getting evidence. The type of foundation intelligence and information is not concretely point to some criminal offence or criminal object but it is helpful to discover the clue of cases, assist to solve cases and direct policy-making concerned with various public information, trade or department information datum, statistical data, the investigation and study report, etc. To be short, the classification mentioned above is only distinctive point of view and not necessarily accurate, but it is good enough to illustrate that the anti-corruption intelligence and information has a content of abundant, not only means the case clues which are misread by many anti-corruption personnel.

2. The Anti-corruption intelligence and information work

The anti-corruption intelligence and information work is a specialized work undertaken by the related functional departments in procuratorate organs and its purpose is to collect, arrange, store, analyze and utilize items of anti-corruption intelligence and information, so as to help the procuratorate organs carry out its duty with facility. In general, it consists of such kind of elements as the anti-corruption intelligence and information, anti-corruption officials and personnel, the intelligence and information technique, the intelligence and information network and the intelligence and information work mechanisms, etc. Its primary mission is to popularize the intelligence and information applied knowledge, raise intelligence consciousness and applied technical ability of anti-corruption officials, program the intelligence and information system, harmonize the connected social information systems to build the networking correlation, expand the application of basic social information in the anti-corruption departments, improve gradually the intelligence and information network; establish and improve the regulations concerning the collection, the storage, the management and the application of intelligence and information, standardize intelligence and information workflow; strengthen the intelligence and information analysis work, exert such functions as decision-making on anti–bribery policy, conduct investigation activities and detecting of certain case. To sum up, the intelligence and information work is comprehensive and systematic, its core aim is to provide strategic or tactical intelligence and information for Anti-corruption Bureaus and enhance their performances in fighting against graft and bribery.

3. The intelligence-led investigation

The intelligence-led investigation is one kind of investigation principle and mode with the intelligence and information as its core and the intelligence and information work as its foundation. Essentially speaking, investigating process is not only a process of continuously collecting, sieving, judging and using of information, but also a process of converting the intelligence and information to detective clues and crime proofs. The intelligence-led investigation emphasizes that the intelligence and information work should permeate each link of anti-corruption work, which means the intelligence and information should contribute to

expanding case sources, directing investigation and improving the quality of decision-making. Therefore, it is a kind of proactive and offensive investigation mode, and is an innovation to the traditional passive investigation mode.

4. The interrelationship

There lies close correlations among the anti-corruption intelligence and information, the anti-corruption intelligence and information work and the intelligence-led investigation. The anti-corruption intelligence and information is the content of the anti-corruption intelligence and information work, without a clear definition of the anti-corruption intelligence and information, the anti-corruption intelligence and information work will lose its way. What's more, the anti–corruption intelligence and information work is the foundation of the intelligence-led investigation, without the anti–corruption intelligence and information work there will be no intelligence-led investigation. In addition, the intelligence-led investigation is the purpose and destination of the anti–corruption intelligence and information work, taking no account of this purpose, the anti-corruption intelligence and information work would have no meaningful features.

.The importance and necessity of strengthening the anti-corruption intelligence and information work

Intelligence and information is the foundation of any policy-making decision. For the anti-corruption work with antagonistic block, the intelligence and information thus seems to be much more important. Not only is it conducive to the policy-making on the whole anti-corruption business, but also to the detecting of certain case. On considering its important function in the anti-corruption work, lots of countries and regions have set up the special agency in charge of the intelligence and information work and have succeeded in operating intelligence and information services which have promoted the anti-corruption work effectively. Currently the struggle against corruption in our country is still very rigorous, it is thus very important and urgent for the Anti-corruption Bureaus to strengthen their intelligence and information work.

1. The objective request of the development of corruption situation

With social economic advancing in China, the bribery crime committed appears the trend of multi-factors and intelligent respects. The following points could be embodied. From the criminal form, the offences committed are constantly enlarging. The cases occur not only in the departments of economy management and resources deployment but also in the departments of culture, science and technology, education, and civil administration etc. which are called "the government offices with low expenditures" and were usually regarded as a clean area. Big offenses committed by government officials and executives of state-owned companies have increased rapidly in recent years, and the crime have become more and more complicated. And along with economic communications increased between countries, transnational crimes of corruption has also gone up-trend. On the other hand, from the viewpoint of criminal methods, because increased efforts are being made to tackle graft and bribery in China's ongoing anti-corruption campaign, the criminals consciousness of evading investigation has been built up, and the crime turns toward much more intelligent, scientific and secret; in the meantime, with the emergence of a great deal of "nest case"or "string case ", the corruption has transformed from traditional simple crime to the radiation appearance and the network form, some corrupt officials in the power section have organized the benefit gang in order to evade investigation ,and the interference on investigation increased which make it much more difficult to detect cases . Additionally, in order to escape from prosecution and punishment, more and more corrupt officials choose to flee overseas with their illicitly acquired assets. All of this new trend of corruption demand that the anti–bribery organs strengthen their intelligence and information work to enhance their capability to control and detect the corruption phenomenon.

2. The urgent needs to strengthen the investigative ability

Detection work is originally a process continuously collecting and using the intelligence and information. To launch every step in the investigation, it relies on the judgment, the analysis and the assistance of information. The ability of collection, occupation, analysis and use of the anti-corruption intelligence and information constitutes an important part of the anti-corruption officials investigative ability. The enhancement of intelligence and information work by way of information's accumulation, analysis and use would contribute officials in the anti-corruption organs to grasp accurately the rules concerning the cases' occurrence and its detecting way, as well as change unhealthy practice of "waiting case at home "and developing a work style of proactive investigation in the anti-corruption unit. And it certainly will bring an active and profound influence on the strengthening of anti-corruption officials investigative capability on the long run.

3. The inherent requirements to realize a sustainable development of the anti-corruption work

Currently, China is in the particular period in which the old system and mechanism turn track. The phenomenon of embezzlement and bribery appears extremely common and the graft and bribe activities are widespread, but on the contrary the shortage of case source is universally met in the anti-corruption bureaus. The problems of seldom- case clue reported, low-grade clue,

low judicial precedent rate have become a bottleneck in anti-corruption work. Its reason lies in the weakness of the anti-corruption foundation work, especially the ineffectiveness of the intelligence and information work. The laggardness of the intelligence and information work results in the passive situation existing on the anti-corruption work over a long period of time, and have affected the transformation of investigation mode. It could be said that the anti-corruption intelligence and information work as the foundation with initiative powers should collect and capture criminal case information from multi-channels to discover and confirm promptly the bribery guilty. Thus, it is an essential and certain choice to strengthen intelligence and information work, build a perfect channel unblocked and the sensitive reaction information work mechanism to raise the ability of self-discovery and solving difficult cases, and receive the sustainable development in the anti-corruption work under the new situation.

4. A powerful act to carry out the anti-corruption strategy of putting equal emphasis on punishment and prevention of career-related crimes

It is China's anti-corruption strategy of putting equal emphasis on punishment and prevention of career-related crimes. To strengthen the intelligence and information work and make it possible for the Anti-corruption Bureaus keep an astute ear to various corrupt phenomenon, not only can it raise the capacity for the anti- bribery unit to take the graft and bribe crime under great control, but also can it play an important role to deter and prevent corruption. For example, from the experience of Independent Commission Against Corruption in Hong Kong, the existence of the informant makes those persons who are lured by crime dare not defy the law to a certain degree; and also from the experience of building the database of law-enforcing behaviors of the administrations, which are promoted actively by the procuratorate organs of Zhejiang province, by taking those law-enforcing activities under scrutinize, the database not only contributes to detecting cases , but also regulating administrative law-enforcing behaviors and promoting to build a clean government .

. Issues on strengthening the intelligence and information work

The intelligence and information work was once more put forward as an important foundation work at the Sixth Anti-corruption Conference of National Procuratorates convened last year. That is a strategic decision based on the summarization of experience and the scientific foresight of the intrinsic development requests for the anti-corruption work, and it will surely produce a positive and profound influence on the anti–bribery work. But it should be pointed out that based on the current judicial condition in China, the intelligence and information work is not only a new topics to the anti–bribery organ self, but is also short of knowledge in society. Accordingly, in order to push this work foreword effectively, there are a few points should be noticed as following;

1. To clarify the anti-corruption intelligence and information work

Over a long period of time, because there was no clear concept of anti-corruption intelligence, the anti-corruption intelligence and information work is misread by some people, who regard it as an particularly work of obtaining intelligence and information by using technical or secretive means, and confuse the relations between the content of intelligence and information work and its means to obtain them. That kind of state has restricted the deployment of the intelligence and information work. Generally speaking, there are three kinds of intelligence ways, i.e. the way of conventional and public collection, the way of collection by using secret force, and the way of collection by using electronic techniques. It is true that some of this intelligence collection means will infringe human rights, but there lies no reason that the intelligence and information work should be baffled for this .The intelligence collection is just one part of the intelligence and information work. Anti-corruption intelligence and information work involves several processes such as collection, storage, management, analysis and use of intelligence and information, and includes the building-up of intelligence consciousness, the construction of intelligence mechanisms, the development of intelligence technique and the training of intelligence personnel, etc. It provides the fundamental information support for the anti-corruption work decision-making and thus, it could be described that the content is far richer than the means. The main purpose to specify the scope of the anti-corruption intelligence and information work is to help anti–corruption officials and the public accurately understand the essence of this job by distinguishing its contents from its means, which furthermore will attain two purposes: One is to help anti-officials set up right viewpoint of intelligence, and push foreword the anti- bribery intelligence and information work in full scales; the other is to gain understanding and support of the anti-corruption intelligence and information work from people of various social circles . These two points are the precondition of realizing an overall development of the intelligence and information work as well.

2. To stick to the conformity of legitimacy and usefulness

As the intelligence work seep through the realm of society, economy, science and technology, the grand intelligence viewpoint is gradually replacing the traditional intelligence viewpoint, but we should confess that the intelligence is a concept with its history. Under the circumstance that anti-corruption intelligence and information work is not widely acknowledged

by society, it seems much more important to stick to the work principle of unifying the legitimacy and usefulness, otherwise the intelligence and information work would fall into passive situation. Because the criminal subject of bribery is special, it demands that the very strong type of policy should be carried out in the anti-corruption work. Hence, depending on the different category of the intelligence resources, we must both scrupulously obey the legal rules, preventing using illegal means from obtaining intelligence and information, and emphasize the research of means to obtain legally the intelligence and information as well as explore the effective ways in the acquisition of intelligence and information so as to enhance our capability to do this job.

3. To strengthen the leadership of the intelligence and information work

As a new deployment, the emphasized leadership is the vital premise to guarantee and promote the work develop healthily. Two aspects should be mainly paid attention to: The first is to strengthen the leadership on how to push the intelligence and information work. There are lots of links and rich content in the anti--bribery intelligence and information work. In order to obtain a systematic development, a strong leadership is needed on its main mission and work way so as to ensure this work develop healthily in the anti -bribery organs at all levels. The second is to address the guidance of the intelligence and information work content. Anti- corruption work possesses a very strong policy in China. To strengthen the guidance on the contents of intelligence and information work, and program it in the overall anti-corruption background in a certain period will help to improve the anti –corruption work.

4. To actively call for the application of special investigative techniques in the anti –corruption field

The special investigative techniques are those measures exclusively authorized to the anti-corruption department by many nations. World widely, the application of special investigative techniques in the investigation of career–related crime is legalized in many nations. The Article 50s of □United Nations Convention against Corruption□is stipulated that ‘ in order to combat corruption effectively ,each State Party shall , to the extent permitted by the basic principles of its legal system and in accordance with the conditions prescribed by its domestic law, take such measures as may be necessary ,within its means , to allow for the appropriate use by its competent authorities of controlled delivery and ,where it deems appropriate ,other special investigative techniques, such as electronic or other forms of surveillance and undercover operations ,within its territory ,and to allow for the admissibility in court of evidence derived therefrom.’However, Chinese anti-corruption organs have no special investigative power because Chinese criminal procedural law was formulated investigative measures based on common crimes’characteristics rather than considering the career –related crimes’. Currently the task of anti-corruption is still onerous in China, while insisting on legally implement the anti-corruption intelligence and information work, we should take the opportunity of enforcing UNCAC and positively strive for special investigative power as the beneficial supplement to the development of the anti-corruption intelligence and information work means.

□. Some suggestions to the current development of the anti-corruption intelligence and information work

Alongside the battle against bribery proceeding, more and more anti-corruption officials are aware of its importance and necessity to strengthen the intelligence and information work, and their work self-consciousness and the initiative are universally building up. But because the execution of anti–bribery intelligence and information work is just made a start, there are a few of theoretical and practical problems to be discussed in order to put the work into practice effectively. At present, the author believes that the following parts should be particularly concerned.

1. To foster and propose the principle of intelligence –led investigation

Consciousness decides the behavior. However urgently needed the intelligence is in our anti–corruption work, the intelligence consciousness is always decisive. The person who has stronger information awareness may often voluntarily collect, analyze and use the information to suit the investigation practice, while those who have no intelligence consciousness would ignore completely or even turn a blind eye to the intelligence and information. It is the intelligence consciousness that would produce the motive and the demand of intelligence. Consequently, for the sake of implementing the anti-corruption intelligence and information work in depth, it is necessary to thoroughly propose the idea of intelligence–led investigation, and guide the anti-corruption officials to set up modern investigative ideas relating to intelligence-led, intelligence investment, intelligence evaluation and intelligence sharing and so on. This knowledge could be treated as the foundation to enforce the anti-corruption intelligence and information work.

2. To strengthen the construction of the intelligence organization

The intelligence and information work requires stronger specialized skills. It is favorable to consolidate a programming anti-corruption intelligence and information work by strengthening the construction of the intelligent organization which would play the role of “the collection center, the management center and the service center”. Owing to the actual demand of pushing an

unified and integral investigation mode, which has been propagandized by the Supreme People's Procuratorate in the past few years, to set up a concentrated, unified and efficiently run anti-corruption intelligence system and make it become an important component of the investigation commanding center, will extend the touch of the commanding centers and enable it to play a better role in guiding the investigation as a "nervous centralis".

3. To strengthen the research of the intelligence and information theory

Lagged theory restricts practice development. Throughout the whole nation, anti-corruption intelligence and information work falls behind the needs of the anti –corruption work at present. One of the most important reasons is that the procuratorate organs have no accumulation of theory in the intelligence and information work and thereof the practice of information work lacks the supports of theory. On this ground, in order to prop up a thorough development of the intelligence and information work in the following period, it is imperative to strengthen the research of the anti–corruption intelligence and information theory both in the macroscopic side and in the microscopic side. The research in the macroscopic aspect should focus on the thoughts of building an overall framework relating to the anti-corruption intelligence and information work, by drawing lessons from the basic intelligence and information work principle with the aim to resolve the guiding principle, the development targets, the development strategy and the development ways of the intelligence and information work. The research in the microscopic aspect should focus on the establishment of anti-corruption intelligence and information work mechanisms to be content with the anti-corruption detection practice, and explore the ways of effective development in the intelligence and information work practice.

4. To strengthen the exchange of the intelligence and information work

The intelligence and information work is currently highly valued by all kinds of investigation organs domestic and abroad, and painstaking efforts have been made in order to strengthen this work .We should actively draw lessons from the newest research developments made by various investigation organizations. By learning from others' strong points to offset our weakness, benefiting by canvassing various opinions, we can achieve the aim to ensure our intelligence and information work advanced and resultful. In the meantime, it should be noticed that corruption is an international problem, with the deepening of increasingly economic globalization in nowadays world, any kind of corruption in other nations is no longer an isolated phenomenon, we should increase international exchange on the corruption intelligence, attach more importance to making research of new circumstances and new trends appearing in the worldwide anti-corruption campaign, and make efforts in introducing and disseminating the worldwide anti-corruption successful experience and practical procedure to accelerate and push the battle against corruption foreword in China.

V

China's Practice and Improvement of Law under Illicit Assets Recovering Mechanisms

Yongyun Guo

Part □

Illicit assets indicates the assets that the criminals acquired by committed corrupt & criminal activities and the benefits brought about from the activities. It includes illegal incomes, properties, facilities or other tools, and the benefits generating from these assets, such as interests, coupons and etc. Recovering illicit assets is the important measures and procedure for the law enforcement agencies of a country to obtain evidence of a corrupt crime, the important measure of protecting public interest, resuming rule of law and maintaining fair and justice, and as well the need of keeping corrupt crime within limits and promoting harmonious development of human society.

Recovering of the illicit assets, means the mechanism that under the framework of international justice cooperation or assistance, after the assets of one country have been transferred to another country in the form of corrupt crime, the assets out flowing country claims directly the legitimate ownership of the assets through certain way, or the assets inflowing country returns the assets upon the request of requesting country (assets out flowing country or its country of origin).

With the development of globalization and frequent exchanges, more and more badger hats abscond or transfer their illicit money to other countries, which have been a big obstacle of

punishing corrupt crime of every country. According to preliminary estimate of World Bank, there is about 2 trillion dollars in the world which is related to corruption flowing transnationally, which occupied about 6% of total GDP of the world, which is about 33 trillion dollars in total.[21]Transnational corrupt crimes are bringing about huge threaten on the stability of economy, politics and society of every country, and have been an international problem concerned together by all the countries in the world. How to capture venal officials fleeing to other countries and recovering corrupt assets which have been shifted outside the borders has been hot topic of international anti-corruption battle. To develop international cooperation and assistance to the broadest level and capture venal officials and recovery corrupt assets have been the mutual desire and imminent demand of anti-corruption action of every country.

In order to strengthen cooperations of beating corrupt crimes globally and acclimating subject demands of anti-corruption battle of every country, on 4 Dec, 2000, General Assembly issued the 55th/61st resolution to set up Ad Hoc Committee and draft out a comprehensive international legal document on preventing and beating corruption. It took representatives from 107 countries and 28 international organizations and non-governmental organizations two years to drafted the convention after 7 rounds of negotiations. On 31st Oct, 2003, at the 58th meeting of United Nations, the "United Nations Convention Against Corruption"(hereinafter referred to as "the Convention") was approved and took effect from 14th Dec, 2005. The born of the convention shows the intense desire and stanch decision of anti-corruption of international society. The most important value which should be give compliment is that the convention established for the first time the principle of illicit assets recovery mechanisms, provided that the illicit assets transferred abroad must be returned.

Article 51 to 58 provides detailed stipulations on recovery and return of illicit assets, which constituted international law mechanisms on recovery of illicit assets. Its core contents are: through certain civil and criminal confiscation measures as well as civil and criminal lawsuits, recovery the illicit assets shifted to other countries and carry out return and punishment according to certain regulations, which include two kinds of asset recovery modules, the first one is the direct recovery mechanism, i.e. one party state through certain ways, for example, its own civil lawsuit or another country's judicatory procedure, when its corrupt assets have been shifted to another party state but not been confiscated by that country, claims directly the legitimate ownership of the assets and chase them back or get compensation(reparation). The second one is recovery of property through international cooperation in confiscation, i.e., one treaty state confiscates cisborder corrupt assets according to confiscation order of another party state or its own law, then return them to the other party state.

The assets recovery mechanism established by *the Convention*, broadens greatly the international cooperation tunnels and promotes the international cooperation possibility of chasing back the corrupt assets of every party state. It makes the badger hats realize that, even if the assets have been shifted abroad, they will not gain anything except punishments, this is undoubtly a tremendous shock to them. The international community generally think that asset recovery mechanisms is the core section of *the Convention*, and also the most important and most compellent one in the 5 systems[22] established by *the Convention* as well as the preminent contribution and biggest achievement of *the Convention*.

However, we need to recognize that, *the Convention* provides effective way for international community to trace back the illicit assets outside the borders mutually in the form of international law only, while exertion of its functions still depends on the bilateral cooperation between the party states and their corresponding specific regulations of domestic law. So the road is still long and arduous. Every party state should cooperate proactively under the framework of *the Convention*, explores and innovates cooperative channels and methods of recovering the illicit assets, improves domestic laws, makes it join related regulations of *the Convention* so as to construct the effective system of chasing back corrupt assets together.

Part □

China always values recovery of illicit assets. *Criminal Law of thePeople's Republic of China* □hereinafter referred to as *Criminal Law*□and *Criminal Procedure Law of the People's Republic of China* □hereinafter referred to as *Criminal Procedure Law*□provide principles on this respect. Article 64 of *Criminal Law* regulates:"All the properties received illegally by criminals should be recovered or be ordered to return or compensate……", the sub 1 and sub 3 of article 198 of *Criminal Procedure Law* regulate respectively that:"Public security organ, people's procuratorate and people's court should keep properly properties and corresponding coupons of

[21] See also: *Research of corrupt assets chase sytem*, Zongliang Zhang, 6th issue of *Shandong Social Science*, 2006.
[22] I.e.,: prevention system, criminal conviction and law-enforcement system, international cooperation system, assets chase system, implementation supervision system.

the suspects and the accused, which have been distrained or frozen so that they will be checked and inspected appropriately……”“As soon as the sentence of people’s court goes into effect, all the distrained or frozen illicit money, plunders and their coupons, except those returned to the victims, turn in exchequer.” Chinese government and its judiciary organ always attached great importance to combat corruption and recover illicit assets based on related stipulations of laws, which redeems considerable economic loss for the country and collective. Statistically, only in 2005, all the returned illicit money, plunders and illicit incomes, replevied by procuratorial organ through investigating and dealing with duty related criminal cases were as much as more than 74 hundred million yuan[23], which maintains the rule of law effectively.

With the further development of anti-corruption battle, Chinese government pays more and more attention and reinforces absconsion-trace and spoils-recovery work abroad in the international cooperations of anti-corruption, aming at the situation that the number of badger hats who abscond with illicit money are increasing[24].

On the one hand, Chinese government proactively carried out bilateral international judicial assistance and law enforcement cooperation with other countries, which gains obvious effects on beating transnational badger hats mutually, exploring and innovating absconsion-trace and spoils-recovery system outside the borders. According to incomplete statistics, since 1998, Chinese government has successfully extradited more than 70 corrupt officials back to China[25] as well as part illicit money through the ways of regional judiciary assistance, extraditing, international operative organization arresting and so on. For example, Zhendong Yu, former president of Guangdong Kaiping subbranch of Bank of China who run away outside for 2 and half years with 4.8 hundred million dollars of corrupt public money, Guizhou Huang, former vice general manager of Hongkong sub office of Guangdong International Investment company who defalcated 13 hundred million HKD of public money, Wanli Lu, former director of department of transportation who defalcated mint nation’s money and so on.[26]

——International judicial assistances. From Sep, 1987 to Apr, 2006, Chinese government has concluded 72 conventions or treaties on bilateral judicial assistances with 48 countries successively. Thereinto, includes not only circumjacent countries like Russia, South Korea, Thailand, the Philippines, Kazakhstan, Kirghizia, Mongolia and etc., but also some distant countries like the U.S.A, Canada, France, South Africa and so on. [27]A great part of the contents in these conventions or treaties is referred to international cooperation of anti-corruption and recovering of illicit assets. For example, the treaty about criminal judicial assistance between China and America, with 23 clauses in total, amid of which, the content of the sub 2 of the article 1 regulates “applicable scope” about:“Assistance should contains:……□□□implementing requests about query, search, frozen and distrain evidence;□□□supplying assistance in the procedures of confiscation…….” Chinese side requested American side based on this treaty for criminal judicial assistance in case of Zhendong Yu, former president of Kaiping subbranch of Bank of China, who defalcated public money. In Dec, 2002, Amercian side took Zhendong Yu into custody in Los Angeles, and returned all the illicit money, 3.55 million dollars, confiscated from him to China in Sep, 2003. On 16 Apr, 2004 American side repatriated him to China at the day of sentence[28].

——Extradition. In order to reinforce international cooperations on punishment of criminals, China passed *The Extradition Law of the People’s Republic of China*□hereinafter referred to as *The Extradition Law*□ on 28 Dec, 2000□and concluded extradition treaties with 25 countries up to now[29]. According to *The Extradition Law*, extradition treaties and related international agreements, China has extradited some corrupt officials fleeing abroad back for trial and recovered part of the illicit money. For instance, our country extradited criminal suspects Manxiong Chen couple, former manager of Guangdong Zhongshan Industrial Development Company, who defalgated 7 hundred million yuan and absconded to Thailand for 7 years back to China for trial with the diplomatic efforts and supports from Thailand

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[23] See also: attorney general, Chunwang Jia’s work statement at the fourth meeting of the tenth National People’s Congress on 11 Mar, 2006. see also: http://spp.gov.cn/site 2006/2006-03-20/000185866.html

[24] According to incomplete statistics in the report of *Offshore Financial Centre has been transition station of China’s capital flight* of research centre of Ministry of Commerce of China, there are about 4000 of Chinese absconded corrupt people, taking away about 500 hundred million dollars. See alsl: http://news.xinhuanet.com/fortune/2004-09/10

[25] See also: *Reinforce international cooperation, beat corrupt criminal mutually*, Jianming Wang, at the page 144 of *Working Papers on the 22th Congress on the Law of the World*□for Panels in Beijing□□.

[26] See also□http://news.xinhuanet.com/fortune/2004-09/10

[27] See also□http://news.china.com/zh_cn/domestic/945/20060403/13215206.html

[28] See also□http://news.china.com/zh_cn/domestic/945/20060403/13215206.html

[29] See also□http://news.china.com/zh_cn/domestic/945/20060524/13343009.html

——International law enforcement cooperation between Interpol parties.

Issuing red warrant and capturing criminals who are at large are important law enforcement cooperations between Interpol parties. As a member of international operative organization, China actively carried out law enforcement cooperations of absconsion-trace and spoils-recovery outside borders with other member countries. Statistically, from 1997 to Jan, 2005, through international operative organization, China had captured 230 fleeing suspects back, and at the same time, shipped off suspects fleeing in China to their own country. For instance, in 2004, Homeland Security Department of the U.S.A requested Chinese police department for assistance to arrest and repatriate Wenzhen Gu, who absconded to Shanghai and was suspected of bribing officials and smuggling commodities to Shanghai, Chinese police took coercive measures on Gu and sent him back to America under escort from Shanghai

On the other hand, Chinese government energetically takes part in and constitutes international treaties together with related nations, which contribute greatly to international cooperation of anti-corruption and strengthening of absconsion-trace and spoils-recovery outside the borders. So far, China has joined 25 multi-lateral conventions or treaties with the judicial assistance content. [30]Especially her proactive participation in the draft out and negotiations of *United Nations Convention Against Corruption*, with the spirits of sincere, practical and realistic, plays a constructive role in the establishment of the convention. China ratified the Convention on 10 Dec, 2003 and on 27 Oct, 2005 the entrance of the Convention was approved at the 18th meeting of the Standing Committee of the 10th National People's Congress. It indicates sufficiently China's brilliant position in reinforcing international cooperation in anti-corruption and shows powerful support to international anti-corruption work. Entrance of the Convention not only establishes the law foundation for our international cooperation on anti-corruption, international law basis for repatriating fleeing badger hats and recovering the assets transferred to other countries illegally, but also at the same time will play important promoting role in establishing sound corruption-punishing and preventing system, improving domestic law system so that it can be in conformity with recovering & cooperative system of corrupt assets.

As the Convention is in the category of international convention, most of the clauses in the Convention must pass every treaty state's domestic law so as to be implemented. In order to carry out each regulation of the Convention better and realize its unisonous running with Chinese nomocracy, law community and judiciary practice department are now raising a study & research upsurge of the Convention; with the principle of"Say with action, act with achievement, abide by promises", Chinese legislature makes joining the Convention as the basis and one of the important contents of revising *Criminal Law* and *Criminal Procedure Law*.

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Compared with the Convention, there is still a big gulf of our country's law regulations of related corrupt assets recovery mechanism. So establishing related principles and systems in China is the imminent task at present.

Firstly, set up a lawsuit system for antecedent civil trial. The sub 1 of the article 53 of the Convention stipulates that, instituting independent civil lawsuit on accused badger hats is allowed. According to our present law, it's allowed to make an absent trial in the civil lawsuit procedure, but the loss caused by criminal action is only instituted as criminal lawsuit with civil claims, and criminal lawsuit with civil claims should be put into trial with criminal cases or after them. So, it's necessarily to innovate our present related lawsuit system: in conditions that the criminal suspects or accused people die, abscond or are absent after the case happened or in the period of criminal lawsuit, as long as it has been checked that the properties are criminal earnings or the criminal suspects, the accused people have the ability of taking on corresponding civil liability, the procuratorial organ or the victims have the right to lodge civil lawsuit on damages, property return or confiscation, and put on trial when the civil accused people are absent. The People's Court has the right to sentence related party to undertake the civil liability of returning properties and compensating loss and so on, or to confiscate related properties. The confiscated properties can be the criminal earnings, or mixed incomes or even the incomes caused by crime.

Secondly, set up a criminal absent trial system. Based on related regulations of the Convention, the enforcement of another country's confiscation order by a treaty state is not in the precondition of effective judgment. However, realization of return of the corrupt assets must be based on the effective judgment of the requesting country. Our present criminal trial system

[30] See also□http://news.china.com/zh_cn/domestic/945/20060403/13215206.html

doesn't contain the absent trial system, namely, when the criminal suspects, the accused people are fleeing outside, we don't have the right to judge them. So, it's necessary to use foreign related law for reference, which stipulates that when the corrupt criminal suspects or the accused people are fleeing, establish criminal absent trial system. Considering about guarantee of the accused people's rights and benefits, criminal absent trial system should be taken as an exception of lawsuit system, and design of procedures should be based on demands of"limit scope of application","tight application conditions","standard application procedures"and"not applicable to death penalty"[31]. Moreover, the accused people have the right of employing a lawyer to defend for them when they are absent, and when the cases have been brought into justice, they have the right to overthrow the original judgments and have a new trial as soon as they don't accept the judgments.

Thirdly, improve frozen, distrain mechanisms. According to the sub 2 of article 54 of the Convention, frozen order, distrain order must provide "reasonable basis", so that the requested countries believe that the reasons of taking moves are sufficient. However, as our law doesn't regulate specific applicable conditions on frozen, distrain, and in practice the control of them are different, it's likely to happen that the search order, distrain order cannot be enforced in other countries. So, we should complete and improve the domestic law, cover the measures of assets-frozen and distrain into the scope of the compelled measure system, and regulates clear and specific rules on their applicable conditions, which will ensure the timely and effective enforcement in other signatory countries of the distrain order and frozen order issued from China.

Fourthly, complete the system of protecting well-meaning third party's rights. In order to fulfill the rules of the Convention that we should protect the well-meaning third party when recovering corrupt assets, our country should establish corresponding notice system and return-guarantee system when implementing the request of returning assets from the requesting country so as not to make damages on the well-meaning third party's rights. It's ruled that before confiscating or returning, the related units or individuals have the right to demur to judiciary organ about the confiscated or returned properties and ask for written guarantees or material guarantees before returning from requesting parties so that the requesting parties have to give back related properties when having a wrong returning.

Fifthly, establish a financial system which enables other countries to share the chased assets. The sub 4 , 5 of article 57 of the Convention regulate: the requested countries can deduct reasonable charges generating from spying, indicting or trial procedures due to confiscation from the confiscated assets; the treaty powers can consider especially about drafting conventions case by case or arrangements which can be accepted together on the final punishments of the confiscated properties. To be practical, it's reasonable for the requested countries to share the chased assets as they actually consumed manpower and financial power when sealing up, distaining and confiscating the corrupt assets. Moreover, divisions of the illicit money of the assisting countries mobilize enthusiasm of the requested countries on developing judicial assistances and then expedite judicial assistances finally. So, our country should transform the traditional ideas that the corrupt assets should be chased back in total without sharing with other countries as they are national assets and set up a workable financial system which allows the other countries to share the chased assets.

Sixthly, constitute a judiciary investigating system admitting and implementing judgments and arbitration judgments from foreign courts. Our country's civil procedural law has a special chapter on "judicial assistance" regulations, while criminal procedural law doesn't. In order to enhance criminal judicial cooperations and assistances with the treaty powers, fulfill related rules about chasing assets of the Convention, according to the reciprocal principle, our country should found a judicial investigating system admitting and implementing judgments and arbitration judgments from foreign courts. The investigating rights are exercised by the Advanced People's Courts of each province, autonomous region or directly governed city region, and be checked by Supreme Court.

Seventhly, build a system of capital supervision and quick-response. Intensify financial institution's supervision duty on shift of corrupt assets and establish a compelled report system of questionable transactions and quota transactions; perfect supervision on using foreign capital and investing abroad and consummate auditing and estimating systems on foreign businessmen's investments or repeals of investments; further perfect savings with real name and systems of declaration of official people's properties and reports of their assets abroad; establish information

[31] See also:
Anti-Corruption Convention and Reamending of Criminal Procedure Law, Guangzhong Chen, Ming Hu,1st issue of *Tribune of Political Science and Law*,2006.

share among the departments of finance, custom, procuratorate, public security, diplomacy and etc., and information exchange system with related treaty power based on reciprocal principle so as to boost up quick-response ability and step up level of spoils-recoverying abroad.

VI

On the Current Situation of Corruption Crime and Related Countermeasures

He Subin

Corruption crime is a public nuisance of the international community nowadays, which not only impedes economic development and impairs government's authority, but also potentially threatens national stability. Generally speaking, the ascending trend of corruption crime has been effectively kept within limits in China, and in some industries and fields it has been descending. This shows the initial achievements made by the guidelines and measures of national anti-corruption work. However, on the other hand, we shall be aware that its hardness, long-term and complexity decide that anti-corruption work cannot accomplish the whole task at one stroke. Correct analysis of the characteristics and causes of corruption and consideration of its countermeasures will be of great significance for further advancement of anti-corruption work. This article intends to analyze and probe into this aspect. I will welcome and value your comments.

1. Current Situation and Characteristics of Corruption Crime

(1) Leading cadres' involvement of corruption crime, especially chief leaders, is conspicuous with increase of major and serious cases. According to statistics, 12869 state functionaries were found guilty of duty crime during the period of 2003 to 2005, among which, there were 8487 cadres of division level, 591 of department and bureau level and 23 of provincial level. In the past there was no such phenomenon that so many senior cadres were investigated and punished within only several years. This, on the one hand, reflects the strength and determination of our party and government in punishing corruption, and on the other hand, tells the severity of a few cadres' involvement in corruption. In recent years, corruption cases have been a lot and persons involved in such cases have higher positions, moreover, the amount involved has been growing. In 2005, the procuratorial organizations around the nation investigated and prosecuted 8490 persons with bribery of over RMB100,000 and defalcation of over RMB1,000,000. The major cases amounted up to 55.7 per cent.

(2) Group characteristic of corruption crime is apparent with growth of "nest case" and "serial case". The badger hats collude with each other politically and economically to form interest groups and present the characteristic of grouping with growth of "nest case" and "serial case". Some chiefs lead in corruption and their juniors follow suit and compete in collecting wealth. In some cases, corruption and bribery crimes are mingled with neglect of duty, misuse of authority and irregularities for favoritism, one case with several crimes, one case with several offenders or one offender with several crimes. Some offenders collude with their spouses, children, relatives or mistresses in their crimes. According to statistics, every year "nest cases" and "serial cases" amount to more than 25 per cent of the total investigated, and in some areas more than 30 per cent. Zhanjiang Smuggling Case, Xiamen Smuggling Case and Shenyang Mu-Ma Case present apparent group characteristics with several hundreds of persons involved.

(3) Means of corruption crime becomes more covert with longer latent period. Because of their special social positions and relationships, corruption offenders' means is usually deceitful, cunning and concealed, presenting some new forms and characteristics with changing situations. There are mainly four types: 1) "option" of power. Many badger hats choose more "future" transactions than "spot" ones in their abusing power for personal gain. They no longer snatch benefits right away but will draw in benefits with their interests several years later, even after their retirement; 2) "false lending" and "transfer" of power. The badger hats connive at their children and spouses, etc. snatching benefits in their names to "act as agents of corruption"; 3) illicit money "bleaching" and capital increase. The badger hats use their illicit money to establish enterprises, and invest abroad or at home, etc. so as to gradually transfer it into legal income; and 4) pretending incorruptness and escaping investigation. Many badger hats often disguise themselves as uncorrupted cadres to puzzle the public, while once investigated they would put up a desperate struggle and deny their crimes. The deceitfulness, concealment and guile of corruption means makes the crimes difficult to find with extended latent period. As the 25th issue of *Report of National Conditions of China* by the State Council of the People's Republic of China and the Center for China Study of Tsinghua University pointed out, the 16 cases of senior officials' breach of principles or laws publicized by media from the 1980s to 1992 had an average latent period of 1.4 years or so from the beginning of breach to being disclosed. The 22 cases of senior officials' breach open to the public from 1993 to 1997 had an average latent period of 3.3

years, nearly 2 years longer than the former. The 16 cases of senior officials' breach open to the public from 1988 to 2002 had an average latent period of 6.3 years. As to individual cases, specific badger hat had a very long latent period. For example, corruption crimes of Wang Huaizhong, vice-governor of Anhui Province, had been concealed for nearly 10 years.

(4) Prominent out-oriented corruption phenomena and increase of cases of fleeing out with illicit money. With the deepening of reform and opening and increasing of foreign economic activity, the phenomena become prominent that badger hats use their duty convenience in foreign economic contacts for corruption. Some of them take the chances of capital flowing across areas, industries or nations and connive with lawbreakers abroad to commit crimes. Some of them commit crimes at home and launder illicit money abroad using discrepancies among nations. Some cadres, especially those key members involved in the cases, would flee abroad right away in case of expecting any trouble. Information from the Ministry of Public Security indicates that from 1993 to January, 2005, over 230 suspects had been arrested and brought back to China from over 30 nations and areas with the help of International Criminal Police Organization. However, by the end of 2005 there had been still more than 500 economic crime suspects free abroad with an amount of RMB 70 billion related with them.

(5) Occurrences of corruption present different area and industry characteristics. The first is area differences. In Mid and West China where economy and civilization fall behind relatively, corruption crimes are often attached to certain people. In East and South China, corruption crimes with out-oriented and capital-accumulation characteristics are severe. In North China, corruption of cadres in state-owned enterprises and loss of state-owned assets are severe. The second is that corruption in state-owned enterprises has not been well inhibited. Due to some defects of their management system, corruption cases in state-owned enterprises are moving up in recent years, which have been the areas where corruption happens concentratively and frequently. The third is that the monopolistic industries and "Three Authorities and One Department" are the accumulative areas of corruption. Due to the system and mechanism reasons, those monopolistic industries such as petroleum, electricity, civil aviation, telecommunication, and communication, etc., those organs of state power such as administrative and judicial departments, and those economy administrative and resource allocation departments such as finance and security, construction, administration of industry and commerce, and tax are the areas where corruption happens most concentratively and most frequently and more than 60 per cent of corruption cases have been investigated. The last is that duty offence is penetrating and spreading from the above frequent areas to "cold" industries. Corruption also happens in departments which were traditionally thought as unprofitable such as culture, technology, education, and justice, where duty offence cases are found continually. For example, indiscriminate charge in elementary and middle schools and corruption in colleges and universities are the focus of social reflection.

2. Considerations and Countermeasures of Anti-corruption at Current Stage

Chinese government has always paid much attention to punishing and preventing corruption crimes such as embezzlement and bribery, and takes a series of effective measures accordingly that play an important role in stopping corruption. However, preventing and punishing corruption crimes, as social system project, shall refer to and absorb successful anti-corruption experience at all times and from all over the world, and be handled in a synthetic way with strategies and means of various aspects such as political, economic, legal, culture, and moral, etc.

(1) Strengthen and perfect laws and regulations of anti-corruption, and set up legal order and environment of anti-corruption and advocating probity under the market economy operational mechanism

First, it is necessary to strengthen legislation against corruption and work out a law specialized in combating embezzlement and bribery as soon as possible. Embezzlement and bribery are major forms of corruption crimes. Although provisions concerning punishing embezzlement and bribery can be found in the Criminal Law and other special regulations, there is no special legislation in this field and moreover, some corruption activities severely harmful to society have not been defined as crimes. This causes defects in legal means in investigating and punishing corruption crimes. The legislation of punishing corruption crimes is not systematic or concerted. Hence, to work out special anti-corruption legislation is of great necessity.

Second, it is necessary to reform and adjust penalty means in punishing corruption crimes. In many nations, punishment of large fine is pointed to the characteristic of avarice of corruption crimes, while punishment against competence is pointed to the characteristic of functionary of corruption crimes, which is to deprive offender of taking certain government posts so as to prevent him or her from misuse of public power for private profit. In China, however, the current criminal law does not set concerning stipulations or just has imperfect stipulations in fine punishing natural person's corruption crime and punishment against competence of legal person's corruption crime. They need reference and perfection.

Last, it is necessary to strengthen procuratorial organization's function in investigating and handling and preventing duty offences. According to legal provisions, the people's prosecutorial offices of all levels have the function of investigating and handling duty offences of state

functionaries as an important force in combating corruption. On the one hand, the prosecutorial offices of all levels should strictly carry out the law and enforce handling of the case, especially be brave enough to investigate and handle major cases, and make their due contributions to combating corruption and advocating probity and optimization of economic environment. Through harsh beating corruption crimes according to the law, corruption is to be changed into activity of "high risk", "high cost", "no profit" and "negative profit". On the other hand, the prosecutorial offices should make full use of their advantages in familiarity with the characteristics, rules and causes of duty offence and in understanding the leaks in system, mechanism and management exposed in cases, positively undertake preventive work and timely propose their prosecutorial suggestion of preventing duty offence. They should enforce preventive work and work hard to stop occurrence of duty offence from its origin.

(2) Strengthen supervision and restriction of power and prevent misuse of power

Power without restriction or supervision will surely lead to misuse of power and corruption. It should been known that in recent years important roles have been played in preventing and inhibiting corruption by power and legal supervision of the NPC and the prosecutorial offices of all levels and by party discipline and administrative supervision of discipline inspection organizations and administrative supervision organizations of all levels. Whereas, as a whole our supervision laws and regulations and supervision systems are not complete or healthful, and the function of the supervision organizations has not been sufficiently applied. More supervision of lower level, less of upper level. More supervision afterwards, less interim or beforehand. The strength and authority of supervision are not sufficient. Hence, it is a must to further enforce supervision of power and practically prevent out-of-control and abuse of power.

First, reform power operation mechanism, and alter high concentration of power systematically. In the first place, it is a must to explicitly define power, responsibility, obligation and benefit of cadres of all levels, especially the chiefs, and prevent over concentration of power and balance power, responsibility, obligation and benefit to form a self-restraint mechanism. In the second place, power should be properly divided to form a power structure of mutual restraint, and separation of powers should be implemented among members of the leading group to prevent the chief from determining everything. In the last place, develop inner-party democracy and enforce inner-party supervision. "Permanent Tenure in Office" and "System of Secrete Vote" should be gradually promoted. Power operational mechanism of reasonable structure, scientific allocation, rigorous procedure, and effective restraint should be actually set up. Supervision of power should be enforced in decision operation and execution, etc.

Second, enhance system reform, and ensure power operation along the track of institutionalization and legal system. In the first place, the administrative system of examination and approval reform should be implemented continuously. Separating the functions of the party from those of the government, separating the functions of government from those of the enterprise, and separating governmental and non-governmental functions should be practically carried out. Governmental functions should be shifted to macroeconomic control, market supervision and social public affairs management. Authorities of examination and approval should be reduced. Civil servants should be urged to be efficient and honest, and to carry out their administrative functions according to the law. In the second place, implement financial system and banking system reforms. Strengthen supervision of financial funds, strictly hold that revenue and expenditure are separate, and enhance the function of financial regulation. In the last place, reform the benefit distribution system. Establish the system of "Incorruption Venture Fund" for civil servants and properly raise civil servants' salary and welfare, which will free them from worries as well as increase the cost of corruption and offence.

Third, establish systematically rigorous power supervision mechanism. Power allocation and structure design should abide by the objective laws of power implementation. At present, different power restraint and supervision mechanisms should be worked out according to the properties, categories and operating modes of powers. In the operation of decision-making power such as power of appointment and removal of personnel, power of purchasing, and power of inviting to tender, etc., public bidding and open competition system should be applied in the implementation of sunshine operation to improve publicity and transparency during decision-making process, and corruption in black case operation shall be reduced fundamentally. In the implementation of power of execution, the systems such as execution tracing, information feedback, impeachment and appealing should be introduced to control randomness and corruption activities during the process of execution.

Last, strengthen social supervision of power. Social supervision is a vital part of power supervision and restraint system as well as a regulating and restraint force of the society upon state organs' activities. At present, further broaden channels of social supervision, attach importance to the supervision functions of media, report and appealing, positively and properly treat people's letters and visits, and pay attention to finding offence suspicions from them.

(3) Strengthen system force of anti-corruption, and eradicate the conditions for corruption from system and mechanism perspectives

Establishing a scientific system is an elementary approach to combating corruption and advocating probity. Our anti-corruption struggle has gone through campaign anti-corruption, power anti-corruption and system anti-corruption these three phases successively. Today we are in the system anti-corruption phase. In the first place, system construction of combating corruption and advocating probity must be scientifically reasonable and practically feasible. In drafting and introducing a system, we must at first grasp facts, find out oversight and deficiency of existing system, focus on the specific system and each bottleneck which may bring out corruption readily, and work out corresponding and pertinent system criterion. In the second place, we must give prominence to emphasis and advance in a stable way. System reform should be implemented positively with emphasis in work on constraint of power, control of capital and supervision of cadres' appointment, and corruption should be controlled from its origin. Simultaneously, system construction should be advanced stably instead of over-anxiety for quick success. For some systems, experiments should be carried out first and only when conditions permit can they come out. In the third place, attention should be paid to well arranging supporting facilities of the system of combating corruption and advocating probity, well drafting an overall scheme and a long-term planning and well designing each specific system so as to make all the systems collected with and look to each other. In the last place, close attention should be paid to implementation and execution of system. Life of a system lies in its execution. A good system would not function without being executed. A good system would not present its value without being sufficiently executed. Close attention should be paid to sufficient execution of a system. Regular supervision and examination of the execution of each regulation or system concerning combating corruption and advocating probity should be made. Activities violating any regulation or system should be seriously investigated and dealt with. Strict enforcement of orders and prohibitions and punishment of any violation should be carried out. Poor execution of a system should be practically solved and rigidity of a system should be increased continuously.

(4) Strengthen ideological and political work and professional ethics education, and consolidate the ideological defense line against corruption and treachery

Practice tells that education is not omnipotent, but it will not definitely work without education. For prevention of corruption, education must come first. In the first place, strengthen education of idea and belief and professional ethics. Civil servants should be educated to establish correct philosophy, values, and honor outlook. Especially, power outlook education of potentates should be strengthened to make powers in their hands tools for people's interests. Civil servants should be educated to be loyal to their responsibilities, accept the constraint of professional ethics in their minds, grow inside sense of moral and self-discipline, resist the temptation of money or materials self-consciously, and respect and advocate the virtues of being law-abide, uprightness and probity, hard struggle, and diligence and love for people. In the second place, strengthen legal and disciplinary education. With full use of the constraint and guidance function of law and discipline, civil servants should be educated to set up the concept and legal consciousness of strict law enforcement and behave according to the law, and to cultivate good habits of managing each social affair according to the law and being a model in law execution and abiding. In the last place, strengthen warning education. By means of visiting prisons, using examples, and watching warning films, etc., civil servants should be educated with opposite examples to promote their self-respect, self-awareness, self-alarming, and self-excitation, and to help them pass through the gates of power, money and beauty, and consolidate the dam against corruption and treachery.

(5) Enforce international judicial cooperation in anti-corruption field, and make corruption offenders have no hide

In recent years, with the speedup of economic globalization, corruption crimes more and more present the trend of transnationalization and systematization. Today with the increase of out-oriented corruption crimes and corrupt officials fleeing abroad, it appears to be important and urgent to enforce international judicial cooperation in the field of corruption.

UN Convention Against Corruption (UNCAC) (hereafter referred to as "the Convention") passed in the 58th UN General Assembly in 2003 provides a platform and chance for China to enforce international judicial cooperation in the field of anti-corruption. As to the trend of international anti-corruption, China should enforce its international judicial cooperation in anti-corruption from the following aspects:

1) Referring to the Convention, modify and perfect our criminal law against corruption. The Convention is a global convention punishing and controlling corruption crimes with the largest range, many contents of which directly reflect the latest legislation and development trend of anti-corruption in the international community. Chinese anti-corruption criminal law takes the Criminal Law of the People's Republic of China revised and passed in 1997 as its principal part with addition of other laws and regulations, and judicial interpretation. Some aspects of it can not meet the demand of combating corruption crimes nowadays. We must adapt to the trend of international anti-corruption crimes, review our criminal legislation and jurisdiction against corruption in an overall way, and envisage their defects and make perfections accordingly. In the

first place, enforce preventive legislation. Establish a civil servant's property declaration system conforming to situations in China. In the second place, improve death penalty legislation and enhance cooperation in extradition of corruption offences. In the last place, strengthen the chasing mechanism of criminal abroad. A specialized organization should be set up to strengthen investigation and research of countermeasures, and to establish a rather complete mechanism of chasing criminals and recovering the illicit money or goods.

2) Enforce communication and coordination to establish a global cooperation mechanism combating and preventing corruption all around. Strengthen judicial cooperation with other nations, establish a regular communication platform for international anti-corruption, eliminate discrepancies, and construct a systematic cooperation network. Establish a mechanism of exchanging corruption data and information, effectively grasp and control the trend of corruption crimes in a timely manner, and enhance international anti-corruption cooperation.

3) Enforce work measures and strengthen the work of chasing criminals abroad. Through the effective channel of international anti-corruption cooperation enforcement, we should strengthen chasing criminals through multiple methods and in various channels to make them give up trusting to luck and no hide available for them.

VII

Origins and Objectives of IAACA

Dr. Ye Feng

Member of Prosecutorial Committee of Supreme People's Procuratorate of the People's Republic of China

Excellencies, Distinguished Guests, Ladies & Gentlemen,

Speaking as a member of Organizing Committee of the First IAACA Annual Conference and General Meeting, and on behalf of the Supreme People's Procuratorate of the People's Republic of China, it is my very great pleasure to extend a warm welcome to all delegates to IAACA's first annual conference here in China.

Establishing IAACA was first suggested by delegates attending the December 2003 conference in Merida, Mexico, convened to sign the UN Convention Against Corruption. Delegates at the Merida meeting recognised the need for a specialist, and international anti-corruption body dedicated to assisting implementation of the UN Convention Against Corruption. Indeed Article 49 of UNCAC advocates establishing joint investigation bodies to encourage more cooperation at the international level between purely national anti-corruption authorities. Models for the sort of role IAACA can fulfil are afforded, for example, by the International Criminal Police Organisation, the International Association of Prosecutors, the International Association of Judges, the International Bar Association and the World Jurists' Association.

Establishing IAACA along such lines was further discussed in the course of several susbsequent meetings, beginning with the 11th UN Congress on Crime Prevention and Criminal Justice in Bangkok and also at the first Prosecutors General Conference of ASEM, held in Shenzhen, China, last year. We also reverted to this topic at a meeting in Vienna last January to draft the rules of procedure for UNCAC, and also in the course of the International Association of Prosecutors executive committee meeting in Kampala, Uganda the following month (February). Strong indications of support for such a body have been received from national anti-corruption all around the world, and including Argentina, Azerbaijan, Australia, Fiji, France, India, Latvia , Malaysia, Namibia, New Zealand, Pakistan, Romania, South Africa, Singapore, Uganda, United Kingdom, Venezuela and Viet Nam, etc.

An initial draft statute establishing IAACA, based on the advice of experts from Argentina, and the UK, was drawn up in the course of the first Prosecutors General Conference of ASEM in Shenzhen last December. This draft was reviewed by experts from Bermuda, Hong Kong, Singapore, South Africa, Sri Lanka and the UK, and also unanimously approved at a special meeting in Vienna last April attended by parties representing some 20 different national anti-corruption authorities. The same draft statute has also been endorsed by the UN Office on Drugs and Crime (UNODOC) in UNODOC's capacity as custodian of UNCAC.

IAACA's first and foremost objective is to provide a forum whereby national authorities are able both to strengthen their domestic anti-corruption systems and procedures, and also develop cross-border channels of communication and cross-border institutional relationships. This primary objective for IAACA takes as its foundation the comprehensive set of anti-corruption standards, measures and rules which UNCAC prescribes for UN member countries. Implementing these anti-corruption measures that UNCAC prescribes is likely top prove an arduous challenge for some countries. How effectively each UN member country is able to implement

the full range of anti-corruption prescribed by UNCAC is likely to be conditioned by two factors.

Firstly, the internal resources and capabilities of all national governments are ultimately finite. Secondly, where corruption operates across national borders, many additional and self-evident problems arise. These problems arise from differences in national cultures and legal and political systems that differentiate one country from another. Specific examples of such differences relate to different interpretations of what constitutes criminal conduct when assets are transferred from one national jurisdiction to another. Or again, many procedural differences may affect the way different countries go about requesting legal assistance from counterpart governments overseas.

One strong reason for establishing IAACA has therefore been the drive to reduce, if not eliminate, such inter-jurisdictional obstacles that stand in the way of the international fight against corruption. As noted, IAACA will seek to act as a forum for open discussion on how best to free up and mobilise whatever mechanisms are needed to combat corruption world-wide. Nor does the IAACA process need to be a monolithic one. Rather it can be stimulated through IAACA organising, for example, a variety of regional work-shops and conferences bringing together the regional parties who most frequently deal with one another, and focussing on anti-corruption issues most common to that particular region. To this end, IAACA is very open to the idea of inviting professional and private sector practitioners, with expertise in anti-corruption issues, to take part in such discussions and events. IAACA will also lobby national governments to support such a process. Again, the rationale here is that organised and sustained pressure in search of a common objective will yield detectible results in the fight against corruption.

As already noted, the problems which corruption poses for individual home governments domestically are greatly compounded when corrupt parties operate internationally. Where there is such a problem with corruption operating internationally (instanced by the involvement of organised, or bribery of overseas government officials, or the transfer of illegally obtained assets between different countries), it can only be sensible for national anti-corruption authorities to coordinate with one another in their common fight against such corruption. Obtaining evidence from abroad, the arrest and extradition of those suspected of corruption, and the recovery of assets from overseas will all take place much more effectively where there is cooperation between authorities whose national laws and systems may have been abused by such criminals.

A major part of IAACA's role will be to stimulate and facilitate such cooperation on a direct government to government basis so that it takes place more effectively and frequently than it may have done hitherto. Partly, this may be achieved by participants in IAACA proceedings agreeing and documenting a framework of codes of best practise and memoranda of understanding for tackling corruption world-wide. Partly also and informally , a better coordinated drive to reduce international corruption may develop naturally through anti-corruption specialists in one country getting to know their counter-part specialists in another country via the forum that IAACA meetings and events will provide.

Additional sharing of information is likely to be an important feature of any better coordinated fight against international corruption. To this end IAACA has set as one of its current year projects the compilation of three manuals, dealing separately and for all jurisdictions, with, firstly "International Instruments on Anti-Corruption", secondly "Anti-Corruption Laws", and thirdly, "Anti-Corruption Authorities". These three volumes should provide an invaluable source of information on the way different jurisdictions have structured their judicial and executive resources for combatting corruption. Via the association's web-site ‘www.iaaca.org’, IAACA will publish a regular dossier of developments pertinent to the international fight against corruption.

As well as facilitating better coordinated requests for legal assistance in combating anti-corruption, and compiling relevant dossiers on anti-corruption law and practice. IAACA also plans to put together a database covering sources of expert information on anti-corruption policy issues, and investigation techniques. On request, and subject to availability of finance, IAACA will also put together teams of experts to provide legal and technical assistance in the areas of corruption prevention and detection, and asset recovery. It is envisaged that technical assistance of this nature will be of particular assistance to developing countries whose fight against corruption may need accelerating due to local constraints on human resources and/or expertise and Treasury support.

None of us I am sure underestimate the scale of the problem and arduous nature of the challenge presented by corruption world-wide. Global problems such as corruption do, however, require globally coordinated solutions and remedies of the sort that IAACA aspires to facilitate.

May I conclude by thanking you for your attention and wishing you a stimulating and productive conference. Thank you very much.

VIII

Nature and Strategy of the IAACA

Dr. Ye Feng

Member of Prosecutorial Committee of Supreme People's Procuratorate of
the People's Republic of China

Excellencies, Distinguished Guests, Ladies and Gentlemen,

1 .Active Response to Implementation of UNCAC
Corruption is universally recognised as an evil phenomenon which undermines democracy and the rule of law, violates human rights, distorts markets, erodes the quality of life and permits organised crime, terrorism and other threats to human security to flourish. Nor, despite many parties' best endeavours in the past, does this evil phenomenon show any sign of abating. Corruption therefore continues to infect all countries, big and small, rich and poor.

The fact that the UN Convention Against Corruption (which I will hereafter refer to as "UNCAC") enters into force on 14 December 2006 is without doubt a remarkable achievement. This is, however, only a beginning. Now we must all bend our best efforts to ensuring that UNCAC is implemented as effectively as possible from the outset.

Establishing the International Association of Anti-Corruption Authorities (or "IAACA" as I will hereafter refer to the Association) is a pro-active response to the need for UNCAC to be implemented from the outset with maximum effectiveness. Effective implementation of UNCAC is IAACA's major objective, working on the comprehensive set of guidelines which UNCAC provides for deterring, and, as far as possible, preventing corruption. Inevitably a major part of this deterrence and prevention will involve civil codes of conduct for regulating government or private sector business as well as, ultimately, punitive action against those found guilty of corrupt practice. IAACA will assist this process by encouraging practical and effective measures aimed at strengthening international cooperation between national anti-corruption authorities.

2. Independent, Non-Political and Professional
I would now like to say a word about what I see as the distinguishing hall-marks of IAACA, by comparison with somewhat similar international organisations. Article 1.2 of IAACA's draft constitution clearly stipulates that the Association is to be independent and non-political in the stance it adopts vis a vis the fight against corruption. It will therefore be a professional, non-governmental and not for profit body. Its institutional members will be the competent national authorities charged, in their respective home countries, with the task of investigating and prosecuting corruption. The nature of the powers will of course vary from state to state .Some national authorities will have powers to both investigate and prosecute corruption; others will have the power to either investigate or prosecute corruption. Some will be focused on anti-corruption work, to the exclusion of other economic crimes such as theft, or manipulating the stockmarket; others will deal with anti-corruption work as well as many other economic crimes. One major difference between IAACA and other international legal/judicial organisations (such as the International Criminal Police Association, or International Association of Prosecutors) will therefore be in the composition of the association's membership. While other such international bodies largely consist of members drawn from the same professional discipline, IAACA's membership will embrace a diversity of professional disciplines.The common denominator between such professional disciplines within IAACA will be a shared focus on the need for international corruption in the fight against corruption.

3. A Not for Profit Organisation
IAACA is also a not for profit international organisation. The association's funding comes mainly from donations, with the principal such present donor being the Government of China. Going forward, other such governmental donations will of course be welcome. Both institutional and individual members of IAACA will pay annual dues on the basis of an equitable assessment of what their right level is. I believe such dues should never become an excessive financial burden on any one institution or individual member. In such cases we will consider whatever exceptional circumstances apply and waive or reduce such dues accordingly.

4. Annual Conferences

IAACA's annual programme already includes some significant projects. Our first priority is to put on a firm footing arrangements for a series of future annual IAACA conferences. Such annual conferences have a key role to play in establishing a process of dialogue whereby national anti-corruption authorities will be able to discuss, communicate, collect and share information and

experience. Delegates with expertise in the field of combating corruption will be equally welcome whether from countries with well-established anti-corruption authorities, or from countries where such authorities have only recently or not yet been established.

The Supreme People's Procuratorate of China , being one of the most important anti-corruption authorities in China is fully prepared to use its best endeavours not only to hosting this year's conference but also to host next year's second annual IAACA conference. Subject to appropriate discussion, we envisage this second annual conference taking place here in Grand Epoch City with the general theme of "Direct International Cooperation Against Corruption". I therefore take this opportunity to invite all of you here present to come to IAACA's conference next year here in China, bringing your ideas, suggestions and experiences to share with other IAACA members Notwithstanding the considerable amount of work involved in organising such conferences, such is the importance of their subject matter that I am confident other members of IAACA will be keen to host future annual conferences.

5. Information and Database

Further to IAACA's ongoing work programme, the Association has particularly noted the absence of any compilation, or database covering national and international laws in relation to deterring, investigating and prosecuting corruption. Following a good deal of research, IAACA staff have therefore already collated for publication a substantial body of existing international anti-corruption instruments and laws from different jurisdictions, as well as background material specific to various national anti-corruption authorities. This is, however, only a beginning our ultimate objective is to provide IAACA members with a comprehensive updated legal database on matters relating to the fight against international corruption. This database will be kept up to date through continuous dialogue between IAACA staff and individual IAACA member countries.

An IAACA web-site is already in existence. Its content is in English and of necessity so far somewhat limited in scope. We would therefore encourage all IAACA members to visit the web-site, review what is on it and help expand the its content by contributing further material setting out the nature and extent of anti-corruption legislation and executive action in their respective home jurisdictions. So far as concerns having the web-site text in additional languages besides English, we are contemplating having Russian and Chinese texts with additional languages being added later on. Publication of web-site material of the sort referred to above will provide IAACA members with a database on a wide variety of anti-corruption corruption legislation and case law. Other information of a forensic nature (finger-prints, passport details etc.) may also be included on the web-site as it develops.

6. Professional Training

Further important facets of IAACA strategy will include professional training programmes in the field of anti-corruption work, and mutual exchanges of personnel to broaden the expertise of such personnel in this sort of work. In China, we envisage establishing an international exchange centre for the further training of staff in the strategy and techniques of anti-corruption investigation, prosecution and general prevention. It is envisaged that the centre will be staffed by people having a particular expertise in the strategies and skills that have proved most useful in combating corruption around the world. Anti-corruption staff from IAACA member countries will be welcome to attend the centre to receive professional training. Such training, and accommodation during the time it takes place, will be provided free of charge, meaning that those attending will only have to bear to cost of travel between China and home country.

7. International Cooperation Against Corruption

IAACA's long term strategy is to set in place the appropriate machinery for combating corruption globally. In certain instances constraints imposed by national jurisdictions tend to stand in the way of fully effective investigations into corruption world-wide. Examples of this problem can be found in the sort of obstacles that national anti-corruption authorities encounter in tracing both suspects who have absconded from their home country as well as the assets they may have taken with them. The process of seeking evidence from abroad regarding such criminal activities is often unduly complicated and protracted in the time it takes. Delays arise due to the problem of finding ways through unfamiliar political and legal systems while operating in a foreign language. It may take months or even years to complete the procedures required for obtaining such legal assistance abroad. Not infrequently cases get abandoned due to such delays.

IAACA will therefore hope to adopt an increasingly active role in promoting direct international

cooperation in extradition, mutual legal assistance and asset recovery. In the longer term IAACA is considering setting up an international Coordination Centre to provide emergency back-up where undue problems arise in obtaining an international arrest warrant, or in the freezing and seizure of assets believed to represent the proceeds of corrupt practise. IAACA also hopes to formulate a set of policy guide-lines on direct cooperation between countries in order to combat corruption more effectively. This is likely to be an extremely challenging task as different parties may well have widely differing views on the feasibility of such international cooperation against corruption.

Finally, I would like to thank for your courteous attention to what I have had to say on these matters. I also look forward to our having a serious and productive debate on such important issues. Thank you very much.

IX

Function, Effects and Experiences of Punishing and Preventing Corruption Crimes by the Prosecutorial Organizations of China

By Wang Zhenchuan
Deputy Procurator-General of the Supreme People's Procuratorate of the PRC

Mr. Chairman,
Fellow Delegates,
Ladies and Gentlemen,

First, I would like to present my heartfelt congratulation for the first annual conference and general meeting of IAACA, and to sincerely welcome all the colleagues and friends from every country, region and international organization into China to attend this grand meeting! Now, I would sketchily introduce to the delegates and colleagues the function, effects and experiences of punishing and preventing corruption crimes by the prosecutorial organizations of China, so as to probe and pursue together the good ideas to prevent and deal with corruption crimes.

 The basic function of Chinese prosecutorial organizations to prevent and punish corruption crimes.

Chinese government has always attached great importance to prevent and punish corruption crimes. According to the Constitution of PRC, the People's Procuratorates are the legal supervision organizations of the country, and it is one of the important legal supervision functions of the prosecutorial organizations to prevent and punish corruption crimes by state functionaries. As the judicial organizations in China for punishing and preventing corruption crimes, the prosecutorial organizations are responsible for investigating the bribery and corruption crimes involving state functionaries, and for prosecuting to the people's courts according to law. Supreme People's Procuratorate of the PRC is the supreme leading organization of the prosecutorial organizations of China, leading all the regional People's Procuratorates and special Procuratorates to prevent and punish corruption crimes according to law. Within the prosecutorial organizations, the function of investigating and preventing the bribery and corruption crimes mainly belongs to the anti-corruption bureaus and duty crime prevention departments.

Anti-corruption bureau is an important institution within the prosecutorial organizations in order to enhance the combat against corruption crimes, which is specially responsible for investigating bribery and corruption crimes. At present, there are more than 3000 anti-corruption bureaus within all the prosecutorial organizations, and more than 36000 anti-corruption personnel therein. In view of the demands of combating corruption crimes, several investigation offices or groups are set up within the anti-corruption bureaus, and investigating and commanding centers are also established in the anti-corruption bureaus within the Procuratorates above district or city level, which are responsible for commanding and coordinating the transregional cases and other important cases. According to the authorities from the law and the internal work division within the prosecutorial organizations, anti-corruption bureaus are to collect the information on corruption crimes, to primarily investigate the accepted or found case clues, to put on file and investigate the corruption crimes among these cases, and after finding out the criminal facts, to refer them to the prosecution departments to decide whether prosecuting to the people's courts.

Duty crime prevention departments were set up within the anti-corruption bureaus once upon a time, and now have become an independent department of the prosecutorial organization, which adequately embodies the attention of Chinese government on preventing the duty crimes such as bribery and corruption. The main function of the duty crime prevention departments is to deeply anatomize the duty crime cases such as bribery and corruption, to research on the characters and rules of the duty crimes and the defects on the governmental administration, so as to bring forward pertinent suggestions on prevention, to impel relative departments in the government to perfect their system, mechanism and institution, and to launch the legal education by use of typical cases and to improve the capacity of the society to know and prevent the duty crimes such as bribery and corruption

 The effects of Chinese prosecutorial organizations to prevent and punish corruption crimes.

According to the anti-corruption policy of Chinese government, which is “to persist on comprehensive improvement of both temporary and permanent anti-corruption solutions, to pay attention to both punishment and prevention, and to lay stress on prevention”, the prosecutorial organizations of China perform their functions effectively according to law, and make great contributions to preventing and punishing corruption crimes.

1. Having investigated a great deal of corruption crime cases, and effectively punished and deterred the bribery and corruption crimes. According to the statistics, since 2003, the prosecutorial organizations of China have investigated and prosecuted 67505 criminal suspects involved in corruption crimes, among whom there were 2183 suspects involved in the cases of more than millions of RMB. These results make clear the firm anti-corruption decision of Chinese government, weed out the corrupt elements from the state functionaries, promote the construction of a clean and honest government, and safeguard the economy construction and the reform.

2. Having actively promoted the construction of a clean and honest government, and enhanced the capacity of preventing corruption crimes from their headstreams. Since 2003, the prosecutorial organizations of China have put forward 35834 countermeasures and suggestions on preventing corruption crimes to the relative departments in the government and the units with exposed cases, have hold 44410 legal lectures on invitation, and at the same time have constructively established an inquiring system on bribery crime files, so as to provide institutional safeguard for restraining bribery activities. Along with the enhancement of prevention work and the perfection of the system, the corruption crimes have evidently reduced in many fields such as finance fields.

3. Having enhanced international judicial cooperation, and made actively efforts for combating transnational corruption crimes together. According to the international conventions such as United Nations Convention against Corruption and other multilateral and bilateral judicial cooperation agreements, the prosecutorial organizations of China actively launch the international judicial cooperation, seriously perform the obligations of China, arrest the corrupt officials through all kinds of channels, so as to obtain obvious effects on the international cooperation of punishing transnational corruption crimes.

 The main experiences of Chinese prosecutorial organizations to prevent and punish corruption crimes.

The successful experiences of Chinese prosecutorial organizations to prevent and punish corruption crimes indicate that, the anti-corruption mechanism with Chinese characteristics accords with Chinese practical situation and is feasible and practical. Our main experiences are as the following:

1. To insist on combining professional work with mass line, so as to establish firm social basis for preventing and punishing corruption crimes. The prosecutorial organizations of China insist on depending on the public to combat corruption crimes, establish a good reporting system, specially set up the reporting centers with reporting telephones, reporting mailboxes and reporting websites, which provide effective channels for the public to report the corruption crimes, and thus enhance the capacity of the prosecutorial organizations to find out and investigate corruption crimes.

2. To insist on handling the cases according to law, and securing to deal with the cases justly. In the work of punishing corruption crimes, the prosecutorial organizations of China insist on

handling the cases strictly according to law. Firstly, to insist on the principle of all are equal under the law, daring to investigate any cases according to law, and safeguarding the authority of the law. Secondly, to insist on taking facts as the basis and taking law as the criterion, paying attention to the quality of the cases, neither conniving at crimes nor treating the innocent unjustly. Thirdly, to insist on putting equal weight on punishing crimes and safeguarding human rights, safeguarding according to law the litigious rights of the criminal suspects. Fourthly, to insist on consciously accepting the supervision of the public, retaining people's supervision personnel from all sectors of society to supervise the investigation work on corruption crimes, so as to secure to deal with the cases justly.

3. To insist on putting equal weight on punishing and preventing, and paying attention to preventing corruption crimes. According to the Implemental Program for Establishing and Perfecting the System Laying Equal Stress on Education, Institution, Supervision and Corruption Prevention enacted by Chinese government, during the work of investigating and punishing corruption crimes, the prosecutorial organizations of China bring their functional advantages into full play, actively launch the prevention work against corruption crimes, impel to prevent corruption from the headstream, so as to obtain good integrative effects.

4. To insist on enhancing international judicial cooperation, and combating transnational corruption crimes together. In view of the trend of internationalization of corruption crimes, the prosecutorial organizations of China attach great importance on enhancing the judicial assistance with all the countries in the world, take active measures to quicken the construction of working mechanism on punishing and preventing corruption crimes which is linked up with United Nations Convention against Corruption, and combating transnational corruption crimes together with the anti-corruption authorities of other countries, so as to make due contributions to international anti-corruption work.

Thank you all!

HongKong SAR,PRC

I

A Strategic Approach toCorruption Investigation

I am delighted to be given the opportunity to address this First Annual Conference and General Meeting of the International Association of the Anti-Corruption Authorities.

2. By providing a valuable platform for exchange of experiences, the Conference represents a significant step towards international efforts against corruption. It facilitates law enforcement agencies both in China and other countries to develop a closer link with their counterparts in different jurisdictions to combat corruption, especially under the context of the United Nations Convention Against Corruption (UNCAC).

Introduction

3. Corruption is by nature a secretive and invisible crime, often with no readily identifiable victim. It is conspiratorial as the giver and acceptor of a bribe are often described as "satisfied customers". Moreover, corruption often goes beyond the scope of straight forward bribery involving misuse of public office. Hence, corruption investigation is no easy task and can be frustrating, not to say that the fight against corruption is a lengthy process.

4. Corruption concerns not only public officials but also the business community, even more so given an increasing trend of outsourcing of public services to contractors in the private sector. Corruption is always entwined with serious and organized crimes. It has also been used by the unscrupulous as an insidious but powerful means to facilitate massive frauds against the government or in the corporate world.

5. The world has become smaller by the day. The rapid development of international financial and banking systems has enabled the transfer of money from one place to another regardless of physical distance. The increasing mobility in international travel and money transfers has been used by criminals to hide or launder their corrupt proceeds and to evade justice by fleeing their jurisdictions. As corruption has become increasingly transnational, we can only fight corruption effectively through proactive investigation, coupled with concerted efforts by our counterparts in other jurisdictions. To this end, the UNCAC quite timingly provides a set of benchmarks for criminalization of corrupt acts and development of a global consensus for implementation of anti-corruption measures and strategies.

ICAC Strategy

6. From a place ravaged by corruption to one now recognized as one of the world cities to combat corruption, the ICAC of the HKSAR has come a long way. Established in February 1974 as an independent anti-corruption agency, the ICAC has adopted a holistic and co-ordinated approach to combating corruption through the 'three-prong' strategy of enforcement, prevention and education. Effective enforcement provides the necessary deterrence so that the corrupt will realize that corruption does not pay. Plugging corruption loop-holes will minimize corruption opportunity as prevention is better than cure. Education enhances public awareness and facilitates community participation in combating corruption.

7. Through the 'three-prong' strategy, we have gradually evolved from the Seventies fighting what has appeared to be a lone battle to one with general public support, in the form of partnership with the community which shows little or no tolerance towards corruption. The level of public support or public confidence in the ICAC can be shown by the number of non-anonymous reports made to the ICAC in recent years.

8. Regarding our investigative strategies, I would like to introduce to you an ICAC case highlighting the importance of international co-operation and proactive investigation.

Case Study

Our Strategic Approach

1. Effective Legislation

9. A pre-requisite to effective corruption investigation is a comprehensive legislation proscribing various forms of corrupt behaviour in the public and private sectors and giving the anti-corruption agency the necessary powers of investigation.

10. In our Prevention of Bribery Ordinance, Section 3 prohibits a prescribed officer to solicit and accept gifts, loans, discounts and passages without permission from the Chief Executive. It serves as a 'gate-keeper' to prevent prescribed officers from being lured into a 'compromised situation' where he is obliged to repay a favour as a result of advantages received.

11. Section 4 proscribes both parties to a bribery transaction involving the public sector. It has an extra-territorial effect which effectively mitigates the jurisdictional hurdle in pursuing the corrupt. Section 9 similarly proscribes bribery transaction involving the private sector in Hong Kong with limited relaxation to an agent accepting an advantage with his principal's permission in circumstances regarded as reasonable.

12. Section 10 makes it an offence for a serving or retired prescribed officer to be in possession of disproportionate assets or living beyond his means. The offence has successfully stood the challenge under the Bill of Rights, on the basis of 'proportionality' and 'rationality' necessary in the fight against corruption.

13. As taking away the ill-gotten gains of the corrupt is an effective form of deterrence, Section 12 of the Ordinance provides for confiscation and restitution of corrupt proceeds after conviction.

14. To facilitate effective corruption investigation, the Ordinance provides the ICAC with special powers of investigation including examination of accounts held by suspects, their family members or associates, and service of statutory notices issued by the court to suspects or other persons, requiring them to provide information against penalty for non-compliance.

2. Proactive Investigation

15. As you have seen from the earlier case study – the success of operation 'Bridge' is attributed to the proactive investigation which the ICAC has adopted for some years. To put this strategy

into action, we have deployed informants and undercover agents to infiltrate into the core of corruption prone or vulnerable areas.

16. There is a dedicated unit in Operations Department responsible for informant handling, undercover operation and intelligence gathering. Officers in this unit, once selected, have to undergo professional training either overseas or through in-house training programmes. Currently, the Department adopts a central registration system for informants. There is a set of stringent guidelines on recruitment and handling of informants and undercover operations.

17. Another main focus of our proactive approach is the use of covert monitoring of suspects through physical and electronic surveillance, including telecommunications interception (TI).

18. TI is a powerful intelligence gathering tool to investigate serious corruption. Throughout the years, intelligence gleaned from TI, supplemented by covert monitoring operation, has generated invaluable information to assist the investigators in targeting and steering the investigation towards overt action. Such intelligence-led operations when coupled with the use of undercover operation, provide the most powerful and effective tool in successfully neutralizing a number of corruption or serious crime syndicates – Operation "Bridge" is a vivid example of the success of our proactive strategy.

19. The whole regime of covert monitoring has come under a severe legal challenge under Article 30 of the Basic Law, which guarantees the protection of individual privacy. As a result, in August 2006, a new legislation – the Interception of Communications and Surveillance Ordinance was enacted to regulate the conduct of interception of communications and the use of surveillance devices by public officers. Under the new legislation, all TI and higher degree of intrusive operations have to be authorized by a specially appointed Judge, with ancillary provisions for emergency applications and review by an independent Commissioner. Information obtained through TI can only be used as intelligence whereas information obtained through covert monitoring can be adduced as evidence in Court.

3. Enhanced Professionalism and Training

20. You have heard about our effective legislation and the proactive strategy we have adopted. Does it mean that they equate to success? I believe not. In ICAC, what we treasure most is our dedicated, loyal and professional work force which is our irreplaceable asset. Every year, we send our investigators to different parts of the world to learn and update themselves on management or job-related training with a view to continuous learning. In the current year, the budget for overseas training is approximately $4.7 million.

21. In order to upkeep our investigative armoury in tackling the sophisticated and very often high-tech crime, the ICAC has been vigilant in endeavoring new frontiers. To this end, specialised units have been formed within the Operations Department to deal with different facets of the investigative activities, to name a few:

(a) Computer Forensics Section has been set up to unearth evidence of corruption and fraud stored in bits and bytes;

(b) Financial Investigating Section, staffed by professional accountants, has been involved in asset tracing, forensic accounting and giving expert evidence in court.

(c) Witness Protection Section is tasked to implement the ICAC Witness Protection Programme, designed to ensure the personal safety and well-being of ICAC witnesses who may be at risk as a result of their assistance in ICAC investigation and subsequent prosecution.

4. International Co-operation

22. Last but not least, the ICAC places great importance on international cooperation, which is absolutely necessary for law enforcement agencies to combat corruption and organized crime at an international level effectively.

23. From an operational liaison perspective, ICAC has maintained excellent working relationships with overseas law enforcement agencies from USA, UK, Canada, Malaysia, Singapore, Thailand, Japan and Korea, etc. Our closest working partners in the Mainland - the SPP and GDPP, which have been providing us with invaluable operational support over the years under the Mutual Case Assistance Scheme.

24. To supplement the operational liaison channel, international cooperation is further facilitated by the Mutual Legal Assistance Agreement under which formal evidence obtained from one jurisdiction can be adduced as evidence in another jurisdiction on a reciprocal basis.

25. In addition, law enforcement agencies can further foster relationships and understanding through international conferences. The ICAC Symposium held in May this year had attracted over 400 participants from 41 jurisdictions. The ICAC's participation in the Interpol Group of Experts on Corruption provides us with a good opportunity for experience sharing.

26. Ladies and gentlemen, it is my pleasure to have this opportunity to share with you the ICAC's strategic approach to fighting corruption, a common enemy which seriously undermines good governance and affects people from all walks of life, no matter where you are or when you are.

27. Finally, I would like to take this opportunity to congratulate the inauguration of the IAACA and wish its every success in fostering better co-operation among different jurisdictions in facing our future challenges. Fighting corruption is forever. Our mission in Hong Kong continues.

28. Thank you.

13 October 2006

II

Fighting Corruption through Effective Law Enforcement and International Cooperation : The Hong Kong ICAC Experience

Mr.Raymond WONG

Mr. Chairman, Distinguished Guests, Ladies and Gentlemen,

It is a great honour for me to be here today to address this First Annual Conference and General Meeting of the International Association of Anti-Corruption Authorities.

2. The theme of the conference is "International Cooperation for Effective Implementation of the United Nations Convention Against Corruption (UNCAC)". The conference carries an important meaning as it signifies the commitment of the People's Republic of China (PRC) to the UNCAC and its implementation in both China and the Hong Kong Special Administrative Region.

3. The Hong Kong ICAC shares the view of the Prosecutor General, Supreme People's Procuratorate of the PRC, Mr. Jia Chunwang that the conference is indeed a golden opportunity for all of us from anti-corruption authorities in different jurisdictions to discuss the strategies and measures to effectively fight corruption under the context of the UNCAC and to share our experiences.

4. The UNCAC symbolises a common consensus, determination and focus on the strategy to be adopted by all participants in the fight against corruption through international cooperation. To ensure that corruption will not prevail in the twenty-first century, effective law enforcement and international cooperation are pivotal in this endeavour.

5. In the next couple of minutes, I am going to share with you the anti-corruption experience of the Hong Kong ICAC.

Criminalization and Law Enforcement

6. Strong legislation is a cornerstone upon which an independent anti-corruption authority should rely in the fight against corruption. The UNCAC sets out in clear terms under Chapter III (Articles 15 to 42) what are considered the benchmarks for effective criminalization of corruption. The Convention not only identifies the nature of corruption but also how corruption can pose a threat to the stability and security of societies. It clearly demonstrates that in many cases, corruption is directly linked and inextricably intermingled with organized and economic crimes, including for example drug trafficking, money laundering and terrorist financing.

7. I am pleased to say that Hong Kong is compliant with the UNCAC. Armed with strong legislation and public support, we have successfully spearheaded the battle against corruption in Hong Kong over the past three decades. Chapter III of the UNCAC requires State Parties to establish criminal offences for a wide range of corrupt acts if they are not crimes under domestic law. In Hong Kong, the criminalization of corrupt activities and a determination to confront and eradicate these evils has been a reality since the establishment of the ICAC in 1974. Anti-corruption measures akin to those laid down in the UNCAC have been in place since that date to ensure that corruption is kept under control.

8. Following an unacceptable period in the 1960's and early 1970's, during which corruption was rampant and affected all sectors of the society, the Independent Commission Against Corruption Ordinance (ICACO) was passed in 1974 which established the ICAC. The legislative approach focused on ensuring that corrupt activities became a high risk crime. That resolve remains today. The ICAC Ordinance, together with the Prevention of Bribery Ordinance set out a regulatory regime under which offences of corruption are clearly defined and the ICAC is provided with sufficient powers of investigation to establish effective law enforcement against corruption, both in the public and private sectors. Such powers include powers of arrest, search and seizure; examination of accounts held by suspects and their associates and service of compulsory notices to suspects and witnesses to obtain information. Through these powers, we have been able to fight corruption without fear or favour. Nowadays, corruption is recognized as part and parcel of serious and organized crimes. The law in Hong Kong not only confers the ICAC with powers to fight corruption but also allows it to investigate crimes linked to corruption or revealed during an investigation.

9. Notwithstanding the strong legislation, we have kept corruption in check through a three-pronged strategy of investigation, prevention and community education. Although each of these functions are separately carried out by 3 different departments within the ICAC, they are interlinked with each other and go hand in hand. When enforcement action taken by the Operations Department reveal corruption loopholes in the system or work procedures of a government department or public entity, the Corruption Prevention Department will be called in to examine the system with a view to identifying and eliminating any areas which may be conducive to corrupt practices. In the meantime, the Community Relations Department will formulate public education programmes, often in conjunction with the department or organizaton concerned to alert staff of the corruption pitfalls and strenghen the culture of integrity. This strategy is in line with the UNCAC which recognizes the need for adopting a comprehensive and multi-discipline approach in fighting corruption.

10. Over the years, the ICAC three-pronged strategy has helped to maintain a clean civil service for Hong Kong and to inspire the confidence of investors by assuring a level playing field in which to conduct business. With relentless efforts in enforcement against corruption and the support of the government and the community, the ICAC has enhanced the reputation of Hong Kong as a place with zero tolerance of corruption. In fact, since the inception of the ICAC in 1974 until now, the percentage of corruption complaints against government departments has dropped from 86% to 32% while complaints against the Police has dropped from 47% to 10%. Meanwhile, there was a complete cultural change in the mindset of the general public. In the 1960's and 1970's people accepted that corruption was a way of life, nowadays there is a total rejection of this social evil. In fact, the public has placed great confidence in the ICAC, as evidenced from the record high 73% of non-anonymous reports received in 2006. From a global perspective, surveys conducted by regional and international organizations have consistently rated Hong Kong as one of the cleanest places in the world.

International Cooperation

11. Corruption has become a transnational crime. Chapter IV (Articles 43 to 50) of the UNCAC highlights the need for State Parties to cooperate with one another in the fight against corruption. By virtue of the mutual legal assistance scheme and formalized arrangements for the surrender of fugitive offenders, the ICAC is compliant with the UNCAC. Under the Fugitive Offenders Ordinance, the ICAC is able to take enforcement action against transnational corrupt activities with jurisdictions that have entered into bilateral agreements with Hong Kong. For instance, in April 2006, a former shareholder of an investment company which allegedly defrauded the company of $5 million in relation to a property development project and stole over $1.3 million from the company, was extradited from Canada to Hong Kong to face prosecution. The UNCAC also advocates all 140 participating States to join hands in fighting global corruption through the exchange of information, surrender of fugitive offenders, asset recovery, etc. The ICAC and the HKSAR are in total support of this proposal.

12. The ICAC also gives full support to international anti-corruption initiatives, including those discussed in this Conference and on other occasions such as meetings of the International Anti-Corruption Conference, the Interpol Group of Experts on Corruption, the Asia Development Bank/Organization for Economic Cooperation and Development, to name a few.

13. In view of the complexity involved in the investigation process, the ICAC is fully aware of the need to continually enhance the professional standards of our investigators in order to outsmart the criminals. We believe that continuous professional development and training will sharpen the investigative edge of investigators. Last year, 39 officers were sent to attend courses organized by renowned overseas law enforcement agencies which included the Federal Bureau of Investigation, the Royal Canadian Mounted Police, the Australian Federal Police, the UK Metropolitan Police. Such cross fertilization of ideas and networking opportunities provided by this type of training form an important building block in international cooperation.

14. The ICAC will continue to share experiences with law enforcement agencies in other jurisdictions on strategies for combating corruption and is committed to implementing anti-corruption measures in line with the UNCAC initiative.

Conclusion

15. Tough enforcement action against the corrupt will send a strong message that corruption is a high risk crime that carries dire consequences. While investigation is a powerful weapon in fighting corruption, it must work hand in hand with prevention and education to provide a comprehensive and long term solution to the problem. As such, the ICAC will continue the three-pronged strategy to fight corruption.

16. The UNCAC sets a milestone in the global fight against corruption. We must all act together to find new strategies to strengthen international cooperation in fighting this globalized crime. Every jurisdiction should implement the provisions in the shortest possible time. To this effect, the need for improved cooperation among law enforcement agencies worldwide has never been greater, and the need to develop and coordinate a global strategy to tackle the problem through mutual assistance is of equal importance.

17. Corruption is a serious business. Complacency has far reaching effects on the whole community. The Hong Kong ICAC will remain vigilant and seize every opportunity to cooperate with law enforcement agencies in Hong Kong and other jurisdictions to eradicate corruption both locally and internationally.

18. Thank you.

17 October 2006

Macau SAR,PRC

Effective investigation and prosecution of corruption

Corruption is a public enemy that brings harm to a harmonious society, threatens the credibility of its government and weakens its economy as well. Since the establishment of the Public Prosecutions Office of Macao, it has been aiming at the combat against corruption and has fulfilled its functions to punish such crimes. It has also learned from its experience and studied new ways to combat profession-related crimes that may lead to a better social environment.

Brief introduction on anti-corruption criminal laws of Macao

Macao does not have any specific laws regarding the combat against corruption. In dealing with these crimes, it relies on its “Penal Code” in terms of laws and on its “Penal Procedure Code” in terms of judicial procedures. Profession-related crimes refer to crimes committed by public

functionaries who, in the performance of their duties, take advantage of their posts to obtain benefits for themselves or others or harm public interests or interests of others. These crimes ought to be punished according to criminal legislation.

According to the Penal Code of Macao, public functionaries refer to 1) employees of the public administration or employees of other public institutions; 2) employees of other public powers; 3) persons who work or participate in the work relating to public administration or judiciary functions, whether they receive remuneration or have obligations or not and no matter how much time they spend on the work. Besides, high ranking officials or representatives of the government, members of the legislative assembly or consultative commission, magistrates, management and supervision officers and employees of other areas of public enterprises, public capital enterprises or enterprises with majority public capital as well as public service concessionaires, public property concessionaires or other companies operating under concessions.

According to the Penal Code of Macao, there are 14 kinds of profession-related crimes. The most common are bribe taking in exchange for illicit acts or licit acts, embezzlement, misuse of public funds and property, abuse of powers, revelation of confidential matters, etc. The crime of embezzlement referred here is equivalent to the crime of corruption in Mainland China. Profession-related crimes are normally punished by imprisonment or fine penalties. To receive bribes for licit acts and embezzlement are punished by a maximum of 8 years imprisonment.

Apart from cases regarding profession-related crimes that were investigated by the Public Prosecutions Office of Macao under its own initiative, most of the other cases were investigated according to reports from the Commission Against Corruption. After receiving the case files from the Commission Against Corruption, a prosecutor from the Criminal Proceedings Service responsible for the conduction of criminal investigation will open a file for criminal investigation to a case that satisfies the required conditions. After preliminary investigation, he will decide whether to continue the investigation by the Public Prosecutions Office or return the case back to the Commission Against Corruption for more investigation. If there is enough evidence for pressing charges, the prosecutor will then decide to institute a prosecution, write the prosecution document and transfer the case to the Court of First Instance for trial. A prosecutor of the Prosecutorial Office in the Court, who is responsible for prosecutions, will take up the case from this point and follow the work of court hearings and support the public prosecution.

New Practices

After the Handover, the Public Prosecutions Office has taken up some new measures in dealing with profession-related crimes and has obtained positive results. Some of these measures are:

Firstly, to promote professionalism in dealing with cases. The Basic Law and the Judicial Organization Law of Macao both provide that the Public Prosecutions Office of Macao is an independent judicial organ. Extrinsically, this means that the Office carries out its duties independently and free from any interruption from other organs or persons. Intrinsically, the prosecutor carries out his tasks in an independent manner. But this does not imply that lower-ranking prosecutors do not have the obligation to follow the instructions of higher-ranking colleagues. In the early days just after the Handover, cases were distributed to the prosecutors by means of a computerized system in order to guarantee a fair distribution of work. Profession-related crime cases, like all other cases, were also distributed in this way. Every prosecutor had the chance to deal with profession-related crimes. After the Handover, the Special Criminal Investigation Unit of the Public Prosecutions Office was set up. The prosecutors from this Unit handle serious or special crime cases and that include profession-related crimes. Perhaps, not all these crimes are serious cases but they are certainly the focus of the society. The citizens will not tolerate such crimes and hope that the judicial organs can handle these cases as fast as possible and punish the criminals accordingly, in order to guarantee the integrity of public functionaries. In this way, profession-related crimes are all passed into the hands of prosecutors from the Special Criminal Investigation Unit who, in dealing with the same kind of crimes, become more specialized and experienced in handling with all sorts of corruption practices and are familiar with the current situation and evolution of these crimes. Under necessary and possible conditions, these cases may also be handled with priority so as to respond quickly to the calls of the citizens.

Secondly, to promote a uniform process for investigation and public prosecution in court. This refers to the changes, which the Public Prosecutions Office introduced to the traditional method of dealing with some serious and complex profession-related crimes. Traditionally, in dealing with a criminal case, a prosecutor from the Criminal Proceedings Service had to handle the work during investigation and prosecution stages, whereas another prosecutor of the

Prosecutorial Office in the Court had to follow up the work in the court trial stage. Now, under the new practice, it is handled by one prosecutor from the Special Criminal Investigation Unit who takes up full responsibilities to carry out investigation, to make decision to prosecute and finally, to support public prosecution in the court as well.

Before putting this new way of functioning into practice, there were doubts about the possibility of losing monitoring and controlling effects between different entities in the process and thus, lead to dictatorship and lack of justice in judicial proceedings if one prosecutor were to finish the whole prosecution work all by himself, instead of two prosecutors handling separately two different stages of work, that is, investigation and public prosecution in the court. However, we can see that the new practice does not contradict the traditional way of functioning because in Macao, prosecutors of the same rank does not have the power to object to one another's decision. That is to say, the prosecutor who supports public prosecution in the court cannot object or change the prosecution decision made by his colleague who has completed of the work of investigation and charges. If the latter comes up with the conclusion to prosecute, the former must support the prosecution in the court, whether he agrees with his colleague or not. In this way, to separate the work of instituting a prosecution from that of supporting a prosecution in the court is merely a job distribution method and does not imply any monitoring or controlling system. Since a monitoring system does not exist intrinsically, there is no reason for doubts about the inability to monitor and control or any possible dictatorship due to the lack of monitoring under this new practice.

It should also be noted that this new practice helps to reduce repeated work and enables the prosecutor to spend more time on the work of evidence finding. Under the original way of functioning where two prosecutors deal with the same case in two different stages, that is, investigation and public prosecution in the court, the prosecutor who knows nothing about the investigation part, must first read the case file to get a better understanding before standing in the court to support his case, not to mention the time taken to check the voluminous accounts and meetings records as corruption cases normally involve such evidence. The prosecutor who stands in the court to support his case, spends a lot of time in going over these evidence, not to mention the time taken to grasp the key points of the case. Practical experience tells us that this new uniform method in which the whole process of investigation, prosecution decision making and the support of public prosecution in the court is done by one prosecutor, proves to be effective in tackling some serious and complex profession-related crimes and helps to avoid the tedious and unnecessary process of file readings, thus accelerating the whole judicial proceeding. Moreover, this also helps to avoid the situation in which the prosecutor is not familiar well enough with the details of the case to support prosecution in the court, due to the limit of time in reading the files or the impossibility to get a clear picture of the case just by a glance.

Thirdly, to promote the internationalization of mutual legal assistance. Corruption knows no borders and is practiced in a more and more covert and intelligent manner. Due to limitations of different jurisdictions, no country or region can rely on its own judicial efforts to combat and punish these crimes timely and effectively. The only way to achieve this is to strengthen mutual legal assistance and cooperation amongst different countries and regions as it is a need recognized by the whole world. The Public Prosecutions Office of Macao pays much attention to this matter and is eager to interact with colleagues from other places and learn from their successful experiences in combating corruption and increase the abilities in dealing with crimes as well as to enhance the exchange of information with foreign judicial organs and be aware of new trends of corruption. It has fully carried out its functions as a member of the Mutual Legal Assistance Taskforce of the Macao Special Administrative Region in a way to promote discussion on mutual legal assistance and has played an active role in the scope of judicial assistance on criminal matters. It has also carried out the duties as the central authority of the "United Nations Convention Against Corruption" and has handled judicial assistance cases related to Macao accordingly. It has also enhanced the cooperation with other regions in the joint investigation of corruption cases and in the exchange of evidence, thus resulting in the increase in the number of joint investigation cases with a broadened ambit of intervention.

3. Reflections

In recent years, in face of a rapid economic growth in Macau, the gaming sector has become a major economic pillar of the city and has won great success. Aside from its contributions to Macao's economic growth, it has, however, created terrain for corruption. There are cases in which employees of the gaming sector, who are prone to the vicious habit of gambling, abuse their powers in the work and embezzle the gaming chips, thus committing the crime of embezzlement. There are also other cases regarding private companies who see many

opportunities but suffer the lack of human resources and increase in rents, also seek a fast track to gaining money, that is, by means of bribery, thus resulting in the increase of crimes like receiving bribes and abuse of powers. During the 2nd legislative assembly elections in 2005, the repeated occurrence of bribery is the evidence to such situation. It is predictable that in 2009 corruption cases in Macao might increase as the time for the new Chief Executive elections approaches. Judicial and law executing organs of Macao, including the Public Prosecutions Office, will not slack off and will continue to conduct more in-depth theoretical studies so as to find out effective solutions to the problem.

To achieve success in a task, one must first optimize his tools. Perfect anti-corruption legislations are like sharp weapons to punish such crimes. To face the problems detected through practical experience and to revise legal loopholes are prerequisites to the optimization of laws. It should be noted that there are still imperfections that need to be improved in the anti-corruption laws of Macao. One of these imperfections is the existence of loopholes: for instance, a purchaser of a private company abuses his powers in the act of purchasing by receiving commission from the one he chooses to purchase. This kind of malpractice is difficult for criminal prosecution. As everyone knows, bribery in a commercial world impedes a fair competition, hinders the progress of a company, slackens its growth in quality and ruins the society's values of integrity and justice. These crimes, if not punished severely, will affect the normal functioning of the economy and may lead to the occurrence of other corruption crimes. However, according to the current legislation of Macao, the subject of bribe-receiving crimes only refers to employees of public entities. It is not possible to prosecute a purchaser of a private company with the charge of receiving bribes. If the purchase price is equivalent to market price, it is even more difficult to charge him with other crimes. Another aspect that needs to be improved is that the instruments attributed by the laws of Macao to investigate corruption, in particular, bribery, are not enough to satisfy the needs to combat and punish these crimes. Bribery is an act of two parties with shared interests and is practiced in a secret and varied manner. These characteristics make investigation and prosecution even more difficult and impede the full development of anti-corruption activities. In face of these difficulties, there are suggestions from the local judicial circle to overcome this insufficiency by using tape recording in the investigation of some serious bribery cases.

In fact, there are loopholes and insufficiency in the anti-corruption legislation of Macao. But this is not a unique situation happened only in Macao. This is a problem faced by many countries and regions in the combat against corruption. The United Nations Convention Against Corruption has already answers to the problem. Till the present moment, this Convention is the most global and innovative international legal document that tackles the problem of corruption, in particular, bribery. The document contains provisions regarding employees of private companies as the subject of bribe-receiving crimes and other provisions on the 3 special means of investigation, that is, "payment under control", "special agent operation", "monitoring by electronic devices or other equipments". The Convention has formally entered into effect in Macao and serves as a guideline for Macao. Legal revisions should be made according to the principle of predominance of international laws over domestic laws and under the prerequisite of not contradicting the fundamental principles of the laws of Macao. In this perspective, legal provisions of the Penal Code of Macao regarding the definition of public functionaries should be revised so as to let profession-related crimes of private companies employees be included in the ambit of control, as a move to meet the practical needs in the fight against corruption. Moreover, the observance of the Convention's provisions on the use of special investigative means like monitoring by electronic devices should be within one's discretion to decide according to circumstances. For instance, to allow the Court to accept tape recording evidence obtained by request of the Public Prosecutions Office and authorization of the judge. This is the only way to reinforce anti-corruption actions and international cooperation as well as to avoid an unfavorable position of passiveness for Macao in joint investigation and legal enforcement operations, in cooperation with the international community.

The combat against corruption is a social implementation that needs both prevention and attack actions and the general participation and efforts of different sectors of the society as well. These efforts include: legal promotion and education on a large scale to raise public awareness to fight corruption; optimization of mechanisms to monitor and control powers and reinforcement of the preventive functions of monitoring; promotion of reforms in order to fill in the loopholes in management; improvement in the judicial system to increase investigative powers; timely investigation and punishment of corruption so as to raise the intimidatory effects of penalties, etc. In order to coordinate efforts of different sectors and answer the need for regulation, Macao must learn from the experience of other countries or regions and draft a specific anti-corruption law that has both prevention and punishment effects with flexible and operational characteristics so as to let its laws to fully perform the role of a keen-edged weapon to beat corruption and to stop the

spread of this malpractice.

Colombia

Speech in the Beijing Conference, October 2006

International Assistance for the efficient Implementation of the United Nations Convention against Corruption

Colombia, as the United Nations has done, recognizes the relationship among drug trafficking, money laundering, corruption and terrorism. Therefore, Colombia, facing this vivid link, searches for the consolidation of stronger laws and international cooperation to put a halt to this kind of delinquency that threatens security, development and hinders obtaining peace.

Conventions against corruption contain measures aimed at having instruments, including international cooperation, which, in the first place, foster an efficient investigation and sanction of offenses typified by member states in accordance with the convention; and secondly, directed to diminishing the consequences of the behaviors which have been classified as offenses and are part of corruption. Like the Constitution, today criminal law provides special relevance not only to the sanction for the commission of the offense but also advocates the reinstatement of the law.

One of the most important instruments for Colombia is the United Nations Convention against Corruption signed in 2003, incorporated to the internal law through Act 970 of 2005 and pronounced its constitutionality through resolution (sentencia C-172 of 2006). There, it is admitted that corruption is another mechanism through which organized delinquency, terrorism, traffic of narcotics and people, money laundering, guarantee the continuity of their criminal action; hence, this scourge must be fought with strong and special strategies, which comprise a strict and internal legislation, committed authorities in the investigation and sanction of corruption acts and the international aid.

TYPOLOGIES ON CORRUPTION MATTERS IN ACCORDANCE WITH INTERNATIONAL CONVENTIONS

The United Nations Convention against Corruption, signed during the conference held in Mérida in the year 2003, demands preventive measures and penalization of the most common forms of corruption both in the public and private sectors. It also foresees measures that allow the repatriation of funds from illicit sources derived from corruption, including money laundering.

It is worth noting that the convention has an undeniable identity of purposes with the Inter-American Convention against Corruption, incorporated to the Colombian legislation through Act 412 of 1997, whose approval was declared by the Constitutional Court through decision (sentencia C-397) issued in 1998.

Now, it is clear that corruption has diverse classification. Depending on the space in which it is originated, it is possible to establish three kinds: a) The one that happens in the State, which can be administrative or political; b) The one that occurs in the private sector; and c) the one that happens in the sectors of the community or the non-state public sector.

Bearing in mind the framework of the conference, the administrative corruption of the State will be an issue of discussion. Then, we will focus our attention on corruption behaviors in the public sector.

The convention foresees the responsibility of the states to adopt legislative measures to typify certain behaviors as offenses. For instance, bribery of national and foreign public servants and officials from public international organizations (articles 15, 16 and 17); embezzlement, misappropriation, deviation of goods by public servants (art. 17); traffic of influences or pulling strings (art. 18); abuse of authorities and functions in order to obtain undue benefit (art. 19); illicit enrichment of public servants (art. 21); bribery of people holding executive posts or holding post

in private sectors (art. 22); misappropriation or embezzlement of goods in the private sector (art. 22); money laundering derived from offenses foreseen by the convention (art. 23); concealing or retaining goods voluntarily, even knowing they derived from such offenses (art. 24); and obstruction to justice regarding processes being carried out by virtue of the investigation and prosecution of the offenses mentioned (art. 25).

In Colombia, the following offenses are established:

Bribery of national public servants.
Bribery of foreign public servants and officials from public international organizations.
Embezzlement or undue misappropriation or other ways of deviation of goods by public servants.
Traffic of influences or pulling strings.
Abuse of functions or responsibilities.
Illicit enrichment.

It is possible to affirm that these behaviors of corruption are typified in the Colombian Criminal Code, within the offenses against public administration, being the legal foundations for the Office of the Attorney General of the Republic of Colombia (Fiscalía General de la Nación) to make a series of diverse charges within the investigations carried out and therefore release the corresponding indictments.

Thus, behaviors of bribery are fitted and adapted in our Criminal Code:

Firstly, the offense of bribery for giving and offering (article 407 CP, Colombian Criminal Code) which contains the behavior of the private individual who gives or offers money or any other benefit to a public servant to delay or omit any action inherent to his/her post; execute one contrary to his/her official responsibilities or that must execute in development of his/her duties.

Similarly, the United Nations Convention against Corruption typifies behaviors predicable of public servants, described with the verbs request and accept. The behavior of requesting in the Colombian legislation is provided by article 404 under the denomination of concussion, though in our legislation it has a wider scope for the typical adaptation of the behavior; whereas the criminal law foresees as punitive the behavior of the public servant who taking advantage of his/her post or functions constrains or induces someone to give, promise or, as it is stated by the convention, request.

With regard to the acceptance, the Criminal Code develops the following behaviors: proper and improper bribery [“el cohecho propio y el cohecho impropio” (articles 405 and 406)] that are differentiated by the act: one for delaying or omitting one proper, and another for carrying out one contrary. Besides, the Criminal Code reproaches the behavior of a public servant who receives money or any other benefit from a person who has an issue under his/her knowledge.

The convention also foresees bribery of foreign public servants and officials from public international organizations. It deals with two situations: the first one refers to a promise, offering or concession to a foreign public official, which is typified in article 433 of the Colombian Criminal Code under the denomination of Transnational Bribery. On the other hand, foresees as punitive behavior the request or acceptance by foreign public servants and officials from public international organizations. There is a gap regarding this issue in the Colombian legislation since this behavior is not penalized.

Besides, concerning the misappropriation of goods by public servants, it is worth noting that this offense is the most common in Colombian and it is simultaneous, especially, with the offense of undue signing of state contracts. Well, it seems to be the most widely used mechanism of corruption to appropriate goods from the State. The Colombian legislation intends to cover all possible ways of occurrence and considers the offenses of embezzlement for appropriation, use, different official application, involuntary or by omission committed by the holding agent, among others (“peculado por apropiación, el peculado por uso, por aplicación oficial diferente, el peculado culposo y omisión de agente retenedor”). In respect to private individuals who do not exercise public duties, and therefore do not have the qualifications requested by the kinds for the active subject, the Colombian legislation foresees, within the offenses against financial patrimony, the type of qualified breach of trust (“abuso de confianza calificado”).

Similarly, it establishes the behaviors of traffic of influences or pulling strings of public servers, abuse or taking advantage of authority and illicit enrichment, as required by international instruments.

One issue which is worth noting is that the convention does not set forth any criminal sanction for behaviors related concretely to the contract matter. In spite of this fact, the description of the offense of undue signing of contract has a wide regulation in the Colombian internal regulation, since it is a recurrent modality to take possession of state monies. Hence, they are behaviors of special attention within inquiries and investigations carried out by the Office of the Attorney General ("Fiscalía General de la Nación"), and in their execution prevails the phenomenon called "white collar delinquency."

Lastly, regarding the internal legislation, it is opportune to point out that these behaviors are also provided as disciplinary conducts with exemplary sanctions in Act 734 of 2002, Unique Disciplinary Code ("Código Disciplinario Único").

STRUCTURE OF THE COLOMBIAN STATE IN THE FIGHT AGAINST CORRUPTION

The Constitution of 1991 created a jurisdictional, autonomous and independent entity, the Office of the Attorney General ("Fiscalía General de la Nación"), in charge of investigating and accusing presumed infractors of the criminal law.

Furthermore, there control bodies such as the Office of the Inspector General (Procuraduría General de la Nación) and the Office of the Comptroller (Contraloría General de la República) in charge of also investigating and penalizing corruption behaviors. In Colombia, the Office of the Inspector General (Procuraduría General de la Nación) judges the behavior possibly infractor of duties in the orbit of a special subjection relation, that is, duties which possess implication effect in the exercise of a public or administrative responsibility; i.e., faces the behavior of those who have public duties subject to a special functional responsibility and determines if during their development the rights were threatened, prohibitions have been made or the regimen of conflict of interest have been violated.

Hence, the judicial consequences derived from responsibility findings in this orbit will seek for the removal of those public servants who eventually might have been sanctioned temporarily or definitely, or who are subject to pecuniary penalties or both.

The Office of the Comptroller (Contraloría General de la República) exercises a fiscal control aimed at determining the patrimony detriment of the State and imposing sanctions to reach recuperation.

The Office of the Attorney General of the Republic of Colombia (Fiscalía General de la Nación), which was mentioned in detail above, investigates from a criminal perspective the behaviors that might attempt or place at stake the judicial goods such as the Public Administration and Administration of Justice, requesting before proper judges to impose detention measures and procedures to forfeit goods derived from illicit activities, among others.

Then, in Colombia a behavior considered as corruption can, without implying a violation of the principle of non bis in idem, receive some reproach from criminal, disciplinary and fiscal perspectives, even in occasions can involved the three, in addition to the jurisdictional political-constitutional-disciplinary process of disinvestiture, process that examines the compliance with all the responsibilities emanated from the democratic-representative principle and whose judicial consequence (sanction) pursues the conservation of representative democracy and which only hinders the return to the service by popular election but no through any other ways.

At government level there is a Presidential Program of Modernization, Transparency and Fight against Corruption, it is a division of the executive which channels complaints and sues file in such branch of public power and keeps in contact the different investigative bodies of the country. This office deals with defining a public policy that the Government must adopt in respect to the fight against corruption. Recently, a National Counter-corruption Plan was created.

ROLE OF THE OFFICE OF THE ATTORNEY GENERAL OF THE REPUBLIC OF COLOMBIA (FISCALÍA GENERAL DE LA NACIÓN)

Taking into account the proliferation of offenses against Public Administration through the Colombian territory, a persistent impunity, a social discontent that affect the image of the country nationally and internationally, and specially in terms of administration of justice, the investigating and control institutions, among them the Office of the Attorney General of the Republic of Colombia (Fiscalía General de la Nación) have made efforts to carry out more

efficiently the mission of judicial organisms for the sake of a penal and criminal policy in the fight against corruption.

Corruption is a phenomenon present nowadays in many facets which requires actions in the internal scope of each country and carries them to an extreme with special attention on actions in the internal environment in connection with international cooperation matters to fight.

These two actions of combat, we could say that in Colombia, are filed at the Office of the Attorney General of the Republic of Colombia (Fiscalía General de la Nación) when corruption violates the written rules and regulations in force, emanated by the public authority, contained in the Political Constitution or laws or Acts, specially Act 599 of the year 2000, Criminal Code, normativity that establishes the precepts or orders which abstractly comprise the criminal regulations and set forth the rules which guide and discipline human behaviors, making possible to understand corruption from this perspective as those behaviors derived from legal provisions.

The Office of the Attorney General of the Republic of Colombia (Fiscalía General de la Nación), as of the time the Constitution of the year 1991 being the duty of the State "avoidance of offenses as a way to protect the society", is forced, in accordance with the provisions of article 250, modified by legislative act 03 of the year 2002, to exercise the criminal action and conduct the investigation of the facts that constitute the features of an offense that is heard by this entity through a complaint, special request, dispute or exofficio, provided that there are enough reasons and factic circumstances which indicate the possible existence of such an offense.

Legislative act generated the issuance of Act 906 de 2004, which implemented gradually the accusatory system, implying a new structure in the Colombian criminal procedure. A judicial tradition is split in terms of the investigation and prosecution model of criminal behaviors. The Attorney General does not conduct proceedings to clear up facts, assess or adopt or make decisions which might eventually limit the fundamental rights. The Office of the Attorney General of the Republic of Colombia (Fiscalía General de la Nación) has to inquire and investigate criminal behaviors, secure probatory material elements or with evidentiary vocation, which will constitute evidence when conducted during oral public trials, with immediacy and concentration, subject to contradiction, in an adversary process and before the judge who heard the case.

It is a great challenge for the Office of the Attorney General of the Republic of Colombia (Fiscalía General de la Nación) the application of the new criminal procedure with agile proceedings to put delinquency and organized crime to a halt, without pushing aside the criminal proceedings being conducted in accordance with the former criminal procedure that imply the commitment to unload judicial offices by January 1, 2008. Also aware that the delay in judicial processes generates impunity and consequently the increase of corruption since the message is not addressed to the community in respect to the compulsory content of rules and regulations and mandates provided by our criminal body of laws.

But this delinquency and organized crime that generate corruption must also be fought with international tools; hence, international assistance is vital to share information, evidence, extraditions, technical assistance and, especially important, to achieve the recovery of assets derived from illicit activities. Recovery of assets set forth under the United Nations Convention against Corruption (CAC) as a very important tool to fight scourge. In this sense, necessarily the countries that have signed and ratified the international conventions must adapt and adjust their internal body of laws to the suggestions made by the international instruments. This, in Colombia, is also developed by the constitutional postulates that seek transparency in the exercise of public duty as essential condition for the due functioning of the democratic system[32].

Then, the Special National Unit of Crimes against Public Administration through Resolution 0227 of the year 1998, setting as a goal the investigation of behaviors that violate or put at stake the judicial welfare of public administration, bearing in mind the particularity of the facts, its seriousness, the complexity, the social impact and the commitment of high amounts of the treasury funds. The assignment of the case is done directly by the Attorney General of the Republic of Colombia, who in person makes a follow-up to all the investigations being carried out.

The Special National Unit of Crimes against Public Administration is back up by the judicial police made up of the Prosecutor General's Corps of Technical Investigators (Cuerpo Técnico de

[32] Constitutional Court, Resolution (Sentencia C-172 of 1996)

Investigaciones, C.T.I.); Administrative Department of Security (Departamento Administrativo de Seguridad, D.A.S.); and the Colombian National Police (Policía Nacional, DIJIN), which excels with a group of special investigators in crimes against public administration comprised by different professions such as lawyers, accountants, economists, business administrators, architect and civil engineers. Moreover, support is provided to carry out investigation techniques such as undercover operations, search and seizures to gather evidentiary material elements.

Besides, it is worth remarking the structure of each public administration unit in the different sectional offices of the Office of the Attorney General of the Republic of Colombia (Fiscalía General de la Nación), whose investigations are subject of follow-up conducted by the National Direction of Prosecutors' Office (Dirección Nacional de Fiscalías). They are units exclusively devoted to public administration that count on special personnel.

Finally, it is necessary to highlight that the Office of the Attorney General of the Republic of Colombia (Fiscalía General de la Nación) does not work alone in the fight against corruption but it counts on the important support provided by control organisms. In deed, an interinstitutional work has been developed regarding the fight against administrative corruption in Colombia.

Under this guideline, the Office of the Attorney General of the Republic of Colombia (Fiscalía General de la Nación) signed a covenant with the Office of the Inspector General (Procuraduría General de la Nación) and the Office of the Comptroller (Contraloría General de la República) in the framework of article 113 of the Political Constitution, which sets forth the harmonious cooperation that there must be among the organisms of the State to attain these objectives. In this sense, the agreement is aimed at carrying out joint investigations within the competence framework of the each institution.

This interinstitutional mission has enabled the logistic assistance among the entities, saved efforts, guaranteed results, and has become a great state barrier against this kind of criminality.

RECOVERY OF ASSETS

In the fight against corruption on the side of the Office of the Attorney General of the Republic of Colombia (Fiscalía General de la Nación), it is worth mentioning the measures adopted to recover assets derived from the offense.

International instruments, especially the United Nations Convention against Corruption (CAC), establish the concepts of preventive attachment, seizure and forfeiture, and set this paragraph as a fundamental principle of the convention aimed at recovering assets derived from the offense.

This international instrument suggests that preventive attachment and seizure be allowed for the sake of forfeiture:

- The product of the offense or goods which value corresponds to such product.
- Equipment or any other instruments used or destined to the commission of the offense.
- The product transformed or converted partially or totally.
- Product of the offense mixed with a licit source.
- Incomes derived from the offense or goods transformed or converted or intermingled.
- Seizure of banking, financial or commercial documents.

It is also suggested that member states consider the possibility to request the infractor to show the licit origin of the presumed product of the offense or any other properties subject to forfeiture.

And adopting measures to rule the administration of attached, seized or forfeited properties regarding competent authorities.

In this respect, the Colombian legislation rules within the criminal process the precautionary measures on goods subject to forfeiture, which proceeds on the properties and resources of the criminally responsible individual that originated or derived directly or indirectly from the offense, mixed, concealed, equivalent properties, in accordance with article 82.

Precautionary measures are material such as seizure and occupation. The measure can also be judicial as the request to suspend the power to dispose properties and resources (articles 83, 84 and 85).

On the other hand, precautionary measures on the properties of the accused individual are ruled to protect the right to compensation or indemnity for damages and harm caused by the offense, so it is necessary to establish the attachment and seizure of properties in a sufficient amount (art. 92).

Besides, a special fund is ruled for the administration of properties subject to measures for the purpose of seizure at the discretion of the Office of the Attorney General of the Republic of Colombia (Fiscalía General de la Nación) (art. 86).

Finally, and as an independent action of the criminal process, the figure of extinction of domain is set forth autonomously over the properties procured illicitly, action defined and ruled under Act 793 of the year 2002.

In accordance with public corruption, the extinction of domain action establishes as illicit activities among others: "behaviors committed, in detriment of the public funds, and which correspond to the offenses of embezzlement, undue interest in signing contracts, contracts signed without complying with all the legal requirements…."

International instruments recommend the need to limit quickly and timely the financing of criminal organizations in order to counteract their capacity of action. This forced the State to adopt measures against the properties and resources derived directly or indirectly from illicit activities.

First, Act 333 of the year 1996 – extinction of domain regulation - was issued. But through time, it was noticed that there were certain failures to extinct the properties since it was practically subject to the luck of the criminal process and they were endless before reaching a resolution with the verdict showing the illicitness of the activity carried out by the indicted or convicted.

This aspect made the Colombian Government considered that "criminal enterprises due to their capacity of aggression and involvement with other forms of organized delinquency have consolidated a power that represents an unpredictable and imminent hazard that originates a serious disturbance of public order on Colombian territory". Therefore, and having being declared the internal state of public unrest throughout the Colombian territory, Legislative Decree 1975 dated September 2002 is issued. This decree replaces Act 333 of the year 1996 and rules the action and proceeding of the extinction of domain.

Decree issued during an exceptional state that later complied with its legislative proceeding, passing the new law of extinction of domain, based on constitutional articles 34 and 58.

Article 34 develops a general principle of law: "nobody is allowed to obtain benefit or take advantage or derive any rights from crime or fraud." Thus, in this article it is precisely admitted through judicial resolution to declare extinct the properties acquired by illicit enrichment in detriment of public funds and with serious deterioration of social moral.

Then, the Constitution sets material limits to the process of procuring properties and the State is given a judicial tool to make effective the postulate through which crime, fraud and immorality do not generate rights.

On the other hand, article 58 provides the right of ownership acquired in a licit manner and according to legal provisions, without harm and detriment to private individuals or the State. It also warns that ownership is a social function which implies obligations.

Therefore, our legal order protects the right of ownership acquired licitly and pursuant to legal provisions. Thereby, whoever is the holder of the ownership title acquired irregularly or illicitly, it only has an aspect of right susceptible to be weakened at any time.

This legislation has provided prosecutors with effective tools to pursue the property owned by delinquency. There is a National Unit of Money Laundering and Assets Forfeiture in charge of these processes, but the task is not so easy since crime reaches specialty day by day and transcends frontiers. It is important then to insist on legal assistance and cooperation and the subscription of agreements dealing with property to make possible the observance of these international instruments which allow the extension and scope of the effects of the forfeiture action abroad member states.

It is important to draw attention to the extended cooperation to be provided among countries to

avoid the diversion of resources toward well-known tax paradise where this pursuit is frustrated.

INTERNATIONAL ASSISTANCE

The Colombian legislator has made great efforts to adjust the international requirements to our domestic legislation. The Criminal Procedure Code provides a specific chapter which rules international assistance dealing with evidence; parameters are established to request legal assistance from foreign authorities and transfer of witnesses and experts; assist in the investigation of crimes of international nature; and to open the possibility of executing in Colombia the extinction of domain orders released by competent foreign authorities. Provisions that facilitate the task of district attorneys while filing inquiries and investigations and allow them to decipher the behavior of transnational delinquency.

It is acknowledged that the corruption phenomena affects all countries and crosses frontiers. Hence, the need of implementing and applying mutual assistance mechanisms to prevent, prosecute and repress this kind of criminal behaviors.

International judicial assistance is at present an efficient mechanism to administer justice in a material sense. Several mechanisms have been designed and applied. It is time to analyze which these mechanisms are, which their basis is and how they have been implemented in Colombia.

Legal mutual assistance is legally supported on international instruments and the statement that cooperation has to be provided independently from political, financial and social systems with the purpose of keeping peace, and international safety and encouraging progress and stability of populations.

The International Community has provided that the states cooperate among them to carry out their relevant purposes, the prevention and prosecution of crimes in their different forms become a motive to live together peacefully and have fair order, which are the essential purposes of the State.

Colombia has subscribed multi-lateral and bilateral judicial assistance covenants with different countries to achieve its goal of fighting and sanctioning infringers of the criminal law. Thereby, it is essential the subscription of the Memorandum of Understanding to strengthen the mutual legal assistance between the Office of the Attorney General of the People’s Republic of China and the Office of the Attorney General of Colombia.

Now, it is important to remember that there are two procedural systems in Colombia at this time: a mixed system and an accusatory system which is progressively going to be applied on all the Colombian territory. The judicial cooperation remains under the same criteria in the criteria.

The general principle of cooperation provided by Act 906 is different from what is provided by Act 600 of 2000, because of the incorporation of the possibility of attending requests made to national authorities by the jurisdiction of the International Criminal Court.

Further, it is established the possibility of fulfilling directly the requirements of INTERPOL red notices under the condition of remanding individuals in said position to the custody of the Office of the Attorney General of the Republic of Colombia with extradition purposes.

Likewise, the double-jeopardy principle is added, which is repeated in the terms above referred to, in the amend, and the possibility of creating joint operations units among different countries pursuant to the provisions of domestic law and under the direction and coordination of the Colombian Attorney General. In any event, such proceedings are carried out under the observance and absolute respect for the requirements of territorial jurisdiction governing such events.

It is worth noting that criminal assistance can be provided even if the behavior is not described by domestic law, unless it is against the value and principles provided by the Colombian Political Constitution.

Judges, prosecutors and judicial police units are empowered to request foreign authorities and international agencies, according to channels established for such effect, the provision of any material evidentiary elements or the practice of judicial proceedings. Besides, the Colombian Procedural Law, in support of the use of technical means, provides the possibility to transfer individuals that may act as witnesses or experts on foreign territory as well as to practice

proceedings on their site by granting prior authorization to foreign authorities entitled to perform them.

Within this context, it is worth noting that it is possible, with the authorization of the Colombian Attorney General, the attendance of foreign judicial authorities to practice relevant judicial proceedings with the assistance of the Public Ministry and under the coordination of the delegate district attorney in charge.

In addition to cooperation mechanisms such as letters rogatory and letters requisitory, the Colombian legislation based on the international experience and the treaties signed provides cooperation techniques through specialized operations to participate and obtain useful information in order to clarify the facts object of the investigation. It is possible the participation of authorities from various countries in such techniques, which implies mutual assistance.

Pursuant to such proceedings, operations have raised from different international instruments such as the 2003 Mérida Convention. Within the investigation mechanisms, there have been consolidated investigations techniques, particularly where it deals with the discovery and dismantling of international organizations, such as it is the case of infiltrations.

Infiltration consist of introducing an undercover agent - that cannot become an inciter - into a criminal organization in order to obtain useful information within an inquiry or investigation prior study assessment, decision and authorization of the district attorney in charge. This is a very useful tool to investigate corruption nets inside public entities as in the event of granting service charges in exchange of money or changing criminal or police records in exchange of payment, or altering freight charges or receipt for taxes or liens.

IMPLEMENTATION OF THE CONVENTION

The purpose of this meeting is to seek an effective international cooperation that allows the implementation of the United Nations Convention against Corruption, such as:

(i) To promote and strengthen the steps to prevent corruption acts. With this purpose, Colombia counts on the Office of the Inspector's General (Procuraduría General de la Nación) as the agency in charge of supervising those who hold public posts, not only to impose disciplinary sanctions but to seek that public function be developed observing the principles of transparence, morality and ethics. Training is conducted at a national level. Colombia also counts on Committees of Community Inspectors (Veedurías ciudadanas). Nevertheless, there is not a corruption observatory to systematize which is the most frequent corruption behavior. Besides, it is intended to create a risk map per regions and sectors.

(ii) Concerning the efficient and effective fight against corruption, the Office of the Attorney General of the Republic of Colombia (Fiscalía General de la Nación) criminally investigates such behaviors. It is important to point out, as it was formerly stated, that the Colombian legislation includes all requirements provided by the convention, describes the behaviors of embezzlement, bribery, misappropriation of property, traffic of influences and illicit enrichment. In addition, it punishes other behaviors that attempt against public administration.

(iii) With the purpose of encouraging, facilitating and supporting international cooperation and technical assistance in the prevention and fight against corruption, including the recovery of assets, as stated, Colombia has subscribed instruments that allow the country to cooperate and obtain assistance from different nations, being of great importance the agreement of understanding between the Office of the Attorney General of China and the Office of the Attorney General of Colombia (Fiscalía General de la Nación).

On the other hand, in furtherance of its mission, in addition to the Extinction of Domain Unit, the Office of the Attorney General of the Republic of Colombia (Fiscalía General de la Nación) counts on the cooperation of the Special Administrative Unit of Financial Information Analysis, UIAF ("Unidad Administrativa Especial de Información Análisis Financiero), which allows the institution to be informed about operations, mainly related to assets laundering issues. Besides, this tool has allowed the National Counter–Corruption Unit to gather valuable intelligence information concerning operations carried out by individuals who are investigated for corruption.

(iv) With regard to the purpose of encouraging the obligation of submitting statement of accounts and due management of issues and public property, mayors and governors in Colombia submit the Colombian Congress their statements of account to the community and public authorities

present annual reports focused on their management to.

COLOMBIAN EXPERIENCE IN THE INVESTIGATION OF CRIMES

Public order situation in Colombia is not ignored or a secret at an international level. There are various actors in our country that take part in developing corruption acts. Lately, it has been observed how public funds are diverted to outlaw groups, which implies taking one side against any of the actors of the armed conflict.

The involvement of paramilitary groups, guerrilla, and drug traffickers in the investigation has generated some risk to those who have the mission of administering justice, as well as to those who may cooperate by providing information to advance in the investigations. Hence, it is important to create a strong victims and witnesses protection programs, as well as to offer guarantees to all judicial officers.

Colombia is committed to fighting corruption, although it is a scourge that affects all countries, it particularly endangers developing countries such as our. Therefore, it is of great importance to joint efforts in the effective implementation of the convention to seek safety, development and peace.

Comoros

ALLOCUTION DU GARDE DES SCEAUX, MINISTRE DE LA JUSTICE, DE LA FONCTION PUBLIQUE, CHARGE DE LˇADMINISTRATION PENITENTIAIRE ET DES REFORMES ADMINISTRATIVES DE LˇUNION DES COMORES

Monsieur le Président,

Honorable assistance,

Lˇhonneur mˇéchoit aujourdˇhui dˇêtre présent parmi vous, dans cet auguste Assemblée, pour parler au nom de mon pays et du gouvernement Comorien, nous le savons tous que la corruption est un fléau auquel tous les pays du monde se trouvent confrontés.
Permettez-moi dˇabord de vous dire combien le Gouvernement Comorien dirigé par son excellence Ahmed Abdallah Sambi, Président de lˇUnion des Comores se voit préoccupé de cette calamité.

Le Président de lˇUnion des Comores, conscient de ce fléau lˇa fait une de ses actions prioritaires. Certes, la lutte contre ce phénomène est de portée universelle.
Dˇores et déjà, notre Assemblée nationale a adopté la loi autorisant le Président de lˇUnion des Comores à ratifier la Convention des Nations Unies contre la corruption. Ainsi, précédemment notre pays est parmi ceux qui lˇont ratifié.

Est grande lˇinitiative de la création de lˇAssociation internationale des Autorités dˇanti-corruption, aux fins de promouvoir la mise en application de la Convention des Nations Unies contre la corruption et de renforcer la coopération internationale dans ce domaine.
Aussi, sont à saluer la place que sˇest donnée la Chine dans la création de cette Association et lˇimplication du Parquet suprême de la République populaire de Chine dans lˇorganisation de la première Assemblée générale des membres de ladite Association.

A lˇoccasion, je tiens à vous informer de la manière dont mon pays compte sˇattaquer à la corruption qui constitue une véritable gangrène dans les affaires mêmes de lˇEtat. Depuis notre accession à lˇindépendance, la corruption sˇest érigée en système de façon à ce quˇelle devienne, comme partout dans le monde, un réel frein au décollage du pays. Dans tous les domaines, le mal existe.

Cˇest pourquoi, le Gouvernement Comorien sˇapprête à sˇattaquer à ce grand fléau à ses racines suivant les deux phases essentielles comme partout dans le monde, à savoir la phase préventive et

la phase répressive.
Dans les deux cas, l'Union des Comores aura besoin, à coup sûr, d'une coopération internationale ; notamment de ses amis comme la Chine.

Pour vous parler d'abord de la phase préventive de la lutte contre la corruption, l'Union des Comores compte mettre en place un organe spécialisé de prévention contre la corruption en suivant point par point les recommandations de la Convention des Nations Unies contre la corruption. Mais avant d'aller jusqu'à la mise en place de cet organe de prévention, il est essentiel pour mon pays de faire un recensement de tous les cas de figure existant dans le domaine de la corruption.

Par ailleurs, le recours à l'expertise internationale dans cette phase de prévention contre la corruption est essentiel, car la coopération avec des pays amis peut nous être utile et nous guidera vers une organisation efficace dans ce domaine.

Pour deux raisons essentielles, mon pays donne plus d'importance à la phase de prévention dans la lutte contre la corruption :

- la première, c'est pour éviter tout simplement que le mal ne se produise pas, car dans tous les cas si la corruption est consommée, forcément elle est nuisible.
- la deuxième, c'est que la réparation ne peut pas être totale, autrement dit le mal laissera toujours des séquelles dans la société.

Pour réussir donc sur cette phase de prévention, l'Union des Comores aura besoin de mener des études comparatives dans le domaine pour s'enquérir des expériences des autres pays qui lui sont en avance dans la lutte contre la corruption. Ainsi, le Gouvernement des Comores se donne le temps nécessaire pour s'y préparer suffisamment.

Mais, il est clair que la prévention est loin d'être la fin de la lutte contre la corruption. On vit dans un monde où il y aura toujours des corrupteurs et des corrompus. Il faut donc se préparer à la répression contre ces malfaiteurs.

La deuxième phase de la lutte contre la corruption est aussi essentielle que celle de la prévention. Elle est essentielle, car laisser dans l'impunité les coupables de la corruption est une grave erreur pour une société ou un Etat. Elle est également essentielle, car elle met en sécurité les capitaux des investisseurs Nationaux et étrangers, acteurs du développement.

En effet, la phase de la répression n'est possible qu'après deux étapes essentielles. Une étape de législation et une étape de coopération internationale.

Mon pays compte se lancer dans ce chantier de législation dans le domaine de la corruption dans les meilleurs délais et en suivant les recommandations inscrites dans la Convention des Nations Unies contre la corruption. Il compte également se donner les moyens d'une coopération internationale dans la poursuite des personnes coupables de corruption en vue de récupérer les biens ou les deniers publics faisant l'objet de corruption.

Je ne peux finir mon propos, sans souligner l'importance du choix du thème de notre présente conférence : « Une coopération internationale pour une application effective de la Convention des Nations Unies contre la corruption ».Mes Dames et Messieurs, nous tenons à rappeler que :

La corruption étant un phénomène mondial, toute lutte contre elle requiert une coopération internationale. Cette première Assemblée de l'association des autorités d'anti-corruption abritée dans ce pays marque aussi l'importance que les autorités chinoises donnent à ce phénomène.

Sur ce Mes Dames et Messieurs, le gouvernement Comorien à son tour témoigne sa disponibilité à coopérer avec le reste du monde afin d'érradiquer ce fléau qui ne fait que ralentir le développement économique de nos pays.

Je vous remercie.

Costa Rica

First Annual Conference and General Meeting

International Association of Anti-Corruption Authorities (IAACA)

Beijing, China

October 22-26, 2006

Report
Lawyer Gilbert Calderón Navarro
Coordinator of the Public Ethics Attorneys Office of the State
Representative of the Republic of Costa Rica

Costa Rica is a country located in Central America that limits the north with Nicaragua and the Southeastern with Panama. As well, its territory is bathed to the East by the Caribbean Sea and West by the Pacific Ocean, with an extension of 51100(fifty one thousands and one hundred) square kilometers and a population of 4016173 (four million sixteen thousands and one hundred seventy three) inhabitants. The official language is Spanish.

Our country is recognized to maintain one of the most consolidated and transparent democracies of America, as well as to have one of the best indices of human development of the region and by the abolition of the army as permanent institution in 1948 (nineteen forty eight), more than 50 (fifty) years ago.

Within the efforts of the Costa Rican State to establish the necessary mechanisms in order to fight the corruption, The Public Ethics Attorney Office of the State is create by means of Law No. 8242 (eighty two forty two), published in the Official Journal No. 83 (eighty three) of May 5th (five), 2002(two thousands and two). This law comes to extend the attributions of the General Office of Attorneys of the State, granting all the faculties to the new office of Public Ethics to fight the corruption in an effective way.

The attributions assigned by this law are oriented to develop the administrative actions necessary to:

- To prevent, to detect and to eradicate the corruption
- To increase ethics and transparency in the Public Administration
- To denounce and to blame official workers as well as private individuals for corruption acts, in the respective court of the State.

The creation of the Public Ethics Attorney Office makes reality one of the ideals of the Costa Rican society, in the meaning to count with an Institution able to protect the ethical values an of probity in the performance of the public function, as well as to impel policies and mechanisms anticorruption in the country.

The Public Ethics Attorney Office is the only anticorruption office that exists in Costa Rica. Its mission is to establish strategies aimed to break the chain of corruption and impunity but mainly, to impel prevention campaigns against this flagellum and to promote the practice of ethical values.

In addition, by means of Executive Decree No. 32090 (thirty two cero ninety) of April 21th (twenty one), 2004 (two thousands four), the Public Ethics Attorney Office was designated as the Central Authority ordered to canalize the mutual support and technical cooperation included in the Inter-American Convention against the Corruption.

Due of that designation, this Office has been managed to collaborate specially with the Public Ministry in the search of important evidences for the resolution of some of the most

complex cases, such as the investigation of ICE-Alcatel and CCSS-Fischel. In this cases are involved two ex-presidents receiving some type of gifts on the part of foreign companies, being then, two of the more important investigations by corruption of our country.

In the ICE-Alcatel case, a process of hiring was made with the French Company Alcatel for the renting with purchase option of the necessary equipment for ICE to provide 400.000 (four hundred thousands) integral wireless GMS technology telephone solutions, by an amount of 149 (one hundred forty nine) million US dollars. Alcatel issued 17.657.405,7 (seventeen millions six hundred fifty seven thousands four hundred five and seven cents) US dollars by concept of gifts prizes to public workers including the President of Costa Rica in that moment.

In the CCSS-Fischel case, a concessional credit was made for the amount of 32.000.000, 00 (thirty two) million US dollars that would be given by Finland for the purchase of medical hospital equipment. In this case, Medko Medical Corporation through its subsidiary Medko Medical LDT, was favored with the awarding of the licitation by issue the amount of 9.249.297,22 (nine millions two hundred forty nine thousands two hundred ninety seven and twenty two cents) US dollars as gifts and prizes also to public workers as well as to the ex-president in that time.

For both cases, the 90% of the evidences were collected in Panama by means of the legal possibility of assistance and international cooperation included into the Inter-American convention against the Corruption and Central American agreement of Reciprocal Attendance, subscribed by the Central American countries.

These two international legal instruments, have allowed the success of the investigation ad the establishment of effective actions in order to recover the removed money and the compensation of the damage caused with the corruption acts.

It is to notice the necessity of subscription by Costa Rica of the United Nations Convention against Corruption as soon as possible because it is an highly international legal instrument that allow us, eventually, to be able to coordinate with the French or Finnish authorities in the obtaining of necessary evidences for the success of the investigations.

The Public Ethics Attorney Office it is carrying out important efforts in order to manage to punish penal as well as economically to all these who commit corruption acts, being our main objective, to recover the property gained through the crime, as well as all those that can be use to repair the Social Damage caused by the acts of corruption to the Costa Rican society.

The reason of all this actions is because we strongly believe that we have to attack the corruption from different areas. One of them is the economic area. Generally, is well known that the corruption is one of the main causes of the poverty and badly operation in the state structure. Then is necessary that in all the crimes of corruption in addition to the penal sentences and the recovery of properties, also another kind of sentence should settle down in economic terms, a Social Damage sentence to all this persons that have been involved in corruption acts.

In the cases previously mentioned (ICE-Alcatel and CCSS-Fischel), this Office has conduced effective actions in order to repair the Social Damage. Thus, to the subsidiary company of Alcatel in Costa Rica, we request the amount of 596.837,27 (five hundred ninety six thousands eight hundred thirty seven with twenty seven cents) US dollars and an amount of 198.945,76 (one hundred ninety eight thousands nine hundred forty five with seventy six cents) US dollars in the other case against Fischel Company. Both amounts have been request with the objective to obtain a sentence by Social Damage against these companies and to revert the injurious effects of the corruption.

Croatia

THE REPUBLIC OF CROATIA
THE OFFICE OF THE ATTORNEY GENERAL
OF THE REPUBLIC OF CROATIA

Workshop Session 3: Getting Civil Society Involved: Relations with Media, Associations and NGOs

1. Introduction

Although to a very great extent our attention today is occupied by terrorism, people trafficking, trafficking in drugs and arms and organised crime, nevertheless another evil has for a long time greatly occupied the attention of all those who deal with the prosecution of crimes. This is corruption.

It is completely irrelevant what kind of political system there is in any given country, because wherever corruption exists, the rule of law is seriously imperilled. In fact, there is practically a law that says the more corruption comes to the fore in some society, the weaker the rule of law will be. And conversely wherever the rule of law is weak, then basic human rights are seriously endangered and accordingly citizens have major problems with legal and social security. I have to point out that corruption cannot be linked with just a single area of human activity, only with a given type of establishment or government body. Corruption creeps into all the parts of the body politic, and is particularly dangerous in places where political, financial and judicial decisions are made. It can also be found in health care, education and even in the sporting world. In fact, the basic characteristic of modern forms of corruption is that it is omnipresent.

Corruption is not a new thing. It has a long history, its all-pervading present, but I hope that this meeting of ours is a clear sign of our determination that corruption will not have a bright future.

In the Republic of Croatia we have to face all the problems that corruption entails, and for this reason a special public prosecutor's office for the prevention of organised crime and corruption has been set up, for it has long since been clear that organised crime makes use of corruption in order to infiltrate the bodies of government. The Office for the Suppression of Corruption and Organised Crime[33], as this special office of the public prosecutor is known, was founded for the purpose of putting the focus on the fight against and the suppression of both corruption and organised crime.

We are profoundly aware that it is hard to achieve rapid, effective and perceptible results, particularly those capable of satisfying the media. At the same time, we are also very much aware of what a difficult, sensitive and serious issue is involved. However, we are setting off with one of the wise sayings of our hosts: a journey of a thousand miles starts with but a little step. We believe that in the Republic of Croatia we took this step some time ago, and that we have made some considerable progress on the road towards our objective.

2. The media and corruption

If the word *media* is mentioned to prosecutors anywhere in the world, half of them will probably immediately develop terrible headaches, and the least that the rest of them will feel is a sense of the onerous pressure to which we are exposed each day. There is nothing to wonder at here, but also, prosecutors cannot expect to be cosseted and eulogised by the media. What we should expect from the media is pressure, but the kind of pressure that will have a motivating and positive charge; we should expect from the media the kind of critical spirit that will have a galvanizing effect on prosecutors, making them always alert, always ready to re-examine every decision they make, if this is necessary for the sake of making still better prosecutorial decisions.

However, we think that in the case of corruption, the media can do much more than this. Their role has to be extremely positive, and because of the incontrovertible power that the media have in all countries, their role can be extremely effective in the struggle against corruption.

2.1 Media and raising awareness of the negative effects of corruption

It is extremely dangerous if in some society there is a prevailing understanding and belief that corruption is ubiquitous, that one has to learn to live with it, and that there is no point in fighting against corruption because success can never be achieved. In such a case, and in such an atmosphere, it is hard indeed to achieve results. The bodies that deal with the detection and prosecution of perpetrators of such criminal deeds have a very large problem: how is it possible in general to fight against a phenomenon in a society in which there is no widely expressed will to support this fight? From whom is it possible to obtain the initial information about crimes, how can all those persons who are linked in the commission of these crimes be identified and

[33] The Office for the Suppression of Corruption and Organised Crime (commonly known by its Croatian acronym of USKOK) was founded in 2001, and its jurisdiction and activities are regulated by the provisions of the Office for the Suppression of Corruption and Organised Crime Law (Official Gazette no. 88/01, 12/02, 33/05).

detected?
If on the contrary we have a kind of setting in which everything that is connected with corruption is in and of itself markedly negative and dishonourable, much better conditions for the fight against corruption can be expected.
And who is it that has the most influence on the formation of public opinion about what is positive and what is negative, who are the good and who are the bad guys, or as the fashion magazines would put it, what is in and what is out? It is in fact the raising of the general social consciousness about the evil of corruption, about it being an evil that must not be tolerated or ignored, that is the first and most important step in the fight against corruption.
Hence every time when in the media some account is found that is written along these lines, an account that is decently written, in a manner that strikes a chord with the public, this must not be opposed, but on the contrary, accepted, for an important contribution to this fight has been made.
We would like to draw attention to one more thing that we think is crucial: via the media, quite often, the public has images of rich and successful business people foisted upon them, without in the media or in the public in general there being any knowledge of how these people arrived at their wealth. We think it is extremely undesirable to create heroes or good guys from people who did not make their fortune in a transparent way; or, which is far worse, can reasonably be guessed to have made their wealth in an illegal manner, perhaps even making use of corruption.

2.2 The direct effect of the media upon members of the public

The power of the media is today so great that practically (of course, at a theoretical level) we can talk of the capacities of the media to affect the passive and the active conduct of citizens with respect to the problem of corruption.
This influence on "passive conduct" would be to direct the public in the direction of refusing to take part in any kind of corrupt activity. In other words, to proclaim the kind of life style in which the very act of complicity with any kind of corrupt behaviour is in itself bad and dishonourable. Quite simply, to call upon the members of the public, in a sophisticated and dignified manner, not to accede to any such procedures, any kind of extortion that might have some kind of corrupt activity as a consequence.
This would certainly be a good beginning. The next thing that the media might do is to have an effect on the active behaviour of members of the public. That is, to encourage them to report incidences of corruption, in whatever phase these activities are, including encouraging members of the public to help the bodies charged with detecting and prosecuting these crimes to uncover them. It should be pointed out that civic courage, the bravery of the individual, is often crucial for the revelation and penalisation of corruption. Here the media might make use of their vast influence to teach citizens their rights in the event that they do report such cases, if they take part in the discovery of perpetrators. From the fact that nothing bad will happen to them as a result to the idea that the action for which participation in corrupting activities is sought or expected from them can be nevertheless carried out in the best way without any resort to corruption.

2.3 Media – problems in procedure

The worse thing that the media can do, in consequence of their curiosity, their haste to publish news, or still worse, to publish sensations, is to reveal the identity of the member of the public, that individual, who has taken part in the revelation of such crimes. Here it is not just that it is directly harmful to the individual member of the public, but also has a fatal effect on any further participation from other members of the public, the desire of citizens to report such behaviour in the future.
Hence the media ought to be extremely circumspect in publishing any such information capable of leading to the revelation of the identity of members of the public that have supplied information or taken an active role in the detection of these activities.

3. NGO participation in the suppression of corruption

We are of the opinion that the role of various forms of civic associations can be extremely important in the suppression of corruption. However, very much as in the case of the media, the position and way of behaving of these associations can contain certain dangers, in spite of all their incontestable good intentions.
Thus it is extremely important for these associations to be really independent of any kind of political contacts and influences, and also from the impact of any capital that might be supposed to have an axe to grind. These associations ought to be entirely transparent: first of all in their independence, and then, which is extremely essential, in their financial independence (because if they are funded from sources close to suspect sources of finances, they can have no credibility in their work). Apart from that, these associations ought to have a certain specialised level of

education about the problems with which they deal, because if the opposite is true, their actions might have a negative effect on the actions undertaken at an official level by the competent bodies.
Nevertheless, these associations certainly can have a very wide area of activity and also be extremely successful; this is particularly true in societies in which corruption is widespread, and in which citizens have lost their trust in the competent institutions. In such a case, the authority and independence of these associations can make them capable of providing members of the public the refuge and resort they need to be able to report acts of corruption. Hence these associations should be well educated, in order to be able to undertake the best measures if they should come into contact with this kind of reality.

4. The experience of the Republic of Croatia

Well aware of the positive possibilities inherent in media and civic associations and NGOs, the Republic of Croatia has brought into effect a number of provisions that enable such potentials to be used and enhanced. Thus the Office for the Suppression of Corruption and Organised Crime Law provides for a special department the task and mission of which is to foster collaboration with the public, the media and the NGOs[34].
This department, for the prevention of occurrences of corruption and for public relations, has the following tasks:
a) to acquaint the public with the dangers and deleteriousness of corruption, as well as about the methods and resources for preventing it;
b) pursuant to authorisation and instructions from the director of the Office to report to the public about the work of the Office;
c) to draw up reports and produce analyses about the incidence and causes of corruption in the public and private sector, and also where necessary to provide the director of the Office with suggestions for the adoption of new or modified regulations.

In fact, for the sake of a better and higher quality provision of information to the public about the activities of the Office, a web site has just been opened[35], a spokesperson has been taken on, and there are ongoing contacts with media and NGOs.
We hope that the time to come will show that we are indeed on the right road, and that our goal, even if it is a thousand miles away, is nevertheless attainable.

DEPUTY TO THE ATTORNEY GENERAL
OF THE REPUBLIC OF CROATIA

Josip Čule

Czech

Renata Vesecka's Paper on the IAACA Annual Conference

The efforts to illegally bear on justice are likely to date back to the establishment of first courts of justice. Methods how to make the blind justice to find the "right way" have included, since ages, varying forms of corruption. However, in particular in the sphere of justice, this is en extraordinary hazardous phenomenon. We have to ask ourselves whether a corrupted judge would sentence an offender who has committed an act of corruption. The answer is "probably not". So, if we admit the existence of the corruption in justice, it does not make any sense to fight it anywhere else.

Since 1995, the Transparency International have published their Corruption Perception Index as an estimate of the level of corruption in the public sector of a specific country. What is used is a scale where the value 10 means a country free of any corruption and 0 is an enormous level of corruption. In 2003, the Czech Republic got rated at the position 54 with the index 3.9. In 2004,

[34] Article 12 Paragraph 1 Item two of the Office for the Suppression of Corruption and Organised Crime Law provides for "a department for the prevention of occurrences of corruption and for public relations" while Article 14 of the same law states the remit of this department.
[35] www.dorh.hr

the position was 51 with the index 4.2 and in 2005 it was 47 with the index 4.3. Given this criterion, the situation in our country keeps improving very slowly.

However, the perception of corruption in the Czech Republic is greatly based on the belief of the members of public that one of the most corrupted spheres of our public life is the justice. It is very uneasy to trace where this negative opinion originates from as the personal experience of the members of public in such an extent is out of any discussion. Media are likely to play an important role in this matter. What is perhaps more difficult is the answer to the question whether and to what extent is the opinion of the public true.

The main source of the risk of corruption within the Ministry of Justice are courts and prosecuting attorney´s offices. Thus, it is apparent that the sceptical views of the members of public refer first of all to them. However, according to criminal records and statistical figures, there has been no judge or prosecuting attorney sentenced for bribery since years. However, such statistical figures just indicate the fact that corruption is extraordinarily hidden and it is very difficult bring an evidence on it. If we use a kind of hyperbole, corruption in justice is something like the end of the world - everyone believes it exists but no one has seen it, yet.

However, every exclusive activity attracts corruption and what the justice is doing, from the point of view of enormous scope of its decision competence and methods of the enforcement of the decisions, is surely an exclusive activity. In particular a number of criminal cases and business matters is of a serious nature and, therefore, it encourages parties involved to use non-standard procedures. What should be noted at this point is the fact that after the principal change of the social conditions in 1989, a class of very wealthy individuals and corporations started to emerge in the Czech Republic who are willing to sacrifice a fortune to put their individual interests through. Therefore, we have to admit that it is realistic that the level of the bribes proposed may be stronger that mere moral restraints of the justice authorities staffs.

Given the situation, there have been just two possible ways. Either refrain from any activity and to express annoyance over the public opinion from time to time or to at least try to find out what is the actual situation like. The establishment of the anti-corruption hotline of the Ministry of Justice matches the above possibility two. Moreover, it is based on the recommendations of the European Council GRECO member countries and the content of the UN Anti-corruption Convention.

It is logical that a central state administration authority is eager to collect all information concerning potential corruption in its sector. No ministry of justice can thoroughly monitor tenths of thousands of cases heard by justice bodies of a specific country every year. However, every party to any such proceeding may respond to any anomaly indicating there could be corruption committed. However, such parties are not unbiased and the content of the information they provide corresponds to the level of their involvement, in other words, it is often distorted.

Based on the above information, the Ministry of Justice of the Czech Republic has established a ministerial anti-corruption hot line since January 2004. The information on a special phone, fax and e-mail connection has been published on the web site www.justice.cz and using the web portals of all courts and prosecuting attorneys in the same way.

This new measure met an unexpected response from the part of media. National-wide newspapers, radio and TV channels and other media brought an information on it and they keep informing on it again and again. Other central state administration bodies have requested information on the operation of the anti-corruption line.

As the new measure was in line with the expectations of the members of public it resulted into jump increase of the supply of information. Such information is received and processed by the Department of the General Inspector of the Ministry of Justice. The content of the information extremely varies which means that in practice some of pieces of such information do not have anything in common with corruption but other data is very interesting in terms of the possibility of the further use by prosecuting and police bodies.

If required so, all information is analysed in cooperation with the members of the Corruption and Financial Criminality Department of the Police of the Czech Republic. What is always agreed is a set of matters complying with formal criteria for the forwarding of a matter to a body executing a verification of an information so provided. The respective office of the prosecuting attorney and the informer, if known, are kept informed on the progress in the matter. A feedback is always provided for.

In particular judges expressed their concern that such information provided by members of public could become a revenge instrument making judges victims of their own decisions. However, we should note at this place that every citizen may express his/her opinion and forward it to anywhere even without the existence of the anti-corruption line.

Starting from March 1, 2005, the anti-corruption hotline has been fully digitalised. Every newly recorded income message in the system is announced by an e-mail sent to the officers in charge at the Department of the General Inspector. Having entered the access code, the announced information on the phone call appears on the screen of a PC and the content of it can be replayed anytime or it may be loaded to another carrier. The calling parties are contacted in order to specify the information or get an explanation of another way of the solution of their problem.

In 2005, the anti-corruption hotline saw a decline in the number of incoming messages which may be interpreted in several ways. However, it basically indicates that the high level of corruption in the justice sector as alleged by the members of public, is exaggerated. Should this not be the case, thousands of parties to proceedings and their legal counsels are likely to have responded to specific cases. By now concluded police investigations have not confirmed any of corruption suspicions in any of such cases. In our opinion, the operation of the anti-corruption line complies in general with the above informative purposes and, therefore, the line will be kept in operation.

Is the establishment of an ”informer´s” line right? The answer is “of course”. Any lack of transparency and willingness to address problems may just strengthen the sceptical perception of the members of public. The facilitation of the flow of information is just an expression of the endeavour to make the difference between the public opinion and the reality objective. Should any such suspicion be confirmed, problem will be identified and more specified measures may be implemented. Should such a suspicion be not confirmed, it will be a counter-argument against speculations. Striking steps in this sphere are important from the point of view of the international position of the Czech Republic, too.

Denmark

Speech at the opening of the 1st Annual Conference and General Meeting of the IAACA

Mr. Henning Fode

Your Excellencies, director generals, prosecutor generals, ladies and gentlemen

The United Nations Convention against Corruption was adopted by the General Assembly in October 2003. It was opened for signature in Merida, Mexico from 9 to 11 December 2003. In a Message for that occasion UN Secretary General Kofi Annan stated the following:

“Corruption is an insidious scourge that impoverishes many countries and affect us all. The signing of the United Nations Convention against corruption is a major victory in our struggle against it.”

I am sure that also today, the 22nd of October 2006 will be remembered as a day of victory in the fight against corruption. We are today and the following days witnessing the establishment of a new worldwide organization dedicated to the fight against corruption, namely the International Association of Anti-Corruption Authorities.

The objective of this new association is to facilitate the implementation of the United Nations Convention against Corruption, which entered into force in December last year.

A huge challenge lies ahead for the Association.

Corruption is properly as old as mankind itself, but focus nationally and internationally was for many years not exactly on corruption problems. Everyone knew that corruption existed, but little was done to efficiently combating the scourge.

Luckily this has changed all over the world. In the fight against corruption there is one first important step: Awareness of the problem. The establishment of the International Association of Anti-Corruption Authorities here in Beijing is in itself a sign of awareness of the highest degree. But then, of course, action must and will no doubt follow.

The founding of the International Association of Anti-Corruption Authorities is thus also part of the concrete and necessary action against corruption in a way that can be crucial when it comes to try to help countries and people to combat corruption.

When fighting corruption we are up against a problem of dimensions that must not be underestimated.

Again to quote Secretary General Kofi Annan from his message to the Merida conference:

“It is now widely understood that corruption undermines economic performance, weakens democratic institutions and the rule of law, disrupts social order and destroys public trust, thus allowing organized crime terrorism and other threats to human security to flourish.

No country – rich or poor - is immune to that evil phenomenon. Both public and private sectors are involved. And it is always the public good that suffers.”

The UN Convention focuses on what can be done against corruption and thus indicates what course the Association can follow in its future work:

Prevention is a key issue. The Convention talks about different kinds of prevention but makes also a specific reference to anti-corruption bodies, such as many of the ones represented here to day. They are indeed very important to promote integrity, honesty and responsibility among public officials and in the private sector. Especially the public services must through these agencies and by many other means be subject to safeguards that promote efficiency, transparency and recruitment based on merit.

Another substantive highlight of the convention is criminalization and law enforcement. Being the President of the International Association of Prosecutors this is of course of special significance to me and many of my colleagues also present here today. It is important not to forget the role prosecutors and prosecution services play in the fight against corruption. I was therefore very pleased when I was not only invited to attend this conference but also asked to speak at the opening.

Another chapter of the UN convention is dedicated to international cooperation – the very theme of this first conference. Without solid international cooperation the fight against corruption is doomed to fail.

I am confident that the Association about to be founded at this conference will be able to contribute to enhanced international cooperation being that increased use of extradition, mutual legal assistance or not least of measures aimed at tracing, freezing, seizure and confiscation of proceeds of corruption. To go for the money gained by corruption is probably one of the most efficient measures one could imagine. Asset recovery is a strong measure as a tool of general prevention and it helps to restore the damage caused to societies especially in developing countries where resources are badly needed to ensure development and a better life for citizens.

Asset recovery is thus one issue I expect to be of mayor importance in the future.

Going through the UN Convention I find it obvious that the topics dealt with in the convention can generate work and debate for many future conferences. I recall that the effective implementation of the convention is one of the objectives of the IAACA.

The role of International Association of Prosecutors in relation to the Association of Anti-Corruption Authorities deserves a few comments. Our associations work partly in different fields and with different objectives. Anyhow we do have much in common. Prosecutors are needed in

the fight against corruption. Where prosecutors participate in prosecution of corruption cases the International Association of Prosecutors as the only worldwide organization of prosecutors do have a genuine interest in our members work as we have a similar interest with regard to all other criminal cases.

The IAACA´s aim is to establish a vibrant and viable network of anti-corruption authorities from all five continents. IAP as well offers its members a similar network.
I am looking forward to separate, but also joint efforts of our two associations in the fight against corruption. The problem is hardly that too many try to combat corruption; it sadly is enough the other way round. More hands and people are needed because of the magnitude of the problem.

This brings me on to the end of my intervention here before you. Let me express my sincere gratitude to our host – the prosecutor General of the Peoples´ Republic of China and his staff for their invitation and for their efforts to launch this new important Association.

Allow me furthermore before I stop to remind all of you here present of a simple fact. We all work - authorities, agencies and prosecutors – in the interest of society when combating corruption. But let us not forget that we do all this work not only for society as such but also for the citizens in all states who suffer from the devastating results of widespread corruption.

To quote Kofi Annan one last time – he underlined the following to the representatives of states gathered in Merida, Mexico some years ago:

“Our greatest challenge today is to ensure that people everywhere can live in dignity free from poverty, hunger, violence, oppression and injustice. For many people in a corrupt society those freedoms remain only a dream.”
So there is, as we all recognize, good reason to get the action started.
Thank you for your attention.

Ecuador

First Annual Conference and General Meeting of the
International Association of Anticorruption Authorities
October 22-26, 2006
Beijing, China

Dr. Manuel García –Jaén, Vice-president
Commission for the Civic Control of Corruption
Ecuador

Ecuadorian democracy resumed after 1979, after a period of military government. Since then it had an acceptable institutional stability until 1996, when Abdalá Bucaram took power. He overlooked his responsibilities and allowed notorious, uncontrolled, and excessive public acts of corruption.

Corruption has been present in varying degrees throughout the country’s history. However, this historic moment is when for the first time an irritated population demanded the end of an openly corrupt government.

The political events were swift. The president was deemed incapable of governing and left his post. Congress named Dr. Fabian Alarcón as interim president, with his first duty being the assembly of a constitutional reform and then general elections. The indignant and upset general public’s pressure provoked the first presidential decree, in which the “Anticorruption Commission” was created in order to investigate in depth all irregularities committed by the last government.

The first Anticorruption Commission was composed of seven respected citizens selected and appointed by the interim president. Their duty was to investigate all acts of corruption committed during the last administration.

As a consequence of the instability caused by the sudden change of government and the public's outcry, a constitutional assembly was organized. The assembly's main purpose was to present the country with a new constitution which would serve as a framework for a better organization and development in the scope of national events.

This is when the representatives of civil society and politics who were in charge of writing a new constitution, include for the first time in the country's history an institution called "Commission for the Civic Control of Corruption". This was done due to the conscious need of a specialized organization for the prevention and fight against corruption and was included in the constitution's chapter which dealt with control organizations.

Once the novel new constitution was in effect, there was a second group of members of the Anticorruption Commission which were appointed by the government. This Anticorruption Commission then proposed and presented congress a project which would be approved as the law of the "Commission for the Civic Control of Corruption". Both the constitution and the law mentioned above, deem the organism politically, administratively and economically independent.

It is important to highlight the Commission's independence since the Government is not supposed to control or interfere with this entity, nor will it depend on any other control organization. To guarantee this independence the Commissioners are elected by seven different Electoral Colleges which are composed of different national social organizations.

These Electoral Colleges are the representation of "civil society", apart and separate from all government. Here are represented different social groups such as worker's organizations, indigenous organizations, businessmen, the press, professional unions, human rights groups, universities and women's rights groups. In this manner all citizens are represented in the Electoral College.

Once the seven members of the Commission for the Civic Control of Corruption are elected their assignments last four years with the possibility of being reelected once. These members nominate the President and Vice-president of the organization.

The Commission carries out the necessary measures for the prevention, investigation, identification and individualization of corruption acts. Also, it works toward the dissemination of values and principles for the crystal clear management of public affairs. The Commission receives, handles and investigates reports of corruption acts committed by government agents, elected popular representatives, magistrates, officials, authorities, public officials, government employees and citizens involved in such accusations. If in the investigation there is circumstantial evidence or indications which show that the law has been violated, then the Commission presents this information to the Public Ministry (Office of the Prosecutor), Offices of the Comptroller General, or the jurisdictional bureau which could adequately handle the case according to the law.

The Commission does not interfere with the judiciary branch; however, it must handle the Commission's petitions. The Commission may also request information it deems necessary for any investigation from any organization or public official. Public officials that refuse to give this information are sanctioned according to the law and may be discharged. Those who do collaborate with the Commission to uncover the truth are legally protected.

The Commission gives preference to denunciations in cases involving, embezzlement, bribes, extortion, concussion and fraud in the financial system. The Commission is also partial to any fraudulent events which may affect the state and its resources or any public institution, including those which are co owned with the private sector.

As an example in 2005 the Commission received seven hundred and thirty (730) denunciations of which 66% came from citizens or institutions, and 34% corresponds to cases in which the Commission decided to investigate by duty and not per request.

Obviously the are cases that do not correspond to the Commission for the Civic Control of Corruption, either for judiciary reasons or the case's facts do not lend themselves to the Commission's domain. However, it is understandable the great number of denunciations given that the organization has a high degree of credibility with the public. To satisfy in some form all the denunciations in which the organizations may not deal with, it refers these to the proper legal or administrative authorities.

It is important to highlight that the most frequent cases of corruption in the country are form the judicial function, public contracts, customs, energy production, provincial and regional governments.

Once the investigation of each case is finished in which due process is strictly followed there is a final report approved by the Commission in full. This report is then considered as an indicator or as presumption of illegal acts with penal, civil or administrative responsibilities.

According to the Commission's law these reports are sent to the appropriate authorities. In case of administrative responsibilities the cases is sent to the Office of the Comptroller General and in cases with penal responsibilities are sent to the Public Ministry (Prosecutor's Office).

It is interesting to note that some reports do not conclude with responsibilities, neither administratively nor penal. However, some do have preventive recommendations to be followed to correct anomalies in the different institutions.

Parallel to the Commission's investigative activities, it also carries out a permanent and important effort in the prevention of corruption, aimed at lowering the general level of corruption. Apart from some short term concrete programs, this activity is reflected in the following fields: The Social Comptroller, which signifies the organized participation of the citizenry in the good and honest management of public administration. Its best instrument is Citizenry Supervisions, which under prescribed norms are organized to develop activities in concrete subjects and also of social importance.

The Citizen Formation consists in diverse programs in all the educational levels aimed at preparing honest citizens at the service and development of the country. The Citizen Networks, are composed of young people as by adults in the main cities. They intend to receive a general formation that allows them to properly participate in the diverse preventive programs that are developed against corruption.

In this field of Prevention it seems appropriate to emphasize that by its own initiative, the Commission is in charge of the electronic official system of public purchases called CONTRATANET and that at the moment it is in its first state of public information. At the moment only the institutions that belong to the executive authority have the obligation to publish their acquisition necessities. As telling data of this increasing activity, in the year 2005 there were published purchase orders of more than one thousand five hundred million dollars. The Commission aspires to consolidate in short term the second phase of the system aimed at the supply and definitive hiring via electronic means.

In relation to the international presence of the Commission for the Civic Control of Corruption it is important to indicate that it has been the organism in charge to represent the country in the main events, meetings, conferences and other similar gatherings where the central subject has been the preoccupation to combat corruption.

Thus the Commission is the "Central Authority" is which is called the Follow up Mechanism in the Implementation of the Inter-American Convention Against Corruption. This is why it is responsible for the analyses of the Ecuadorian legislation in relation to the Convention and in the development of the recommendations the country is given so that the country may have more and better instruments in the great combat for honesty in public administration.

The Commission was designated to represent the Republic of Ecuador in the tracendental act of adoption of the Convention of Nations United against Corruption, instrument of world-wide outpost that was quickly ratified by the Ecuadorian State.

The private and public organisms are varied and diverse of other countries that approach the Commission for the development of activities directed at the prevention of corruption as well as to the instrumentation of programs or instruments directed to fight it.

All previously mentioned is the foundation to be able to affirm that we are convinced that only common international efforts will be able to achieve real and positive successes in attempts for a world that develops vertiginously in multiple aspects, but where still corruption has clamped down its claws.

The Commission for the Civic Control of Corruption is committed in this international effort; it also offers all its cooperation as well as it will expect the same from similar

organizations from all friendly countries.

For that reason those who make up this Organism of Control in Ecuador, are conscious of the necessity to fortify it every day in all its resources in order to fulfill better the hope of a country that wants to live and develop with transparency, justice and solidarity.

Ethiopia

I

Dear Sirs,

First and foremost, I would like to thank the Supreme People Procuratorate of the People Republic of China for inviting the Federal Ethics and Anti-corruption Commission (FEAC) to the first Annual Conference and General Meeting of the International Association of the Anti-corruption Authorities.

As you very well know, corruption has already become a very serious global threat. It has particularly become a very dangerous menace to the economic development and democratization processes in Africa.

Cognizant of its dangerous consequences, the international community began to exert a concerted effort to tackle corruption and impropriety. The Ethiopian Government, which has always been well aware of the damaging effect of corruption on the on-going development process, didn hesitate to join the international community in the struggle against corruption.

To put the measures taken in perspective, the Government made an over all assessment of the Country civil service system and found out that corruption was taking root in many of the public offices and enterprises.

Fraud, cheating, trickery, embezzlement, extortion, nepotism and prejudice have been some of the features that corruption manifested itself in the Country.

The assessment showed that poor governance, lack of transparency and accountability, low level of institutional development, extreme poverty, inequity and harmful cultural practices were the major causes of corruption in the civil service system.

Having made the assessment, the Government found it absolutely necessary to reform the civil service system and launched a huge civil service reform programme, which comprised various sub-programmes.

One of the sub-programmes was the ethics sub-programme, which, in turn, contained the anti-corruption campaign as one of its components.

To fight corruption decisively, a strong and independent anti-corruption institution had to be established and that was why the FEAC was established in May 2001 on the approval of parliament.

Following the establishment of the FEAC, various regulations and directives were issued for the effective implementation of the anti-corruption proclamations and laws. The FEAC consists of five departments, three services and three offices.

The major objectives of the Commission are the creation of an aware society where corruption will not be condoned and the effective prevention and prosecution of corruption offences.

Since its establishment, the Commission launched a three-pronged attack on corruption namely, ethics education, prevention and law enforcement. So far, it investigated and pressed charges against numerous corruptors, about 100 of whom received from 1-19 years of imprisonment.

Most importantly, the FEAC has taken the preventive approach in fighting corruption. It is our strong conviction that this approach is more cost-effective, sustainable and participatory than the curative approach. Corruption prevention has, therefore, been at the center of our anti-corruption campaign and will remain to be in the years ahead.

With a view to plugging loopholes that were believed to be conducive to corruption, the FEAC examined the practices and working procedures in more than 50 public offices and enterprises and put forward corrective measures and recommendations.

The Commission has also been doing everything in its power to expand ethics and anti-corruption education among the Ethiopian public so that they will not tolerate corruption and will be determined to combat corruption in collaboration with it.

Dear Participants,

We strongly believe that the participation of stakeholders is a key factor in the fight against corruption. Therefore, we have been doing everything in our capacity to enhance and encourage stakeholder participation in our fierce fight against corruption.

We particularly attach a very high significance to the participation of the public in the fight against corruption and we put similar premium to their protection and safety.

In an effort to ensure the safety of whistle blowers, a draft of whistle-blower protection proclamation has been developed.

We also organized a number of meetings and discussion forums with the civil society organizations, donors, religious leaders, professional associations and the various cross-sections of the society on how to join hands with them in the fight against corruption.

In fact, we have already forged a very strong partnership with many of the afore-mentioned stakeholders and have been working with them very closely.

In a similar vein, there is a global consensus nowadays that corruption can be effectively tackled only through partnership and coordination. It has become crystal clear, more than ever, that isolated efforts will take us nowhere in the global fight against corruption.

That was why the international community was busy forging a more viable and vigorous partnership and collaboration in the fight against corruption and impropriety.

Chief among the mechanisms of forging such partnership has been the organization and launching of international conferences and forums.

In this regard, the launching of the First Annual Conference and General Meeting of the International Association of Anti-corruption Authorities here in Beijing could be taken as a decisive move by the international community to tackle corruption through partnership and collaboration.

Dear participants,

On my part, I am very much pleased and honoured to take part in this vitally important Conference, which, in my opinion, will enable us to devise mechanisms and strategies of implementing global and continental anti-corruption conventions.

As a matter of fact, we actively participated in different anti-corruption conferences held in Vienna, Lusaka, Seoul and Brasilia.

As participants in those conferences, we drew important lessons from our counterparts from other countries and shared our experience with them.

My Country is a signatory to the UN Convention against Corruption and the African Union Convention on Preventing and Combating Corruption.

The FEAC has already presented the Conventions to the Council of Ministers for approval with

the latter to submit them to the parliament for ratification. We are very committed to implementing the Conventions fully following the ratification, which is the most likely outcome.

Ethiopia, which incorporated anti-corruption laws in the newly revised Penal Code devoting more than 23 articles, is more than ready to fully implement the criminal laws it promulgated and the conventions it signed up.

We will also continue to work in partnership and collaboration with all stakeholders in general and our counterparts in different corners of the world in particular. I, hereby, urge our counterparts from all over the world to do the same.

The united we are the stronger we will become in fighting corruption and impropriety.

I thank you.

II

WORK SHOP 5: Cooperation between Law Enforcement and Other Relevant National Authorities

By

H.E. Mr. Addisu Mengistu,
Deputy Commissioner of the Federal Ethics and Anti-Corruption Commission of Ethiopia.

1st Annual Conference and General Meeting of the International Association of Anti-Corruption Authorities.

Oct. 22-26/2006
Beijing, China

Cooperation between Law Enforcement and other Relevant National Authorities in Fighting Corruption

Dear Sirs
Corruption is a very complex criminal act. That is why it is very essential for various law enforcement bodies and national authorities to join hands and forge strong partnership in the fight against it. If there is no strong partnership among such organs, it is not likely that corruption will be done away with. In order to satisfy the interest of justice, law enforcement organs such as police, prosecutors, courts and prison administration should work in close collaboration with other relevant authorities such as ombudsmen, general auditor, anti-corruption bodies and human rights activists and watch-dogs. Various areas of cooperation can be identified.

The provision and exchange of information is, for example, one area. All the agencies gather information from the public and other sources in order to accomplish their tasks. While doing so, they usually get information more relevant to other law enforcement agencies. For example, the general auditor office can get information related to criminal offences, or maladministration. The Anti-corruption bodies can also get information related to forgery, money counterfeit, drag trafficking, or human rights violations, maladministration and inconsistency in financial administration. Such information should be passed immediately to the concerned authorities. The same can be said about the police, public prosecutors, prison administrations, ombudsmen and human rights commission.

Assisting one another is another area of cooperation. In enforcing the law, the law enforcement agencies should assist one another because it is difficult to enforce law individually. The police,

public prosecutor and anti-corruption bodies, for example, need a case to be audited and the auditor to be a witness at court. The general auditor should assist them. The general auditor, police, public prosecutor, ombudsman and human rights commission may need advice or training on corruption-related issues. The anti-corruption commissions should assist them. Anti-corruption commissions, ombudsman and human rights commission may need training in investigation skills. The police commission should assist them. The same can be said about the other agencies.

They can also cooperate in the area of operations. Some times need may arise to cooperate in operations or to undertake joint operations. Some vast investigation operations may need cooperation between the police and the anti-corruption commission. Some vast and complicated prosecutions may need cooperation between the public prosecutors and the anti-corruption commission. The human rights commission and the ombudsman or the ombudsman and the anti-corruption commission may undertake joint operations in an institution. In such cases, joint investigation teams, or prosecutors, investigators, etc may be given to the requesting agency to work under its command. In the same token, police and the general auditor, or the anti-corruption commission and the general auditor may undertake joint operations in certain institutions.

The Dire Need to Start Cooperating Sooner than Later

As I emphatically made it clear above, law enforcement organs and other relevant agencies should start cooperating in the fight against corruption sooner than later. No matter how valiant their efforts may be, they will not bear fruits unless they are concerted and coordinated. And, the sooner they forge partnership, the huger will be the amount of wealth to be protected from being looted by the greedy corruptors. They should have done that a long time ago. But, it is also important that they should do it now. “Better late than Never,” as the saying goes.

These days, some continental and international organizations have already begun to forge partnership in the fight against corruption. Some continental and international conventions have also been signed. These things could serve as a launch pad for enhancing cooperation between and among law enforcement organs and other relevant agencies in the fight against corruption. The international community should capitalize on that.

The Need to Exchange Experience on How to Do it

The cooperation between law enforcement bodies and other relevant agencies is not a new phenomenon. Many countries started a long time ago. Countries like the USA, UK, Germany and Japan have already made encouraging achievements in this regard. That is what makes experience-sharing most important. Countries which have vast experience can be of great help in this regard.

Conclusion

Corruption cannot be successfully fought through ad hoc and isolated efforts. If corruption is to be successfully tackled, all stakeholders need to exert concerted efforts against it. Most importantly, law enforcement organs and other relevant agencies need to forge a very strong partnership in the fight against corruption. There should be cooperation between and among them in the combat against corruption. At the end of the day, the major objective of all of the law enforcement organs and other relevant agencies is preventing and controlling crime. At least in the Ethiopian case, corruption is considered to be a criminal act. Therefore, law enforcement organs and relevant agencies must gear and coordinate their activities towards this end.

Finland

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The 1. Annual Conference and General Meeting of the IAACA, 22. - 26.10.2006 Beijing

Workshop 12: Training and Upgrading of Skills

FINNISH PROSECUTION SERVICE – A PARTNER IN COMBATING CORRUPTION

1. Corruption in Finland

The level of corruption in Finland is comparatively low. For years Finland has been ranked one of the least corrupted countries in the world. The good situation is considered to be the outcome of a long historical process, which has resulted to certain significant features in our society[36]:

- There is a generally accepted base of values, which includes moderation, personal restraint and the common good. These values check the pursuit of private gains at the expense of others and help to build mutual trust. The ethical and responsible behaviour of persons in important positions is considered to bring about similar attitude in other people.

- There is also a comprehensive system of legislation, efficient law enforcement, a well-functioning judiciary and proactive monitoring of abuses, which guards against the abuse of power. This mechanism is strongly supported by a vigorous legalistic tradition, extensive transparency of the public administration and an independent and free media.

- Adequate wages and low disparities of income are also factors, which reduce the propensity to accept bribes and curb economic greed in career building.

- However astonishing it may be, according to international studies the prominence of women in political decision-making and in higher public offices correlates with low corruption levels. Finland has been for a long time, along with other Nordic Countries, a pioneer of gender equality.

The low level of corruption in Finland means in practice that only few cases of corruption are detected annually. Typical cases of corruption are related e.g. to public procurement, town planning and construction business. As an exotic curiosity, a recent bribery case connected to the leasing of icebreaker ships of Finnish icebreaker fleet may be noticed.

2. The Prosecution Service

From the international point of view the position of the Prosecution Service of Finland[37] may be described as a highly independent one.

The Prosecution Service falls into the branch of the Ministry of Justice, which is in charge of the financial resources of the Service. Anyway, the Service is functionally independent in relation to the Ministry of Justice as well as to the judiciary and the Council of State. Independence is guaranteed both in individual assessments of charges and in the guidance of the prosecutors. The Ministry of Justice, however, determines the general result objectives of the Prosecution Service.

The Prosecution Service consists of some 320 district prosecutors in local prosecutor's offices, 13 state prosecutors in the Office of the Prosecutor General and adequate clerical staff. The Prosecutor General is the superior of all prosecutors.

The district prosecutors have, as a main rule, authority to prosecute all kind of crime in all instances of courts of justice. Only cases with wider significance to the community, like

[36] Combating Corruption - The Finnish Experience. Ministry for Foreign Affairs of Finland, 2005
[37] For more extensive information see http://www.vksv.oikeus.fi/Etusivu/Suomensyyttajalaitos?lang=en

those concerning acceptance of bribes committed by senior public officials, are appointed to state prosecutors.

In local level there is also a nationwide system of key prosecutor groups. These are groups of district prosecutors, who are specialised on definite types of crime. One of the key prosecutor groups concentrates on offences in office and corruption.

The Prosecution Service is not an actual investigative authority. The main criminal investigative authority in Finland is the Police, which is subordinate to the Ministry of Interior. One basic assumption in the Finnish criminal procedure has been that the assessment of the charges should be completed separately and independently of the investigative stage.

Even if the prosecutors are not investigative authorities, their investigative role has become more active recently. The police are by law obliged to carry out a criminal investigation or further investigations on the request of the prosecutor, as well as comply with the instructions issued by the prosecutor. Accordingly, the co-operation of prosecutors and the police is very close during the pre-trial investigation of more complicated crime like cases of corruption.

In combating corruption, low tolerance is the prevailing feature of the work of the prosecutors and the police. Relatively slight symptoms of corruption normally launch an extensive investigation.

3. Training of the Prosecutors

The training and upgrading of skills of the prosecutors in Finland is a task for the Development Unit of the Office of the Prosecutor General. For this end, the Development Unit runs a small but very active training entity called the Prosecutor Academy.

The training in the Prosecution Service consists of

- Training Program for Junior Prosecutors, which is aimed for young lawyers who want to be prosecutors.
- Basic Training for newly appointed district prosecutors.
- Advanced and Continuous training, which consists of courses on definite fields of crime and other topics of prosecution work.
- Training of the key prosecutors.
- Leadership training.
- Regional training, which is carried out by groups of local prosecutor's offices.
- Training of the Clerical Staff.

Training on matters related to corruption is concentrated mainly on basic and advanced levels and on training of the key prosecutors.

The basic level training program includes a section on regulations on bribery and other forms of corruption. In the advanced level, all prosecutors have the option of attending a special course on malfeasance and corruption, which the Academy organises every two or three years. The training of the key prosecutors is individual and based on personal curricula, which are supervised by a state prosecutor. The key prosecutors participate in organising the training of lower levels, too.

5. Co-operation

In Finland the anti-corruption work of the Prosecution Service, the Police and the judiciary is generally regarded as successful. However, promoting the public awareness about the danger of corruption is considered to be equally important.

Therefore, some multilateral entities for this end have been established. E.g. the Prosecution Service and various private and public sectors of the society are represented in Anti-Corruption Network and Anti-Corruption Working Group, which are government-backed organs with extensive fields of activities.

The anti-corruption work of the NGO´s, like the Transparency International, is highly appreciated, too.

France

Conference of Beijing

Monday, October the 23rd 2006

International cooperation in the implementation of the UN Global program against corruption

Mr Attorney General of the People's Republic of China, dear friends, Ladies and Gentlemen, dear colleagues,

I am pleased to be able to address you all today on this inaugural session of the first annual conference of the international association of anti-corruption authorities.

I should like to express my gratitude to our Chinese hosts for the outstanding organization and the quality of their hospitality here in Beijing and to also like to pay my respects to the members of the high authorities and thank them for honouring this meeting by their presence.

The association created today is a response to a clear need. It is necessary due to the width of the issues which unite us and the future issues and work to come.

The context is particularly apt as of course the UN global convention against corruption signed in MERIDA in December 2003 by 140 countries became effective last December.

We are all very conscious of the utmost importance of seeing this strategic instrument in force in our countries.

My purpose will be to show to just how much this program constitutes a great challenge and a major opportunity for our judicial systems.

All those in the IAACA know that a convention alone cannot be sufficient to suppress such a huge phenomenon. But I would like to reaffirm how we all need to strengthen the tools which our laws provide to enable us to meet the expectations our citizens have of their judicial systems in the fight against corruption.

Mr Attorney General JIA, during the last ASEM conference in SHENTZEN in 2005, you rightly pointed out that the rule of law in our society was the essential imperative for a more peaceful and wealthier world.

This wise conviction can be found in the 25 century old book of Chinese rites according to which a country must promote uncorrupted figures to reconcile the people.

The UN convention reminds us that morality and particularly public ethics in the government of people is a fundamental issue.

The convention exhorts us to understand clearly that we all suffer from corruption.

As Kofi Annan, UN Secretary-General, pointed out at the time of the adoption of the Program by the UN General Assembly:

"Corruption hurts the poor disproportionately by diverting funds intended for development, undermining a government's ability to provide basic services, inequality and injustice prevail and foreign investment and aid is put off."

This fight seems to be an illustration of the public prosecutors' fundamental task;: they must defend an equal application of law for everyone to serve the poor against the unjust violence of crime.

Over recent years we have seen a spread of this scourge and no country has been spared. Moreover corruption is tightly linked with the development of an organized crime which is becoming increasingly international and audacious.

It is our common responsibility, grounded on similar experiences and values, to make the fight against corruption more efficient.

It is above all a chance for our judicial system and especially for our public prosecutors to reaffirm their prevention policy, to refine their juridical armory, to develop international cooperation and to ensure an efficient suppression.

In my opinion the role of the national public prosecutors must be guided by three fundamental factors embedded in our policies and practices:-

Corruption is a reality, but not an inevitablity:

Nowadays corruption is a weapon for international organized crime

It extends to both private and public sectors.

Of course, threats to public probity must be our first concern since we can't offer our fellow-citizens a chance of a better and safer world if there is any doubt about the institutions in charge of their protection.

UN has recently evaluated that organized crime spends 840 billions dollars a year of its illicit profits in order to corrupt those authorities which threaten its activities.

Fighting corruption is also to combat the most violent and insidious forms of this organized crime that our judicial systems recognise on a global scale.

One of the major achievements of the convention that became effective on the 14th of December 2005 is thus to recognise the link between corruption and organized crime.

Another is a recognition of the need to reinforce each country's own weapons in the fight and to improve judicial cooperation between countries.

Even if corruption is a very old and widespread phenomenon, we shouldn't become resigned to it. There are many examples of efficient actions taken against it throughout the world and we should learn from these successes in order to improve our own judicial response.

Notable progress has been made:

in the public sector first; in many countries the setting up of central preventive structures against corruption and the adoption of laws for transparency in public life have begun to show to the public that corruption could be fought and that it is justifiable to invest major finance in such incentives.
It is actually fundamental that the State takes the lead.

Civil servants and parliamentary figures can be prosecuted for crimes through the ordinary criminal process

In 1993 we brought into force a specific ruling which made it possible for government ministers to be prosecuted for crimes committed during their tenure by the Court of Justice for the Republic made up of 15 Judges, 12 elected parliamentarians and three lawyers from the Appeal Court.

The investigation into any matter is undertaken by a body of 3 Court of Appeal magistrates who receive complaints from any member of the public once it has been initially reviewed by a body made up of 7 magistrates from the prosecution service of the Ministry of Justice.

The decision of that body can form the basis of a prosecution in the Court of Appeal

The sentences differ in no way from that of the ordinary courts and can include imprisonment, financial punishment and with an additional sentencing power enabling the prohibition of exercising a public role which can be either permanent or temporary.

Since its creation it has already been involved in several cases all of which have attracted a great deal of media interest. He hearings and the judgments were of course all held in public.

Our constitution does allow for the exemption of the President of the Republic from criminal responsibility, for example from corruption, taking place during his presidency (with the exception of high treason) so that the office of President benefits from immunity from such prosecutions

in the economic field corruption scandals which affect the competitiveness and lower the credit of firms involved in them concerned have highlighted the fact that economical ethics do exist in line with public ethics.
This is for example illustrated by a better control of the firms' accounts by the professional bodies in charge of them.

in the judicial sphere finally; when judicial action reveals deals with corrupt activities the public's mistrust can be reversed if the result is a public bringing to justice of corruptors and corrupted, whatever their rank and means.
It is illustrated by the setting up of specialized judicial units. The Appeal Court gives out about a dozen judgments annually in corruption cases, and the lack of appeals (about 6%) witnesses underlines the quality of the decisions that are made for the most part against civil servants.

The task is all the more huge in that we must fight obscure/unknown facts and situations where the corrupted person is both a victim and a criminal. That makes it even more difficult to unveil and eradicate a phenomenon that relies on the power of money and the fear of reprisal.

In this respect the UN program is an opportunity but not a panacea

The realization of this program is the essential setting up of a general framework for the world community of judicial systems:

It is the symbol of a common priority and it enables the coherence and compatibility of judicial responses.

The program is thus more than a simple well-meant statement since it allows the creation of a real working network of trans-border criminal policies.

I would like to underline that it certainly constitutes the first effective juridical tool intended to address the huge problem of corruption on a universal scale ; it imposes obligations on the signatory states to set policies of prevention.

Of course the institution of the programme in individual countries is not simply a panacea but it does marks the birth of a resolute fight in differing forms against corruption.

Resolute since, despite our differences, we share the same analysis of the effects of corruption in our societies,
and in many forms as we have sometimes learned to our expense that the fight needs a huge number of judicial responses.

I would like to highlight the whole range of solutions that have been tried by our judicial institutions and which seem destined to succeed in the spirit of the convention much as the spirit which brings us all together.

During the conference some will talk about the main technical answers in various fields: legislation, improvement in repressive mutual legal assistance, adaptation of the rules of limitation,hardening of monetary sanctions or on the positive impact of supreme court jurisprudence that seeks to make law more reliable.

For instance, I want to underline the relevance of the bilateral agreement that China and France are currently signing here in Beijing; a program in a climate of mutual trust which encourages cooperation between judicial authorities and the exchange of ideas such as operational actions.

Moreover, I emphasize the decisive role of Liaison Magistrates who facilitate international judicial cooperation.

Of course legislations which have already become more aligned must still come closer for this criminal policy to be efficient,

Of course tools of cooperation must be strengthened

And of course these renewed weapons must be used by those involved, judges and prosecutors, whose motivation must be assured.

But in my opinion,
There will be no systematic progress in this demanding fight unless each country adopts two fundamental foundations, in addition to significant reinforcements of repression and technical cooperation between countries,

One foundation is to give the prosecuting authorities all the weapons available to 21st century justice.
The other re-foundation is to guarantee better protection for women and men who contribute to fight against corruption every day.

Reform of the public prosecution service would not be a disruption of the organisation that forms a legitimate part of each country's history,
We mustn't look for an illusionary standardisation of the systems or the utopia of a universal public prosecutor;

In fact we must look for the most efficient configuration to allow more effective judicial action against corruption without undermining the fundamental principles of loyalty and equity whose strength was demonstrated during the recent conference of the International Association of Prosecutors in Paris which showed the degree of consensus between prosecutors.

In my country for example,
We are currently thinking of reforms that would reinforce balance in criminal procedures. These reforms would assure a stronger control of the judicial police by the prosecutors. They would also assure the dual role of the magistrates as defenders of personal freedom and guardians of the public interest.

To my mind, a stronger prosecution service is the key to a modern anti-corruption system. Its authority should be clearly defined as far as its governmental responsibilities and judicial responsibilities are concerned in line with the recommendations of the highest international authorities and this is the determining factor in the anti corruption model.

Reforms of its status is certainly necessary and should return it to its place in the state system.

But an institution is nothing without those who serve it; this is my second point:

Better protection for those involved in preventive and repressive action wouldn't be a new sort of privilege – Our democracies would not tolerate that.It would in fact a use or a reinforcement of ambitious actions in two main directions.

Training, which brings professionalism and innovation to the side of guardians of the law and not only to the side of the criminals.

You will all during this conference have the opportunity of highlighting the role our teaching institutions must play in the transmission of knowledge at each stage of our legal careers.
And of course specialised training must be set up to deal with organised crime which would guarantee the performance of the criminal judicial response when confronted by often threatening enemies who are always ready to use the law against those who serve it.

I am calling for the gathering of knowledge across geopolitical borders.
And I rejoice with the very fertile possibilities opened by the upcoming opening of a Sino-European legal institution which will play an important role in the pooling of competences.

We all understand the need for better trained and better paid people, better protected legally and physically protection of all the people engaged in fighting the real menace reflected by the world of corruption.
But we should also not forget the need to develop real ethical vigilance:

The fight against corruption actually needs the women and men who works in the filed to be aware of the dangers they can find within themselves and around them;

They are especially exposed when facing powerful corruptors without any scruples,
And the risk of finding a shelter in corporatism and technical deficiency shouldn't be underestimated.

It is a duty of utmost importance for judicial authorities always to evoke ethic reflexes when carrying out tasks where the slightest failure can be deadly for the reputation of justice and for the honor of those who must remain faultless.

I encourage you not to ignore any ideas during your debates on this central theme of the fight against corruption: share experiences, moral codes or good practice, specialised training, examples of criminal and disciplinary sanctions.

But these efforts and policies must be thought with humility and lucidity which I as a legal practitioner know to be essential
The success of our fight relies on our capacity to fight together which also means to think together and to share our questionings between equal and motivated partners.
This is exactly the aim I would like to give to the works of this conference

We must improve prevention, detection and suppression of corruption on both national and international scales. That is a challenge for our judicial systems precisely because it is a major issue in our democracies. This is what has gathered us. This should allow us to progress.

You will have to address a very large range of themes since every aspect of the fight must be addressed for it to be global and complementary:
Prevention, legislation, prosecution, international cooperation, confiscation of criminal assets, the role of international organizations… all of these are themes that will be discussed;
They follow the different chapters of the UN convention, they are our schedule even beyond this important conference

In conclusion

You will no doubt have felt my beliefs as a prosecutor, as a magistrate, as a citizen of the world, is based on my certainty from my personal experience as well as out of the extraordinary alignment of judicial systems that is taking place

Beyond the many differences that characterise and define our organisations and sometimes divides them, I think that a conference such as this contributes to defining a common goal which does not recognise either naivety or complacency but on the contrary a common task undertaken methodically together.

25 centuries ago the founder of Western philosophy Aristotle defined such an attitude in his Metaphysics: "real courage is to be able to fear danger and still hold on"

Thank you

Georgia

Corruption in Georgia has been a significant obstacle to economic development since the country gained independence. Its pervasive nature and high visibility have seriously undermined the credibility of the government. The previous Government of Georgia has developed a significant amount of anti-corruption analytical and policy documents prior to the so-called "Rose Revolution" of 2004. However, the political will to implement these policies was missing, and they remained only on paper.

The new Georgian government in 2004 committed to tackle corruption at the highest levels, as

visibly displayed by arresting and prosecuting several former government officials. After the political change, the magnitude of the problems faced by the Georgian society called for immediate action, and not for drafting new documents. It was of utmost importance for the Government to demonstrate ability to lead and to deliver practical results. This goal was to a large extent achieved: there is a strong perception that the level of corruption was reduced in Georgia. The views of the civil society, international actors and the Georgian authorities coincide on that. To qoute the World Bank, "Georgia saw the largest reduction in corruption among all transition countries from 2002-2005. ... The leadership has taken bold actions to lessen the burden of the state in the economy, improve fiscal transparency, and strengthen oversight institutions, all of which has contributed to the decline in corruption. The Georgian government needs to continue to build transparent, accountable, and well-functioning institutions to ensure good governance over the long term."

Taking into consideration the substantial changes in political will of the government combined with measures taken in fight against corruption, including structural and functional reforms at the Prosecutor's Office, the independent, powerful unit empowered to fight against corruption effectively was needed.

Investigative Department, the central organ of the Office of the Prosecutor General of Georgia, conducts criminal proceedings with respect to the corruption offences. It is headed by the Deputy Prosecutor General. It has ***three deputies***, ***5 senior prosecutors***, ***6 prosecutors***, ***5 senior investigators*** and ***16 investigators***. There are investigative units in 8 Regional Prosecutor's Offices plus Prosecutor's Office of the Autonomous Republic of Adjara. The Investigative Department at the Office of the Prosecutor General of Georgia has jurisdiction over the territory of Georgia, while the regional units are limited to their geographic boundaries. However, Prosecutor General and Deputy Prosecutor General are entitled to take a case from one unit to another. Prosecutors from the Investigative Department at the Office of the Prosecutor General of Georgia appear before the court of cassation on behalf of the regional units. This further proves that the system is unified and well coordinated.

The Government has made substantial changes in the legislation to reduce the number of categories of officials immune from criminal prosecutions: elected officials, prosecutors and investigators do not enjoy immunity anymore. Criminal Procedure Code explicitly states that the immunities cannot be used as a shield against criminal liability. Legal reforms coupled with the reforms of the law-enforcement agencies provided grounds for successful prosecutions of corruption. For instance, in 2004-2005 more than ***300 officials*** were brought to criminal responsibility for the abuse of power, including ***11 ministers***, ***9 deputy ministers***, ***head of the Chamber of Control (Audit)***, ***11 judges***, ***12 prosecutors and investigators of the prosecutor's office***, ***7 investigators*** of the Ministry of Internal Affairs, ***4 Mayors***, ***211 police officers***, ***one member of the parliament***, etc. The Office of the Prosecutor General of Georgia initiated more than 30 claims against 200 persons at the courts of general jurisdiction on the forfeiture of illegal and unexplained wealth of convicted public officials, their family members, close relatives and related persons. According to the court decisions the Government obtained various types of property, as illegal and unexplained, under the ownership of public officials, their family members, close relatives and related persons. The property forfeited as being illegal and unexplained amounts to approximately 50 million USD.

Those figures talk by themselves and are especially impressive after the experience of complete impunity and government omission. These facts destroyed the myth of inviolability of public officials. Ministers, investigators, prosecutors were prosecuted first time.

In the last two years Georgia has made important steps for reforming its public administration. Central government underwent a radical restructuring; the number of civil servants was drastically reduced. For example, the Ministry of Internal Affairs (MIA) reduced the police force to 14,000 from 40,000, paying much higher salaries and demanding higher standards. Other areas of civil service, such as Ministries of Education or Economy, have also drastically reduced their staff numbers, and increased the salaries, at least at management level. During 2004-2005, about 40,000 jobs in the public sector were cut, allowing for a substantial increase in the remuneration of the remaining civil servants.

Newly employed civil servants were admitted though open competitions based on the results of tests, organised by respective institutions. These measures allowed for a major increase in salaries to the new, reduced and better qualified stuff. Internal controls were developed in individual institutions though the establishment of General Inspections. They also increased the prestige of the civil service, provided powerful incentives for integrity among civil servants and improved

the image of the new public service.

An example of this can be a law enforcement campaign. Reform of the traffic police is the largest and one of the most successful experiments that Georgia did undertake in this regard. A new Partol Police service, that is built upon the pirnciples of professionalism, honesty, openness and public visibility, has proved to be highly popular among helped to reduce corruption and improved the public image of the Police service in general, as reported by recent surveys by international organizatons, such as Swiss Agency for Development and Cooperation, and United Nations Mission of Observers in Georgia.

Georgia has had significant steps to liberalise its business environment. Most of the implemented measures focused at reduction of taxes, licensing regimes, permits and registrations; introduction of onestop shops, abolishment of customs duties; at some cases disbanding whole structures, perceived as corrupt. The administrative burden on businesses and economic incentives for corruption were effectively reduced. The World Bank has also recognized Gerogia as being amongst 10 top performing reformist States, according to its "Doing Business" rankings.

Today, fight against corruption is one of the key issues on the agenda of Georgian government. At this stage, political will along with effective mechanisms against this perilous phenomenon is at present. Measures taken so far by state authorities represent the clear manifestation of our commitment to promote rule of law and ensure final eradication of corruption. Reforms undertaken further affirm the determination of the government in this regard and significantly contribute to the elimination of favourable conditions for corruption and ensure prompt, independent and impartial investigation of corruption related criminal cases. The increase of salaries, improvement of working conditions, constant liberalisation of legislation, create effective and coordinated environment for fight against corruption in all government structures.

The Government chose an approach of integrating anti-corruption provisions into the overall reform process. While the Anticorruption Strategy and Action Plan were adopted, the Government does not intend to continue with the development of a stand-along anti-corruption policy in the short-term. Instead, it is foreseen that reform strategies for various sectors should include anti-corruption provisions; such strategies are still to be developed. Reflecting this integrated approach, a separate Anti-Corruption Bureau was abandoned; the coordination of anti-corruption policy was first transferred to the National Security Council, and then it was moved to the office of the Minister for Reform Coordination, who is responsible for all sector reforms as well as anti-corruption policy implementation.

Germany

Speech of Werner Róth

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Germany
Wiesbaden

Excuse me please, that I do not cling to the topic of this workshop strictly, but I would like to take the chance to report some experiences and considerations on combating corruption as a long- time chief prosecutor in Germany, my former job. Maybe it the last opportunity for me to do so.
A couple of years ago there was an exhibition which took place in the Historical Museum of The Hague. The exhibition with the theme " Balance and Sword " showed pictures which were relevant to justice. One of the exhibited paintings of the 16 th century illustrated a judge without hands. In this way the artist wished to illustrate a judge who does not take bribes. Thus not following the old Roman saying, " manus manum lavat,", that is in english : "you scratch my back and I will scratch yours." On the other hand, the drastic picture of uncorruptibility shows

that even in such an ethical and religious small community with a high degree of social control as it was in the Netherlands of that time , corruption was a clear problem.
We German lived for a long time with the self-rightious illusion that due to internalisation of the so-called " Prussian Virtues " , our set-up of civil servants was far more resistant to corruption than in other countries . In all probability, this was always a legend, although one could in the whole determine that corruption in Germany is still not a general happening, it is still a thing that does not happen on a day to day basis. Thus it hardly or at least very rarely happens that one can purchase , for example , a diploma or a seat of office in Germany.
Evan during my 35 year position as prosecutor I have not experienced a judge being accused of taking bribes. Ignorance of law, laziness, prejudice , yes it happens surely, but no corruptibility in German jurisdiction. I personally was never the aim of a any attempt of corruption.
Therefore, Germany has quite an acceptable place in the Corruption Perception Index.

However, since the end of the 1980 `s the German civil service hast lost its image of innocence, the public was confronted with numerous scandals. Namely at the link between administration and commerce, prosecutors continually came up against weak point susceptible to corruption within the fields of contracting and procurement of business, particularly at those points where the public hand has a monopoly , with acts of office subject to fees , upon granting of permission and concession – as a matter of fact, in all cases where the government itself spends a lot of money, or where it makes decisions or takes part in making decisions in the expenditure of large amounts of money.
An explanation as to the many causes of an increase in the spreading of bribery within the administration and the society cannot be standardized.
Thereafter, in my opinion one could name essentially the following causes for the spreading of corruption :
For a start, a decline in values or also a reversal of the table of values, as we experience in Germany, leads to an absence of guilt consciousness in the persons subject to corruption, without moral scruples seems to be for many an idealism; constantly one refers to the fact that the others do not act any differently.
My personal experience of corruption offences has shown that in more than 90% of all cases supervision has been missing or that the surveillance system has failed. I am in accordance with the results of a study conducted by the German Federal Criminal Police Office in Wiesbaden and the Police Management Academy. This study shows , that the representatives of the public prosecutor´s offices / criminal courts , as well as the respondents from the criminal investigation department , in choosing approaches to combating corruption , place grater emphasis on the establishment of external supervisory bodies. Evan before recommending " sensitisation of public employees ", they fall back on measures which have a repressive effect. The criminal investigation department , for example , thus assesses the "establishment of special departments for inquiries internal to the authority" as the most important measure for combating corruption, ahead of sensitisation . According to this study public prosecutors and judges recommend first the following three approaches :

Improving administrative and technical supervision, intensifying controls ;

Obliging the authorities to submit a report when there is a nascent suspicion ;

Obliging public employees to report all attempts of corruption –including those that are not punishable.

In my opinion, preventative measures should be applied at this point and I feel confident that this would be very successful. Some remarks about efficient control :

In Germany administration is characterized by a high level of transparency.
Indeed , efficiency is sometimes sacrificed in the name transparency. But transparency seems to be for me, besides education , the code word for combating corruption efficiently.

Well, control can be exercised in different ways and according to different criteria :
One can compare certain data of one or more services, one can examine certain proceeding of administration from the beginning to the end, one can check proceedings of a certain department of an authority, one can select spot checks , one can control the work of administration in a certain stage, or one can check proceedings according to their importance on their frequency of mistakes. And most important, a willing perpetrator must know, he will be controlled intensively and carefully.
All this forms of supervision are applied in German administration and jurisdiction.

The control in Germany is made effective by the fact, that the supervisor has an excellent basis for the examination, the precise files for all public actions. In the theoretically ideal way, the file contain all relevant facts concerning the proceeding and the results of an authorities decision. Because there is an obligation for all decisions to give written reasons, to give written grounds . So from the files not only the stage and the way of proceedings can be seen comprehensively ,but also the legal and economic considerations and the motivation of the authority. The files are very carefully kept. If there is one thing from German public administration I had to recommend without restriction for export, it would be the German technique of filing. In the days of electronic data processing , we are on the way to complete electronic files, the acting or our authorities will be surely even more transparent.

Transparency in its last consequence , every decision on public administration area or jurisdiction can be brought to independent courts, which will ask for full disclosure of the files. Best results one can achieve when internal and external control meet .
Let me give you one example of a field I know best, the work of a public prosecutor service:

Somebody has responsibly caused a traffic accident, let say by drunken driving. Normally his driving license will be seized for a time, for the driver this will be a high economic loss. Now he gives the public prosecutor a considerable sum of money und the prosecutor will stop the procedure. It is not serous case, normally the prosecutor will not be supervised by his seniors. But the insurance company of the victim will ask for the file by its lawyer, to prove , if it has to pay for the damage or not.
And than this lawyer will see for the written reasons, why this case was stopped by this public prosecutor.
And when he is not convinced, he will complain about the decision at the chief prosecutor, and I can assure you, there will come hard times for the corrupt prosecutor, when the boss discovers something irregular in the handling of the case.

I will not conceal, our system has also a gap and weak point. The gap is, the best documented files can not prevent the smuggling of illegal information outside, and indeed we had some cases in this field. The weak point is , to much control can lead to unwanted bureaucracy, to red tape. The skill of leading an administration service is to find a way which keeps the same distance to both extreme positions, chaos and bureaucracy. It is characteristic for the predominance of bureaucracy if the sense for one´s own responsibility diminishes.

At the end, let me make some remarks about the International Association of Anti-Corruption Authorities :
Regarding the organisational structure it should follow the International Association of Prosecutors, our experiences in constructing and conducting this very successful and important NGO should be utilised in the new Association, and I think Dr.Ye Feng is the best guarantor for this.

As one further activity of the IAACA I would like to make a concrete suggestion - and this is again the contribution of a practitioner :
Surely there should be an exchange of knowledge of systems and laws, but I propose also an exchange of experts on maybe a bilateral level. If for instance a Prosecutor General of one country is I not content with the proceedings and the results of some cases, he may invite experienced representatives of the state criminal prosecution authorities from an other country, who study and analyse the files of these cases – the data made anonymous- together with their own experts , and compare it with methods of prosecuting and the legal and technical means, which would be applied in this jurisdiction in similar cases. Maybe that will help to start a fruitful cooperation in future. I am ready to take part in such an action.

Grenada

Theme: Special Investigative Techniques

To be presented at the1st Annual Conference and General Meeting of the International

Association of Anti-Corruption Authorities

Workshop 7: 23rd to 26 October 2006, Beijing, China.

By: Tafawa Pierre Grenada

Grenada's Prospective on Corruption

Entrenched in our domestic laws are safeguards both to prevent and combat corruption and its attendant problems.

Most of it however, is of some vintage and inadequate in many instances to deal with the impact of corruption.

Throughout our history there have been bouts of suspected corruption, however, no successful prosecution has been recorded.

It must be noted, that with a dynamic developing state, there is always a possibility that corruption can show its ugly head.

Grenada's primary focus has been the strengthening of its legal framework, which in whole or in part represent particulars of the convention.

Consequently, several pertinent pieces of legislation have been enacted, creating the legal platform to adequately combat corruption. Most have been fashioned after the articles embedded in the convention.

In 2003 the following Acts were enacted:

The Financial Intelligence Unit Act,
The Proceeds of Crime Act,
The Anti-Money Laundering Act,
The Terrorism Act.
Extradition Act

These Acts in general, provide the legal frame work for the fight against money laundering, give authority for restraint and possible forfeiture or confiscation of proceeds of crime.

It is important to note, that corruption is listed as a serious crime and thus regarded as a predicate offence. It also gives the basis for the seizure of terrorist assets.

In addition, they deal with bank secrecy and give the power to retrieve personal banking information whether for local investigation or based on international request.

The two existing treaties: Mutual Legal Assistance in Criminal Matters with the Commonwealth and the United States of America, created the platform for information sharing, and the rendering of assistance to foreign states. Its also speaks of confiscated asset management.

To date there are two existing bills touching and concerning corruption directly:

The Prevention of Corruption Bill
The Integrity in Public Life Bill

Both bills seek to remedy and prevent corrupt practices by public officers in the performance of public functions. It seeks to uphold the principles of right and wrong in the behaviour of public officers and to provide adequate accountability, thus enhancing honesty and good governance.

The legal frame work will ultimately affect policy within the private and public sector.

Public sector reform will eventually revolutionize attitude and the way business is conducted. The intention of this approach is to make the incidents of corruption a thing of the past and to invoke speedy remedy when necessary.

I will discuss the subject matter by first discussing the legislative framework which to my mind is the genesis of any effective investigative technique

.
Legislative Framework

In fact, no meaningful success or achievements can be realized in the absence of a robust legislative framework in sync with local trends and most importantly international expectations.

It must be noted however, that there must be:
capacity for flexibility,
Be designed in such a way so as to accommodate and adapt when there is need.

I speak of a framework,
though technically sound,
is simple and easily followed.

Moreover, it must be compatible with neighboring jurisdiction and with the wider international community.

I respect the need to keep laws indigenous, meeting the social expectation of any given state. However, we are all aware that corruption, money laundering and the likes are not fashioned to fit any given state law, I contend that it encompasses a certain kind of commonality that requires a strict oneness, if we to arrest the scourge of corruption bearing in mind its transnational and global outlook. Particular notice must be taken regarding the various instruments:

Restraint,
monitoring orders,
search and seizures and,
asset sharing,
NB// Must have the ability to be activated through request.

For discussion:

Case in point, there has been much debate on the issue of civil forfeiture, many states including mine, is still grappling as to the constitutional correctness of this matter. Nevertheless, that this is an effective instrument if we are to rid our world of corruption. It is quite evident that the fear of loosing ill acquired wealth can serve as a deterrent. Therefore, it is my view that states move swiftly to implement stringent civil forfeiture legislations.

Benefits

Strip criminals of the proceed of crime, (to remove profit motive).
Remove working capital from criminals and their organizations.
Provide a source of funds for Law Enforcement.

International Co-operation / Information Exchange

Bearing in mind the transnational nature of corruption, money laundering and terrorist financing; information exchange is a crucial component in the fight, which can take several forms:

Official Request
MLAT
Other letters of request
Unofficial person to person request

Without a sincere level of information exchange, little can be achieved. From where I sit I encounter severe hardship in this regard, which I consider unnecessary. I dream of:
quick and reliable information exchange system,
void of any complex beauracy

Enabling a smooth flow of information; whether or not that jurisdiction is actively involved in the particular investigation.

With my experience I have discovered that the criminal enterprise posses a fervent information exchange system requiring very little effort, turning out to be very effective, giving them an edge in law enforcement.

I am well aware that corruption and other financial crimes investigation require high level financial records and other private documentation. Therefore, some common ground must be found, making retrieval of this class of information much easier than it is.

Wire tap / Electronic Surveillance

This subject is one of increasing debate throughout the world, I suspect it touches and concerns the right to privacy in all respects and can be met with aggressive resistance, not necessarily by law breakers or corrupt subjects but by ordinary citizens adamant to protect rights entrenched in most existing constitutions.

In jurisdictions where these practice is backed by legislation much success has been realized and I contend that it is an effective investigative technique to monitor suspected criminal relationships.

For discussions:

Intel verses evidential value

In small jurisdictions, several concerns have been raised:
Its effectiveness once become public
Maintaining financial support for such a regime.

Undercover Operations

This technique provides a large cadre of human resource at the disposal of investigators in complex matters. Particularly, in small jurisdictions this can be a very effective practice.

However, it continues to be a challenge in smaller jurisdiction and requires legislative and budgetary support, if it is to be successful technique.

Legislative
Budgetary Support
Cross Boarder Co-operation
Mutual Trust

Conclusions

Generally, the task is complex and demands all of our resources, commitment and trust.

I reiterate that co-operation is the way forward, if we are to record any meaningful success.

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Guyana

UNITED NATIONS CONVENTION AGAINST CORRUPTION

It is often said that with the advent of globalization, corruption has become a worldwide issue. In this context, it is indeed apposite as it is timely that a seminar of this nature is being convened. This Seminar not only provides an opportunity to present the necessary tools to suppress and even eliminate corruption in all forms but also provides an appropriate forum to critically assess the United Nations Convention against Corruption.

Though cognizant of the problems associated with corruption and its negative impact on all our societies, the Government of Guyana has not yet become a party to the United Nations Convention Against Corruption. However, recognizing that this would be a very useful instrument in the fight against corruption, the Government of Guyana is preparing to accede to this Convention.

Guyana remains committed to the prevention and eradication of corruption. As an indication of thes commitment, Guyana has , on the 29 March 1996, signed the Inter-American Convention Against Corruption. We have also ratified same on the 11 December 2000. Guyana is also a State party of the Committee of Experts of the Follow-Up Mechanism on the Implementation of that Convention.

In addition, we have domestic legislation which can be utilized to deal with corruption. For instance, there is the Integrity Commission Act, 1997 (Act No. 20 of 1997), which makes provision for securing the integrity of persons in public life by establishing a Commisssion to, among other things, examine financial declaration of such persons. This Commission also has the power to inquire into complaints of breaches of the Code of Conduct.

Further, our Commission of Inquiry Act (Chapter 10:03) allows the President to establish a Commission to inquire into any matter in which such an inquiry would be for the public welfare.

The Ombudsman, as established under the Constitution of Guyana, may investigate any action taken by any department of Government , by the President, Minister or other public officials, where there is a complaint that by reason of such action, an injustice has been suffered.

It is also noteworthy to mention that our : Criminal Law (Offences) Act (Chapter 08:01) makes provision for the crime of embezzlement; while the Procurement Act (Act No. 8 of 2003) makes provision for the establishment of a National Procurement Board to regulate the procurement of goods, services and the execution of works as well as the promotion fainess and transparency in the procurement process; and the Audit Act (Act No.5 of 2004) which, in accordance with our Constitution, establishes the office of an Auditor General, who is the external auditor of all public moneys and on the economy as well as on the efficiency and effectiveness in the use of such moneys, are all these pieces of domestic legislation which when taken collectively offer substantial assistance in reducing corrupt practices.

Consideration is also being given to the Corruption Prevention Bill as put forward by the Caribbean Community (CARICOM), which addresses corruption in both the public and private sector. The Bill is of critical import as it speaks of, inter alia, the establishment of a Corruption Prevention Commission, financial disclosure, a Code of Conduct and the freezing and forfeiture of property.

Guyana’s understanding and appreciation that corruption kills, contributes to global insecurity, adds to the risks of war, incrcases poverty, impairs freedom, undermines human rights and distorts fair trade is evident not only in the efforts it has already made and which it continues to make in its domestic legislation to combat this evil, but in its bona fide intentions to adopt all regional and international mesures deemed practical for the purpose of achieving this aim.

Hungary

Corruption in Hungary from a prosecutorial point of view

Crimes against public justice are enacted in the Hungarian Criminal Code from Section 250 to 258.

The law distinguishes two different types of bribery: bribery committed by public official and economic operator.

Any public official who requests an unlawful advantage in connection with his actions in an official capacity, or accepts such advantage or a promise thereof, or agrees with the party requesting or accepting the advantage, is guilty of a felony punishable by imprisonment between one to five years. (Section 250)

Any employee or member of a budgetary agency, economic operator or non-governmental organization who requests an unlawful advantage in connection with his actions in an official capacity, accepts such advantage or a promise in exchange for violating his responsibilities or agrees with the party requesting or accepting the advantage is guilty of a misdemeanor punishable by imprisonment for up to two years. (Section 251)

The wording of these sections is in conformity with the requirements of the European Union and other international organizations.

I have to mention here, that bribery in international relations and influence peddling in international relations are also punishable in Hungary.

The wording and the composition of these two crimes are very similar to the domestic bribery exposed above; nevertheless they are completed with an interpretative provision of foreign economic operator.

According to that, foreign economic operator shall mean organizations vested with legal personality according to the laws of its home country, which is entitled to perform economic activities in its prevailing organizational form.

I need hardly say that the detection of corruption cases is very difficult.

In order to facilitate the detection, the Hungarian legislative created a new ground for the termination of punishability.

I explain, in Hungary the perpetrator of bribery shall be exonerated from punishment if he confesses the act to the authorities first hand, surrenders the obtained unlawful financial advantage in any form to the authorities, and reveals the circumstances of the criminal act.

There is still no statistical data about the efficiency of this provision, but we have already used it in several cases, and it proved to be practical.

I would like to explain briefly the investigation of corruption cases in Hungary.

In Hungary the general investigating authority is the police.

About 98 % of all criminal cases are investigated by the Police.

2 % of the cases are investigated by the Customs and Excise Guard, the Border Guard, or by the Prosecutorial Investigating Offices.

During the recent years, social conditions, structure and volume of criminality have been changed to such an extent that made indispensable to reform the Prosecution Service and the organization of the Prosecutor General's Office.

The modifications widened the exclusive competence of the prosecutor's offices to conduct certain investigations and made possible for the Prosecution Service as well – just as for other investigating authorities – to perform secret information gathering.

Earlier, the Prosecution Service had no right to perform secret information gathering, although the character of investigations falling within the exclusive competence of the prosecutor's office, would have it required.

It's worth mentioning, in Hungary, the prosecutor is responsible for the investigation.

The prosecutor
- may order an investigation, may instruct the investigating authority to perform further investigative actions or further investigation
- may be present at the investigative actions
- may amend or repeal the decision of the investigating authority, and shall consider the complaints received against the decision of the investigating authority
- may terminate the investigation and order the investigating authority to terminate the investigation
- may refer the proceedings in his own competence

The aim of the supervision of investigations is, that when the investigating authority has carried out the investigation, the results of that should be appropriate for the prosecutor to decide, whether to indict, or instead of it some other measures (termination of the investigation, suspension) are considered necessary.

The prosecutor has to take good care, that the investigating authority complies with the dispositions of the criminal procedure, and during their actions they guarantee the rights of the accused person, the defense attorney and the injured party.

A special attention should be reserved in the criminal procedure to the legality of coercive measures, especially those, that restrict the individual liberty. From the coercive measures restricting individual liberty the investigating authority can order only the 72-hour detention, all other such measures (preliminary arrest, provisory forced medical treatment, house arrest, confiscation of passport) are to be ordered by the court, but exclusively on the motion of the prosecutor.

The Criminal Procedure Code specifies the cases belonging to the exclusive investigative competence of the prosecutor.

Investigations conducted by prosecutor means, that after it, the prosecutor may terminate the investigation, or indict and represent the charge before the court.

These are the cases where the independence of the investigating authority is a basic requirement in the interest of the lawful functioning of the state organs.

- crimes committed by persons enjoying immunity due to holding a public office, and by persons enjoying immunity based on international law
- murder and violence against a judge, a prosecutor, junior and trainee prosecutor, prosecutorial investigator, notary, professional member of the police
- any criminal offence committed by the persons listed above
- bribery committed in connection with a judge, a prosecutor, trainee prosecutor etc..,
- bribery by an official person holding a senior position or entitled to take measure in matters of importance
- criminal offences committed by the sworn members of the police and civil national security services
- false accusation, misleading the authority.

Furthermore the prosecution service shall investigate also if the head of an investigating authority with nation-wide competence has been excluded, and in cases where the investigation was drawn into his competence.

Prosecutorial investigations are carried out by the Central Prosecutorial Investigating Office – with nation-wide competence established upon order of the Prosecutor General, and on their own field, by the Local Offices for Prosecutorial Investigations.

In every county, there is an Office for Prosecutorial Investigation.

These offices belong to the Local Prosecution Offices, and they have a territorial competence.

The Central Prosecutorial Investigating Office resides in Budapest.

There is no hierarchical relationship between the Central Prosecutorial Investigating Office and the Local Prosecution Offices.

The Central Prosecutorial Investigation Office began his activity on the 1st of July 2001.

The competence of the Central Prosecutorial Investigation Office includes investigations of criminal offences committed by persons enjoying immunity, judges, and prosecutors, notary publics, independent bailiffs, sworn members of the police, border guard, detention center and civil national security services.

Crimes committed by the members of the police, border guard and civil national security services fall within the competence of the Central Prosecutorial Investigating Office, if the members work in a high position, such as head of department, or in a higher rank.

Otherwise the crime is investigated by the Local Prosecutorial Investigating Offices.

It already demonstrates that the primary task of the Office is the detection of crimes which endanger the regular function of the state apparatus.

The Central Prosecutorial Investigating Office concerning the corruption cases deals with the sensitive cases (bribery committed by judges, prosecutors, members of parliament, Constitutional Court judges etc...)

As you can see, a corruption case in Hungary may be investigated by the police, by the Local Prosecutorial Investigating Office, and by the Central Prosecutorial Investigating Office as well.

The competence of the investigating authority depends on the perpetrator.

If a judge or a prosecutor or a policeman in a higher rank is bribed, the Central Prosecutorial Investigating Office shall conduct the investigation.

If a policeman gets money in connection with his action, the territorial competent Local Office for Prosecutorial Investigation shall conduct the investigation.

And if a citizen wants to bribe somebody for example in a municipality, the territorial competent Police Headquarters shall conduct the investigation.

The Department for Special Cases at the Prosecutor's General Office provides the professional supervision over the activities of the Central Prosecutorial Investigating Office.

The Department exercise supervision over their investigations, may give instructions, may revise the legality of their decisions and measures made in the course of their investigation.

The Department consists of two divisions
- the Division for Organized Crime and Corruption Cases
- and the Division for Economic Crime Cases

The competence of the department covers the following crimes:

- crimes against public justice (such as the bribery, influence peddling)
- bribery and influence peddling in international relations
- acts of terrorism
- establishment of a criminal organization
- damaging the environment
- damaging the nature
- economic crimes
- any crime committed in criminal organization
- and each crime assigned to the department by the Prosecutor General or his deputy.

Once the investigation is concluded the investigating authority sends the file to the prosecutor.

The prosecutor shall decide whether
– to bring an accusation to the court

- or terminate the investigation
- or order further investigating acts
- or decide on the suspension of the case

The prosecutor shall make indictment with bringing the accusation to the court.

If the prosecutor participates in the trial (it is not always compulsory), he can amend the charge.

As I have already mentioned, the Central and Local Prosecutorial Investigating Offices indict and represent the charge before the court themselves.

According to the Criminal Procedure Code, corruption cases in the first instance fall within the competence of the county court.

Let me finish this presentation with some statistical figures.

We are firmly convinced that the structural reform – carried out within the prosecution service – gives an adequate answer to the new challenges of the criminality.

Iran

PRESENTATION OF MR. IRFAN QADIR, PROSECUTOR GENERAL, PAKISTAN ON THE TOPIC "EFFECTIVE ANTI CORRUPTION AGENCIES, POLICIES, STRUCTURES AND FUNCTIONS – PAKISTAN'S EXPERIENCE."

Pakistan's Efforts in Combating Corruption

Pakistan has been pro-active in its desire to eradicate corruption both internationally and estically. Pakistan's active participation in the negotiations for finalization of United Nations vention against corruption which was finalized and signed in December, 2003 is ifestation of its resolve against corruption. Consequently, an international conference on UN vention against Corruption was organized in Islamabad in April 2004. This indeed was an ortant initiative. Pakistan is now in the process of ratifying the Convention.

Need for New Law on Account-ability

the domestic front, Pakistan slid to the bottom of corruption index. Thus National countability Ordinance was promulgated on the 16th of November, 1999 as the existing laws ere inadequate to deter the corrupt or to effectively recover the proceeds of crime.

ıe focus of National Accountability Ordinance unlike previous laws was not merely on forcement alone [i.e. it was not restricted to investigation or prosecution]. This Ordinance also ovided for measures to eradicate corruption from its source through awareness and prevention. The National Accountability Ordinance, therefore, not only provides for dealing with the uent but it also has in view the need to educate society about the harmful effects of tion and to take preventive measures for its eradication. This is manifest from Section 33-C National Accountability Ordinance. In order to achieve the objectives contained in the ıal Accountability Ordinance, the National Accountability Bureau was constituted for the country. The National Accountability Bureau unlike other agencies [which were only ement oriented] launched a three pronged attack on corruption i.e. through awareness, ıtion and enforcement.

Eradicating Corruption through National Anti Corruption Strategy

ober 2001 a process was initiated in Pakistan to formulate an Anti-Corruption Strategy to he menace of corruption. This resulted in the launching of a project known as the National Corruption Strategy. The main focus of this project was to accomplish the following tasks:-

To identify the causes of corruption;

To give recommendations for addressing these causes;

To implement these recommendations through actual operations.

Conceptually the National Anti-Corruption Strategy was based on the pillars of national integrity system [a concept borrowed from Transparency International]:-

(1) Legislature.
(2) Judiciary.
(3) Executive.
(4) Anti Corruption Agencies.
(5) Public Accountability Bodies.
(6) Media.
(7) Civil Society.
(8) Private Sector.

Through the National Anti-Corruption Strategy weaknesses in each of the aforesaid pillars were discovered which led to the following conclusions:-

There is a large scale corruption in every sector;

The corruption at the top level has been relatively less as compared to the middle and lower tiers of public sector institutions. According to this Strategy the main causes of corruption have been identified to be:-

Poorly paid employees of large public sector organizations possessing sufficient opportunities for corruption;

Complicated and obscure laws and procedures;

Collapse of the accountability system.

Social acceptability.

The National Anti-Corruption Strategy is essentially aimed at eradication of corruption through awareness and prevention in the following ways:-

Through education and awareness develop a society i.e. vocal and effective against corruption;

Awareness

Prevention

ough a preventive model reduce needs and opportunities of corruption;

Enforcement

ment however remains the most important tool of eradication of corruption. This is the of the National Accountability Ordinance. In Pakistan's experience the enforcement operations have been extremely successful. There are number of reasons which have made these operations highly successful:-

(1) The law assigns the tasks of uprooting corruption to the National Accountability Bureau of Pakistan. The synthesis of the provisions thereof would reveal that the prosecution and investigation are a part of the same agency yet both maintain their independence in a manner in which they supplement each other. The National Accountability Bureau of Pakistan consists of two offices viz the office of Chairman of the National Accountability Bureau and the office of the Prosecutor General of Pakistan. Both these functionaries have been given security of tenure and none of them can be removed from office unless they complete their tenure. As regards their removal they have been provided same safeguards which are available to the Judges of the Supreme Court in Pakistan. As such, the possibility of their removal is remote. Infact, both Chairman National Accountability Bureau and the Prosecutor General are a check on each other. There are number of powers which the Prosecutor General is to exercise with the approval of the Chairman and yet there are areas where Prosecutor General can act independently of the Chairman. This mechanism of law prevents either of these functionaries to abuse their positions. In a nutshell, the National Accountability Ordinance envisages the creation of an Anti-Corruption agency where no one single individual can abuse his position.

(2) All the investigations are scrutinized by the Office of the Prosecutor General yet the decision

to forward the case for trial is to be taken by the Chairman. In case Chairman National Accountability Bureau arrives at a wrong decision and causes a reference to be filed in the court the Prosecutor General can withdraw the reference but this withdrawal is subject to the decision of the Accountability Court. It is because of these checks that Pakistan's experience in its efforts against corruption has been extremely successful.

That National Accountability Ordinance exhaustively and comprehensively deals with the offence of corruption. Resultantly, no conceivable form of corruption is outside the domain of corrupt practices mentioned in Section 9 of the National Accountability Ordinance. This all encompassing mandate is largely responsible for successful operations of Pakistan's apex anti corruption agency viz the National Accountability Bureau.

It has become extremely difficult for the corrupt elements in Pakistan to hide their ill-gotten assets. Banks are under an obligation to report unusually large transactions devoid of genuine economic or lawful purpose. Failure to report such transactions entails penal consequences against bank officials i.e. the delinquents can be sentenced upto a period of five years with fine. Besides, the ever vigilant intelligence and surveillance teams of the Bureau remain busy in carrying out an effective ground check of immovable assets in routine. These units immediately report about sudden accumulation of assets by anybody who lacks lawful resources to justify the acquisition of such assets.

The Mutual Legal Assistance under the National Accountability Ordinance is not stifled on account of absence of a bilateral treaty and regardless of such treaty the National Accountability Bureau can seek or furnish mutual legal assistance to and from jurisdictions abroad. I would suggest that other countries of the world should also follow Pakistan's example and incorporate a similar provision in their relevant statute so as to ensure that impediments in the way of mutual legal cooperation are removed in line with the spirit of UNCAC.

In the matters of public procurement and obligations incurred by government and public sector organizations of contractual nature Section 33-B makes it mandatory that all such contracts of a monetary value of Rs.50 million or more ought to be reported to the National Accountability Bureau by the officials concerned.

Distinction between National Account-ability Ordinance and earlier laws

One of the basic distinction between the previous laws and the National Accountability Ordinance is that the former did not provide an effective recovery mechanism. The earlier laws were mainly confined to holders of public office i.e. politicians or the bureaucrats. The National Accountability Ordinance brought within its ambit all persons indulging in corruption or corrupt practices in the public or private sector including persons committing wilful default which hitherto was not an offence in Pakistan but was essentially a civil liability. In order to effectively enforce the recovery mechanism, concepts such as voluntary return, plea bargain and reconciliation of liability were introduced in the law. The consequences of voluntary return are the same as that of plea bargain. A person offering voluntary return is absolved of criminality whereas a person entering into a plea bargain becomes a convict by fiction of law but without undergoing sentence of imprisonment. Both voluntary return and plea bargain facilitate the return of money to some legal entity that has suffered the corresponding loss.

New Reasons for Success under the National Accountability Ordinance

National Accountability Ordinance envisages across the board accountability. The Ordinance applies to every person in Pakistan. It admits of no exception. Notwithstanding the specialized nature of the subject matter of this law viz corruption, this law generally applies to all. The high functionaries in the public and private sectors have been prosecuted and punished. The myth that the sacred cow was broken and it has now become impossible for any organ of the State to exclude itself from the purview of this law. Prime Ministers, Chief Ministers, Generals, Air Marshals, Admirals and Ministers are being investigated, prosecuted and punished.

Relief to Across the Board Account-ability

Considerable relief was provided to a common man in major corporate scams such as forex, modarabas, housing societies etc. through recovery of the misappropriated amounts from the culprits. Besides, Banks and other financial institutions were revived through recoveries from wilful loan defaulters and those who had misappropriated, embezzled or fraudulently converted these institutions of their assets.

Recoveries & Repatriation of Assets to Public and

Considerable recoveries made from the delinquents resulted in repatriation of assets to public and private sector organizations. The total recovery made by the National Accountability Bureau is to the tune of over US$ 4 Billions whereas an infinitesimal portion was spent on NAB operations.

Conclusion

The recovery of over Rupees 240 billion is manifestation of the commitment to uproot

corruption. Inspite of this resolve, a lot remains to be done. We are far from achieving the ideal of a corruption free society. However, if we strive to ensure the accountability of the corrupt in an evenhanded way there seems no reason why this ideal may not be achieved. Only evenhanded accountability of the corrupt can establish the credibility of any anti corruption initiative. If we are desirous of eradicating corruption we must never venture to exclude ourselves from accountability which infact is the very essence of life in this world and hereafter. In the words of Quran:

“O ye who believe! Stand out firmly for Qist (justice), as witnesses to God, even as against yourselves, or your parents, or your kin, and whether it be (against) rich or poor: for Allah can best protect both. Follow not the lusts {of your hearts), lest ye swerve, and if ye distort (justice) or decline to do justice, verily Allah is well-acquainted with all that ye do. [4/135]”

“And O my people! Give measure and weight in Qist (justice) and reduce not the things that are due to the people, and do not commit mischief in the land causing corruption. [Prophet Shoaib (PBUH) to the people of Madyan 11:85]”

Iraq

Ladies and Gentlemen,
Greetings…

I would like to thank you for your attendance to hear my speech, and I thank the sponsors of this invitation to hold the first annual conference of establishing anti corruption authorities.

After the great change that happened in Iraq when the ex-regime was toppled down in 2003, it was necessary to establish Commission on Public Integrity in Iraq CPI to curb and fight corruption which spread in the governmental offices as a result of the ex-regime policies and what happened after its fall, like the lack of security and government administration. Thus, our Commission was established according to order 55 in 2004, which depended on the principle of the supremacy of law and nobody is above the law. Procedures of this commission are applicable to all Iraqi employees without any exception.

The Commission started its work in June 2004, and it consists of five offices:

- Investigation office
- Legal office
- Prevention and transparency office
- Public relation and education office
- Relations with non-governmental organization office

The work of the Commission concentrates on tow points:
The first one is preventing corruption.
The second is fighting corruption.

As for preventing corruption, it is achieved before corruption occurs by using the following procedures:

1- Inspector General: In each ministry, there is an IG who is the first observer in it. His employees spread in all over Iraq. The IG supervises on the work of the employees of the ministry, audits its work, and aims at avoiding committing mistakes and preventing corruption before it occurs, like preventing to sign contracts that are implicitly corrupted.

2- Prevention and Transparency office: which is one of our commission's offices and it prevents corruption by issuing:
a. Financial Disclosure Statements, which includes senior officials in the state, starting from the President of the republic to a certain level of employees. Through this statement, the employee

guarantees to disclose his financial interests at the time he is employed and when he leaves his position, and he should prove the integrity of the source of his money.

b. Code of Conduct: and it includes a set of legal rules and ethical standards which should be abided and signed by all Iraqi employees.

3- Revising the educational approaches and spreading the concepts of transparency and integrity.
4- Holding meetings, conferences and using media
5- Creating honest environment by:
a. Amending old laws which hurdle anti corruption work, and suggesting new bills that help in supporting anti corruption efforts.
b. Establishing a good and enough salary system that provides to the employee a good life and make him avoid involving in corruption.
c. Establishing a system that fights unemployment by providing work.
d. Establishing a system that provides health insurance for the employees.
e. Finding a social system that protects the employee and his family.
As for fighting corruption, it happens after it occurs. The CPI receives the information of corruption through many sources which are:
1- The Inspector General in the ministries
2- Personal interviews with the Commissioner of the CPI
3- The hotline, in addition to false information
4- Complaints which are received by the Parliament and the council of ministers
5- The media
The information received through the abovementioned sources are submitted to the analysts, and then they are divided into tow types: criminal and administrational
Administrational cases are referred to the concerned ministry to take the necessary procedures according to the law of employee service.
As for the criminal ones, the commission has 36 investigational committees, each committee consists of three members (judicial, technician, and auditor), and they spread in the ministries according to the information received. They collect evidences then the case is referred to the investigation court which is a normal court that belongs to the (High Judicial Council) and it is dedicated to integrity cases and it includes three judges and a prosecutor.
The investigation court gives the judicial characteristic to the case, and if it finds that the evidences are enough, it refers the case to the criminal or felony court to punish the convicted person.

The CPI faces the following obstacles:
1- The commission is a newly established entity, and there is no previous office similar to it, thus the commission lacks enough experience for its employees who have not practiced such a work before.
2- The employees need to be trained inside and outside Iraq to increase their experience and see the experiences of other countries.

As for our future projects, they are:

1- Establishing the national center of integrity and transparency, to train the CPI employees and the IG offices in addition to the other employees on the principles of integrity and transparency.

2- Amending or canceling the laws that stands against anti corruption work.

The total cases which are referred by the Commission to the concerned court of integrity are 2000 cases; also the total amount of money which is being investigated by the commission is about seven billion dollars and a half. As for the senior officials who have been referred by the CPI to the court, is 47 officials including ministers, acting ministers, and director generals, in addition to the tens of corrupted employees.

Regards

Judge Radhi H Al-Radhi
Commissioner of CPI

Ireland

I

Extradition

Ireland's position in relation to extradition of accused or convicted persons to other countries is governed by two major pieces of legislation. The first is the Extradition Act of 1965 Part 11 which governs our extradition arrangements with States outside of the European Union. a The second is the European Arrest Warrant Act of 2003 as amended by the Criminal Justice Terrorist Offences Act 2005, by which we have implemented the European Council Framework Decision of 13th of June 2002 on the European Arrest Warrant and the surrender procedures between member States.

The European Arrest Warrant Act 2003 as amended, applies to those designated states within the European Union who have signed up to the principle that extradition procedures should be abolished among the member states in respect of persons who are fleeing from justice after having been finally sentenced and extradition procedures should be speeded up in respect of persons suspected of having committed an offence.

THE 1965 EXTRADITION ACT PART 11

Ireland is party to several multilateral treaties dealing with extradition. Under these treaties the general principle is applied that there must be reciprocal arrangements for extradition between the states that have signed up to such treaties.

In relation to extradition between Ireland and countries outside those states governed by the European arrest warrant regime the 1965 Extradition Act applies. This act only is operable when there is an extradition treaty or agreement between Ireland and the State seeking extradition of a person from Ireland.

The Irish courts have always construed all extradition legislation strictly, because the Act is a penal statute. It is also worth noting that the conditions for extradition vary depending on the content of the extradition agreement between the requesting State and Ireland...

The person to be extradited according to the Act, must be charged with an offence specified in an extradition warrant, and cannot be charged on surrender with other offences not so specified, subject to some exceptions. The Irish courts do not adjudicate on whether a conviction of a person has been properly arrived at. However extradition is not allowed in the following circumstances:

(a) Where an offence has been committed within the State that has been requested to extradite.
(b) Where a prosecution is pending in Ireland against the person to be extradited.
(c) Where by lapse of time the person concerned is legally immune from prosecution i.e. due to age or statutory limitations.
(d) Where the offence for which the person is to be extradited is punishable by the death penalty, unless the requesting State gives an assurance that such death penalty will not be carried out.
(e) Where there is no provision by the requesting State for the law of speciality to apply (more on this principle underneath).
(f) Where there is no provision in the requesting State's law stopping the person involved being extradited to a third country.
(g) The offence for which a person is to be extradited must be an offence which is punishable by a term of imprisonment for at least one year, although the subject can be extradited for more minor offences as long as one offence meets this minimum gravity requirement.
(h) Extradition is also refused for offences which are deemed political. A fuller description will be given below in relation to some Irish case law on what is deemed to be "political".
(i) Offences under military law which are not offences under ordinary criminal law in Ireland are also not extraditable, nor are revenue offences committed in another State.

(j) The Irish courts have deemed revenue offences to be offences in relation to tax laws where charges or levies are raised to raise revenue within the State that is requesting the extradition. Fraud in relation to pan European levies, for instance are not deemed to be revenue offences as they are not specifically chargeable within the State seeking extradition for the benefit of that State's revenue- see Byrne –v- Conroy – (1997) 2 I.lLR.M 99 (HC), (1998) 2 I.L.R.M 113 (SC).
(k) The offence for which the person is to be extradited must be an offence which would constitute an offence under Irish law.
(l) The person to be extradited will also not be surrendered where there are substantial grounds for believing that that person would be prosecuted for race, religion, nationality or political opinion.
(m) Extradition can also be refused for other reasons which are not specified in the legislation, for example if the courts believe extradition would constitute a violation of the subject's constitutional rights or if the delay since the offence is alleged to have occurred is sufficient that it would be unjust to extradite

Political Exemption

A political act is not defined under the 1965 act except insofar as Section 50 defines such an offence as not including the assassination of a Head of State or members of his family, or an offence within the scope of article 3 of the United Nations Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances 1988.

By the early 1980's the Irish courts had moved to a position in which they demonstrated a reluctance to accept that an offence involving the use of violence against other persons could qualify as a political offence. In the Irish case of Quinn -v- Wren (1985) ILRM 410, it was deemed that it was not a political offence if the stated aim of the perpetrator was to set aside the Irish Constitution by prohibited means.

In the case of Ellis -v- O'Dea High Court 1991 ILRM, the Irish High Court ruled that offences of conspiracy to cause explosions and possession of explosive substances were excluded from political offence exemptions. An indiscriminate bomb which explodes and causes a series of injuries and deaths to individuals is not deemed to be a political offence.

In certain circumstances, if an attack is carried out for a specific purpose, and against a specific target, for a specific political purpose such as for example subversive activity against the jurisdiction of a foreign State, then the political exemption may still apply. See McGee -v- O'Dea 1994 ILRM. It has also been held that in claiming the political exemption the offence involved cannot be one carried out in one State in pursuit of political objectives to be realised in another State.

Dual Criminality

The principle of dual criminality applies also to extradition under the 1965 Act. A suspect must be wanted in a requesting State for conduct, which would also constitute a criminal offence in this jurisdiction. To prove this Irish courts expect evidence of the law pertaining to both States, and the extradition warrants have to set out the circumstances of the offences complained of.

Offence which is not an offence if Committed outside territory of Ireland

The European convention on terrorism implemented by the Extradition Act 1965 part 2 number 23 of 1989, stipulates in article 7(1) that extradition may be refused if the offence has been committed either in whole or in part in a place which is regarded by the law of the requested State as its territory or in a place treated as its territory. If however the offence has been committed outside the territory of the requesting State extradition may only be refused if the law of the requested party does not allow prosecution for some category of offence when committed outside of its territory or doesn't allow extradition for the offence. In the case of Aamand -v- Smithwick 1995 Irish Reports the Irish State refused to extradite a Danish citizen for offences of drug smuggling on the high seas, as at that time a person could not be prosecuted in Ireland for smuggling drugs outside Ireland. Mr. Aamand is currently before the courts in respect of a European Arrest Warrant

request for his surrender Ireland has introduced legislation criminalizing such activity subsequent to the refusal in this case.

Rule of Specialty

The rule of speciality also applies under the 1965 Act. An extradited person can only pursued for the offence for which he is extradited, and which is specified or in the case of multiple offences are specified in the Arrest Warrant. There are exceptions to this rule which mirror the exceptions commonly contained in international extradition agreements.

Procedure Under Part 11 of the 1965 Act

1. The Minister for Justice receives a request for the suspect to be delivered to the requesting State. The request must be in writing, and be made by an accredited diplomat or by such means as the extradition agreement between Ireland and the requesting State prescribes.

   This request must be supported by;
   (a) An original or authenticated copy of the conviction and sentence or warrant for detention.
   (b) A statement of each offence for which the extradition is requested, and a legal description thereof.
   (c) Particulars of the offence involved, and the circumstances surrounding same.
   (d) A copy of the relevant enactments of the requesting country.
   (e) An accurate description of the person claimed.

   The request must be signed by a Judge, Magistrate or Officer of the requesting country, and be certified as being sealed with the official seal of a Minister of State.

   Warrant for Arrest.

2. Where the Irish Minister for Justice is satisfied that the documents are in order and extradition, is not prohibited under any of the grounds mentioned above, he may cause an application for an extradition warrant for the person specified to be made to a Judge of the High Court.

   The High Court must then issue a warrant and the Gardai Siochana (the Irish Police Force) affects the arrest of the person to be extradited and bring him before the High Court.

   The High Court Judge has the same powers of remand, detention and bail as he has in relation to indictable offences. The Gardai on arresting the person proposed to be extradited may seek and retain any property which appears to them to be reasonably required as evidence for the purpose of proving the offence alleged. Where the person to be extradited either dies or escapes then the property may still be handed over to the requesting State.

   Where the statutory requirements under the 1965 Act are met the Minister may by order direct that the person concerned be surrendered to such other person who is in his opinion duly authorised by the requesting country to receiving him, and this must be done within one month of the committal of the person involved by the High Court for the purposes of extradition.

   Committal

   Where a person has been brought before the High Court pursuant to a full extradition arrest warrant, or provisional warrant the court must make an order committing him to prison or remand institution to await the order for his extradition. The order of committal however can only be made if the provisions of the Extradition Act 1965 part II have been duly complied with and extradition is not prohibited by any of the means outlined therein and the documents required to support the request for extradition have been duly

produced before the court for examination. The person to be extradited has the full rights of Habeas Corpus available to him under article 40.4 of the Constitution as other Irish citizens have, and often these applications are closely contested affairs in the Irish Superior Courts which can often last years. A great deal of litigation was generated in relation to requests by the United Kingdom from the Republic of Ireland during the years when the United Kingdom sought the extradition of alleged IRA and other subversives from the Republic who were engaged in alleged political offences. This gave rise to what was meant by a political offence as briefly outlined above. Extradition between the United Kingdom and Ireland was based on the old backing of warrant system was in fact governed by Part 111 of the 1965 Extradition Act which has now been superseded by the European Arrest Warrant Act 2003.

European Arrest Warrant

The European Arrest Warrant Act 2003 implements a framework decision adopted by the EU Counsel in 2002 with the objective of simplifying the system of the delivery of wanted suspects and convicted criminals between European Union States. As of August 2005 extradition to the United Kingdom and 23 other designated European member States is governed by the 2003 Act.

Section 3 of the 2003 Act empowers the Minister for Foreign Affairs to designate any EU member State for the purposes of the Act. Once so designated the extradition requests from any such State is governed by the 2003 Act.

The Act applies to offences committed before as well as after the Act came into force although there are various date cut off points in relation to various States outlined therein.

The Irish 2003 Act provides for a designated central authority to issue and execute the warrants. Under the 2003 Irish Act the Minister for Justice, Equality and Law Reform or persons designated by him constitute the central authority.

A warrant under the European arrest warrant system may be issued for acts punishable by the law of the issuing state which has a custodial sentence of at least 12 months, or where the sentence already imposed is a custodial sentence of at least 4 months. Interestingly there is no provision for surrender of more minor offences subsidiary to an offence which meets the minimum requirements under the EAW system, unlike the extradition system it replaces.

The warrant issued must include the following items;

(a) The name and nationality of the person in respect of whom the warrant is issued.
(b) The name of the judicial authority that issued the warrant.
(c) The fax and telephone numbers of the issuing authority.
(d) The offence to which the European Arrest warrant relates including the nature and classifications under the law of the issuing State.
(e) That a conviction, sentence or detention is immediately enforced against the person to whom the warrant relates.
(f) The circumstances in which the offence was committed, or alleged to have been committed.
(g) The penalties normally applicable if convicted of such an offence.
(h) Where convicted the actual sentence imposed.
(i) The warrant involved must be translated into one of the official languages of the executing State -in Ireland's case this would be either Irish or English.

A European arrest warrant can be transmitted to the central authority in any of the member States by delivering it to the central authority by fax. The principle of double

criminality has been dropped in relation to offences where the custodial sentence involved is at least three years. The designated offences in question are;

(a) Participation in a criminal organisation
(b) Terrorism
(c) Trafficking in human beings
(d) Sexual exploitation of children and child pornography
(e) Illicit trafficking in narcotic drugs and psychotropic substances
(f) Illicit trafficking in weapons
(g) Munitions and explosives
(h) Corruption
(i) Fraud (including fraud on the European communities)
(j) Laundering of the proceeds of crime
(k) Counterfeiting currency
(l) Computer related crime
(m) Environmental crime
(n) Facilitating unauthorised entry in residence
(o) Murder and grievous bodily injury
(p) Illicit trade in human organs and tissue
(q) Kidnapping
(r) Illicit restraint and hostage taking
(s) Racism and xenophobia
(t) Organised crime or armed robbery
(u) Illicit trafficking in cultural goods
(v) Swindling
(w) Racketeering and extortion
(x) Counterfeiting and piracy of products
(y) Forgery of administrative documents and trafficking therein
(z) Forgery of means of payment
(aa) Illicit trafficking in hormonal substances and other growth promoters
(bb) Illicit trafficking in nuclear radioactive materials
(cc) Trafficking in stolen vehicles
(dd) Rape
(ee) Arson
(ff) Crimes within the jurisdiction of the international criminal court
(gg) Unlawful seizure of aircraft and ships and sabotage

For offences other than those listed the surrender is subject to the condition that the Acts in respect of which the warrant was issued constitute an offence under the law of the executing State.

Obligatory Grounds for Refusal of an Arrest Warrant

A court (usually a High Court) in Ireland must refuse a warrant for arrest in the following circumstances:-.

1. If the offence in question is covered by an amnesty in the executing Member State.

2. Where the executing State has jurisdiction to prosecute the offence under its own criminal law.

3. Where the person has been finally judged by a member State in respect of the same offences and the sentence is served, or is being served, or is no longer executable under the law of the sentencing State, and if the person cannot be held criminally responsible due to their age under the law of the executing State for the Acts on which the arrest warrant is based.

Discretionary Grounds for Refusal

An Irish Court has discretionary grounds to refuse where the Act on which the warrant is based does not constitute an offence under the law of the executing State or where the person is being prosecuted in an executing State for the same Act.

It must refuse to issue a warrant where a final judgment has been passed against the person in a member State which prevents further proceedings in respect of the same Acts.

Where the prosecution or punishment of the person is prevented by reason of delay in Ireland and the Acts fall within the jurisdiction of Ireland, then an Irish court must refuse to extradite

Where the executing judicial authority is informed that the person has been finally dealt with in respect of the same Acts by a 3rd State, or where the warrant is for a national or resident of the executing State in respect of whose sentence an executing state undertakes to execute the sentence, or where the offence is regarded by the law of the executing State as having being committed in whole or in part in that State.

Also where the offence has been committed outside the issuing State, then where the law of the issuing State does not allow prosecution for the same offence when committed outside of its territory surrender, can be refused.

Procedure

When the requested person is arrested the |High Court shall inform him of the warrant and its contents and the possibility of consenting to surrender. That person has the right to assistance of a lawyer and an interpreter in accordance with the national law of the executing State. He also has a right apply for bail.

The person whose extradition is sought may consent to surrender and/or waiver of the speciality rule. If he does so consent this consent must be given before the court so that it can see that the person to be extradited has had access to legal advice in making his consent known

Where a person makes a Habeas Corpus application under Article 40.4(2) of our constitution that person cannot be surrendered to the issuing State while the proceedings relating to the Habeas Corpus application are pending.

Again under Section 24 of the European Arrest Warrant Act, the High Court must refuse to surrender a person if the law of the issuing State does not provide that a person so surrendered shall not be extradited to a 3rd country without the consent of the High Court and the Minister first being obtained and the consent of the person to be extradited to a 3rd country whose consent must also be obtained.

Under Section 25 of the Act a member of An Garda Siochana may for the purposes of performing functions under the Act, enter any place if necessary by use of reasonable force and search that place if he or she has reasonable grounds for believing that a person in respect of whom a European arrest warrant has been issued is to be found in that place. That Garda may also seize anything found in that place or anything found in possession of a person present at that place relating to the offence specified in the European arrest warrant. The Gardai cannot enter a dwelling under Section 25 other than with the consent of the occupier or in accordance with a warrant issued by a Judge of the District Court. The District Court must be satisfied that there are reasonable grounds for believing that there is evidence relating to an offence specified in a European arrest warrant to be found in the property specified in the warrant..

Under Section 26 any property seized under Section 25 shall if a person has surrendered under the Act be handed over to any person duly authorised by the issuing state to receive it as soon as may be at the surrender of the person and it shall be handed over notwithstanding that the surrender of the person cannot be carried out by reason of the death or escape from custody of the person claimed.

Where there are multiple European arrest warrants or requests for extradition at the same time for the same person the High Court shall decide which one to grant based on

a) The seriousness of the offence specified in the European arrest warrant, and to the offence to which the request for the extradition relates
b) The places where the offences concerned were committed or alleged to have been committed
c) The date on which the European arrest warrant was issued and the date on which the request for extradition was made
d) Whether the European arrest warrant was issued or the request for extradition was made for the purpose of bringing the proceedings for an offence against the person concerned or for the purposes of executing a sentence of detention under order in respect of the person and
e) The relevant extradition provisions.

There is also a prohibition on surrender if the person can prove

a) That his or her surrender would be incompatible with the State's other obligations under European Convention on Human rights or the protocols of the convention
b) His or her surrender would constitute a contravention of any provision of the Irish constitution
c) There are reasonable grounds for believing that the European arrest warrant was issued in respect of the person for the purpose of facilitating his or her prosecution or punishment in the issuing State for reasons connected with his or her sex, race, religion, ethnic origin, nationality, language, political opinion or sexual orientation or
d) Where the person to be surrendered to the issuing State would be sentenced to death or where he or she would be tortured or subjected to other inhumane or degrading treatment.

In effect this has seemed to cause some difficulty in Ireland as we have generated considerable case law regarding prohibition of the continuation of criminal trials if there is evidence of prejudice caused to an extradited person by undue prosecutorial or court system delay

Extradition Talking Points

1. Extradition Act 1965 Part 2

(a) Ireland is party to several multilateral treaties.
(b) Strict construction of all extradition legislation.
(c) Offence must be specified in extradition warrant.
(d) Wont be extradited where a prosecution is pending in Ireland.
(e) Where the offence for which the person is to be extradited is punishable by death.
(f) Where there is no provision by the requesting State for the law speciality.
(g) Where there is no provision in relation to extradition to a third country.
(h) Minimum penalty of at least 1 year.
(i) Extradition to be refused for offences which are deemed political.
(j) Wont be extradited for offences under military law or revenue offences.
(k) Wont be extradited if substantial grounds for believing persecution.
(l) Violation of the subject's constitutional rights in Ireland.
(m) Political exemption.
(n) Dual criminality.
(o) Offence which is not an offence if committed outside the territory of Ireland.
(p) Rule of speciality.

2. Procedure under part 2 of the 1965 Act

   (a) Request to the Minister for Justice.
   (b) Warrant for arrest.
   (c) Committal.

3. European Arrest Warrant

   (a) European Arrest Warrant Act 2003.
   (b) Framework decision of EU Council 2002 / Simplification of system.
   (c) Designation of Member States / EU States.
   (d) Designated central authority.
   (e) Items to be included in European Arrest Warrant.
   (f) Crimes for which the principle of dual criminality have been dropped.
   (g) Obligatory grounds for refusal of an arrest warrant.
   (h) Discretionary grounds for refusal.
   (i) Procedure to be followed in obtaining European Arrest Warrant

II

MUTUAL ASSISTANCE IN CRIMINAL MATTERS IN IRELAND

1. *Let me begin by saying how pleased and honoured I am to be invited to the First Annual Conference and General Meeting of the International Association of Anti-Corruption Authorities ("IAAC"). I would like to thank Prosecutor General Jia, Mr. Ye Feng, Secretary General of the IAAC and his staff for organising this wonderful initiative. The attendance of senior prosecutors from the five continents around the world bears testimony to the importance of the subject matter of this conference, the tackling of corruption on a global scale.*

2. *I would also like to take this opportunity to thank the authorities of the Peoples Republic Of China for their wonderful hospitality and the efficiency with which they have organised this conference.*

3. The need for mutual assistance between countries arises from the increasingly international nature of criminal offences. It reflects developments in technology, the rise in international organised crime and terrorism and increased sophistication in the manner in which criminals communicate, transfer funds and generally do business. Mutual assistance is a service to another State to assist it in the administration of justice and the investigation and prosecution of criminal offences and cannot be underestimated in the fight against crime. The regime of mutual legal assistance in place in Ireland is based on mutual trust between countries and respect for fundamental human rights.

The legislative framework for Mutual Legal Assistance in Ireland

4. The Criminal Justice Act, 1994, Part VII (1994) is presently the operative statute for Mutual Legal Assistance[1].

5. Under the terms of the Act incoming requests for mutual assistance are dealt with by the Central Authority, a unit within the Department of Justice, Equality and Law Reform, which also deals with Extradition requests and European Arrest Warrants. Outgoing requests for assistance are primarily dealt with by the Office of the Director of Public Prosecutions and then transmitted by the Central Authority to the requested State.

6. There were 410 new requests for mutual legal assistance in 2005. The principle categories of offences were fraud/embezzlement, theft/forgery, tax evasion and drug trafficking. The largest number was received from the United Kingdom/Northern Ireland

[1] The European Convention on Mutual Assistance in Criminal Matters 1959 and the European Convention on Laundering, Search, Seizure and Confiscation of the proceeds from Crime 1990 were implemented in Irish Law by the 1994 Act.

with 150 requests. Spain, France, The Netherlands and Germany were also frequent requestors.

7. There are four main categories of formal mutual legal assistance which the Irish authorities can provide at present under the 1994 Act. These include:

- Service of foreign summonses and court documents under section 49. It is important to note that the person served is not under any obligation under the law of the State to comply with it.

- Search and Seizure pursuant to section 55. The Minister for Justice, Equality and Law reform has the power to direct that an application be made by the Garda Síochána to the District Court for a search warrant. In 2005 there were less than ten applications for search warrants.

- Pursuant to section 46 of the Act and under Regulations made in 1996[2] the Minister has power to apply to a court for a restraint order "freezing" a person's assets temporarily or a confiscation co-operation order to give permanent effect to a foreign confiscation order. The State cannot transfer confiscated assets to the requesting country. The monies must go the Irish Treasury.

- Section 51 allows the Minister to nominate a District Judge to receive evidence at a hearing. The proposed witnesses are summoned to appear in the District Court and give evidence under oath. The evidence is recorded in a transcript signed by the nominated judge and then transmitted by the Minister to the requesting authorities. This procedure is often used to obtain evidence from bankers or telephone service providers and to formalise the transfer of evidence that might otherwise be transmitted informally by police to police co-operation.

- Sixty-one requests were dealt with via section 51 in 2005. This involved one hundred witnesses on twenty sitting days before a nominated District judge.

8. Section 52 of the 1994 Act covers outgoing requests for assistance in obtaining evidence outside the State for use in the State. The Director of Public Prosecutions can make an application to a District judge to issue a letter of request. The judge can issue the request where it appears to him/her that an offence has been committed (or there are reasonable grounds for suspecting same) and that proceedings have been instituted or that the offence is being investigated. In 2005 there were 259 outgoing requests for Mutual Legal Assistance.

9. <u>The Criminal Justice (Mutual Assistance) Bill 2005</u>.

The Mutual Assistance Bill comprises a radical overhaul of the mutual assistance regime in Ireland. Part VII of the 1994 Act will be repealed so that all mutual assistance provisions will be found in one statute. The existing mechanisms will remain with some refinements to take into account recent case law.

10. The purpose of the Bill, which is expected to become law by the end of 2006 is to give effect to seven Mutual Legal Assistance instruments as follows:

- The Convention of Mutual Assistance in Criminal Matters between the Members States of the European Union 2000

- The Protocol to the Convention on Mutual Assistance in Criminal Matters between the Member States of the European Union.

[2] S.7 343 of 1996

- The Second Additional Protocol to the Convention on MutualAssistance in Criminal Matters.

- The Mutual Legal Assistance aspect of the agreement between the European Union and the United States of America on Extradition and Mutual Legal Assistance.

- The EU Council Framework Decision on the execution in the European Union of orders freezing property or evidence.

- The agreement between the EU and the Republic of Iceland and the Kingdom of Norway on the application of certain provisions of the 2000 Convention and the 2001 protocol thereto.

- The mutual legal assistance aspects of the Shengen Acquis.

11. The main new forms of mutual assistance provided for in the Bill are as follows:

- The provision of financial information to other States for criminal investigation purposes in relation to transactions on bank accounts and the monitoring of such accounts.

- The provision of assistance in accordance with national law in relation to the interception of telecommunications in the context of criminal investigations in EU Member States.

- The hearing of witnesses and experts in other countries by video conference or by telephone conference;

- The mutual recognition and enforcement of orders for freezing property or evidence from other Member States of the EU.

- Obtaining of identification evidence for criminal investigations both inside and outside the State;

- Provision for the establishment of joint investigation teams with the USA;

- Provision of a legal basis for the restitution of articles obtained by criminal means to their rightful owner and for controlled deliveries in the State and participation in such deliveries in other EU and Council of Europe Member states.

12. Ireland is also a member of Europol and Eurojust. It has bilateral agreements with the United Kingdom (1st June 2004). It also has a mutual legal assistance agreement with Hong Kong which has not yet been ratified due a technical problem wherein our 1994 Act provides for mutual legal assistance between countries and not territories. It is proposed to amend this in the 2005 Bill which will now include territories. Ireland is also in negotiation with Argentina, Chile, Brazil, the Isle of Man and the Bailwick of Guernsey in relation to mutual assistance agreements.

13. <u>The European Evidence Warrant</u>

A Framework Decision on a European Evidence Warrant (EEW) was agreed in principle in June 2005 after much negotiation and compromise between the Member States of the European Union. The instrument is based on mutual recognition with the intention that it becomes the cornerstone of judicial co-operation both in civil and criminal matters within the European Union.

14. It was considered that an EEW was necessary given the perceived deficiencies in the current arrangements for securing evidence pursuant to a mosaic of European Union and International instruments. The provision of mutual legal assistance can still be slow and inefficient and different rules apply to different Member States due to various declarations

which can be made to the European Convention on Mutual Assistance 1959.

15. The draft framework decision refers to "objects, documents and data" being obtained through this new system. It covers evidence that already exists and that is directly available. The proposal for an EEW covers a relatively narrow range of evidence i.e. it will only relate to evidence in being. It therefore excludes requests to take further evidence, such as witness statements, obtaining evidence in real time, such as interception of communications and monitoring of bank accounts, as well as the taking of evidence from a person including DNA evidence. Existing evidence within these categories are not excluded. The innovative aspects of the EEW is the further relaxation of the requirement for "dual criminality" and the standardisation of procedures in the area throughout the European Union together with tighter deadlines.

16. Only judges, investigating magistrates or prosecutors may issue an EEW. The issuing Judicial Authority must be satisfied that it would be able to obtain the objects, documents or data in similar circumstances if they were in their own territory. The European framework decision on the EEW is still at discussion stage in the government here and I have no indication if or when it will be given the force of law.

Elizabeth Howlin,
Prosecutor, Ireland

IAAC Conference October 2006.

Israel

Address to the 1st Annual Conference and General
Meeting of the International Association of Anti-Corruption Authorities
Beijing, China
October, 2006

"The Role of the Movement for Quality Government in the Struggle for Better Government in Israel"

by
Michael Partem, Adv.
Vice-Chairman
Movement for Quality Government in Israel

"Quality government is a measure of the value and moral standing of a country".
Justice Haim H. Cohen, Deputy Chief Justice of Israel's Supreme Court

On behalf of the Movement for Quality Government in Israel it is both a privilege and pleasure to be able to address the 1st Annual Conference and General Meeting of the International Association of Anti-Corruption Authorities. I would like to thank our hosts, the International Judicial Cooperation Department and commend the Government of China for its initiative in establishing an international forum for anti-corruption authorities.

The Movement is a non-profit, non-governmental, non-partisan civil society association with a Board of Directors made up entirely of volunteers and I am particularly gratified to see that the subject of civil society organizations has been included in this conference.

One of the main themes of our organization is that the individual can make a difference and one of the central lessons of our experience with the Movement for Quality Government in Israel

is that civil society has a positive role to play in the improvement of public life.

As the distinguished representative from China was able to witness first hand at our first International Conference on Quality Government which we held in Jerusalem this past May, 2006 we are not an anti-government organization. On the contrary we believe that a better government is a stronger government.

Corrupt government is inefficient government and corruption is a hidden tax imposed on the many for the advantage of a small minority. I believe that the Movement's goal is shared by most of the population on this planet: government can do better in the service of its citizens.

Many civilizations and many cultures have learned that the correct principle of governance is that authority is an obligation granted to the few for the benefit of the many.

Israel's Supreme Court, in echoing thousands of years of jurisprudence and Jewish tradition, has ruled time and again that government is a public trust and the powers entrusted to public officials must be utilized fairly and honestly for the greater public good.

In Jewish history the precepts both against corruption and for public transparency go back to the very formative moments of the Jewish national and legal tradition as recorded in the Hebrew Bible approximately 3,000 years ago. Not only does the Bible contain specific injunctions against bribe taking but the rational given for this injunction teaches us a lesson which is relevant to this very day. In the last of the 5 Books of Moses, Deuteronomy, it is written that " a bribe blinds the eyes of the wise and perverts the words of the righteous." (16:19). Notice the respect given to the bribe's potent power. It can blind the wise and pervert the righteous. In other words, no matter how honest you are, you should not consider yourself immune to the lure of corruption. In a parable attributed to Jewish sages around 200 ACE a bribe is likened a to bait on a fish hook. The temptation to bite is overwhelming but woe to the fish that is caught for it loses both the bait and its life.

Even if politicians were saints there would be problems; how much more so with the average politician who all seem especially susceptible to temptation?

Since this issue has vexed every society since the very founding of government itself it would be presumptuous to believe that anyone has all the answers. But my long years of experience with the Movement has emphasized three lessons: 1) Something can be done. There is no reason to despair.

If corruption cannot be entirely eliminated it can be curtailed; 2) The fight for better government requires constant effort and vigilance and ; 3) Non governmental actors can make a significant contribution.

Here I would like to bring present you with a very brief summary of our organization with some highlights of our achievement.

The Movement for Quality Government was founded in 1990 by a small group led by its current chairman, Eliad Shraga, as part of a wave of public protest against a major national political crisis that occurred at the time. Shortly after its founding the early membership decided Israel did not need another political party (we have dozens of those) but Israel could use an independent watchdog organization. This was a new concept back then.

Further, we came to the conclusion that real and lasting improvement in the ethical climate of public life required a very broad based approach. Ideally we had to act in 3 areas: 1) Systemic Reform; 2) Exposing and taking legal action against public misconduct and; 3) Education to ethical citizenship and civic involvement.

The primary success of our organization has been in the area I describe as "exposure and legal action". The establishment of the Movement coincided with a radical change in Israel's Supreme Court that provided an organization like ours with unprecedented leverage to effect change.

Back in the days of the British Mandate, the British had established a Supreme Court and gave it special powers to deal with administrative matters. This institution is known as the Supreme Court Sitting as a High Court of Justice. Until the late 1980's access to the Supreme Court Sitting as a High Court of Justice ("standing") had been severely restricted. For a variety of reasons the Court decided to begin to recognize the right of public petitioners in filing claims

against the government on issues of administrative malfeasance. The Movement was quick to take advantage of this opening and the Court has utilized a steady stream of public petitions to issue precedent after precedent in areas connected with good government.

A small sampling of these decisions include: establishing the duty of any new government to publish its underlying coalition agreement; the nullification of illegal patronage appointments and the establishment of a standard of competence as an overarching criteria in making public appointments; outlawing of the appointment of ministers who are under indictment; nullification of illegal Knesset decisions to allocate Members of Knesset pension payments and illegal political funding; implementation of the principle that elected municipal officials may be held personally responsible for the misappropriation of funds.

In the past 16 years the Movement has established itself as the most prominent public petitioner in the Israeli Supreme Court. The Movement has had greater legal success than any other organization in the history of the State of Israel. One cannot study constitutional or administrative Law in Israel without learning from decisions handed down in precedent setting MQG cases.

Although it took a while to get off the ground our educational activities have been growing along with our legal ones. So much so that a few years ago it was decided to establish a separate "daughter association" to handle our educational programs: The Academy for Quality Government in Israel. Today the Academy has two major and highly successful programs: 1) Ometz: an interactive internet based high school course in the study and practice of civics. Ometz is the major program of its kind in Israel and has been adopted by hundreds of classes around the country. And 2): Ethical Seminars which are conducted with government employees on both the national and municipal levels.

In our third area of action, systemic reform, we have unfortunately been less active. There have been a few specific instances where we have proposed statutory changes and sometimes have even succeeded in influencing legislation, e.g. the important reform of political party financing which took the right to set the level of party financing out of the hands of the politicians and transferred that power to an independent committee headed by a judge.

I personally feel however that Israeli citizens are becoming more alienated from their political representatives (as evidenced by the continuous decline in voter participation) and that reforms in our political structure, especially the expansion of direct elections to the Knesset (Parliament) rather than voting for a party list, are required.

The Movement's reputation has been built on a solid foundation of outstanding legal, investigative and educational work. We run academically accredited legal clinics in cooperation with 4 different institutions of higher learning in Israel, including the Hebrew University Law School. Our membership has grown steadily and today we are the largest organization of our kind in Israel.

We employ a professional paid staff of 13 people at our headquarters in Jerusalem, where we operate through seven departments: the Legal Department, the Legal Clinic & Hotline Department, the Research and Budget Watch Department, the Economic Department, the Development Office, the Organization and Recruiting Department, and the Spokesperson and Public Relations Department. The Movement has a Board of Directors and Executive to determine policy and oversee operations.

The Movement receives no government funding and is dependent on donations and membership dues to maintain and improve on its standards of excellence.

The Movement's efforts have been recognized last year as we received special achievement awards from Transparency International and from the Council for Voluntarism in Israel.

This conference has special meaning for us. Israel does not yet have an independent anti-corruption authority. In fact these matters are generally handled by the Attorney General's office. The Attorney General has been placed by law in an inherently problematic position. He is responsible both for the prosecution of public crimes and for advising his main and only client the Government. In matters of corruption these obligations can conflict.
Time and again there have been very awkward situations where the Attorney General has had the embarrassing dilemma of deciding whether or not to defend the government for an action the

attorney general publicly did not agree with. But more often than not the Attorney General has a tendency to protect the government at the expense of the vigorous prosecution of public offenses. Therefore we have come to the conclusion that Israel needs a special authority to combat public corruption and we have made that a goal.

Therefore I would like to end my remarks with a double thanks to the organizers and distinguished delegates. First I thank you for lending me your ears and politely listening to me tell you how wonderful we are; and I thank you a second time for providing us with material which will be useful in the establishment of an anti-corruption authority in Israel as part of our never ending effort to improve government for all citizens.

Shalom and good luck to us all!
[end]

Italy

First Annual Conference of The International Association of Anti-Corruption Authorities

Mr. Paolo Iorio
Avocats sans Frontières I

22nd – 26th OCTOBER 2006

BEIJING CHINA

I would like to express my warmest thanks for giving me the opportunity to participate in this important conference which boasts so many eminent personalities coming from justice systems around ten world.
My particular thanks to Mr. Jia Chunwang, Prosecutor General of Supreme People's Procuratorate of P.R. of China, Mr. Zhang Geng, First Deputy Prosecutor General of Supreme People's Procuratorate of P.R. of China and Dr Ye Feng Director-General of International Judicial Cooperation Department of the Supreme People's Procuratorate of P. R. China.
I am sure that many prominent authors have already tackled this negative phenomenon of the public administration and have come up with a solution.
Notwithstanding this, I wish to give my short contribution in order to examine this problem under Italian law and how it is dealt with .

Corruption under Italian law
Corruption is a general concept describing any organized system in which part of the system is either not performing its duties at all, or performing them in an improper way to the detriment of the original purpose of the system.
In Italy corruption is not regulated by special legislation but by the penal code.
The Italian penal code, which dates back to 1930, is divided into three parts. The first one deals with general rules, the second one with serious offences and the third one with minor offences.
The second part contains rules on "offences against public administration " which include, inter alia, extortion, misfeasance, false pretence and of course, corruption. Under Italian law we have two different sort of corruption: a standard corruption and a non-standard corruption.
Standard or proper corruption, regulated by article 319 of penal code, is when a civil servant carries out an illegal activity in conflict with his duty and at the same time agrees to accept money or other benefits in return. The penalty is from a minimum of 2 years to maximum of 5 years imprisonment.
Non-standard corruption, provided by article 318 of penal code, is when a civil servant performs a task which is within his duties but he accepts money or other benefits. In this case the penalty is from a minimum of 6 months to a maximum of 3 years of imprisonment.

The person encouraging the corruption as well as the corrupt civil servant are both punished by the same penalty.
Generally speaking many corruption cases are defined with a penalty of 2 years of imprisonment suspended sentence.

Corruption in Italy
One of the recent corruption cases of Italian republican history was "the Banco Ambrosiano " scandal raised Italy in 1982, which implicated the Mafia and the Vatican Bank as well as criminals involved in the "Maxi Trial" dealt with in Sicily in the mid-1980s.
In the early 1990' another scandal broke out in Italy, which implicated hundreds of politicians, members of the government and high rank civil servants. This led to criminal proceedings dealt with by the Prosecution Authority in Milan known as "Clean Hands", which basically revealed that Italy's political parties were being illegally financed by industry. This was only the tip of an enormous iceberg of political corruption. Over 2,500 people, mainly politicians and business administrators, suddenly found themselves facing corruption charges. Although thousands hundreds of people were charged, few were convicted.
This famous case struck at the very heart of corruption in Italy in the form of the entire ruling class of politicians. However, it unfortunately failed to have a lasting effect, for the main reason that Italian justice system is a real maze with more than two hundred thousand individual laws. By contrast in Britain for example there are altogether about six or seven thousand laws.
The effects of " Clean Hands" have now almost disappeared and many of the accused who were arrested and imprisoned have not only been fully rehabilitated.
The Christian Democratic Party, which had dominated Italian politics since World War II, collapsed under the pressure of this scrutiny. Bettino Craxi, a prime minister from the Socialist Party, fled to Tunisia ahead of a number of corruption charges. He died there few years ago.
Prescription anti- corruption

As we can see the phenomenon of the corruption comes has repeated itself over the centuries. In the 12th century Dante Alighieri (the well known Tuscan poet) in his masterpiece " The Divine Comedy " said that Popes and prominent authorities responsible for corruption would be sent to hell. . Macchiavelli four centuries later wrote about corruption in his famous book " Il Principe".
Corruption is still there in the shadow conscience of the people.
Nevertheless corruption can be fought and won: the key is to find out the cause. Bureaucracy is one of the plagues of our modern society. A complicated system with a complex labyrinth of legislation pushes people to find a way out. Common people strangled by a difficult problem they can only pay their way out of, and corrupt civil servants, often on law salary, only too willing to accept.
The cure is very simple: less bureaucracy, more transparency and fairness.
For a big disease a little therapy is needed; the public administration which has been the victim must become the doctor.
I am sure that this distinguished conference will come up with few solution to this problem.

Rome, October the 3rd 2006

Paolo Iorio

Laos

Address by h.e. Bounpone Sangsomsak
Deputy supreme people's prosecutor of Lao PDR
At the first annual conference and general meeting of IAACA

ON
INTERNATIONAL COOPERATION FOR EFFECTIVE IMPLEMENTATION OF THE UNITED NATIONS CONVENTION AGAINST CORRUPTION

From 22-26 October 2006,
Beijing, People's Republic of China

Excellencies Mr. Chairman,
Mr. Jia Chungwang, Prosecutor General of the People's Republic of China
Distinguished Delegates …!
Ladies and Gentlemen…!

On behalf of the Lao government I would like to take this opportunity to express my deepest sincere thanks to Mr. Jia Chungwang, Prosecutor General of the People's Republic of China for inviting me to participate in this important conference on 'International Cooperation for Effective Implementation of the United Nations Convention Against Corruption' which is taking place in Beijing, a City of cultural civilization with a long time of development. This is a very important subject for all countries at a whole, in particular for my country. On the basis of the UN Convention Against Corruption we will find ways and measures in effectively fighting against Corruption.

Ladies and Gentlemen!

Mr. Kofi Annan, United Nations Secretary-General has said at the adoption of the United Nations Convention against Corruption by the General Assembly:

"Corruption hurts the poor disproportionately by diverting funds intended for development, undermining a government's ability to provide basic services, feeding inequality and injustice, and discouraging foreign investment and aid".

Corruption is an abuse of power for private interests-for interests of their friends who cause damage to the Government, the collective and legimate interests of citizens. Abuse of power is root of corruption. Corruption can be demonstrated in many forms. It is called many different names, some it are: embezzlement and bribes. Some even use threats to obtain collective properties of people for wealth-personal, families, and friends- of civil servants and government officials at various levels the state machinery.
Corruption exists in many different forms. It exists at every level in every society. In Public Administration, corruption is Greed! At high level and a Need At low level.

Corruption is a threat. The cost of corruption is poverty, under-development, immeasurable human suffering. Corruption can sabotage a country's economy, erode stability and threaten the national security. But corruption can not be demonstrated in economy terms. Where corruption is present, society at large suffers. It debilitates the judicial and political systems that should be working for the public good by weakening the rule of law and silencing the voice of the people. As result, citizens' trust in Government officials and national institution dwindles. Everyone has a role to play in stopping corruption: the Government, the private sector and civil society.

Since the government adopted the NEW ECONOMIC MECHANISM (NEM) in 1986 much has changed in the Lao PDR. The move towards a market-based approach accelerated the growth in Lao PDR in 1988. NEM was an economic reform package that transformed economic activity from a central command system to market-based approach. It decentralized economic decision-making and allowed the private sector to take active role. This led to accelerated economic growth and there has been an emphasis on social sector spending.

Nonetheless, Lao PDR remains among the world's poorest countries. Lao PDR's estimated per capital income was a lowly US$<500, in 2005. Twenty eight point five percent (28.5%) of the population live below the poverty level in 2004-05.There are many causes of poverty and under development. But corruption is among of the main causes.

Ladies and Gentlemen!

Seeing the serious dangers that bring negative effects on security and development of our nation, the combating Corruption is so with a need and depends on a Decision of the Leadership of the Country. Therefore, the government of Lao PDR considers Anti-Corruption Priority Activities which everybody in the society should be committed to fight. Currently the government has issued many legal tools in fighting corruption.

Let me outline what we have done so far:

- In 1982 the National Control Committee was established.
- In November 1999 the government, conscious of the increasing problems related to corruption in the Lao society, adopted an Anti-Corruption Decree (Decree No 193/PM, dated 2 November 1999). Additionally the government extended inspection and audits regarding financial issues to cover all employees in the civil service.
- In 2001 a new-Anti-Corruption body (The State Inspection Authority (SIA)) was established, reporting directly to the Prime Minister.
- In December 2003, the government has signed the UN Anti-Corruption Convention and we are on the way of its ratification.
- In 2005, the Law on Anti-Corruption has been promulgated; however, its implementation is not very effective.
- National Anti-Corruption Strategies have been discussed; anti-corruption awareness for government officials and anti-corruption education programme at schools have been prepared.
- The documents on efficient declarations of assets for all government officials which should be followed by regular re-declarations have been discussed to avoid the corrupt practices.

Also the government stress the importance of the all civil servants maintaining high ethical standards. The Decree on Civil Service of the Lao PDR (Decree No 82, dated 19 May 2003) further reinforces these standards, emplacing rewards for integrity and performance, and curtailing all activities that entail a possible conflict of interest or abuse of office. This decree also includes a provision on whistle-blower protection. The Public Administration and Civil Service Authority (PACSA), who is responsible for Civil Service Management is currently drafting a code of conduct for all Civil Servants.

The government urge all of Civil Servants, Soldiers, Policemen, Peoples, Mass Media and Business Sector to keep eye on and assist the Government to monitor and investigate corruptive manners and state properties and properties of population from being embezzled and corrupted. We all should be committed to recovering all assets and goods of the government and citizens, obtained through corrupt activities.

As the Lao prosecutors we have the role to monitor the investigation of corruption of Anti-Corruption Authority and enforce the legal rights of prosecution.

Ladies and gentlemen,

On this beautiful Occasion, and again, on behalf of the Lao government and on my own Name, I would like to take this Opportunity by expressing sincere thanks and deepest appreciation to His Excellency Mr. Jia Chungwang, Prosecutor General of the People's Republic of China and all staffs for inviting me to this Conference and for the excellent hospitality extended to me, and not to be forgotten for the excellent arrangement of the IAACA. I wish all honorable Delegates a good health and the conference a great success.

Thank You

Latvia

Criminalisation of Corruption and Law Enforcement in Latvia and
the Role of the Corruption Prevention and Combating Bureau

Aleksejs Loskutovs,
Director
Corruption Prevention and Combating Bureau
Latvia

23 October 2006

I would like to thank the Chinese authorities for giving me this opportunity to inform about how the requirements of the United Nations Convention against Corruption are implemented in Latvia in the area of criminalisation and law enforcement and talk about the Corruption Prevention and Combating Bureau or "KNAB" as it is commonly known in Latvia, which I am heading since May 2004.

Introduction

Fight against corruption has become a key political priority in Latvia over the last decade. An important impetus for it was the growing intolerance to corruption in Latvia, but also our accession to the European Union and NATO. In 2004 the Government adopted the National Strategy and Programme for Corruption Prevention and Combating for 2004-2008. Its implementation is coordinated by the KNAB in co-operation with other institutions involved in the efforts to fight corruption. Over the past years a number of important legal and institutional changes were adopted in Latvia. I believe our legislation and institutions are basically in line with international standards set by Council of Europe, European Union and the United Nations anti-corruption conventions. Attention should focus now on putting these formal instruments into practice, which is a far more challenging task and also require cooperation with other countries.

Latvia has adopted a three-fold approach to the fight against corruption. It is based on prevention, enforcement and education. For this reason, before I talk about criminalisation and law enforcement, let me briefly introduce you to the main legal instruments in the area of prevention. Prevention of corruption in Latvia is regulated, first of all, by two important special laws - on control of conflict of interest of public officials and on financing of political parties and election campaigns. There is also the administrative procedures code. For example, it provides for a new instrument to appeal against an administrative decision - special administrative court that also bears the burden of proof. The administrative violations code provides for administrative responsibility for corruption-related violations, for example, having additional employment or sources of revenues or - accepting gifts. Important instrument in the area of prevention is also the Freedom of Information Law. It established the obligation to public institutions to provide information requested by the citizens. The most recent in this field is the new public procurement law, which entered into force in 2006 and brought the public procurement system in Latvia in line with main European Union requirements. The experience of the Corruption Prevention and Combating Bureau shows that in order to efficiently prevent corruption there are still loopholes in the legislation. Therefore, work continues to adopt of regulation on pre-election campaigns and use of public property, as well as to introduce a system of declaration of income and assets by natural persons.

I will now talk more specifically about criminalisation and later on explain the law enforcement system in the area of fight against corruption in Latvia.

Criminalisation and Law Enforcement

The Criminal Law of Latvia entered into force in 1999. It replaced the previous Criminal Code adopted back in 1961 during the Soviet Union. The new law criminalises a range of acts related to corruption. It reflects both the mandatory criminal law requirements and additional offences set out in the United Nations Convention against Corruption.

Most part of the corruption related offences are reflected in the chapter "Offences against Public Institutions" of the Criminal Law, which criminalises the following acts:

- Exceeding of official duties;
- Misuse of official position;
- Failure to act by a public official;
- Accepting a bribe;
- Giving a bribe;
- Intermediation in bribery;
- Misappropriation of a bribe;
- Violation of restrictions to public officials;
- Unlawful participation in property transactions;
- Trading in influence;
- Unauthorised receipt of financial benefits.

In practice, criminal proceedings in corruption cases can be started not only according to the above mentioned offences, but also according to other sections of the Criminal Law, for instance, fraud and extortion (crimes against property), legalisation of illegal income (economic crimes). Most severe sanction for taking a bribe is 15 years of imprisonment and for giving a bribe – 12 years of imprisonment.

Regarding liability of legal persons, in 2005 into the Criminal Law was introduced a new chapter "Coercive Measures Applicable to Legal Persons". These amendments provide for the possibility to apply coercive measures to a legal person when a criminal offence has been committed in the interests of the legal person or if it has been committed by a natural person using, for instance, the rights of representing or taking a decision on behalf of the legal person. These coercive measures vary from monetary fines, limitation of rights, confiscation, compensation to liquidation of the legal person.

Another mandatory criminal offence under the Convention is obstruction of justice. This is regulated by the Criminal Law, which includes such offences as interference in investigation and prosecution, as well as interference in adjudication. Criminalised is also the use of coercive measures to obtain a testimony.

Concerning bribery of foreign public officials, Latvia has extended the definition of "public official" in the Criminal Law to foreign public officials, members of foreign public assemblies, officials of foreign public organisations, foreign parliamentary assemblies, officials and judges of international courts. These amendments were adopted in April 2002.

In this area of laundering of proceeds of crime, important reforms have been carried out as well. The most significant step was the adoption of the Law On Prevention of Laundering of Proceeds of Crime which entered into force in 1998. This law brings Latvian legislation in line with main requirements of the Convention in this area. It is generally considered that this Law complies with all the key international anti-money laundering standards. The law explains that "legalisation of proceeds of crime" means activities undertaken to hide proceeds of crime, such as conversion of property or financial means, concealment or disguise of the true nature, location and disposition of the property or financial means, their acquisition in possession or use. Legalisation of proceeds of crime also includes cases when the offence was committed abroad in a country where liability is foreseen for such offence. Proceeds of crime are property and financial means acquired in result of committing any offence provided in the Criminal Law, including all above mentioned corruption-related offences. The Criminal Law establishes criminal liability for the legalisation of proceeds of crime. As of June 2005, the punishment for money laundering has been increased to 12 years of imprisonment. Legislation in this area is enforced by the Latvian financial intelligence unit – the Office for Prevention of Laundering of Proceeds of Crime, which is based at the Prosecution Office.

In addition, I would like to briefly mention another recent change in the Criminal Law in the area of fight against corruption. In March 2006 was introduced criminal liability for acceptance of illegal payments by persons delivering public services. These changes are directly applicable, for instance, to persons working in health or education sector institutions, but who are not public officials.

The law enforcement work in the area of fight against corruption in Latvia is divided among several authorities responsible for investigation and prosecution of criminal offences. The Corruption Prevention and Combating Bureau plays the leading role, since it is the specialised anti-corruption authority of Latvia. According to the Criminal Procedure Law, the competence of our Bureau is to investigate offences in the public service that are related to corruption. Meanwhile, it is not an exclusive competence. If another law enforcement institution detects a crime related to corruption, it can also start proceedings and investigate it. The other pre-trial investigatory bodies include: the State Police; the Security Police; the Financial Police (part of the State Revenue Service); and the Prosecution Service. Investigation of corruptive offences committed by border guards is to be undertaken by the State Border Guard. The Prosecution Service ensures oversight of investigations and provides advice to investigators and prosecutors in the area of corruption, for instance, it regularly discusses issues related to application of certain offences or norms of the Criminal Procedure Law, for example, confiscation. Finally, the prosecution service is the state plaintiff, as it pursues the charge in the court. Given the high level of public interest in corruption, good cooperation has been developed among the Bureau and the Prosecution Office. The Bureau informs the public about those criminal cases, which have been forwarded to the Prosecution Office for starting criminal prosecution or when a person was

detained or declared a suspect. The Prosecution Office informs the public when prosecution has started or pre-trial investigation has finished.

If we talk about practical experience with application of criminal offences, the statistical analysis shows that out of all offences committed against public institutions in 2004 56% were detected by the State Police, 18% by the Prosecution Service and 14% by the Corruption Prevention and Combating Bureau. The most "popular" offences against public institutions charged in 2004 were: exceeding of official duties; taking a bribe; and giving a bribe. Statistics also show a rather low rate of conviction in corruption cases in Latvia. This number has increased over the past years, but courts are still very reluctant. It is also reflected in low sentences. For taking a bribe altogether 79 public officials were convicted from 2000-2004. For instance, in 2004 out of all persons convicted for taking a bribe, 9 were imprisoned, 21 received alternative sentences, including 1 person received a fine.

The Corruption Prevention and Combating Bureau

With entering into force of the Council of Europe Criminal Law Convention on Corruption in 1998 it has become common understanding in Europe that in order to combat corruption countries need specialised, independent anti-corruption bodies. This has become an international standard with the adoption of the United Nations Convention. It sets out more specifically the requirement for specialised preventive anti-corruption bodies and specialised authorities fighting corruption through criminal law enforcement.

In Latvia it was decided to combine these two functions – prevention and enforcement – together with education and entrust them to one specialised anti-corruption authority. In 2002 the parliament voted the law On Corruption Prevention and Combating Bureau. The Bureau is fully operational since February 2003. The Bureau was created with the objective to prevent, combat corruption and monitor the observance of rules relative to financing of political parties. The Bureau is part of public administration. The head of the Bureau is selected by the Parliament. The Bureau is under supervision executed by the Prime Minister, but his rights are limited to examination of lawfulness of Bureau's decisions. The work of the Bureau is under the scrutiny of its Public Advisory Council consisting of 15 non-governmental organisations.

As you can see from the organisational structure, there are two separate branches: one is dealing with prevention of corruption and other – with criminal investigation.

Structure of the Corruption Prevention and Combating Bureau of Latvia

In the area of prevention, the Bureau controls activities of public officials in respecting the law On Prevention of Conflict of Interest in Activities of Public Officials. It sets out the restrictions and incompatibilities to public officials in Latvia, for instance, on additional employment, additional income or economic activities. The law also provides for certain limits in making decisions by public officials when their personal interests or interests of their relatives or partners are at stake. To control financing of political parties, the Bureau mostly focuses on checking the financial declarations of political parties and can determine administrative liability and impose sanctions to political parties. The parties can be asked to return to the state budget the illegally received funding. Finally, the Bureau prevents corruption through educating public officials, the public and the political parties.

In the area of enforcement, the Bureau has a similar competence as police: it carries out criminal investigation and investigation of corruption related offences in the public service and then handles the proceedings over to the Prosecution Service.

Criminal proceedings started by the Bureau in 2005

Cases started in 1 January – 30 September 2005

Proceedings Started in 1 October – 31 December 2005

I would like to finish my presentation by mentioning that the Bureau has recently celebrated its 4th year birthday. Over the 4 years of our work, KNAB has become one of the most trusted public institutions in Latvia. To date at the Bureau work about 130 persons. These are mostly lawyers and economists. The average age of our staff members is 30-39 years. As I mentioned,

there is also a quite high interest from the public in our work. In average, every month there are about 300 press articles mentioning KNAB.

We believe, that behind the statistics and figures about our work, the main achievement is the slowly increasing public awareness about the high risks of corruption and damages caused by it. Best support for us is also increase in individual responsibility of citizens not tolerating corruption, but reporting and knowing that there is a law enforcement system capable to carry on this report and protect the citizens.

Mali

INTERNATIONAL ASSOCIATION OF ANTI-CORRUPTION AUTHORITIES – (IAACA)

DEFINITIONS:

Corruption is a practice as old as the world.

According to the dictionary, "Petit Larousse", corruption is the fact to be rotten, depraved or perverted. The action of corrupting consists for a person to bribe another person in such a way that the latter acts against his/her duty.

The Malian criminal code in its Title II, Chapter X, Section VIII, Articles 120 to 123 deals with civil servants and private sector employees' corruption and influence peddling.

The folk tradition in Mali abounds with acts of corruption or incorruptibility to teach young people recommended attitudes and/or facts and gestures of the cultural past to illustrate corruption and its opposite.

- Thus, it is told in the chansons de geste (the acts of bravery of the ancients) that Soundiata KEITA (Ancient and Founder of the Empire of Mali) got the secret (the spur of a white cock) of Soumangourou KANTE, King of Sosso, by charming the latter's sister, who preferred her love to her family.

- How many health professionals (traditional as well as modern) created hope to assist childless women to have children by exploiting them. Victims of many others are children without distinction and many other examples could be quoted in other professions.

- Experts of all kinds go round the world deterring governments or individuals' attention with tricks offering to build a turnkey factory or simply to increase bank notes.

In general, corrupters exploit the credibility, poor intelligence or ignorance of their victims.

Corruption at the level of States is a wide spread practice that constitutes a drama; it gnaws leading officials, ruins the resources of nations, undermines people's minds, embezzles towards havens the means necessary for the economic and social development of the great majority of people.

Corruption is merely the blind and cynical contempt of an oligarchy as regard the general interest.

André VITU said: "Corruption is an endemic social evil whose symptoms exist in every era, in every country of the world and under every political regime, without exception''. It is then possible to mention the characteristic Jean Carter BRESSON gave to corruption, I quote: «One of the properties of corruption is that it is difficult to define because the word is tainted with images of physical decomposition close to corrosion, an alteration of everything from an original state of

purity and a moral deterioration characterising the depraved». This strongly recalls the definition suggested by the dictionary.

To talk to the audience for a while about this large and important topic, we must have unfortunately a quick and overall overview, in three points: first the Malian experience, second corruption as a universal phenomenon and a universal remedy, and thirdly our conclusion.

I. MALIAN EXPERIENCE IN FIGHTING AGAINST CORRUPTION:

Any Malian of some age would surely remember the unpopular «Opération Taxi» of the First Republic (1960 – 1968). This operation consisted in identifying and confiscating all the public means of transport belonging to civil servants because our law forbids state agents to undertake commercial activities.

Already, in his speech on September 22, 1961 (First anniversary of our country), President Modibo KEITA said: «Corruption is the proof of the incapacity, misappropriation of funds and misbehavior of implicated administrative agents». At this time, the keynote of the campaign against corruption for the government was transparency and accountability in carrying out the missions to eradicate, it was said, the defaults left by colonial administration.

The Military Committee for National Liberation (C.M.L.N) that succeeded the socialist regime of Modibo KEITA came with the same ideals of public resources preservation. The arsenal for fighting against corruption grew richer with Orders that include considering public funds embezzlement as a conspiracy against the security of the state tried in the Special Court of State Security composed of army officers and professional magistrates. It was important that all the destroyers of the national economy be convicted and the presence of «military judges» better guaranteed that. All possible remedies were attempted: illicit enrichment crime, State Debts Recovery Committee, Economic Police, massive dismissals of state agents, etc… the proliferation of the

repressive apparatus ended up with the opposite of the objectives sought, for the corrupted succeeded in having the pursuit agents on their side.

The democratic power taking over from 1991, I wanted to say, inheriting the situation, while rationalizing the methods of fighting, privileging the respect of law and human rights, added a supplementary layer: preventive approaches were cumulated with the repressive system; public sector services supervision was reinforced, Supervision Reports Collection and Analysis Cell (CASCA) set up at the Office of the President of the Republic, Ministerial Inspections set up and reinforced, the Section of Accounts at the Supreme Court given more confidence for a posterior public expenses supervision, and the Office of the Auditor General were added to the rich collection.

Unfortunately it can be ascertained that public resources are still largely topped out into private properties.

The reassuring element is that Mali is not sitting idle. This well organized, international, well structured and intelligent business that is corruption is to be combated endlessly. Our country is specializing the training of agents to new financial investigations techniques, a better and appropriate legislation. To carry out that fight our way is also in line with the universal system.

Legal instruments to fight against corruption and financial crime are national and international.

At the beginning it was mainly the classical criminal code with classical offences: misappropriation of public funds, corruption practices, interference of civil servants in trading business.

At the time of C.M.L.N., special legislation and even the special organisation of justice burst into: The Order N°6 C.M.L.N. of February 13, 1974, the Order N° 76 – 13 of February 5, 1976, the Law N°82-39/AN-RM of February 20, 1982, the Law N°82-40 AN – RM of March 26,1982, better specified the description of criminals for better use of the repression with the following terms: offence against public property, repression of economic offences, fraudulent export of cattle and illicit export of cereals, illicit enrichment crimes.

Through the Law N°01 – 079/ANRM of August 20, 2001 relating to the criminal code, in the democratic era, the Malian legislator has standardized all its laws and defined new offences such

as: illegal interest taking, offence of favouritism, influence peddling, insider dealing,

money laundering, granting unjustified advantages to shareholders, market splitting, etc…

II UNIVERSAL INSTRUMENTS

Mali in stating in its constitution of February, 2002 that it adheres to the Universal, Declaration of Human Rights and to the African Chart of Human Rights and People can only comply with the following provision from articles 13 to 15 of the Universal Declaration of Human Rights: «Citizens have the right to notice through themselves or through their representatives the need for political contribution, freely consent to it and monitor its use… Society has the right to ask any public sector employee of its administration for explanation». The following, non exhaustive regional and international agreements are the illustration of the desire of all the Countries of the world to fight against corruption: The Organization of Economic Cooperation and Development (O.E.C.D.), International Judicial Cooperation Treaties, Organization for the Harmonization of Business Laws in Africa (OHADA), Treaties of the Common Court of Justice and Arbitration of the Economic Community of West African States (ECOWAS) and the Court of Justice of the West African Economic and Monetary Union (UEMOA), Organization for the Senegal River Development (OMVS), the International Criminal Court, the High Court of Justice of The Hayes…

Ratifying all the treaties of the world is not enough as long as there is no true solidarity between all the states of the world. True moral and economic identify is to be demonstrated to counter the tremendous advance of the phenomenon of financial peddling. Tax havens are unfortunately not pure theoretical views. Sums of money intended for citizens in poor and heavily indebted countries pour in to enrich those who are already full and finish off those only awaiting death.

It is known and accepted that no country, whatever its means are, on its own, succeed in fighting against corruption.

CONCLUSIONS

The prerequisite to any real and efficient fight against corruption goes through standardizing as much as possible the legislation in the matter, going beyond geographical and ideological barriers to objectively combat this cancer which carries the same face everywhere; judicial systems cooperation is to be better organized and added to them all police and information services

Cheickné Dettéba KAMISSOKO
Public Prosecutor at the
Sup

Moldova

Organisational structure of the Prosecutor Office of the Republic of Moldova

General Prosecutor's Office
Anticorruption Prosecutor's Office
Municipal Prosecutor's Offices (2)
District Prosecutor's Offices (44)
Military Prosecutor's Office
Prosecutor's Office in Transport

Anticorruption Prosecutor's Office

Anticorruption Public Prosecutor's Office was created there under Republic of Moldova Parliament Enactment nr. 1429-XV from 07.11.2002.

The new structure and staff including 27 prosecutors of particularized Prosecutor's Office were approved by General Prosecutor's Order from 21.12.2005.

STRUCTURE of Anticorruption Public Prosecutor's Office:

Anticorruption Chief Prosecutor

1. Division for Prosecution Supervision at CCECC (Center for Combating Economical Crimes and Corruption)

- North Service
- South Service

2. Combating Corruption Division

- Anticorruption Investigative Service
- Prosecution Service

Anticorruption Public Prosecutor's Office is charged with criminal prosecution of corruption cases and crimes linked to it within Anticorruption Prosecutor's Office exclusive jurisdiction as well as cases prosecuted by anticorruption attorneys of referrals from other Prosecutor's Offices.

According to art. 270 Penal Procedure Code attorneys have an exclusive right to prosecute crimes committed by:

- President of the country;
- Deputy;
- Government officials;
- Judges;
- Prosecutors;
- Generals;
- Prosecution officers.

Actual activity of the Anticorruption Public Prosecutor's Office meets the requirements of Republic of Moldova European integration plan. It's work focuses on achievement of following priorities:

- National Strategy for Prevention and Combating Corruption;
- European Integration National Plan;
- Economical Increase and Poverty Reduction Strategy.

RESPONSIBILITIES of Anticorruption Public Prosecutor's Office:

1. Anticorruption Public Prosecutor's Office is charged with supervision of maintenance of legality while Center's employers are executing their official duties (Center for Combating Economical Crimes and Corruption is a particularized law enforcement authority for combating financial, tax, economical crimes and corruption).

2. Anticorruption Public Prosecutor's Office makes criminal investigations in common with operation services of other law enforcement authorities (CCECC, Ministry for Internal Affairs, Information and Security Service).

3. Anticorruption Public Prosecutor's Office handles corruption cases and crimes linked to it prosecuted by anticorruption prosecutors as well as referrals from other offices.

4. Prosecutors make prescriptions about necessity of removal of law breaking, elimination of causes and condition that facilitate crime committing, make protests against acts that contradict the legislation. Above all this, in order to prevent corruption articles are published, in different institutions meetings and discussions are organized.

International Legal Assistance and Cooperation

INTERNATIONAL LEGAL ASSISTANCE IN THE CRIMINAL MATTERS

Legal regulation of international legal assistance :

- The relationships with foreign countries or international courts regarding the legal assistance in criminal matters shall be regulated by the CPC RM.

- The provisions of international treaties to which the Republic of Moldova is a party to as well other international commitments of the Republic of Moldova shall have priority in relation with the provisions of CPC RM.

If the Republic of Moldova is a party to several international acts of legal assistance and the foreign state from which legal assistance is solicited or which solicits it, and if there are divergences or incompatibilities between the provisions of these acts, than the provisions of the treaty which ensures a better protection of the human rights and freedoms shall be applied.
The admissibility of granting international legal assistance shall be decided by the competent court. The Ministry of Justice may decide the non-execution of a judgement regarding the admission of granting international legal assistance when the fundamental national interests are at stake.

Manner of transmission of the legal assistance' addressing
Addressing concerning international legal assistance in the criminal maters shall be made through the mediation of the Ministry of Justice, of the General Prosecutor's Office directly and/or through the mediation of the Ministry of External Affairs of the Republic of Moldova, except for the cases when on the basis of mutuality another manner of addressing is provided.

Extent of legal assistance
International legal assistance may be solicited or granted at the execution of certain procedural activities provided by the criminal procedure law of the Republic of Moldova and of the respective foreign state, namely in:
1) transmission of acts to natural persons or legal entities which are abroad the borders of the country;
2) hearing of persons as witnesses or experts;
3) execution of the investigation, search, seizure of objects and documents and their transmission abroad, conduction of expert examination;
4) summoning of the persons from abroad to present voluntary in front of the criminal prosecution or of the court for hearing or confrontation, as well as forced bringing of the persons in detention at that moment;
5) conduction of criminal prosecution upon the denunciation made by a foreign state;
6) search and extradition of the persons who had committed crimes or for the execution of the imprisonment sentence;
7) recognition and execution of the foreign sentences;
8) transfer of the convicted persons;
9) other actions which do not contravene to CPC R.Moldova.
Taking of the preventive measures shall not be an object of the international legal assistance.

Refusal of international legal assistance (Article 534 CPC).

International legal assistance may be refused, if:
1) the request refers to crimes considered in the Republic of Moldova as being political or connected crimes to such political crimes. The refusal shall be inadmissible if the person is suspected, accused or convicted for the commission of perpetration provided in art.5-8 of the Rome Status of the International Court of Criminal Justice;
2) the request refers to a perpetration which constitutes exclusively a violation of the military discipline;
3) the criminal prosecution body or court which is solicited to grant legal assistance considers that its execution may violate the sovereignty, security or public order of the country;
4) the are founded grounds to believe that the suspect is prosecuted or punished for reasons of race, religion, nationality, membership of a certain group or for sharing certain political beliefs, or if his situation is even more aggravated due to the listed reasons;
5) the respective perpetration is punished with death according to the legislation of the soliciting state and the soliciting state offers no guarantee of non-application of the capital punishment
6) according to the Criminal code of the Republic of Moldova the perpetration invoked in the request does not represent a criminal offence;
7) according to the domestic legislation the person can not be held criminally liable.
Refusal of international legal assistance shall be motivated if this obligation flows from the treaty the Republic of Moldova is a party to.
Expenses related to granting legal assistance shall be covered by the soliciting party from the territory of its country if another way of covering the expenses in the conditions of mutuality or in an international treaty is not established.
The procedural act drawn up in a foreign country according to the legal provisions of that country shall be valid before the criminal prosecution bodies and courts from the Republic of Moldova, when its execution is performed according to the procedure provided by CPC RM.

Execution of the rogatory commission requested by foreign bodies in the Republic of Moldova

Criminal prosecution body or the court shall perform rogatory commissions requested by the respective foreign bodies on the basis of the international treaties to which the Republic of Moldova and the foreign soliciting state are parties to or in mutuality conditions confirmed according.

Mutuality conditions shall be confirmed by a letter through which the Minister of Justice or the General Prosecutor of the Republic of Moldova undertakes in the name of the Republic of Moldova to grant legal assistance to the foreign state or to the international criminal court in taking some procedural actions with securing of procedural rights provided by the domestic law concerning whom the assistance is granted.

The request for the performance of the rogatory commission shall be sent by the Prosecutor General to the criminal prosecution body or, upon the case, by the Minister of Justice to the court at the place where the solicited procedural action will be taken.

The request on hearing the witness or the expert shall be executed in all the cases by the instruction judge.

!!! At the execution of the rogatory commission the provisions CPC RM shall be applicable, but, upon the request of the soliciting party a special procedure provided by the legislation of the foreign state may be applied, in compliance with the respective international treaty or with the observance of the mutuality conditions if this complies with the domestic legislation and with the international obligations undertaken by the Republic of Moldova.

!!! Representatives of the foreign state or of the international instance may assist at the execution of the rogatory commission, if this is provided by the respective international treaty or by an obligation provided in written by the mutuality conditions. In such a case, upon the request of the soliciting party, the body which has to execute the rogatory commission shall inform the soliciting party on the time, place and term of the rogatory commission's execution in order for the interested party to be able to assist.

If the rogatory commission may not be performed, the received documents shall be restituted to the soliciting party through the mediation of the institution from which the documents have been received, with the indication of the reasons which have impeded the execution.

Extradition

The Republic of Moldova may address to a foreign state with a request on extradition :

- of a person who is being prosecuted for crimes for which the criminal law provides the minimal punishment of 1 year of imprisonment or another severer punishment ;
- or the person regarding whom there was adopted a sentence of conviction to an imprisonment punishment for the duration of at least 6 months in case of extradition for execution, if the international treaties do not provide otherwise.

Extradition request shall be made on the basis of the international treaty to which the Republic of Moldova and the solicited state are parties to or on the grounds of written obligations undertaken in mutuality conditions.

In case of necessity to request the extradition of the non-convicted person in the conditions provided all the necessary materials shall be submitted to the Prosecutor General for settling the issues related to submission of the extradition request to the respective institution of the foreign state.

The issue of submission of the extradition request of the convicted persons shall be handled by the Ministry of Justice.

The extradition request shall include:

1) the name and address of the soliciting institution;

2) the name of the solicited institution;

3) the international treaty or agreement of mutuality based on which extradition is requested;

4) the last name, first name and patronymic of the person whose extradition is requested, date and place of birth, information on the nationality, domicile, place to be found as well as other data on the person, as well as, to the extent it is possible, the description of the exterior aspect, picture and other materials which may help identify the person;

5) a description of the perpetration committed by the person whose extradition is being requested, the legal qualification of the committed perpetration, information on the damage caused by the crime, as well as the text of the national law which provides the criminal liability for this perpetration and the obligatory indication of the sanction;

6) an information on the place and date of adoption of the sentence into force or of the ordinance on bringing forward charges with the attached authenticated copies from the originals of these documents.

The conclusion of the instruction judge or, upon the case, of the court regarding the authorization of the pretrial arrest shall be attached to the extradition request. Also, data on the unexecuted part of the punishment, besides the copy of the sentence into force, shall be attached to the request on extradition of the convicted person.

Extradition documents

Extradition shall be granted only if, as a result of the perpetration commission, the arrest warrant or another document of an appropriate legal force, or the enforceable decision of the competent authority of the soliciting state which orders the detention, as well as the description of the applicable legislation are provided. If extradition is requested for the prosecution of several crimes, instead of the arrest warrant or another document of an appropriate legal force, another document, issued by the competent authorities of the soliciting state, characterizing the charges brought to the person whose extradition is requested shall be sufficient.

If there are special circumstances justifying the verification of the existence of reasonable grounds to believe that the accused has committed the crime he is charged with, the extradition shall be granted only upon the presentation of evidence confirming the probability of the crime commission.

Extradition for the purpose of executing a sentence or another punishment established by a third state, shall be granted only upon the provision of:

1) the enforceable decision of imprisonment and a document from the third state containing the consent of the state that has taken over the execution[38] to execute it;

2) a document from the behalf of the competent authority of the state which has taken over the execution, confirming that the sentence or another sanction is enforceable on the territory of that state.

3) applicable legal provisions.

Specialty rule

The person who was extradited by a foreign state may not be held criminally liable and convicted, as well as transmitted to a third state for to be punished for the crime committed by him before the extradition, for which he was not extradited, if regarding this case the consent of the foreign state that extradited him is missing.

Extradition shall be granted only if the following guarantees are secured:

1) the person will not be punished in the soliciting state without the consent of the Republic of Moldova for a reason that appeared before his handing, except for the crimes for which extradition is granted, and his personal liberty will not be limited, and he will not be persecuted through measures which can be taken in his absence;

2) the person will not be handed, transferred or deported to a third state without the consent of the

[38] Perhaps this is a technical error, and instead of “execution” there should be written “obligation” (translator’s note).

Republic of Moldova; as well as
3) the person will be able to leave the territory of the soliciting state after the closure of the procedure for which his extradition was granted.

The soliciting state may waive the observance of the specialty rule only if:
1) the Republic of Moldova expressed its approval to carry out the criminal prosecution or to enforce the sentence execution or another sanction regarding a facultative crime or to hand, transfer or deport to another state;
2) the person did not leave the territory of the soliciting state for 45 days since the closure of the procedure for which his extradition was granted, although he had the possibility to do so;
3) the person, after leaving the territory of the soliciting state, returned or was sent back by a third state;
4) simplified extradition is granted.
The provisions of this article shall not apply to cases of crimes committed by the extradited person after his extradition.

Execution of the extradition request of the persons who are on the territory of the Republic of Moldova
The foreign citizen or stateless person who is criminally prosecuted or who was convicted in a foreign state for the commission of a perpetration which is criminally punishable in that state may be extradited to this foreign state at the request of the competent authorities, for the purpose of prosecution or execution of a sentence delivered for a committed perpetration or for the purpose of delivering a new sentence.

The foreign citizen or stateless person who was convicted in a foreign state for the commission of a criminally punishable perpetration in that state may be extradited to the foreign state, that has taken over the execution, at the request of the competent authorities of the state, for the purpose of execution of a sentence delivered for a committed perpetration or for the purpose of delivering a new sentence.

Extradition for the purpose of criminal prosecution shall be granted only if the perpetration is punishable under the legislation of the Republic of Moldova and the maximum punishment is of at least one year imprisonment or if, after a similar inversion of things, the perpetration would be, under the legislation of the Republic of Moldova, punishable in such a way.
Extradition for the purpose of execution of the sentence shall be granted only if the extradition under CPC RM were admissible and if an imprisonment punishment is to be executed. Extradition shall be granted if the term of detention which is to be executed or the cumulating of the detention terms which are to be executed, is of at least 6 months, if the international treaty does not provide otherwise.
If the extradition of a person is requested in concurrence by several states, either for the same perpetration or even for different ones, the Republic of Moldova shall decide the extradition, taking into account all the circumstances, including the seriousness and place of commission of crimes, the nationality of the solicited person and the possibility of a further extradition to another state.
If the General Prosecutor or, upon the case, the Minister of Justice considers that the solicited person by the foreign state or international instance may not be extradited , he refuses extradition through a motivated decision and if he considers that the person may be extradited he makes submits a request to the court from the territorial jurisdiction where the Ministry of Justice is located, to which he attaches the request and the documents of the soliciting state.
The court shall solve the request on extradition with the participation of the prosecutor, of the person whose extradition is requested and his counsel. If the person who is solicited for extradition does not have his chosen counsel, he shall be provided with an *ex officio* counsel. The request on extradition of an arrested person shall be solved in emergency and priority order.

Simplified extradition procedure

At the request of the competent authority of the foreign state regarding the extradition or provisional arrest of a person for extradition, there may be granted the extradition of a foreign citizen or stateless person, in whose respect an arrest warrant was issued for extradition, without following the formal extradition procedure, if the person agrees to such a simplified extradition and his consent is confirmed by a court.

The requirements of Specialty rule shall not be invoked if the foreign citizen or stateless person, after he was informed of his rights, expressly waives his right to application of the specialty rule and this fact is confirmed by a court.
The instruction judge from the competent court shall inform the foreign citizen or the stateless

person of the possibility to apply the simplified extradition procedure and its legal consequences and that he shall consign his statement.
The consent of the solicited person shall be given in the presence of the counsel after the instruction judge has examined the identification data of this person, informing him of his right to a complete procedure provided by the present section.
Refusal of extradition

The Republic of Moldova shall not extradite its own citizens and the persons it has granted the right to asylum.
Extradition will be also refused, if:
1) the crime had been committed on the territory of the Republic of Moldova;
2) regarding the respective person a domestic court or a court of a third state had already delivered a sentence of conviction, acquittal or dismissal of the criminal trial for the crime for which extradition is requested, or if the criminal prosecution body had issued an ordinance on the dismissal of the criminal proceeding or if the national bodies are prosecuting the commission of this perpetration;
3) the term of limitations for holding criminally liable for that kind of crime has expired, according to the national legislation or, in case of amnesty act's intervention;

4) according to the law, criminal prosecution may be started only on the basis of the preliminary complaint of the victim and such a complaint is missing;
5) the crime for which extradition of the person is solicited is considered by the domestic law as a political or connected to it;
6) The Prosecutor General, the Minister of Justice or the court examining the extradition case have well-founded reasons to believe that:
a) the request on extradition has been lodged with the aim to prosecute or punish a person for race, religion, sex, nationality, ethnical origins or political opinions considerations;
b) the situation of this person risks to worsen for one of the reasons mentioned at the letter a);
c) in case that the person will be extradited he will be subjected to torture, inhuman or degrading treatment in the soliciting state.
7) the requested person was granted the status of political refugee;
8) the state soliciting extradition does ensure mutuality in the field of extradition.
If the deed for which extradition is requested is punished by the legislation of the soliciting state with capital punishment, extradition of the person may be refused, unless the soliciting party gives enough guaranties that the capital punishment will not be executed regarding the extradited person.

Postponing of extradition and conditional extradition
If the person, whose extradition is asked in the Republic of Moldova is charged during a criminal prosecution, trial or if this person had been convicted for another crime than the one for which extradition is requested, the execution of extradition may be postponed until the termination of the criminal proceeding or until the complete execution of the punishment established by the national court, or until the final release before the expiration of the punishment term.
If postponing of extradition may entail the expiration of the criminal action's term of limitation or may cause considerable damage for the finding of the facts, the person may be extradited temporarily on the basis of a motivated request, under the conditions agreed on in common with the soliciting party.
The temporarily extradited person has to be retroceded immediately after the procedural actions for which he was extradited were taken.

Handing of the extradited person

If the extradition of a person is accepted by the court, after its judgement comes into force, the Prosecutor General or, upon the case, the Minister of Justice shall brief the soliciting state or the international court on the date and place of the extradited person's handing, as well as on the duration of the executed detention in view of his extradition.
If the soliciting party does not receive the extradited person at the established date for his handing and if postponing was not solicited, the person may be set free at the expiration of the 15 days term from this date and shall be anyway set free after the expiration of the 30 days term calculated from the established date of handing, if the bilateral treaty does not provide for more favorable conditions for this person.
Extradition of the person for the same perpetration after the expiration of the terms mentioned in this article may be refused.

Transmission of objects
At the request of the soliciting party, according to the provisions of this chapter, there may be apprehended and transmitted, as far as the national legislation allows:
1) objects which may be relevant as evidence in the criminal case for which extradition was requested; as well as
2) proceeds, resulted from the crime for which extradition is requested and the objects in the possession of the person at the moment of arrest or which had been discovered afterwards.
Objects and proceeds may be transmitted even if extradition of the person may not take place due to his decease or absconding from trial.
If the claimed objects are necessary as evidence in another national criminal case, their transmission may be postponed until the termination of the respective trial or these may be handed temporarily under the condition of being later restituted.
The rights over these objects or valuables shall be reserved to the Republic of Moldova and they will be transmitted to the soliciting party, under the condition of termination of the criminal trial as soon as possible and without expenses, being restituted afterwards.

LETTERS ROGATORY

Legal basis

1.Multilateral treaties and conventions

- European Convention on Mutual Assistance in Criminal Matters
- Additional Protocol to the European Convention on Mutual Assistance in Criminal Matters

2.Bilateral treaties

- Treaty between Republic of Moldova and Romania on mutual legal assistance on civil and criminal matters (06.07.1996).

3. National legislation
- Article 8 part 2 of the Constitution of the Republic of Moldova provides that any international agreement where Moldova is a party prevails over domestic law.
- Annexe (provides of CPC).

Channels of communication (sending, receiving and returning of requests)

- Direct contacts are not permitted – reservation to the art. 15 of the ETS 30.
- Through central authorities – Prosecutor General's Office and Ministry of Justice.
- The use of the diplomatic channel is not excluded.

Form and content of requests for mutual legal assistance

1.Information to be included in a request

Under article 14 of ETS 030, the requests for mutual assistance shall indicate as follows:
- the authority making the request,
- the object (purpose) of and the reason for the request,
- where possible, the identity and the nationality of the person concerned - against whom criminal proceedings have been initiated
- legal qualification of the investigated offence, a copy of the text of the Penal code, which envisages the offence and a summary of the facts.
- explicit list of the requested procedural actions

2.List of measures, which may be provided

Measures possible include:

- Hearings (including interrogation and confrontation, identification of persons and objects)

- *yes*: according to ETS 030 and article 18/1, 132, 133, 138-146 Criminal Procedure Code.
- Transfer of persons deprived of liberty for the purpose of hearing
  yes.
- article 11 and 15 of ETS 030
- Search and seizure of evidence. Art.533 of the CPC
- Search, identification, freezing, seizure and confiscation of instrumentality and proceeds of crime.

ETS 141 was signed on 06.05.1997, but not ratified yet

- Use of special investigative means

yes. See European Convention and Law on Operative Investigative Activities

- Interception of telecommunications

yes

- Bugging

yes

- Observation

- Order to produce specific documents

- Undercover operation
- *no.*
- Controlled delivery - *no*
- Feigned giving/accepting

3.Specific requirements: dual criminality/Reciprocity

Both are required.

4.Language of the request/translation

English, French, Moldavian /Romanian, Russian are accepted.

Grounds for refusal of an assistance request

- See article 2 of ETS 030.
- The Prosecutor General's Office does not grant support to the letter rogatory when it is certain that the requested actions are prohibited expressly by the law or contradict the fundamental principles of the Moldavian rule of law.

Issuing and executing a request

1.Competencies of the national authorities

The authorities, which can issue a letter rogatory, are:

- prosecution offices;
- police – Ministry of Interior;
- Security and Intelligence Service;
- Customs Department;
- Ministry of Justice;
- courts.

They are sent via Prosecutor General's Office in pre-trial procedure and via Ministry of Justice in trial procedure.

The authorities, who execute the letters rogatory, are: prosecutor offices, police – Ministry of Interior, Security and Intelligence Service Customs Department and courts.

2.Procedure

See Chapter V of ETS 030 and article 18/1 of the Criminal Procedure Code.
The Prosecutor General's Office and Ministry of Justice are the central authorities responsible for international co-operation. Ministry of Foreign Affairs serves only as a mailbox for sending the requests via diplomatic mail.

- for outgoing requests:
The institution, which may issue requests *through the Prosecutor General's Office* (in pre-trial procedure) are: Departments of the Prosecutor General's Office, regional prosecutor offices, police offices through the regional prosecutor office, the Security and Intelligence Service and Customs Department.
The institutions, which may issue requests *through the Ministry of Justice*, (in a trial procedure) are: courts of first instance, Courts of Appeal and the Suprem Court of Justice.

- for incoming requests:
Requests are sent to the Prosecutor General's Office or Ministry of Justice. The central authority examines the demand to verify if it is issued in accordance with the international instruments and that is not in contradiction with the national legal provisions, then sends it to the competent body to be executed. The General Prosecutor's Office sends the request to be executed to the criminal prosecution body and the Ministry of Justice sends it to the competent court.
Executed materials are sent to the Prosecutor General's Office and then to the requesting authority. The executor could send the materials directly to the requesting body.

3.Costs of assistance
For countries parties to ETS 30: according to article 20, in principle, the execution of requests for mutual assistance shall not entail refunding of expenses except those incurred by the attendance of experts in the territory of the requested Party or the transfer of a person in custody.

REQUESTS FOR SERVING OF SUMMONSES, JUDGEMENTS AND OTHER PROCEDURAL DOCUMENTS

Article 7 of ETS 030 applies.

EXCHANGE OF CRIMINAL RECORDS

Article 13 of ETS 030 applies.

Madagascar

THE FIRST ANNUAL CONFERENCE AND GENERAL MEETING OF THE INTERNATIONAL ASSOCIATION OF ANTI-CORRUPTION AUTHORITIES

Beijing - CHINA
22nd – 26th october 2006

Workshop n° 4: Integration of the United Nations Convention Against Corruption in the internal legal order, and harmonization with policies and legal regulations: the experience of Madagascar.

INTRODUCTION

Following the 2002 political crisis in Madagascar[39], it appeared that the demand of the public for a sane and transparent management of the affairs of the State constituted the very heart

[39] Madagascar is one of the islands of the Indian Ocean, among the islands of Reunion, Mauritius, Comoros and the Seychelles. Separated from Africa by the Mozambique Channel (about 400 km), it is the 3rd largest island in the world with a surface area of 592 000 km². Its population is of 17 millions people, and its human population presents certain particular specificities with the contributions of asian origin dominating those of african origin. One must consider the great island as a world of its own, with its own problems, from a geographical as well as historical point of view.

of the movement that carried Mister Marc RAVALOMANANA to the Presidency of the Republic.

In his global reform program with a view to instituting Good Governance, the President of the Republic undertook to fight against corruption, a phenomenon considered to be a primary cause of poverty. In practice, corruption is a critical point at all levels and in every fields.

The President of the Republic considered it is urgent to build a structure required to assist and advise him on the matter.

As a result, the High Council for the Fight against Corruption or Conseil Supérieur de Lutte Contre la Corruption « CSLCC » was created by Decree n°2002-1128 of September 30, 2002 and put in place in July 2003. Its principal mission includes:

--The development of the National Strategy in the Fight against Corruption,
--The elaboration of legislative reforms for an independent and efficient judiciary --system in order to re-establish the confidence of the population in the justice system,
--The implementation of pacts of integrity, ethical rules and norms of conduct,
And finally the putting into operation of an independent agency in the fight against corruption.

These missions were accomplished : the CSLCC elaborated the National Strategy in the Fight against Corruption, prepared a law on the fight against corruption (adopted in July 2004) which reformed all prior legislation on the fight against corruption, and put in place the Independent Anti-Corruption Bureau or Bureau Indépendant Anti-Corruption (BIANCO) operational since September 2004.

Decree n° 2002-1128 of September 30, 2002 modified and completed certain terms of Decree n° 2002-1128 cited above. After this, Decree n° 2006-207 of March 21, 2006 created the Committee for the Safeguard of Integrity (CSI) which substituted itself for the CSLCC and ensured the continuity of its activities. Its missions nevertheless changed and are now focused on the development of the National Integrity System, support for the implementation of the national policy in matters of integrity, namely in the areas of reform of the Judicial system and the judicial police and assistance the pillars of the National Integrity System.

As a reminder, Madagascar ratified on September 22, 2004 the United Nations Convention Against Corruption, and the African Union Treaty on the Prevention and Fight Against Corruption. Law n° 2004 - 030 of September 9, 2004 on the fight against corruption includes in its terms the recommendations of the two Treaties.

In addition, Law n° 2004 - 020 of August 19, 2004 on the laundering, detection, confiscation and international cooperation in the matter of criminal products governs money laundering, and the Malagasy State has undertaken to fight against the laundering of capital and reinforce regional, sub-regional and international cooperation by putting in place national programs relative to this phenomenon.

The fight against corruption is a central part of Good Governance and the two main actors intervene concurrently: the State as the subject and the object of reform and civil society as watchdog.

The three organisms of the fight against corruption include the Committee for the Safeguard of Integrity (CSI), which spearheads the integrity program in the good governance program, the Independent Anti-corruption Bureau (BIANCO) which is the execution organism in the strategy of the fight against corruption, and the Chaîne Pénale Anti-Corruption (CPAC) which is a one stop anti-corruption judiciary shop.

* * *

We propose to analyze the main principles of the United Nations Convention against Corruption (UNCAC) in the internal judicial order before then presenting the efforts undertaken in view of harmonizing policies and legislation with this Convention and the problems actually raised by its application.

I- INTEGRATION OF THE MAIN PRINCIPLES OF THE UNCAC IN THE INTERNAL JUDICIAL ORDER

One must state that the first mission order given to the former High Council for the Fight Against Corruption included the elaboration of texts relative to the creation of an anti-corruption agency that would exercise its powers under the legal status of independent authority.

It was first necessary to integrate Madagascar into the different international instruments by the ratification of the UNCAC on September 22, 2004. UNCAC now being applicable was presently to be integrated into the internal legal order by the conforming of national legislation, principally the law on the fight against corruption and its texts of application, with the principles of the Convention.

The first step undertaken was to carry out a public consultation of some 6 500 opinion leaders about the principal points to be included in anti-corruption legislation and to collect from regional workshops the expectations of the population with respect to local problems and regional specificities. The draft law was thereafter discussed with all of the interlocutors and partners of the former CSLCC before being presented to the Council of Ministers and adopted by the Parliament.

THE INTERNAL LEGAL FRAMEWORK

In terms of prevention

UNCAC gives an important place to measures of prevention. Its aim is to decrease the opportunities of corruption in at risk procedures and to favour a culture rejecting corruption. Law n° 2004-030 of September 9, 2004 on the fight against corruption includes these principles in its article 22 which BIANCO is in charge of, on the one hand, « *searching in the legislation, the rules and administrative practices, the factors of corruption in order to recommend the reforms needed to eliminate them* », and on the other hand «*of educating the population on the dangers of corruption and the need to combat it and to mobilize public support* ». A Prevention Department exists within BIANCO as well as Public Relations Department in charge of the education of the population and the development of public support.

In matters of repression

The Convention adopts a large definition of corruption and recommends to States is to extend penalization to other assimilated conduct *stricto sensu*. Its aim is to criminalize all violations of integrity such as trading ininfluence, the abuse of position and the laundering of the products of corruption.

It is important to note that important changes were brought to the Penal Code[40] (PC) in order to appropriately punishcorruption offences and assimilated misconducts, and to create new offences in order to meet the international norms of special Penal Law.

- Reinforcement of existing offences:

- Article 15 of UNCAC provides for the adoption of legislative and other measures for the punishment of corruption by national public agents. These provisions existed already in the PC but were reinforced and made more coherent. Here are the essential points :

. simplification of the definition of persons concerned by the prohibitions with a preference given to expressions that are more all encompassing : « *person vested with public authority or persons in charge of a public service mission* » instead of « *State servants or public officers, receivers of payments, contributions or public funds, their clerks or employees »*, art 174 of the PC,

. simplification of the designation of persons involved in passive corruption in the public sector, article 177.3 of the PC introduced elected officials in the term « *invested with an elective public mandate* »,

. the taking of an unjustified advantage is from now on aimed at all State servants, any person vested with public authority or in charge of a public service mission or invested with an elective public mandate if beforehand only State servants, public officers and agents of the government were concerned,

. for incompatible commerce, art 176 of the PC, the penalty also applies to the commander of the police forces if before it was limited to the military and other State servants like the

[40] Please see appendix for cited articles

*prefect subprefec*t (state representative in regional level and his deputy),

. some offences with respect to incompatibilities (articles 175 and 175.1 of the PC) are strengthened by the extension of the prohibition beyond the mandate ; enlargement of the material act of the offence and the nature of prohibited employments, by the use of terms that are more general and all-encompassing,

. unification of reprehensible offensive activities of article 177 of the PC, which puts at the same level all forms of corruption committed by persons exercising a public function, regardless of the nature of the prohibited activities,

. unification of the treatment of actors committing offensive acts such as trading in influence, passive or active, that are punished with the same penalty, whereas the priori text only provided for aggravating circumstances applicable to only a certain category of persons,

. adequacy of sanctions for a better personalization of the powers given to judges (choice between a sanction of imprisonment or fine) but a generalization of additional penalties for a uniform treatment of all corruption offences,

. increase in lengths of penalties for misappropriation of public funds and all forms of corruption listed in articles 177 to 178 of the PC which have been almost doubled – increase in monetary penalties to render them more dissuasive;

- Article 12 of the UNCAC provides for the taking of measures to sanction corruption involving the private sector. The new terms of the PC provide for an extension of passive corruption to the private sphere: the prohibition applies to the managers and shareholders of private companies as well, art 178 of the PC – persons exercising a liberal profession, art 178 of the PC, the initiating client and the intermediary, art 177.1 – 177.2 – 178 et 179 of the PC ;

- Article 11 of the UNCAC also provides for the taking of measures to reinforce the integrity of judges and the investigative services and to prevent the possibility of corrupting them. One must underscore the introduction in the legislation of aggravating circumstances relative to judicial functions, of all persons having the status of magistrate and to all persons sitting in a judicial position (arbitrators, assessors), art 181 of the PC ;

- As it is said in article 27 of the UNCAC, each Party State may adopt the legislative measures necessary to give the character of penal violation to the attempt to commit an infraction. According to article 174.3 of the PC, the attempt becomes punishable whereas before the act would have had to have been completely consumed before it was punishable ;

- Article 16 of the UNCAC aims for the adoption by Party States of measures punishing the corruption of foreign public agents and the employees of public international organizations. Article 177.2 of the PC make criminal the active corruption of foreign public agents and the employees of public international organization.

▪ The Malagasy penal code endeavoured to reinforce the preventive measures provided for in articles 7, 8, 9 and 14 of the UNCAC. One must underscore in particular the creation of new penalties through the establishment of new offences in response to the larger definition of corruption provided for by international norms.

- <u>conflict of interest</u> : defined by the new law, art 182 of the PC, such as the coincidence between the private interests of the applicable person and the public interest, this situation being capable of influencing the exercise of public duties, disclosure of such a situation is now required and it is the non-respect of this obligation that launches the intervention of the penal code. The persons targeted by this prohibition are public agents and all public authorities;

- <u>gifts :</u> this prohibition applies to all public agents then exercising their functions. It concerns the acceptance of a prohibited gift when this is likely to have an influence on the public agent, in other words there is a causal relationship between the gift and the decision of the public agent, art 183 of the PC ;

- <u>the failure to make a declaration of personal wealth</u> : sanctions the applicable

persons[41], for the voluntary failure to make a declaration of personal wealth, after BIANCO has sent a reminder (not by judicial channels). It is also reprehensible to make incomplete, incorrect or false declarations, art 183.2 of the PC ;

- favouritism : applies to persons vested with public authority or those in charge of a public service mission or invested with an elected public mandate to procure an unjustified advantage to anyone else by an act opposite to public market rules (art 175.2 of the PC) ;

Article 20 of the UNCAC provides that Party States adopt legislative and other measures necessary to confer to any act leading to unjustified enrichment to be subject to a penal sanction. It is within this framework that the unjustified or illegal enrichment penalty was created, an offence that is in agreement with the fundamental principles of the Malagasy legal system.

- Unjustified or illegal enrichment: in accordance with article 183.3 of the PC, the commitment of illegal enrichment is the fact that the applicable person cannot reasonably justify the substantial increase in his/her personal wealth relative to his/her legitimate revenues. Paragraph 2 stipulates that the offence also be characterized by the detention of the wealth or the uses of illegal resources coming from the persons cited above ;

In order to render effective judicial investigation, and in accordance with the terms and recommendations of articles 30 and after of the UNCAC, new offences were provided for:

. breach of secrecy and confidentiality : this relates to any person disclosing confidential information relative to the identity of persons that are subject to investigation or otherwise detrimental to the investigation, art 31 of law n° 2004-030 ;

. abusive denunciation: relates to the fact of accusing someone of an act of corruption knowing full well that the facts are non-existent, art 373.1 of the PC ;

. obstacles to investigations: relates to the fact of any person refusing or impeding the exercise of the investigative powers BIANCO, or to give it false documents, art 27 of law n° 2004-030.

In matters of international cooperation

The Convention gives great importance to cooperation among countries in the fight against corruption in all areas: prevention, education, investigation and prosecution. It thus obligates the Party States to furnish assistance in cases of requests for proof, extradition, seizure or confiscation of the products of corruption.

Other terms are included in law n° 2004 - 020 of August 19, 2004 on the laundering, le detection, confiscation and international cooperation in the matter of criminal products which governs money laundering. The Malagasy State has undertaken to fight against the laundering of capital and to reinforce regional, sub-regional and international cooperation in terms of the products of such crimes (bank secrecy, extradition, judiciary cooperation, confiscation and seizures of products of the violation, recovery of assets abroad) by putting in place the international programs relative to this phenomenon. Decree n° 2005-086 of February 15, 2005 relative to the creation, organization and operations of the Financial Information Services has come to complement the terms of this law.

INSTITUTIONAL FRAMEWORK

For the implementation of the national policy in the fight against corruption, law n° 2004-030 of September 9, 2004 put in place an institutional framework composed of:

- a High Council for the Fight Against Corruption (CSLCC),
- an Independent Anti-Corruption Bureau (BIANCO).

▪ The High Council for the Fight Against Corruption (CSLCC)

[41] The decree n° 2002-1127 of september, 30 2002 on declaration of personal wealth, modified by decree n° 2004-983 of october, 12 2004 sets the list of persons liable for it, which are State servants including high leaders, civil and military high officials.

became the Committee for the Safeguard of Integrity (CSI).

The former CSLCC which became the CSI is an advisory organism for BIANCO and in accordance with article 19 of law n° 2004-030 of September 9, 2004; it has as its mission to ensure the monitoring and surveillance of the implementation of the policies and the National Strategy in the Fight against Corruption. It must namely be consulted on the general effectiveness of the strategy in the fight against corruption, operational procedures, the needs in human resources and the general conditions of recruitment of BIANCO personnel.

Decree n° 2006-207 of March 21, 2006 created the CSI and according to article 12, the CSI is substituted to the CSLCC and ensures the continuity of its activities and undertakings. This decree redefines therefore the reasons of the missions of the CSI, and in addition to its role set forth in article 19 of the law cited before, it spearheads the Integrity component of the National Good Governance Program [42].

It promotes the National Integrity System (SNI), composed of 12 pillars: Justice, Media, the Executive Branch, the Parliament, Anti-Corruption Organisms, the Mediator, Civil Society, Organisms of State Control, Religious Organizations, the Private Sector, Political parties and International partners. This promotion is focused on three themes: Fight against Corruption, Rule of Law and Human Rights.

In order to accomplish its mission, the CSI prepares the National Policy in terms of integrity and assists in its implementation. For a better acceptance of the reforms, it does not substitute itself for the actors but gives them close assistance.

In addition, it measures the advances made by a Monitoring and Evaluation System, following a model developed for anti-corruption.

A National Integrity Observatory (NIO) was recently put in place as a tool for monitoring, information and intervention in matters of integrity in Madagascar. It collects data and treats it in order to transform it into useful informations to be distributed. It is set to be independent.

- The Independent Anti-Corruption Bureau (BIANCO) :

Law n° 2004-030 of September 9, 2004 provides for a certain number of conditions allowing for the guaranty of independence and the responsibility of BIANCO. The independence of BIANCO is guaranteed by the security of its leaders, the availability of sufficient funds set forth in the finance laws and the autonomy of its operations. As a counterpart for this independence, it is required to send annually report to the President of the Republic and the Parliament, and is subject to the annual audit of the Cour des Comptes.

BIANCO was created by Decree n° 2004-937 of October 5, 2004. It is in charge of the implementation of the National Strategy in the Fight against Corruption.

The missions and powers of BIANCO are set forth in the law that ensures it an operational autonomy and broad powers in terms of investigation, in the framework of the Penal Procedures Code.

BIANCO is given three missions of equal importance: education, prevention and application of law.

- With respect to education, it is responsible for making corruption known to all segments of the community, to increase public awareness on the negative impact of corruption, and the good values shared and protected by thesociety ; to incite the population to actively participate in the program to fight against corruption, to enforce positive values, and defence mechanisms against any attempt at corruption, to persuade the public to denounce acts of corruption, to develop public support to have the desired results.

- With respect to prevention, BIANCO is responsible for examining the risks of corruption on procedures and systems, to give recommendations and to evaluate the impact of preventive measure on the marked reduction of opportunities giving rise to corruption; to apply incentive measures in order to encourage good practices, and to monitor the violation of the rules

[42] The National Program on Good Governance includes three components, Integrity, Effectiveness of the State and Citizen Participation.

in order to diminish them.

- With respect to investigation, BIANCO is empowered to lead investigations, with complete independence and while respecting the applicable judicial norms and human rights: facts suspected of corruption that take place after the entry into force of the law on the fight against corruption ; on all complaints or grievances - even anonymous – relative to suspected facts of corruption ; to collect and conserve the declarations of personal income of high level public officials, to seize the public Ministry at the end of investigations of facts capable of constituting de corruption violations.

- The Penal Anti-Corruption Chain (CPAC)

The CPAC was put in place by a multi-ministry decision of July 2, 2004 between the Ministry of Justice, the Ministry of National Defence and the State Secretary in charge of Public Security who each made available to it magistrates, police officers and gendarmerie officers.

Its experience has been limited to the jurisdiction of Antananarivo but it is called upon to expand into other jurisdictions.

The ultimate goal of its putting into place is to return Justice to its place and to re-establish confidence for the users of the system, since justice and the judiciary police are perceived as being the most affected by corruption.

The goal is to individualize and to reunite in one place the chain made up of the units representing all the traditional authorities of criminal justice going from the preliminary investigation to the execution of any punishments: police officer, gendarmerie officer, substitutes to the prosecutor of the Republic, investigating judges, first instance judges and the judges in the appeals court.

In the specific context of the fight against corruption, the objectives are to render the criminal prosecution effective and to experiment at a smaller scale a criminal justice that is healthy and independent. It concerns therefore to see *in situ* the effectiveness of a healthy justice system including the necessary means and the most righteous and competent elements, in terms of human, financial and material means.

The integrity may be obtained through the rational choice and recruitment of actors in the chain, of the personnel of the judicial police, the public Ministry, from the investigating court to the sentencing one. To promote this integrity, the work environment has been improved in order to reduce the risks of corruption.

Effectiveness, which is the central reason for being of the program, consists on the one hand of conforming the elements of the chain to the specificities of economic and financial penalties and on the other hand, to permit the actors to undertake their investigations, prosecutions and deliberations, such as provided in the Penal Procedure Code, all while putting in place a rigorous system of monitoring and evaluation, without nevertheless affecting the independence of the responsible persons.

II- EFFORTS MADE IN VIEW OF HARMONIZING POLICIES AND LEGISLATION WITH THE UNCAC AND PROBLEMS ENCOUNTERED DURING ITS IMPLEMENTATION

The judicial and institutional frameworks are not alone sufficient to reassure the public and to create a dynamic for change, and it was necessary to develop a series of specific projects, in collaboration with various institutions.

SPECIFIC PROJECTS

1\Redynamization of the Médiature :

This organism of defence of the average citizen before the Administration, the Médiature[43] entered a period of dormancy since the year 2000. A project aimed at redefining its missions and the means of doing so through a new law was put in place. As a result a plan of action was validated leading to the elaboration of a draft law on the complete restatement of the

[43] The Médiature is led by a Mediator Defender of the People (an Ombudsman).

ordonnance of 1992.

The text of the draft law is in the course of finalization for presentation to the Parliament.

2\Securing admission exam to administrative schools :

In the face of the numerous recriminations against their integrity, the former CSLCC has taken the initiative to examine with the applicable authorities in the securization of all of these qualifying exams. A global plan of securization was elaborated and has started to operate for certain high level Institutions. Standards drafted together were implemented and a standardized procedure adopted, ending in the Decree n° 2005-500 of July 19, 2005 governing the general principles relative to the organization of administrative qualifying exams. Measures such as anonymity and the use of information and communication technology were implemented uniformly for all of these exams.

3\The Ethics Movement :

This is a very vast field with as its aim a new moral dimension to public life.

The establishment of the general principles for the effective application of the fight against corruption and the adoption of rules and norms of conduct are includes in the principal missions given to the former CSLCC. The success of the movement and the integrity pact must translate into a real change in attitude and conduct and depends on a level of professionalism in the implementation of the National Strategy in the Fight against Corruption.

A Technical Committee on Ethics (TCE) was put into place in order to stop the basic principles for the establishment of the norms of conduct, to promote an ethical movement and the integrity pact in Madagascar and to give a technical support to factual decisions.

The role of the Committee is to:

- elaborate a strategic approach and a reference document for the promotion of ethical movements and the integrity pact,

- produce a guide for the establishment by sector of a code of professional, a code of conduct and the rules of conduct,

- define the general principles, the rules of ethics and the norms of conduct following the fundamental values of Malagasy culture,

- elaborate a strategic and pragmatic approach to the putting in place of ethical committees at the local and national levels.

The reference documents for the promotion of ethical movements and the pact of integrity improve upon the exiting ethical and professional codes and are the reference for the creation of new codes. These documents were widely distributed.

At the moment, Decree n° 2003-1158 of December 18, 2003 establishing the professional Code of the Administration and the good conduct of agents of the State sets forth the duties and general obligations of the Administration and the agents of the States, namely with respect to the users of government services of the State, the Institutions and the Administration. The principles such as neutrality, transparency, professionalism, competence, dignity and integrity are highlighted and there exists for example particular clauses on conflicts of interest.

Decree n° 2005-710 of October 25, 2005 establishing the professional code of Magistrates establishes the basic principles such as impartiality, integrity, equality before the law, transparency, competence and diligence.

The importance of ethical and professional codes is confirmed in Madagascar. Indeed, they play a significant role in the improvement of the performance of public companies and services.

4\. Creation of the Penal Anti-Corruption Chain

This chain described above is a vital element of the anti-corruption process.

5\ Encouragement of civil society movements,

This concerns mainly the support to the initiative of some thirty civil society associations to constitute a coalition of associations fighting against corruption.

In addition, the basic principles such as the participation of civil society, the effective access of the public to information are the object of reflection and debate. There is also a movement to promote an active, demanding and receptive citizenry (increased publication of rights, a culture of rejection of corruption, denunciation, etc.).

A draft law on access to information has been drafted and the process is in the course of finalization.

6\. Transparency in the financing of political parties,

A draft law that saw the participation of the political parties has been drafted but the adoption of the law is in a waiting pattern. Works are underway for the elaboration of a Code of good conduct and to study the mechanisms for financing of political parties.

7\ Objective criteria for the grant of public procurement contract:

These criteria as defined include: transparency, competition, and the publication of information; The redraft of the law on public procurement was the object of law n° 2004-009 of July 26, 2004 establishing the Code of public procurement. The reform was a primary strategic axis relative to good governance and one of the global objectives aimed at the fight against corruption, the transparency of management and the quality of services rendered.

Despite considerable advances, problems continue to be present in the implementation of anti-corruption legislation.

THE PROBLEMS OF IMPLEMENTATION OF ANTI-CORRUPTION LEGISLATION

These problems follow two patterns: on the one hand, their appropriation by the entities in charge oftheir implementation, and on the other hand, the problem of legal technique, since new concepts whose contours are not always well defined and that must be elaborated with jurisprudence, or yet again various measures of protection in place for the exercise of certain functions or professions, such as privileges and immunities.

i. Problems inherent to the appropriation of anti-corruption legislation

With respect to the training of magistrates, considerable work has been done through professional and ethical training seminars, and on the improvement of anti-corruption penal justice[44].

The objectives of the seminars were to ensure the appropriation by each magistrate of the code of conduct, the essential condition to the success of compliance. The magistrates were also initiated to the new tools of criminal law and the penal procedure conceived for a better treatment of the phenomena of corruption and money laundering, of new investigation technique in terms of economic and financial crimes in order to improve the operational links between the magistrates and the investigative departments of BIANCO.

Nevertheless results have thus far been timid and that a certain reticence reduces the number of penalties imposed in the matter. In addition, penal repression presents certain shortcomings in the sense that it is not always accompanied with disciplinary system that is prompt and efficient.

One must also underscore a certain malaise on the part of whistleblowers that do not feel sufficiently protected in the face of reprisals of which they are victims, even though articles 32 to 35 of law n° 2004-030 of September 9, 2004 expressly provide for protection measures for denunciators and witnesses.

Exchanges are underway at the level of the partners of the CSI to find realistic and practical solutions permitting the effectiveness of the provisions of the law with respect to this issue.

Another fundamental problem is also those of means for the implementation of programs and more particularly the long term effect of actions in the fight against corruption that are

[44] Sixteen sessions were organized between January and August 2006 over the entire territory, aimed at targeting all magistrates currently working in all jurisdictions, with the Ministry of Justice and those seconded.

fragilized by the insufficiency of funds.

ii. The problem of judiciary techniques

The law on the fight against corruption has created new violations, such as conflicts of interest, prohibited gifts, unjustified or illegal enrichment, for which the contours are not always well defined in the absence of reference jurisprudence. In addition, the making criminal of certain actions is even sometimes discussed if not contested.

With respect to conflict of interest, it appears necessary to define it in a concrete manner and to reinforce the judicial framework related thereto. The CSI is working on this program at the moment.

The offences related to prohibited gifts and unjustified or illegal enrichment have been widely discussed at the very moment of drafting of the law on the fight against corruption. It will be necessary to develop a jurisprudential construction that will define its contours and avoid any negative interpretations.

Finally an important problem is the issue of privileges and immunities protecting certain categories of person : if in light of former article 34 of the Customs Code, a general investigative authorization was necessary to lead without obstacle investigations against customs officials who are subject to corruption or related allegations, this text was expressly repealed in 2005.

Numerous special immunities and privileges protecting certain functions and profession are still relatively important: the President of the Republic, members of the government, parliamentarian, military, officers of the judicial police, etc. These protections go from jurisdictional privileges (offences subject to jurisdiction of the High Court of Justice[45] for example), to special authorizations for prosecution (for example for parliamentarians, magistrates, military). They are important obstacles to the effectiveness of repression of certain corruption violations.

In summary, we can say that Madagascar has made great strides in terms of update of its laws to meet the norms of the UNCAC. Nevertheless, there remain today numerous updates that still need to be made and a major problem of effective application of the laws and regulations. This change is relatively recent (three years) but it concerns a profound and irreversible change whose results are expected to be evident soon.

Mme Bakolalao RAMANANDRAIBE
President of the Committee for the Safeguard of Integrity

and

M. Patrick RAFOLISY
Executive Secretary of the Committee for the Safeguard of Integrity

Montenegro

Republic of Montenegro
CHIEF STATE PROSECUTOR

[45] Institution provided for in articles 113 and following of the Constitution to judge violations committed by high level dignitaries of the State in the exercise of their functions, but not yet put in place.

TOPIC III:Sub-session

EFFECTIVE ANTICORRUPTION AGENCIES:

-Policies
-Structures and
-Functions

Corruption means every form of abuse of authority,for personal or collective benefit,whether it is a matter of public or private sector.

Corruption is damaging,and it exists through all ages.

In modern state,corruption is a danger,because it has contagious influence on society affairs,it reduces neccessary level of morality,blocks public administration and makes the judiciary look unefficient.

Long standing economical and political crysis,poverty and dominant state of inhabitants,which are particularly effecting countries in tranzition,as well as Montenegro,are significant factors of risk,in favour of corruption.

Effective combating corruption,one of the most dangerous national and global phenomenons,demands harmonized exertions and activities,both government and citizents,as well as every single sector of public life,and particularly,enhacing the capacities of authorities that are investigating and prosecuting,and also sentencing.

Criminal code of Montenegro does not prescribe substantive criminal offence of corruption,but corruptive elements of offences are prescribed through criminal offences in Heads XXII and XXXIV of mentioned Code.

Succesful fight against corruption,depends of numerous factors,and most important is political will and determination.

In Montenegro,an independent state now,not only according to the oppinion of citizents,but also as a general obligation of main political parties,movements and NGO-s,presumptions for making a general consenzus on requirements to prevent corruption,exists.

Political obligation of operation,is not just an ordinary declaration of intent,but a clear obligation of subjects of political authorities,from which derives liability towards citizents.

Adopted programme of fight against corruption,is a strategy of it's kind,based on the principles of democraty,responsibility and reform of governing structures,in manner to become more sensitive on the requests of citizents,and what is of key importance,to make the assesment and realization of the state affairs in every local ambience,a starting point for action.

On that way, we shall identify,not only the conditions,encouragements and mechanisms of corruptive behaviour,but also engage political allies in fight against the corruption.

Priorities are:

-To build horizontal and vertical networks and unions,with the aim of mutual action of political parties and leaders,agencies of public and civil society and other unstate actors,

-To intensify already started general reforms of legal and financial systems,

-To implement international instruments and standards from in area of fight against corruption.

INTERNATIONAL OBLIGATION OF ACTION

The programme of combating corruption,must start from respecting relevant international standards in organized civil fight against theese appearances,that are enclosed in adopted and ratified documents from resolution of General Parliament of UN 3513,numerous Protocols,Resolution of Council of Europe,which contains 20 leading principles to fight corruption,criminal-law Convention on corruption of SRJ, Convention of OECD on preventing bribery of foreign public officials,who are participating in international buissiness transactions,that is not ratified by Montenegro,yet,Greeco Agreements from 1998.(a group of states for fight against corruption),Declaration in Ancona and Anticorruption Initiative of Stability Pact for South-Eastern Europe-SPAI.

EFFICIENT CRIMINAL PROSECUTION TO PREVENT CORRUPTION AND ORGANIZED CRIME

Efficient law enforcment is a constituent part of process of democratization and protection of rights and freedoms of citizents.

Repression and disclosure of coruption can not be achieved only by detecting,prosecuting and punishing the perpetrators of theese offences,although it is one of the key elements.

First of all,we should undertake measures to induce european standards,which is already being done in Montenegro,and we have founded the institutions and brought the laws according to the european standards,in order to help the work of the police with the judicial system,we have also adopted and applaying a Programme of fight against the corruption and an Action plan for it's enforcment is being brought,also.

Capacities are strenghten for financial investigations,control of money laundering,which gives us the opportunity to fight corruption more successfuly.

However,interdepartment and longdistance projects must exist, with the aim to help attaining wider goals of democraty,good manegment and economic prosperity of Montenegro.

Besides repressive,it is very important to develope a preventive dimension,to eliminate causes and conditions,that are in favour of corruption.

In that sence,it is necessary to reduce consumption of products,which are being offered by criminal gens,through stimulating products of legal firms,by the competent authorities.

We should undergo to exact control the courses of money,buissines transactions,investmants and public affairs.

In order to achieve that,we must improve conditions of service for judiciary,and stabilize judicial sytem,through adequate remuneratiom,and also equiping and inducing a modern informatical system.

-Permanent education,particularly relating on possibility to prosecute corruption,which should be in connection with action on professional self-awareness and ethics of judges, as well as prosecutors,in order to achieve higher level of awareness of it's danger and damages,as a necessary precondition for efficiant work,

-Application of Code of ethics,of judges and prosecutors,as a quality base for creating professional criterias,

-Raising up a level of legal knowledge and confidence generaly,with respect of the role of providing more efficient legal aid to citizents,

-Public publishing of problems which exists in law enforcing,and that is the role of protector of human rights ombudsman.

In the forthcoming period in Montenegro,we have an obligation to create conditions for efficient work of mutual promotion-preventive actions of government and nongovernment sector and civil society,in organizing wide anticorruption public campagnes.

Strategy of fight against corruption,assumes recognition of evil of corruption,making plans and activities of fight and mobilisation of all available social and political actors.

The role of main actors of political authorities is crucial in that,and have alread shown,that they are ready for sucessful fight against corruption,by bringing new Law on state prosecutor,strenghtening his role in pretrial procedure,inducing new institutes,bringing Law on witness protection,Law on preventing money laundering and the Direction for preventing money laundering which is already in Egmont group,Criminal code and Criminal procedure code,Law on police,which ensured transformation of the police into a modern service,and made conditions to prevent activities that incite all forms of crimes.It is essential to point out,that in this Law,the police is defined as an authority in service of community,instead of »power of the state«.

We also have in procedure,very important bringing Law on responsibility of legal person,which would make round the reform of our legislation.

I expect from the First Annual Conference,to the strenghten of mechanisms of international cooperation for efficient implementation of UN Convention against corruption, in order to promote efficient work in parent countries,establish special teams in the framework of global organization,with the mission to help regional and national branches,in the area of application of UN Convention against corruption.

CHIEF STATE PROSECUTOR

Vesna Medenica

Mongolia

To the issue of the independence of Anti-Corruption Authority in Mongolia

Ladies and Gentlemen,

Dear Colleagues,

Good morning/afternoon.

I'd like to express my sincere gratitude to the organizers of this conference for providing me with an opportunity to make a presentation on anti-corruption actions in Mongolia.

In 1990, Mongolia replaced its one party totalitarian system in a peaceful manner and has begun to establish a democratic society with a multi-party system and a free market economy.

The country's economy is growing and a lot of new things are being created in social relations. However, a growing economy offers opportunities: legal and illegal ones.

In recent years, the number of crimes against property has increased significantly. Such crimes range from theft, burglary, robbery to embezzlement. I am concerned that the most serious among them is a corruption phenomenon, which increasingly attracting the public's attention.

The People's Control Committee, which were performing control over the state property was abolished in 1990, while the State Audit and Inspection Law was not passed until 1995 creating the State Audit and Inspection Committee.

During 5 crucial years of transition with a high level of privatization there was no external audit function. That was obviously enough time for all types of administrative and business practices to take root.

When people, who didn't have their own property and lived on their salaries in the old system, entered the free market economy with competition for property, they started seeking very actively all the ways to become rich fast and snatching every first opportunity that comes along.

The participation of few groups and individuals in privatization has nurtured corruption to certain extent. I can list a lot of problems here, including lack of transparency in the activities of government organizations, bureaucracy, red tape, and licensing.

Considering such circumstances, Mongolia has incorporated the anti-corruption issues in its public policy and adopted the Anti-Corruption Law in 1996 and the National Anti-Corruption Program in 2002. Mongolia has established the National Council to implement the Program and joined the UN Convention against Corruption in 2005 and passed a new Anti-Corruption Law in July 2006.

The new law will come into effect from November 2006.

The new Anticorruption law differs from the previous law by establishing a special Anti-Corruption Agency, providing its structure, power and functions and ensuring its independence.

The Anti-Corruption Agency shall perform 3 main duties, i.e. public education, prevention of corruption and investigation of corruption cases. The Agency also has the function to review the statements of income and assets of the persons specified in the law.

The Chief and Deputy Chief of this Agency shall be nominated by the President and voted by the Parliament and if the nominee gets the simple majority vote of the Parliament, he/she shall be appointed by the decision of the Parliament.

The President selects the candidate considering the following requirements prescribed in the Law: " A Citizen of Mongolia, who has a legal profession and experience in the public service for at least 15 years, has attained 55 years, and has not held any political organization for the last five years" as the Chief of the Agency.

The Anticorruption Law prescribes that the Chief of the Agency and his/ her deputies are

appointed for a term of 6 years. Terms of the President and the Parliament, who appoint the Chief of the Agencyl, are 4 years. This 6 and 4 years' difference is very important in terms of allowing the Chief of the Agency and his/ her deputies to work independently from those who appointed them.

The grounds for releasing or dismissing the Chief of the Agency and his/her Deputies are strictly provided in the law, thus ensure the independence of the Agency.

A non-staff Public Council will be established under the Anti-Corruption Agency to increase the public's participation in the fight against corruption, to bring forward the public's voice, and to provide recommendations on the situation of corruption and the implementation of the anti-corruption legislation in Mongolia.

The members who will represent the civil society in the Council shall be appointed by the President for a term of 4 years.

Prosecutors shall supervise over the undercover operations, inquiry and investigation procedures of the Anti-Corruption Agency under the relevant laws.

The Parliament shall hear the reports of the Anti-Corruption Agency on the implementation of the anti-corruption legislation and the situation of corruption on an annual basis.

One of the major challenges that the Mongolian Government facing is to guide the agency's activities in the right direction and to improve the agency.

The people of Mongolia have high hopes of the Agency managing and organizing the fight against corruption nationwide and working effectively.

However, such agency can't cover a wide range of corruption issues.

The civil society and non-government organizations are making a lot of initiatives in this area. The press and media began to address the issue more actively. Journalists and non-government organizations working in the area organize more trainings and seminars and the public education campaign is increasing. Such participation of the civil society is very important in creating an environment where the public are willing to join their forces in the fight against corruption.

But Mongolia still lacks a systematic and targeted education campaign. The public need to become aware of the hazards of corruption and be educated not to tolerate corruption.

The law provided the roles of the government, business entities, organizations and citizens in public education and prevention of corruption.

It is important to focus on public education and prevention in addition to investigation, punishment and determent and conduct such activities in parallel.

Mongolia made commitments before the international community by joining the UN Convention against Corruption and in accordance with its commitments, Mongolia has been conforming the national legislation to the Convention and preparing to the implementation of the new Anti-Corruption Law. We will need the experience of other successful countries in completing the above-mentioned tasks.

Corruption becomes not only a domestic issue of a country, but a global concern now. So, we are in more need than ever to unite our policies and efforts to combat corruption, to share our information and to work together both internationally and regionally.

It is very important for law enforcements agencies and other anti-corruption agencies to cooperate closely with each other and provide assistance and support to each other promptly and efficiently in detecting illegally obtained money, because many criminals choose to place or transfer their illegally obtained money abroad today in order to conceal it.

It is the common interest of the global community to live in a world that doesn't have corruption and is ruled by justice.

The UN Convention against Corruption opened a new way for us to join our efforts in fighting corruption. Therefore, it will be important for a group of countries or a region to develop cooperation and unify their efforts to fight corruption. Mongolia will be one of the active participants in the cooperation.

I hope that this conference we are attending will make a significant contribution to the cooperation.

Thank you for your attention.

Mozambique

By Mr. Joaquim Luis Madeira

Prosecutor General of the Republic of Mozambique
Mr. Chairman
Distinguished participants
Ladies and gentlemen

First of all I would like to thank you on behalf of my delegation and on my own behalf, for the invitation that was addressed to us to participate in this "1st Annual Conference and General Meeting of the International of Anti-Corruption Authorities"; I would also like to thank you for the fraternal reception and warm hospitality we have been receiving from the authorities and the Chinese people, since our arrival in this pleasant city of Beijing; I am equally thankful for the opportunity I was given to address this session.

Secondly I would like to congratulate *The Supreme People's Procuratorate of the People's Republic of China, in the person of respective Prosecutor General, Mr. Jia Chunwang,* for having taken the initiative of organizing this conference which has brought together in this beautiful Country, Anti-corruption Authorities from almost all the

From now on, these Anti-Corruption Authorities have a Forum of their own where to reflect, discuss and share experience in the combat of an evil so old and yet so present.

We can indeed say that that corruption as a phenomenon has the age of the humanity; its origins are lost in the dust of time.

In fact, we find references on corruption in the old biblical texts, in the old civilizations of Greece, Rome, Mesopotamia, in the Eastern civilization, as well as in the Middle, Modern and Contemporary Age.

Despite all this, it seems that it is in our days that corruption phenomenon has become a major problem that increasingly worries humanity deserving, therefore, our special attention and treatment.

The establishment of special anti-corruption units in almost all continents; the approval of regional and continental protocols, with the view to coordinating action against corruption bear witness to what we are saying; these efforts culminated with the approval of the United Nations Convention Against Corruption.

Mr. Chairman
Distinguished participants
Ladies and gentlemen

The Attorney General's Office of the Republic of Mozambique had the privilege of participating in 4 of the 6 preparatory sessions of the United Nations convention against corruption, as part of my Country's delegation mandated to that effect.

The experience gathered in those session showed that although corruption today is a phenomenon that worries almost the entire human kind, the perception there of and its impact is not uniform; it varies from one society to another.

This is because corruption manifests itself in different ways, some more, and others less blatant, with major or minor gravity.

That is why some academics make a distinction between what they call "great Corruption" from what they consider to be "small corruption".

In their opinion, the great corruption, which they also term as the political corruption, affects political decisions. So, it occurs in the high echelons of the political authorities.

"This happens when politicians and decision makers invested with the power to formulate, establish and implement laws (and I would also add programs) on behalf of the people, they become, (in the process) themselves corrupt".

Therefore, according to these academics, the great Corruption happens among individuals placed in high spheres of power, who from the national and international corporations, appropriating themselves of the "pay-offs" from contracts, or divert large sums of public money into their bank accounts usually located in foreign countries.

It is important to note that this corruption is not generally very easy to see; it is not easily catchable through an eye for obvious reasons: It takes place in high echelons (usually unsuspected); it does not often involve many people, though it involves very large amounts of money and it takes place far away from the eyes of the people and even of the media.

Only in case when, for some reason, there is information leakage. Then
Scandals occur, that may shake entire governments, even in developed Countries or in apparently stable countries.

As for the small corruption, also called bureaucratic corruption, this usually takes place in the Public Administration and in the public services, such as hospitals, schools, courts, public prosecution services, police, customs, places of licensing of several activities, etc.

This corruption is considered by those academics as small corruption "low level corruption" or "street corruption". It does not usually involve large sums of money like the great corruption (though sometime it may), but it is the one that the common citizen normally faces on a daily basis, making his life increasingly difficult.

So, no matter the size, big or small, corruption is always a pernicious phenomenon.

In my Country, a National Base Research on Governance and Corruption, conducted in 2004, came, among others, to the following conclusions:

1. Corruption endangers the stability and the safety of societies; it undermines the values of democracy and morality; it affects social, economical and political development; the free trade and governments' credibility, and it contributes to the promotion of organized crime;
2. Corruption in the public services was considered one of the main obstacles to the economic development of the Country, among other constraints, such as unemployment, the cost of living, the inflation, the difficult access to water, hunger, the quality of the roads and criminality.
3. These devastating effects of corruption harm the efforts of the Country, mainly in the fight against poverty. They constitute an impediment to the continued nation building process in Mozambique.

These conclusions are enough to illustrate the danger posed by corruption in any country, mostly, in a developing country.

So, the fight against corruption is more than an imperative of consciousness; it is, above all a must for the survival of our societies in current days.

It is therefore justified, that in all societies mechanisms to combat corruption are implemented involving not only the repressive apparatus of the state(courts, Public Prosecution Services, police or special authorities, anti-corruption unit), but also governments and the civil society, including the media, in addition to parliaments, that should pass laws befitting this combat.

It is in this context that the Government of my Country has undertaken a number of actions, within the scope of the Public Reform Sector Program, aiming essentially at simplifying bureaucratic procedures, in order to facilitate access to public services.

This is one of the ways to prevent corruption, which, as it is well known, has as one of its characteristics, taking advantage of, or even creating difficulties in order to sell favors.

This year our Government has adopted a national Anti-corruption strategy for 2006-2010, its

implementation is being planned at a sector lever, with priority to the justice, Education, Health, Police and customs sectors.

At legislative level our Parliament has passed the Act no. 6 of 7 June,. 2004 and the Government approved the respective regulation through the Decree no. 22 of 22 of June, 2005. They constitute an important contribution in the strengthening of the legal arm in the fight against corruption.

This is because in a State of Law, Crimes are fought with laws, in order to prevent excesses and abuses.

In this light of the above Act and Decree, it was possible to establish the Office for the fight against corruption and regulate its activities. This body, although it enjoys a degree of autonomy has been placed under the subordination of the Attorney General.

This Office exists for a little more than 1 year now, and it is in replacement of the Anti-Corruption Unit that had been temporarily set up in one of the specialized Departments of the Attorney General Office.

The Central Office for the fight against Corruption, with headquarters in the Capital of the Country-Maputo-, has already opened regional offices to guarantee its presence in at least the three main regions of the Country (North, Central and South), while awaiting its establishment in all the eleven provinces of the Country.

This Office has been working in close collaboration with the civil society in general and with some specific NGO's, in particular, such as Mozambique, with has been allowing it to receive denunciations and relevant information that help undertake or explain ongoing investigations of cases of corruption.

The Office has been giving lectures to the civil servants and the civil society in the Capital city

Mr. Chairman
Distinguished participants
Ladies and Gentlemen

I do not want to continue to abuse of your patience.

I am aware of not having been able to translate the complete truth about corruption, and even less, of not having been able to present you with resolving formulae for its eradication (and I think that nobody has them), but I just wanted to share with you the experience of all of you, though aware of the fact that nobody is so wise as to have nothing else to learn, or so ignorant that has nothing to share.

And having said that, I thank you for your patience and attention.
Thank you very much

Myanmar

TEXT OF WRITTEN STATEMENT OFTHE UNION OF MYANMAR DELEGATION

Mr. U Tun Tun Oo

Mr. Chairman, Excellencies Distinguished Guests, Ladies and Gentlemen,

It is indeed an honour and previlege to address this First Annual Conference and General Meeting of the IAACA. Since this is the first time that my delegation is taking the floor, may I offer my hearty congratulations to you on your election to the chair. Our thanks also go to the Government of the People's Republic of China, the Chinese people and the Supreme People's Procuratorate of the People's Republic of China for the warm hospitality given to myself and my delegation.
Mr. Chairman,
Ladies and Gentlemen,

Corruption is a crime that is the concern of not only one nation, but the concern of all nations of the world. It plagues the economy of nations and morality of its citizens. Myriads of efforts are made by na-tions to combat this crime in every field of human endeavour. It is through combating this crime together that we can attack this crime effectively. It is through togetherness that we can face and overcome this crime.
As efforts are being made to combat this crime, jurists and international lawyers are endeavouring to combat it through international law and domestic law. As much as efforts are made in the law enforcement and investigations front, great efforts are seen in the legal front.
International Law is a law that works with cooperation and con-sent of States. Its backbone is the psychological factor or the political will of nations. The psychological factor commonly known by international lawyers as Opinio Juris Sive Necessitatis is the driving force or the force of will that forces the way for cooperation. This will of States gears them to draft international instruments. These instruments come to the midst of nations for signatory, ratification or accession.
Corruption offers many legal problems to be solved, i.e., jurisdiction, punishment, ingredients of crime, venue of trials, applicable laws, etc. They range from Public International Law to Private International Law and Domestic Law. The legal crimes can only be solved through the legal cooperation of States. Thus, in the area of corruption, the Draft Convention Against Corruption was drafted by the United Nations with various drafting sessions.
Regrading Myanmar's participation in the drafting of international instrument on corruption, she dispatched a delegation at its fourth and sixth drafting sessions held at Vienna, Austria on 10th March, 2003 and 21st July, 2003 respectively. Myanmar has signed the Convention.
Transnational crime of corruption has no boundaries or limits and has created crimes to be solved and through international legal cooperation of international legal instruments and enforcement by domestic law, we can tackle them effectively. If international legal cooperation be made through the instrument including the Convention Against Corruption, we are confident that the age old legal maxim Res Ipsa Inquitur (things speak for themselves) will one day emerge that legal crimes be tackled effectively by legal cooperation.
Mr. Chairman,
Ladies and Gentlemen,

In many legal systems of the world with some exceptions international documents work only through domestic law for legal enforcement. All States have their domestic laws against corruption. In the same way, Myanmar has its domestic laws that combat corruption. The two main laws are instrumental in combating corruption in Myanmar. One is the Penal Code which was promulgated in 1861 and adopted as the Myanmar Penal Code by adoption of Laws Order, 1948. There is a Chapter entitled “Offences by or relating to Public Servants” prescribing offences and penalties for the offences specified. Sections 161 through 171 deal with the said offences. The following is the provision of section 162:
“Whoever accepts or obtains, or agrees to accept, or attempts to obtain, from any person, for himself or for any other person, any gratification whatever as a motive or reward for inducing, by corrupt or illegal means, any public servant to do or to forbear to do any official act, or in the exercise of the official functions of such public servant to show favor or disfavor to any person, or to render or attempt to render any service or disservice to any person, or to render or attempt to render any service or disservice to any person with the Union Parliament or the Government or with any public servant, as such, shall be punished with imprison-ment of either description for a term which may extend to three years, or with fine, or with both.”
Another law specifically referring to corruption is the one entitled “The Suppression of Corruption Act, 1948” in Myanmar version. The Act has only six sections and is closely linked to the Penal Code mentioned above. Section 4 of the Act reads as follows:
“4.(1) A public servant is said to commit the offence of criminal misconduct in the discharge of his duties:
(a) If he habitually accepts or obtains or agrees to accept or attempts to obtain for any person for himself or for any other person, any gratification (other than legal remuneration) as a motive or reward, within the contemplation of section 161 of the Penal Code, or
(b) If he habitually accepts or obtains or agrees to accept or attempts to obtain for himself or for any other person any valuable thing without consideration or for an inadequate consideration

from any person. Whom he knows to have been, or to be, or to be likely to be concerned in any proceeding before him or likely to be before him, or business transacted or about to be transacted by him, or business transacted or about to be transudate by him, or form any person having any connection with the official functions either of himself or of any public servant to whom he is subordinate, or from any person whom he knows to be interested in or related to the person so concerned; or

(c) if he, by corrupt or illegal means or otherwise by abuse of his office as a public servant, obtains for himself or for any other person any valuable thing or pecuniary advantage; or.

(d) if he commits any frand to the detriment of public interest or commies in respect of public property entrusted to him, either an act of misappropriation or of misconduct.

Explanation - It is not necessary that the Acts mentioned in this clause should be an offence under the existing laws.

(2) Any public servant who commits criminal misconduct in the discharge of his duty shall be punished with imprisonment for a term which may extend to seven years and all the gains found to have been derived by the accused by the commission of that offence shall be liable to be forfeited to the State.

(3) In any trial for an offence punishable under subsection (2) or under section 161 162, 163 or 165 of the Penal Code, if it is proved that the accused or any other person on his behalf was or is possessed of pecuniary resources or property not commensurate with the legitimate sources of the accused's income, the Court shall presume, in the absence of proof to the contrary, that the accused has committed an offence under sections 161,162,163,or 165 of the Penal Code or criminal misconduct in the discharge of his duties and the conviction for such an offences shall not be deemed invalid by reason only that it is based solely on such presumption."

There are other domestic laws that are promulgated to combat corruption. Among them are the Anti-Trafficking in Persons Law, the Control of Money Laundering Law and the Central Bank of Myanmar Law, among others.

Since Myanmar belongs to the Common Law legal family, the doctrine of Stare Decisis or the Doctrine of Precedents is practised in Myanmar. Almost every section in the above laws has been interpreted by successive Supreme Courts and they are followed by all courts of the land.

Mr. Chairman,

Ladies and Gentlemen,

In conclusion, may I thank the Government of the People's Republic of China and the Chinese people for the very warm welcome, hospitality shown to us and to the Supreme People's Procuratorate of the People's Republic of China for meticulously planning this conference and seeing to our every need. I wish you the best of deliberation in the coming days of the Conference. To all who worked on or behind the seems to make this Conference a reality, you have the heartfelt thanks of Myanmar delegation.

[End of Document]

FLIGHT ITINERARY OF ALL MEMBERS OF FMYANMAR

DELEGATION

Date	From	To	Flight No.	Departure Time	Arrival Time	Flight Hours
1. 21 Oct o6	RGN	BKK	TG 4544	0725	0910	1:15
2. 21 Oct o6	BKK	PEK	TG 614	1030	1610	7:15
3. 02 Nov o6	HKG	BKK	TG 603	0800	0940	2:40
4. 02 Nov 06	BKK	RGN	TG 305	1810	1900	1:20

Namibia

SPEECH DELIVERED BY

HONOURABLE U. D. NUJOMA, MP

DEPUTY MINISTER

MINISTRY OF JUSTICE

ON

THE OCCASION OF THE

FISRST ANNUAL CONFERENCE AND GENERAL MEETING OF THE

INTERNATIONAL ASSOCIATION OF ANTI-CORRUPTION AUTHORITIES

(IAACA)

PEOPLES REPUBLIC OF CHINA, BEIJING 22-26 OCTOBER 2006

THE CHALLENGES OF PREVENTING CORRUPTION

Introduction

Mr Chairperson, I would like on behalf of my Government thank the organizers for inviting me to this august conference so as to share in the wide and varied experiences of other participants concerning the extremely important subject of combating the evils of corruption which is a global problem.

One of the landmark development in the fight against corruption around the world is the adoption of the United Nations Convention Against Corruption. Namibia as a member of the United Nations has ratified the United Nations Convention Against Corruption and is also a signatory to the African Union Convention on Preventing and Combating Corruption and the Regional SADC Protocol Against Corruption. Since the ratification of the above stated instruments, significant steps have been taken to implement these instruments. The United Nations Convention Against Corruption, particularly covers a wide range of measures, both domestic and international, some of which are mandatory. The Convention contains strong provisions on asset recovery, making it an important instrument to help recover some of the estimated US$400 billion looted from African economies and deposited in foreign banks.

The topic for discussion, Mr Chairperson is “the challenges of preventing corruption”. The damaging impact of corruption is worldwide and cross-border, demanding an international framework to effectively combat it. The fact of the matter is that corruption is a universal problem. The United Nations Convention Against Corruption does not provide for a comprehensive universally accepted definition of corruption. However, the most widely known definition of corruption is, that corruption is the misuse of a public or private position for direct or indirect personal gain. Such definition covers both the public and the private sector as well as in civil society generally. For example, an employee of a private company may misuse his/her power to procure materials or contracts on behalf of the company for his/her own benefit, or a sportsman may be offered a bribe to perform below standard in a key match. It is not strange to hear about corruption in sport activities today.

When corruption is considered from this wider perspective, it is clear that corruption generally includes two elements:
Abuse of a position of power or trust.
Personal or commercial gain which benefits both the person who abuses his/her trust and the person or company benefiting from such abuse.
To take it further in most corrupt practices two or more parties are involved. The bribee(s)

receiving a bribe and the briber paying a bribe. In most but by no means all cases, the briber is employed in the private company. Investigations have shown how companies from rich nations have been implicated in corruption in developing countries in order to be awarded tenders. Today many developing countries have join the campaign against corruption, yet they are faced with this challenge by rich foreign companies.

It is also important to recognize that the acts of corruption do not always take the form of payment of money. Bribery for example can take many other forms, such as lavish entertainment, gifts in kind such as vehicles, reduction of purchase price of a vehicle, travel abroad, consumable items, special favours, dispensation or treatment, offers of employment or accelerated promotion, protection from exposure or criminal prosecution and many other forms. The ultimate beneficiaries of corruption may not be the individual public servants or employees of private company who abuse their powers to bestow advantages on the bribes.

Challenges of Preventing Corruption

Achieving good governance and fighting corruption are among the most important challenges facing the world. Corruption can only be prosecuted once there is evidence to support the allegation of corruption. Any anti-corruption strategy should have a strong emphasis on prevention. The UNCAC provides that each State Party shall, in accordance with the fundamental principles of its legal system, ensure the existence of a body or bodies as appropriate, that prevent corruption by means of implementing the policies where appropriate overseeing and coordinating the implementation of these policies. It should also increase and disseminate knowledge about the prevention of corruption. Such body or bodies should be accorded the necessary independence in accordance with the fundamental principles of its legal system, to enable the body or bodies to carry out their functions effectively and free from any undue influence. The necessary material resources and specialized staff may as well as the training that such staff may require to carry out their functions, should be provided.(Article 6).

Given this scenario one of the challenges the anti-corruption bodies face, is adequate funding. Funding of the anti-corruption bodies is essential for the smooth running of such bodies or agencies. It is the adequate funding that would ensure the implementation of other strategies to broaden its scope of corruption awareness campaign.

Another challenge that may confront an anti-corruption body in exercising its functions could be adequate measures to protect whistle-blowers. Only when the protection of informers, whistleblowers and witnesses are protected by way of legislation that these people will be willing to come forth with information on corruption. This should include the possibility of granting immunity from prosecution to whistle-blowers. This is necessary because in most instances the informer would just be as guilty as the person who is being investigated. This is especially the case with bribery. By extending a protection to them in the form of immunity from prosecution, they are encouraged to report corruption. A culture of silence due to fear of victimization can be dangerous and may breed corruption. People are often aware of forms of corrupt practices being perpetrated but are either too tolerant of their work colleagues or too frightened to report them. To overcome this situation and to promote a culture of transparency and accountability, a clear and simple framework must be established that encourages whistle-blowing and protect whistle-blowers from victimization. Of course the law alone is not enough, but the law must provide for the mechanism that allows for the anti-corruption body to deal with the content of the message. Only when the society is aware that whistleblowers are protected, they would be proactive in preventing corruption.

The other factor that could be a challenge to preventing corruption is lack of increased institutional capacity which requires an increase in anti-corruption bodies, courts and departmental anti-corruption agencies. The responsibility to fight corruption needs not be left to one anti-corruption body only. There should be legislations mandating other bodies such as the Electoral Commission, Ombudsman's Office, Auditor-General's Office and others, with the legal duties to monitor corrupt practices. Corruption is a wider concept and only when the functions to fight corruption are apportioned to various bodies that it would be possible for the country to successfully fight corruption. In many instances the courts are overburdened with heavy court rolls, as a result prosecution on corruption charges do not assail through the courts within a reasonable time. The perception the public gets is that corrupt elements are not punished or at the time he/she gets punished by the court, the public has lost interests in the case. Such unfortunate delays may destroy the public's confidence in the fight against corruption.
It is also our considered view that in order to wage an effective campaign against corruption there

is a need to harmonize our legal systems. Different laws in different countries pose serious stumbling blocks as they prevent certain evidence to be admissible or certain witnesses to be interrogated in accordance with the criminal justice system of the country prejudiced by corruption. Other problems are experienced in laws pertaining to extradition and mutual legal assistance. Many anti-corruption bodies are created and appointed by governments. These institutions are expected to investigate the same appointing authorities. Some functionaries in these agencies may feel that they owe allegiance to their masters and this may compromise the integrity of the investigations. This poses a great challenge and can complicate matters for the agency. Matters can further be exacerbated if there is no political will on the part of politicians.

Corruption may also be prevented when proper systems are in place. Improvement to procurement systems, employment arrangements, the management of discipline, risk management and financial management. One other important element in preventing corruption is professional ethics. The development of Code of Ethics that serve as guidelines in one's professional conduct is an important challenge in corruption prevention. Then of course the promotion of awareness campaign on corruption through training and education. It must also be pointed out that there is no uniform strategy just as there are no standard causes of corruption. What is mostly important is to have a realistic political approach. What is required is a political commitment to the fight against corruption. Without political commitment any promise to fight corruption is a mere rhetoric theory.

The Namibian Situation

As I earlier said, Namibia, like many countries particularly in Southern African, has taken significant steps after the ratification of the aforesaid instruments. The Namibian Parliament had since promulgated the Anti-Corruption Act No.8 of 2003. The Act provides for the establishment of the Anti-Corruption Commission and further provides for among others the function of the Commission. In terms of this legislation the Anti-Corruption Commission of Namibia is an impartial and independent body. It is only answerable to the Parliament by way of the annual report that must be submitted to Parliament by the Director of the Anti-Corruption Commission. The powers and functions of the Anti-Corruption Commission are in line with the provisions of the UNCAC. The newly created Anti-Corruption Commission which is barely a few months old has made a significant impact on raising awareness and we applaud the bold steps taken, to prevent corruption and corrupt related activities. Action has been taken to arrest culprits and bring them to book, and by so doing serves as deterrent to others. The Anti-Corruption Commission has a wide range of functions. Some of these functions are:

To receive or initiate and investigate allegations of corrupt practices. This means the Commission investigates complaints or allegations lodged with the Commission but it does not necessarily need to wait for a complaint to be lodged. It may initiate an investigation of the allegation that it becomes aware of either through the media or elsewhere.
To consider whether investigation is needed in relation to an allegation and if so, whether the investigation must be carried out by the Commission or whether the matter should be referred to any other appropriate authority for investigation or action. This entails that cases that are lodged with the Commission, jet they do not fall within the mandate of the Commission are referred to the relevant authority for investigation. In order to monitor the progress on investigation by the relevant authority, the Commission shall demand a report from the relevant authority.
To consult, co-operate and exchange information with appropriate bodies and authorities, including authorities or bodies of other countries that are authorized to conduct inquiries or investigations in relations to corrupt practices. Corruption does not know borders. Corruption does not carry passport and it is beyond the power of a single nation to address on its own. It is therefore crucial that countries have to cooperate with one another in every aspect of the fight against corruption, including prevention, investigation and the prosecution of offenders. This is in line with the UN Convention Against Corruption which obliges State Parties to render specific forms of mutual legal assistance in the gathering and transfer of evidence for use in court and to extradite fugitive suspects. Another fundamental issue relating to cooperation is asset recovery. State Parties are required to take measures that will support the tracing, freezing, seizure and confiscation of the proceeds of corruption. No doubt high level corruption has plundered the national wealth of certain countries. Such resources are sorely needed for the reconstruction and rehabilitation of failed institutions in those countries.
To assemble evidence obtained in the course of the investigation for the purpose of prosecution. This goes to emphasis that adequate training and resources are necessary to ensure that reported cases are dealt with effectively and to encourage those aware of corruption to come forward with information. As a matter of fact whistleblowers shall only blow the whistle when they are confident that effective action against corruption will be the result. The Commission of such

magnitude of responsibility needs to be comprised of highly trained, competent and well-trained investigating officers.
To investigate the conduct of a person employed by the public body or private body which in the opinion of the Commission may be connected with or conducive to corrupt practices.
To take measures for the prevention of corruption such as;
To examine the practices, systems and procedures of public bodies and private bodies to facilitate the discovery of corrupt practices and to ensure the revision of practices, systems or procedures.
To advise public bodies and private bodies on ways of preventing corrupt practices, systems and procedures compatible with the effective performance of their duties and which are necessary to reduce the likelihood to the occurrence of corrupt practices.
To educate the public and disseminate information on the evil and dangers of corruption.
To enlist and foster public confidence and support in combating corruption.

We can only succeed to fight corruption, if members of society are educated on the dangers that can be caused by corruption. Corruption impacts most adversely on the poor and the marginalized. Therefore education of the society on the corrosive effects of corruption is so crucial. Members of society need not only be educated on corruption, but they should become active participants in the daily management of public affairs. That is what good governance entails. The Act defines the public body to include any corporation, board, council, institution or other body, whether incorporate or unincorporated. That is in addition to any ministry, office or agency of government.

As I am speaking now the National Assembly of Namibia is currently debating the Financial Intelligence Bill which provide for the combating of money laundering and to establish an Anti-Money Laundering Advisory Council, to provide for the Bank of Namibia with the necessary powers to collect, assess and analyze financial intelligence data, which may lead or related to money laundering. All these measures will go a long way in combating the evil practice of corruption.

Corruption in relation to good governance

Good governance based on transparency, accountability and an efficient integrity system is a necessary tool for the prevention, detection and prosecution of corruption and for fostering sustainable development. Any effective anti-corruption strategy must recognize the relationship between corruption, ethics, good governance and sustainable development, transparent and accountable governance enhance institutions which act as deterrent against corruption. There must be transparency, which is the important component of ethics and of course an indispensable aspect of strategies to combat corruption. Transparency is evidenced by public policies, clear boundaries for institutional activities, articulation of planning and budgeting processes, result oriented management systems, existence of result oriented assessment procedures and processes conducive to accountability and adequately developed information system. When all people are actively participating in the process of fighting corruption, the chances of corruption, are reduced. There are many challenges but if we all globally assist each other in all kind, we shall overcome these challenges.

Finally, may I express our sincere gratitude to our host, the people and the government of the Peoples Republic of China for the warm welcome and hospitality extended to my delegation since our arrival in your beautiful capital Beijing.

Long live the friendship between the Peoples Republic of China and Namibia.

I thank you

Nepal

(Text of the speech of Rt. Hon. Chief Commissioner Mr. Surya Nath Upadhyay of the Commission for the Investigation of Abuse of Authority, Nepal to be delivered in the morning of 24 October 2006 during the First Convention and General Meeting of International Association of Anti-Corruption Authorities in Beijing, People's Republic of China)

Mr. Chairman,
Your Excellencies,
Distinguished Delegates,
Ladies and Gentlemen!

It is a great pleasure for me and my colleagues to be here to participate in this 'First Annual Conference and General Meeting of The International Association of Anti-Corruption Authorities.' On behalf of my country *Nepal*, my organization *The Commission for the Investigation of Abuse of Authority (CIAA)*, my team and myself, first of all, I would like to extend my heartfelt congratulation to the Government of People's Republic of China and the Supreme People's Procuratorate of People's Republic of China for hosting this Conference. I also wish to express my sincere gratitude for giving me this opportunity to share our learning on anti-corruption efforts amidst all like-minded friends, associates and contemporaries who are devoted to proclaim a fight against corruption.

It is needless to say that the cost of corruption remained very high to our development and civilization. Now, all of us are realizing that corruption and bribery have undermined our good governance, social welfare, economic development, and political stability. The presence of corruption problem as a global phenomenon is widely understood.

While corruption is a feature of all societies to varying degrees, it is a serious threat in particular for economies in transition and countries which are at their nascent stage of development because it undermines equitable growth, discourages capital investment, and curtails the resources available for infrastructure, public services and poverty-reduction programmes. The reality is that in many new democratic countries the political commitment and democratic structures have remained remarkably weak in controlling the tenacity of corrupt practices.

When we talk of corruption we need to understand the law and order, the government stability, the bureaucratic performance quality, and the economic and social behavior of a particular society. Not only this, the whole array of issues associated with governance ranging from the type of government, the structure of power balance, the political history of the country, the laws and the institutions, and above all the social attitude towards this subject need to be taken into account.

> In Nepal, the fight against corruption is a long drawn historical movement. For us the year 2002 is the turning point in the history of corruption control. It is the most important period from the point of view of establishing a legal regime for combating corruption and creating competent legal system with a set of laws to reinforce with more sophisticated arms and ammunitions against the battle of corruption. Our experience in the attainment to this legal regime is a saga of successes and failures, as well as trails and errors. We realized that a regular court which has to hear all sorts of cases would not be able to dispense speedy justice that is so vital in the case of corruption. It would also not be able to apply the expertise that is required for such cases. In the situation of enrichment by corrupt and illicit actions it is near to impossible for any investigating authority to get concrete documentary evidence of corruption. Hence, the onus of the proof must rest with the accused in the case of disproportionate assets.
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> Leadership is another aspect, which matters most in this campaign. One needs to find a dare devil to endure any pressure be it coming from political circle, friends, business community and even from the family connection. The combatant should understand that he or she needs to have strong backing of the media, awareness among the people and a strong alliance of the governmental and non-governmental institutions, which would rally behind the cause and the strides that would be taken in this context. These are some of the lessons that we have learned in Nepal in course of fighting against corruption.

In our experience, anti-corruption efforts are a story of considerable promise and creative initiatives dissipated through poor follow up and weak implementation. The political commitment has been rhetoric reflecting the imperfect and narrow credibility of the senior political leaders and the larger political parties when they arrive to fighting corruption. Frequent

change in government, horse-trading, unhealthy compromises, unethical alliances for power etc. all contribute and pose constraints to such institution. The control of government has impacted the institution in two ways: (1) it has been used occasionally as a tool to settle the score of the ruling party against its rival party, or (2) even if the institution operates fairly, it may loose its credibility in the eyes of the general public due to the massive false campaign launched by the rival political parties.

Not only the sound legal regime, but equally important is the autonomy and independence of the authority, which has the responsibility to fight against corruption. We learned from our past experience that in a political culture and soft state syndrome like ours, the anti-corruption body under the government would not be able to act effectively. All attempts were evaporated by the ill-interest of top leaders. We, therefore, dismantled the anti-corruption body under the supervision of Government ministry and formed an independent and autonomous commission. As it stands now CIAA is a unique body, which is unparallel to many institutions in the world. It enjoys comprehensive powers of investigation and prosecution. CIAA is responsible to parliament. The Commissioners enjoy constitutionally high position and are appointed for a fixed term. They can only be removed by a two third majority in the parliament. This independence and autonomy has its direct bearing on its work.

CIAA as an institution is also very unique in its functions that it combines the attributes of an investigator and prosecutor both. In many cases it acts as ombudsman as well. The actions of the past couple of years have a long bearing upon the total governance of the country. On its behest legislative and administrative changes have been brought by the government. In the realm of criminal prosecution land mark achievements have been made. There has been phenomenal increment in the conviction rate of the crime of corruption in the country.

However, with the attainment of success we have also learned many lessons in the meantime. A formal structure and the provisions of law are not enough to attain the required effectiveness and independence. One may be independent by law, one may have a formal set of democratic norms but unless and until the formal norms transcend to the behavioral pattern and attitude, it becomes difficult to enjoy the independence and to become effective. Unfortunately, many a times we have experienced that the law remains in the statute books and never implemented. This applies in the case of anti-corruption body's independence and effectiveness also. The way the social fabric of our bureaucratic culture is woven, it becomes very difficult for us to come out from the shackles and be a reformist. It is likely that the fighter may fall to the pulls and pushes, undue favors and concessions, and links and nepotism. Hence, the social reform process should equally be launched with that of formal legal regime against corruption. In the absence of such a drive a single institution cannot sustain and function effectively.

We in CIAA also believe that the fight against corruption cannot be won without citizen's support, participation and vigilance. The Civil and Non-governmental partners play a crucial role in fostering public discussion of corruption and increasing awareness about the negative impacts of corruption. In this sphere over the last 5 years, CIAA has achieved some success in collaboration with Civil Society Organizations, which are spontaneously working for anti-corruption and good governance. They may indeed contribute a large share to monitoring and investigating government and business activities and thereby deter corruption. Very recently we ended up with an attempt to involve government agencies, business sector and civil society representatives at the district levels in a single forum to enhance their solidarity to fight against corruption. It is the first of its kind of model where all three sector people are together in one coalition forum and form a co-ordination committee. Through this committee we are exploring the possibility of more enhanced implementation of anti-corruption activities.

With the growth of technology and interlinking of the economy of many countries in our time corruption also has transcended across the borders and has taken international character. Its tentacles are spread between and among many countries. Hence, there is immediate and urgent need for countries to come closer and devise common methods and strategies to fight this menace. We must applaud in this connection the efforts made by the UN in bringing out the Convention against Corruption. Nepal has been a participant of negotiating conference of this Convention and has signed it. We have set up committee to prepare a report for its ratification and hopefully very soon we shall be able to ratify this Convention. Besides, some of us in Asia and the Pacific Region have joined Asian Development Bank (ADB)/Organization for Economic Co-operation and Development (OECD) Anti-Corruption Initiative to demonstrate our solidarity in this campaign. This initiative has provided excellent opportunity to learn from each other and enhance our skill. There is a clear need for the countries to come more closer in this regard.

Nepal as a neighbouring country between two huge growing economies - the People's Republic of China in the north and India in the South - we place high value to our joint cooperation in economic development and controlling corruption. Mutual legal assistance and cooperation for extradition are essentially important to restrain cross-boarder crimes. In the case of corruption these tools are vital because of the reason that the fight is against those who have the resources and means to operate and enrich themselves and go beyond the reach of the particular jurisdiction. There is need of concerted joint operation for apprehending the criminal and recover the ill-gotton assets. Nepal shall always be in the forefront in this regard in terms of extending cooperation and would like to work together. At this juncture, I am sure, this historical Convention and General meeting of International Association of Anti-Corruption Authorities will prove to be an important signpost in fastening the international relation. UN Convention provides the chord of such bondage to unite us together. I wish this august gathering will conclude with high-breed strategies to earn an extra mileage in the course of anti-corruption activities.

Let me conclude by saying that fighting corruption is difficult, but not impossible. Experience shows that in societies a small percentage of people are always there to cheat, no matter how good the laws are. Reversely, there are also some good people who are having high moral values. Our anti-corruption efforts should be directed towards altering the corrupt system by the good system to give the corrupt people really a hard time. This Conference and General Meeting may lead us towards this direction to reflect our solidarity and action to make our societies clean, our conscience clear, and to uphold our moral values high. Let this be a precursor for bringing concerted efforts against the great menace of corruption which has plagued our countries and societies.

Thank you!

Surya Nath Upadhyay
Chief Commissioner
The Commission for the Investigation of Abuse of Authority
Nepal

Pakistan

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PRESENTATION OF MR. IRFAN QADIR, PROSECUTOR GENERAL, PAKISTAN ON THE TOPIC "EFFECTIVE ANTI CORRUPTION AGENCIES, POLICIES, STRUCTURES AND FUNCTIONS – PAKISTAN'S EXPERIENCE."

Pakistan's Efforts in Combating Corruption

Pakistan has been pro-active in its desire to eradicate corruption both internationally and estically. Pakistan's active participation in the negotiations for finalization of United Nations vention against corruption which was finalized and signed in December, 2003 is ifestation of its resolve against corruption. Consequently, an international conference on UN vention against Corruption was organized in Islamabad in April 2004. This indeed was an ortant initiative. Pakistan is now in the process of ratifying the Convention.

Need for New Law on Account-

the domestic front, Pakistan slid to the bottom of corruption index. Thus National countability Ordinance was promulgated on the 16th of November, 1999 as the existing laws ere inadequate to deter the corrupt or to effectively recover the proceeds of crime.

Eradicating Corruption through

ıe focus of National Accountability Ordinance unlike previous laws was not merely on forcement alone [i.e. it was not restricted to investigation or prosecution]. This Ordinance also led for measures to eradicate corruption from its source through awareness and prevention. ational Accountability Ordinance, therefore, not only provides for dealing with the

delinquent but it also has in view the need to educate society about the harmful effects of corruption and to take preventive measures for its eradication. This is manifest from Section 33-C of the National Accountability Ordinance. In order to achieve the objectives contained in the National Accountability Ordinance, the National Accountability Bureau was constituted for the entire country. The National Accountability Bureau unlike other agencies [which were only enforcement oriented] launched a three pronged attack on corruption i.e. through awareness, prevention and enforcement.

National Anti Corruption Strategy

:ober 2001 a process was initiated in Pakistan to formulate an Anti-Corruption Strategy to he menace of corruption. This resulted in the launching of a project known as the National Corruption Strategy. The main focus of this project was to accomplish the following tasks:-

:ntify the causes of corruption;

To give recommendations for addressing these causes;

To implement these recommendations through actual operations.

Conceptually the National Anti-Corruption Strategy was based on the pillars of national integrity system [a concept borrowed from Transparency International]:-

(1) Legislature.
(2) Judiciary.
(3) Executive.
(4) Anti Corruption Agencies.
(5) Public Accountability Bodies.
(6) Media.
(7) Civil Society.
(8) Private Sector.

Through the National Anti-Corruption Strategy weaknesses in each of the aforesaid pillars were discovered which led to the following conclusions:-

There is a large scale corruption in every sector;

The corruption at the top level has been relatively less as compared to the middle and lower tiers of public sector institutions. According to this Strategy the main causes of corruption have been identified to be:-

Poorly paid employees of large public sector organizations possessing sufficient opportunities for corruption;

Complicated and obscure laws and procedures;

Collapse of the accountability system.

Social acceptability.

The National Anti-Corruption Strategy is essentially aimed at eradication of corruption through awareness and prevention in the following ways:-

Through education and awareness develop a society i.e. vocal and effective against corruption;

Awareness

Prevention

)ugh a preventive model reduce needs and opportunities of corruption;

Enforcement

ment however remains the most important tool of eradication of corruption. This is the of the National Accountability Ordinance. In Pakistan's experience the enforcement operations have been extremely successful. There are number of reasons which have made these operations highly successful:-

(1) The law assigns the tasks of uprooting corruption to the National Accountability Bureau of Pakistan. The synthesis of the provisions thereof would reveal that the prosecution and investigation are a part of the same agency yet both maintain their independence in a manner in which they supplement each other. The National Accountability Bureau of Pakistan consists of two offices viz the office of Chairman of the National Accountability Bureau and the office of the

Prosecutor General of Pakistan. Both these functionaries have been given security of tenure and none of them can be removed from office unless they complete their tenure. As regards their removal they have been provided same safeguards which are available to the Judges of the Supreme Court in Pakistan. As such, the possibility of their removal is remote. Infact, both Chairman National Accountability Bureau and the Prosecutor General are a check on each other. There are number of powers which the Prosecutor General is to exercise with the approval of the Chairman and yet there are areas where Prosecutor General can act independently of the Chairman. This mechanism of law prevents either of these functionaries to abuse their positions. In a nutshell, the National Accountability Ordinance envisages the creation of an Anti-Corruption agency where no one single individual can abuse his position.

(2) All the investigations are scrutinized by the Office of the Prosecutor General yet the decision to forward the case for trial is to be taken by the Chairman. In case Chairman National Accountability Bureau arrives at a wrong decision and causes a reference to be filed in the court the Prosecutor General can withdraw the reference but this withdrawal is subject to the decision of the Accountability Court. It is because of these checks that Pakistan's experience in its efforts against corruption has been extremely successful.

That National Accountability Ordinance exhaustively and comprehensively deals with the offence of corruption. Resultantly, no conceivable form of corruption is outside the domain of corrupt practices mentioned in Section 9 of the National Accountability Ordinance. This all encompassing mandate is largely responsible for successful operations of Pakistan's apex anti corruption agency viz the National Accountability Bureau.

It has become extremely difficult for the corrupt elements in Pakistan to hide their ill-gotten assets. Banks are under an obligation to report unusually large transactions devoid of genuine economic or lawful purpose. Failure to report such transactions entails penal consequences against bank officials i.e. the delinquents can be sentenced upto a period of five years with fine. Besides, the ever vigilant intelligence and surveillance teams of the Bureau remain busy in carrying out an effective ground check of immovable assets in routine. These units immediately report about sudden accumulation of assets by anybody who lacks lawful resources to justify the acquisition of such assets.

The Mutual Legal Assistance under the National Accountability Ordinance is not stifled on account of absence of a bilateral treaty and regardless of such treaty the National Accountability Bureau can seek or furnish mutual legal assistance to and from jurisdictions abroad. I would suggest that other countries of the world should also follow Pakistan's example and incorporate a similar provision in their relevant statute so as to ensure that impediments in the way of mutual legal cooperation are removed in line with the spirit of UNCAC.

In the matters of public procurement and obligations incurred by government and public sector organizations of contractual nature Section 33-B makes it mandatory that all such contracts of a monetary value of Rs.50 million or more ought to be reported to the National Accountability Bureau by the officials concerned.

Distinction between National Account-ability Ordinance and earlier laws

One of the basic distinction between the previous laws and the National Accountability Ordinance is that the former did not provide an effective recovery mechanism. The earlier laws were mainly confined to holders of public office i.e. politicians or the bureaucrats. The National Accountability Ordinance brought within its ambit all persons indulging in corruption or corrupt practices in the public or private sector including persons committing wilful default which heretofore was not an offence in Pakistan but was essentially a civil liability. In order to effectively enforce the recovery mechanism, concepts such as voluntary return, plea bargain and reconciliation of liability were introduced in the law. The consequences of voluntary return are the same as that of plea bargain. A person offering voluntary return is absolved of criminality whereas a person entering into a plea bargain becomes a convict by fiction of law but without undergoing sentence of imprisonment. Both voluntary return and plea bargain facilitate the return of money to some legal entity that has suffered the corresponding loss.

New Reasons for Success under the National Across the Board Account-ability

National Accountability Ordinance envisages across the board accountability. The Ordinance applies to every person in Pakistan. It admits of no exception. Notwithstanding the specialized nature of the subject matter of this law viz corruption, this law generally applies to all. The high functionaries in the public and private sectors have been prosecuted and punished. The myth that the sacred cow was broken and it has now become impossible for any organ of the State to exclude itself from the purview of this law. Prime Ministers, Chief Ministers, Generals, Air Marshals, Admirals and Ministers are being investigated, prosecuted and punished.

Relief to

le relief was provided to a common man in major corporate scams such as forex, ves, housing societies etc. through recovery of the misappropriated amounts from the ts. Besides, Banks and other financial institutions were revived through recoveries made from wilful loan defaulters and those who had misappropriated, embezzled or fraudulently deprived these institutions of their assets.

Recoveries & Repatriation of Assets to Public and

le recoveries made from the delinquents resulted in repatriation of assets to public and ctor organizations. The total recovery made by the National Accountability Bureau is to f over US$ 4 Billions whereas an infinitesimal portion was spent on NAB operations.

Conclusion

recovery of over Rupees 240 billion is manifestation of the commitment to uproot ı. Inspite of this resolve, a lot remains to be done. We are far from achieving the ideal of on free society. However, if we strive to ensure the accountability of the corrupt in an ed way there seems no reason why this ideal may not be achieved. Only evenhanded ility of the corrupt can establish the credibility of any anti corruption initiative. If we us of eradicating corruption we must never venture to exclude ourselves from ility which infact is the very essence of life in this world and hereafter. In the words of Quran:

"O ye who believe! Stand out firmly for Qist (justice), as witnesses to God, even as against yourselves, or your parents, or your kin, and whether it be (against) rich or poor: for Allah can best protect both. Follow not the lusts {of your hearts), lest ye swerve, and if ye distort (justice) or decline to do justice, verily Allah is well-acquainted with all that ye do. [4/135]"

"And O my people! Give measure and weight in Qist (justice) and reduce not the things that are due to the people, and do not commit mischief in the land causing corruption. [Prophet Shoaib (PBUH) to the people of Madyan 11:85*]"*

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II

"The Challenge of Preventing Corruption"

Chairman NAB's Speech
Monday 23rd October 2006
Session I (10:30 to 12:30)
Speech duration: 10 minutes.

Distinguished Delegates, Ladies and Gentlemen:

I take this opportunity to congratulate our dear friends and brothers from the People's Republic of China for spearheading the initiative of establishing the International Association of Anti Corruption Authorities. I particularly appreciate Dr. Ye Feng's untiring efforts for gathering international support for the Association.

It is my profound pleasure to address this August gathering of Anti Corruption practitioners and experts.

Dear Colleagues,
Corruption has been, and continues to be, one of the major problems the world faces today. It has global dimensions and exists in all countries of the world in varying degrees.
Corruption has unfortunately become a high gain - low risk phenomenon. We need to reverse the equation. Effective prevention will decrease the chances of gains by the corrupt and proper enforcement certainly increases their risks.

Without undermining the necessity of effective penal measures, I must say that the impact that timely preventive intervention can have on controlling corruption is by all means incomparable.

The emphasis on Preventive Measures and the importance of engaging the civil society outlined at the very outset of the UN Convention Against Corruption, sets the long-term problem solving tone.

In preventing corruption the focus is on eliminating the causes, rather than just fighting the symptoms. Through preventive action policy makers and managers can be assisted in designing better systems that decrease the opportunities for corruption. Societal participation in the fight against corruption is in itself a very important tool of prevention. Properly designed awareness strategies help in developing social attitudes against corruption and in turn effectively serve the preventive purpose.

Ladies and Gentlemen, I would like to briefly share our experience at the National Accountability Bureau, in its transition from an agency focusing solely on investigations and prosecutions, to an organization dealing with the challenging task of preventing the incidence of corruption and raising societal awareness about its adverse impacts.

Our Bureau itself undertook a project in 2002 for developing a National Anti Corruption Strategy, to identify causes of corruption and recommend remedial measures. The strategy gives recommendations as well as a time bound implementation action plan.

A basic recommendation of this strategy was indeed the necessity of having a comprehensive anti corruption approach encompassing awareness, prevention and enforcement.

Resultantly, the anti corruption law in Pakistan was amended and now we have the mandate for examining laws and regulations that govern the functioning of various government departments with a view to suggesting necessary changes to plug in the loopholes. Similarly, the National Accountability Bureau can now, upon request from private entities assist them in developing internal anti corruption mechanisms. The law now makes it mandatory for all federal, provincial and local government entities to furnish to the Bureau copies of contracts entered into by them that exceed a certain amount.

We have since had a number of successes but have also identified many challenges in the way forward.

To begin with, we successfully restructured our own organization, which now has a full-fledged Awareness and Prevention Division. Our Prevention Wing has undertaken a number of successful pilot projects.

One such project was the redesigning and reforming of the corruption prone Islamabad Traffic Police. The department incorporated the concepts and reforms suggested by us, and today it is being seen as a role model by the traffic police in other major cities.

We have also revamped the Asset Declaration system for government servants. Declaration forms have been revised and software designed to ensure computer based monitoring.

Public procurement, being prone to corruption is another priority area. We assisted the Government in setting up of the Public Procurement Regulatory Authority and formulation of new Procurement Rules.

Another of our achievements includes supporting the Prime Minister's Office in holding an 'Ethics Retreat' of the Federal Cabinet early last year. The Cabinet spent a whole day in deliberations on the issues of integrity, transparency, accountability and Governance. The outcome was a Cabinet Declaration reiterating the commitment to combat corruption.

A number of other preventive projects in areas such as tax administration and pension payments have also been initiated.

We at the National Accountability Bureau have been actively supporting the implementation and ratification of the UN Convention Against Corruption. A Consultative Group of various government departments was formed to evaluate the Convention in detail. The Group has completed its deliberations, and now the Government is ready for initiating the formal processing of the Convention for ratification.

The strategy lays down significant milestones in developing an anti corruption regime, but its proper implementation is a big challenge. Capacity constraints, resource limitations, and lack of expertise and training are some of the challenges faced at the operational level.

Also, prevention is a participatory approach, as without the interest and ownership of

stakeholders, it is not possible to successfully implement the reform process.

I believe that the International Association of Anti Corruption Authorities (IAACA) can play an important role in addressing these challenges. International Cooperation fora such as this Association are essential for a successful anti corruption drive. These not only provide opportunities for sharing and learning from each other's experiences, but also serve as an instrument to seek support of the political leadership. It is my hope that this Association would help in strengthening the global political will to combat corruption.

This is a momentous occasion for all of us and I hope that the International Association of Anti Corruption Authorities will be making significant contributions in the fight against corruption. Lets take time by the forelock.

With this ladies and gentlemen, I thank you all for giving me a patient hearing.

Portugal

The Portuguese Situation Regarding the United Nations Convention against Corruption and the International Cooperation Mechanisms

The problem of international cooperation is a subject that will always be central to the concerns of the fighting corruption authorities. In a globalised world, with the progressive opening of markets, the increasing circulation of persons, the almost unlimited circulation of capital and facility of accessing new technologies, fighting corruption within a strictly domestic circle will certainly be a task doomed to fail.

And international cooperation is important at all levels, even in the simple contact between agencies and in divulging their activities. In fact, divulging good practices and good results in fighting corruption is a positive factor that leads other institutions and other countries to follow that path. Look, for example, to the important role played by the Hong Kong Independent Commission against Corruption (ICAC) in the last 25 or 30 years that made a great contribution to active policies that established or improved anti-corruption agencies, e.g. in Macau, Australia, South Korea, Malaysia and also in Mainland China.

International co-operation is also decisive both to investigate and recover assets, and to investigate money laundering activities. It must, however, operate on solid foundations enabling effective co-operation mechanisms between the various investigation agencies. One should, in fact, acknowledge that such foundations have been build in the past few years based upon International Law instruments, the United Nations Convention (the Merida Convention) being another good example of that.

However, I'm faced with the fact that Portugal has not yet ratified this Convention. There are two reasons for this. In the first place, Portugal has been actively reforming its criminal and criminal procedures systems under the guidance of a mission unit that was established for that purpose and, on another level, by Parliament that will certainly soon deal with this important issue. In the second place, even though such ratification has not taken place yet, Portugal already has several instruments that meet most of the United Nations Convention requirements and, without

prejudice to the need for ratification, this fact minimizes the urge for that to happen.

In fact the Portuguese criminal system lays down the list of crimes set out by the United Nations Convention, covering the public sector, the private sector and international business according to a broad concept of officer that, in certain cases, also encompasses foreign officers and European Union officers.

Such offences are punished with an heavier penalty when carried out by anyone holding a public office (Law 37/87 of 16 July).

It lays down a set of special arrangements aimed at fighting corruption, organized crime and financial and economic crime, with specific provisions on the breach of secrecy for the sake of criminal investigation, on the bank accounts' control, property loss (Law 36/94, of 29 September and Law 5/2002, of 11 January) and on the possibility of carrying out under cover actions (Law 101/2001, of 21 August).

It sets outs a witness protection program (Law 93/99, of 14 July) within criminal procedures whenever danger may threaten witnesses' lives, as well as their physical or mental integrity, freedom, and considerably high value property as long as such danger is motivated by the fact that they have provided evidence regarding facts examined under the legal action. Such protection is extensive to anyone, regardless of their status in the criminal procedure and this may also cover their family members or any close person.

The Civil Service Disciplinary Statute (Law-Decree 24/84, of 26 January 1986) lists the civil servants' general and special duties forming a sufficiently detailed code of conduct and establishing adequate guidelines to curtail corruption activities and the like.

The law sets out strict rules regarding financing of political parties and electoral campaigns (Law 19/2003, of 20 June), the financial accounts of which are controlled by the Constitutional Court through an independent body, the Entity for Financial Accounts and Political Financing. The members of this body are appointed by the Constitutional Courts Judges in a plenary sitting (Organic Law 2/2005, of 10 January).

The law also sets out rules that pre-empt and punish laundering of illegally obtained benefits. Such rules were adopted following two E.U. Directives on the use prevention of the financial system for the purpose of money laundering (Law 11/2004, of 27 March) imposing a vast set of duties to credit institutions, investment firms and other financial companies, insurance companies, management of group pension funds undertakings, venture capital firms, exchange offices, risk capital management and investment companies and group investment firms. The scope of such duties goes from monitoring to notifying of their clients' suspicious operations and are extensive to non-financial entities such as Casino concessionaires, real estate agents, lottery or gambling agents, high-value property business, external accountants, companies, notaries, registrars, lawyers and other legal professionals and other independent professionals. The observance of such duties is monitored by supervision bodies and the breach of such duties is severely punished. It is an important instrument that also follows the forty recommendations set out by the Financial Action Task Force, involving financial and non-financial institutions in the investigation of crimes that oftentimes stem from various forms of corruption or similar crimes.

Finally, the Public Prosecution Service and the Judiciary Police are in charge of carrying out corruption prevention actions (Law 36/94, of 29 September). The Judiciary Police acts through a specialized unit, the Central Directorate for Fighting Corruption, Fraud and Economic and

Financial Offences, that is in charge of gathering information, requesting hearings, inquiries and investigations aimed at checking administrative procedures and that suggests any actions that may result in the decrease of this type of crime. Without prejudice to its technical independence, the Judiciary Police, under the Public Prosecution Service leadership is also in charge of carrying criminal investigations regarding corruption. In 1986 attempts were also made to establish a system that did not produce the expected results. It consisted in establishing a High Authority against Corruption that had the power to investigate, check and monitor all the Administration activities and had the power to initiate legislative measures and recommend administrative practices. It was thought that by having an independent authority with vast powers to access the Public Administration and monitor the administrative activity it would be possible not only to put a break to corruption but also help establish good practices in the administrative activity. In spite of the worthy job that was carried out, the High Authority would be brought to an end six years after its inception on account of poor results. Hence the belief that prevention without coercion is not enough to put a break to corruption and such powers were transferred to the Judiciary Police. The Judiciary Police has brought together prevention and repression, and is now in a better position to reach the desired goal. Note that, regarding criminal investigation, the Judiciary Police is under the authority of the judiciary authority and not under the Government, thus carrying out its mission free from undue interference, notably political interference.

At this point, we need to stop to think. Portugal, in fact, has a legal system that basically meets the United Nations Convention proposals both in what concerns incrimination and investigation, and also regarding a large number of preventive measures.

Then, why are we just 27 on the transparency ranking? This may not be fully accurate. But in any case, it is an important sign that must be considered. What has been going wrong in the fight against corruption?

We believe that the problem lies in the investigation methods that have been followed and in the lack of a global perspective regarding this phenomenon that needs to be most urgently fought. The fight against corruption must be conducted by a specialized body. It must be free from interference and such combat cannot be performed in isolation, demanding the participation of all entities that directly or indirectly engage in that action. This is particularly true in the public sector, where most easily people tend to believe that it is a crime without victims and, therefore, the harder it is to have them co-operate in such combat. Especially noteworthy among those entities are the tax and customs authorities that supervise the financial system. Their contribution is pivotal to fight certain forms of corruption and money laundering, notably in more complex situations involving multiple or geographically scattered crimes, a large number of defendants, shell companies, tax havens, fictitious flows of goods, forged documents and invoices, fictitious businesses and when such activities are carried out in an organized or transnational manner.

The need for such joint actions led to a recent co-operation protocol between the Judiciary Police and tax and customs authorities enabling real-time computer access to different data bases with relevant information. In the near future mixed investigation teams as well as mutual operational support and technical support teams will be established.

Besides, in order to establish specialized units, the police directorate in charge of fighting corruption has formed three sections: one, dealing with corruption in municipalities, municipal

companies and the like; a second one aimed at corruption in central administration bodies, public companies and public institutes; and a third, for corruption in sports, security forces, international business relations and corruption in the private sector. Corruption befalls these areas for reasons that are not always the same. In case of municipalities, corruption arises on account of a certain distance form the central supervisory entities and also because, in the context of rivalry between local and central power, the population's collusion - for they are more attracted to local programs than the great State objectives - is a determining factor. The problems of corruption in central administration organisms, companies and public institutes is not worrisome in terms of frequency, but in terms of substance, since therein lie the major risks of corruption and consequent State degeneration. The remaining areas of incidence of corrupt activities are under investigation in the same section, not because they don't deserve the same attention but because they concern more specific domains and they have a more specific profile.

Specialization, linked to information shared between the various sections and the several entities we mentioned, will certainly lead to better results in tracking corruption. Please note that many of the mentioned measures are recent.

The fight against corruption requires a tracking force, which in turn needs a determined and united front. This force should include the State's several organisms, the financial system and parallel institutions, as well as a strong social pressure based on civic education and free press, that is free from political power control and from certain economic monopolies which, in very well known cases, steered the fight against corruption towards the judicial powers and the policing activities that were supposed to be tackling it.

In my view there is one fundamental flaw in the Portuguese legislation, that is, the lack of punishment of illegal enrichment of civil servants. In fact, despite the raising awareness, there has been a strong resistance, first and foremost from the academic circles, under the guise of unconstitutional problems, which, in our view, are brought about by an incorrect notion of this type of crime. What must be followed is not a policy of facilitating evidence, perhaps including a reversal of the burden of proof. Such an attitude would result in making this a substitute of the crime of corruption, used in the cases where proof of wrongdoing could not be obtained. What is at stake here is the creation of a new type, based on the violation of the duty of transparence - demanded of all employees – lest there be a loss of the State's and public institution's credibility. Under such circumstance, the request for the employee to prove the lawful origin of his respective estate will never be considered an element of the crime itself, rather, an opportunity for his defense.

As we know, the constitution is the anchor of fundamental rights, an indispensable pillar of the Rule of Law. However, it will lose this status once it is converted into a refuge for corrupt agents, the main enemies of the democratic Rule of Law.

Thus, I consider the United Nations Convention against corruption a fundamentally significant instrument in the fight against the plague that is corruption, also because of the recognition of the crime of illegal enrichment.

Finally, it is upon us to pay more attention to the 'intelligence' activities within the fight against corruption. Corruption on a large scale undermines the core of the Rule of Law and we risk placing the State's structures at the hands of organized crime. The fight for credible judicial systems and honest and efficient public administration is a fundamental part of internal security

policy, which cannot forego the intelligence service's contributions and its interaction with policing organisms. Even more so when corruption infiltrates into the areas where the intelligence services generally operate. No one will contest the strong link between corruption and espionage.

Concerning the main guidelines of the Portuguese regime in terms of international cooperation, let's point what type of assistance from the Portuguese authorities may be obtained in fighting corruption.

The most important cooperation instrument the Portuguese legislation has to offer is the Law on judiciary cooperation in terms of criminal matters. (Law 144/99, 31st August). Such is a diploma defining the forms of cooperation on the matter, including extradition, exchange of criminal suits, sentence executions, transfer of convicts, surveillance of those convicted or on parole, and mutual judiciary assistance concerning criminal matters. The latter in turn includes the notification of actions and delivery of documents; obtaining evidence; searches, raids, detentions, exams and expert reports; notifying and hearing suspects, defendants, witnesses or experts; movement of people; information on Portuguese or foreign law and case precedent in terms of suspects, defendants or convicted persons.

The law is applicable in case of absence or insufficiency of treaties, conventions or international agreements pertaining to this matter and in general, it can be applied to assistance requests as long as the principal of reciprocity is respected (art. 4). However, even in the absence of reciprocity, an assistance request may be met when such cooperation is 'deemed advisable owing to the need to fight certain serious forms of criminality' (art. 4, nr. 3, l a). Certainly no one will cease to recognize that the fight against corruption is within the fight against a serious form of criminality. Cooperation acknowledges the tasking of joint criminal investigation teams (art. 145 – A), controlled or monitored deliveries (art. 160 – A), undercover actions (art. 160 – B) or communications' interception (art. 160 – C). These actions presume an agreement, treaty or convention and, in the case of undercover actions, respect for the principle of reciprocity is fundamental. This type of cooperation may occur among States bound by the Convention on Combating Bribery of Foreign Public Officials in International Business Transactions, undertaken within the scope of the OECD on the 17th December 1997. In effect, as set out in article 9 of the a/m convention, already ratified by Portugal (Parliament resolution nr. 32/2004, of the 2nd April 2004), each of the parties will grant, insofar as their laws and international instruments allow, 'a ready and effective judiciary cooperation'. The same is the case with the States that subscribed to the United Nations Convention against Transnational Organized Crime and additional protocols, also already ratified by Portugal (Parliament resolution nr. 32/2004, of the 2nd April 2004), regarding the crimes set out therein and in the terms set out in articles 18 and thereafter.

It may also be granted within the framework of the European Council's Criminal Law Convention on corruption (ratified by Parliament resolution nr. 68/2001 of the 26th October), in strict conformance to the norms that are an integral part of the convention's chapter IV.

I believe it will not be long until the same support is granted within the scope of chapter IV of the Merida Convention.

Still within the range of cooperation, but at the level of the EU's member States, it is important to highlight the European arrest warrant, which stands on the principle of mutual recognition. Based

on such a warrant, the monitoring of double jeopardy is foregone, as long as the facts are in accordance with the issuing Member State's legislation and fall within a range of crimes, punishable by no less than 3 years' sentencing, among which are the crimes of corruption and money laundering. Although this instrument is still limited in its usage, it is a trend in cooperation among other States in this matter.

I come to the end of my brief intervention. I congratulate the Supreme People's Procuratorate for this important initiative and I would like to thank all those of you present.

Júlio Pereira (Procurador-Geral Adjunto)

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Papua New Guinea

FIGHTING CORRUPTON AS A PUBLIC SECTOR OMBUDSMAN IN PAPUA NEW GUINEA.

A PAPER PRESENTED BY OMBUDSMAN PETER MASI

AT THE FIRST ANNUAL CONFERENCE AND GENERAL MEETING OF THE INTERNATIONAL ASSOCIATION OF ANTI-CORRUPTION AUTHORITIES.

Grand Epoch City, Beijing. PR of China

Monday 23rd October, 2006

Introduction

We are at the eve of establishing the International Association of Anti-Corruption Authorities – a body that would have a Constitution that should express the global importance of fighting corruption. As active members of the United Nations our presence is sufficient to state our allegiance to fight corruption as a group on mutual cross-border issues and our attendance is a response to facilitating the implementation of the United Nations Convention against Corruption which came into force in December 2005.

The heart of mankind - global it is by nature is ever deceitful, and there seem to be more evil and less good happening around us. Corruption is simply putting into action a dishonest desire to gain material wealth, other favors, fame and power. It is global and it requires global organizations with firm commitments and appropriate strategies to fight it. We fight or we shall be consumed by this menace which destroys people's dignity and lives and let us count ourselves and secure the services of others to help us fight corruption.

I am a practitioner in fighting corruption in my job as an Ombudsman in Papua New Guinea – a country with a population of 5 million. I am honored by the invitation to speak; for this I want to thank the Prosecutor General, Supreme People's Procuratorate, People's Republic of China.

To share my beliefs and thoughts on the eve of creating a global association is a pleasure for a cause dear to me as I witness my resource-rich developing country being plundered by internal and external forces in the name of democracy and development yet without any significant gain for the people and the improvement of their living standard. I shall try to provide an overview of the Ombudsman Commission of Papua New Guinea, what other international associations the organization - I work with, is a member to, what we do as public sector ombudsman and the difficulty and some observation I wish to make as one of a global member in the fight to control and reduce corruption levels within the government in Papua New Guinea and in the Pacific.

First, it is appropriate that I explain the concept of an Ombudsman, and the origin of its world-wide usage and application.

Definition/Origin and Concept of Ombudsman Commission

'The ombudsman is a part of a system of administrative law used for scrutinizing the work of the executive; an appointee of the executive but of the legislature; enjoys a large measure of independence and personal responsibility and is primarily a guardian of correct behavior. His/Her function is to safeguard the interest of citizens by ensuring administration according to law, discovering instances of maladministration, and eliminating defects in administration. Methods of enforcement include bringing pressure to bear on the responsible authority, publicizing a refusal to rectify justice or a defective administrative practice, bringing the matter to the attention of the legislature and instigating a criminal prosecution or disciplinary action' (encyclopedia – Britannica)

The name Ombudsman is Swedish (means defender of citizens) and it originated there in Sweden in 1809 and the concept targets public sector officials only and not the officials in the private sector.

Papua New Guinea Ombudsman Commission

The Papua New Guinea Ombudsman Commission is a Constitutional Office with a three(3) member Commission headed by a Chief Ombudsman and two(2) Ombudsmen. Appointed by a bi-partisan Committee, each incumbent serves a term of six (6) years and the only power the Chief Ombudsman has is the power to call and chair meetings.

A 3-member commission is desirous – it simply is applying the traditional Melanesian society of the Pacific and it is a concept of participation and consensus on issues that affect people and lives. The Ombudsman Commission has been in existence since 1975, the year our country got independence.

The Papua New Guinea Ombudsman Commission is an affiliate of the International Ombudsman Institute (IOI), a forum available to members for exchanges, dialogue and policy information and guidance. Member countries of the Institute are Public Sector Ombudsman and Industry Ombudsman such as Housing, Banking etc..and they meet every four years to deal with administrative, governance and corruption issues to help members to be relevant in the fight against wrong conduct – the common name used by the classical ombudsman. Wrong Conduct is a corruptive action taken by a person.

The International Ombudsman Institute comprises seven (7) regions, of which we are members of the Australasia-Pacific Ombudsman Region (APOR) – the only 2 Asian member institutions being from Hong Kong and Taiwan. According to the IOI books the APOR Ombudsman Offices are more effective in coordination and dialogue and we hold annual conferences where we discuss issues that should benefit us mutually.

Constitutional Mandate/Roles and Functions

The Constitutional Mandate. The overarching Constitutional mandates speaks of the Ombudsman Commission ensuring that all government bodies are responsive to the needs and aspirations of the people; helping in the improvement of the work of government bodies & the elimination of unfairness and discrimination and helping in the elimination of unfair or otherwise defective legislation and practices affecting or administered by government bodies.

The above which comprises three quarters of our mandate is the classical or traditional role of an Ombudsman – investigating, resolving and providing reports with recommendations about the wrong conduct of government agents and government bodies.

At our independence (1975), our National Parliament (Assembly) adopted a 'Code of Ethics' legislation (which applies to certain categories of leaders) and this became the fourth mandate which has been entrusted to the Ombudsman Commission to supervise and enforce and this is done through the leadership investigations on misconduct allegations and where there is a prima-fascia evidence the particular leader is referred to the Public Prosecutor for possible prosecution.

The enabling legislations giving further effect to the Constitutional mandate are 2 Organic Laws; The 'Organic Law on the Ombudsman Commission' (OLOC- the traditional ombudsman function) and the 'Organic Law on the Duties and Responsibilities of Leaders'(OLDRL) or as is commonly known as the Leadership Code in Papua New Guinea. Heads of Government Bodies are informed when investigations

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are conducted under the OLOC whilst investigations under OLDRL are private meaning that any Leader under investigations is not notified until the time where he/she is given a right to be heard. Under both Organic Laws we can cause own motion investigations and according to our hierarchy of laws, the Organic Laws ranks the 2nd to the Constitution whilst Acts of Parliament are ranked after the Organic Laws.

Fighting Corruption in Papua New Guinea

Firstly, Prime Ministers in Papua New Guinea under the Commission of Inquiry Act sanctions the establishment of Commissions of Inquiry to look at scandals in government operations. It is a faster method of exposing and preventing the spread of corruptive activity in a sector of government. Before independence we have had 5 whilst after independence we have had 27 and there is 1 ongoing at the moment.

This shows a commitment at the political level to fight corruption although what is lacking is the ability to implement the recommendations made through these Inquiries.

Secondly, the Ombudsman Commission is one of other National Institutions (to name a few such as the Police, Auditor General, Internal Revenue Commission and Public Service Commission with their own rules of mandate) in the country bestowed with legislative powers to investigate allegations of corruptive decisions and actions by leaders, government agents and bodies.

Our Constitution and Organic Laws expresses concurrent investigations with Police and informal exchanges of information between other watch-dog investigators.

The Complaints and Administrative Investigations conducted under the traditional function (Organic Law on the Ombudsman Commission) of the Ombudsman end up as resolved cases or in other cases reports with recommendations are produced for Government Bodies to accept and implement.

Leadership Investigations on the other hand are conducted under the Organic Law on the Duties and Responsibilities of Leaders and these are forwarded to the Public Prosecutor (if a leader has a case to answer) – who is an independent Constitutional Office-holder. He decides whether the case has merits before he asks the Chief Justice to appoint a Leadership Tribunal. The Public Prosecutor can instigate criminal proceedings using facts in the Ombudsman Commission statement of reasons but is restricted in law and cannot use the Ombudsman Commission documents as court evidences.

Fourthly, the Ombudsman Commission, with 3-4 other Government watch-dog

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Institutions are members of the Community Coalition Against Corruption (CCAC) – an informal body which partners government watch-dog agencies and Non Government Organizations

(NGO's). The group is effective in undertaking massive awareness about the quality of leadership and general government conduct throughout the country and stands ready to blow the trumpet on controversial issues. The group comprises Civil Society, individuals, Media Council, Council of Churches and Transparency International.

The Judiciary system in the country is also effective and this provides some comfort to our people and this does help in the overall fight against corruption.

Greenpeace-type endeavors is promoted in the country through environment protection groups, one to be mentioned here is the Eco- Forestry Forum.

Difficult Fight in a Developing Country

Corruptive behavior (should call it an epidemic) knows no boundaries and is not restricted to government officials. We have difficulties (in resources and international/domestic network) in netting companies and the officials that deal in collaboration with our leaders. The effects of corruption as we know have consequences in the long and short term and it is destructive to the growth of strong and sustainable societies. There is a cause of much concern in Papua New Guinea when our 800 or more tribes and languages are diminishing in value and strength. Population increases, law and order problems including ethnic animosities and the prevalence of HIV/Aids is an additional burden we consider in the fight against corruption.

In the name of democracy, trade, research and development our resource-rich country has attracted increased competition among multi-national cooporations as well as providing leaders with ethical deficiencies the urge to capitalize on the situation without regard for loyalty to country and for the greater public service delivery according to their given mandates. We have mineral exploration and mining companies, logging companies and trading companies operating as subsidiaries from abroad. The rules of engagement do not favor us as a developing country and our Leaders and government bureaucracies are at the mercy of the influences (good and bad) of trade and development policies.

We are a new, new country! I call it a new, new country because we want to build and design everything new or develop a new policy yet we are not good at completing the incomplete project or maintaining the existing project. We would like the donors to complete our incomplete project and assist us to maintain the existing project!

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Some years after we gained independence, our Government adopted a "Look North Policy". This policy looks to these parts of the region as alternate trading/development partners and the principle behind the policy was to be mentored and shown 'how to fish' and not be fed from the 'fish already caught! That policy has merits but today, the country is facing problems of fair partnership in trade and development.

The Ombudsman Commission does not lack in legislative powers under the Constitution and Organic Laws to carry out its function effectively, even after 31 years of operation. However a legislation that will enhance our operation is the enactment of Freedom of Information Act or a Whistleblowers Act. From experience this law will help us to protect those who give us information and the area we lack (like everybody else) is resources and the relevant skills required on the day of investigations.

During the forthcoming months we are looking forward to the operation of the Crime Proceeds Regulation (recently passed in the assembly) to comprehensively deal with perpetrators of crime in our country – and this includes Leaders who are processed under the leadership proceedings. It is our wish that the application of this law will further advance our cause of strong leadership and good governance.

A recent TI documentary that provide interest reading speaks of 30 biggest exporting states which accounts for 80% of the world exports are homes to firms that are most willing and ready to pay bribes in low-income countries!

How sad it is but this is true now in my country and just the thought of it is enormous in dimension and what a fight we have in our hands and the fight has to go beyond the domestic scene and this becomes extremely difficult.

Leadership and Government ability to accept all situations and challenges and make it work is the vision of the Ombudsman Commission of Papua New Guinea. We want to develop strong leadership and promote good governance – as stated in our 5 year strategic plan. We'd like our leaders to separate their decision making from what they can gain personally as opposed to that of carrying out their public responsibility where benefits are spread out to the wider community.

What should a developing country gain from such Forums as this?

I read from a commentary of the Transparency International website;

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' International anti-corruption conventions and instruments are increasingly important in a world in which states and private actors are more and more interconnected through travel, communications, trade, investments and financial transactions. The range of anti-corruption conventions and instruments in existence today are the manifestations of an international consensus that emerged in the early 1990's identifying corruption as an important problem needing to be addressed and in particular requiring internationally agreed solutions.

Anti-corruption conventions embody binding agreements betweens states on standards and requirements in the prevention, detection, investigation, and sanctioning of acts of corruption, including better cross-border cooperation in these areas.'

Immigrants wearing coats of traders, miners, builders, scientists, missionaries, technologists, financiers and clerks help build economies all over the world either as individuals or as corporate entities and they are a blessing in general and whilst each compete for territorial increases and in the race for supremacy and profit/others, governments of the developing countries are subjected to the policies of these public and private actors and loose out in fair negotiation, respect for domestic policies and loose the independence as sovereign nations. Multi-national companies and individuals who apply any degree of corruption must be dealt with by the anti-corruption bodies nationally with the assistance of the international counter-parts as is discussed in these forums using the frame work provided for by the global anti-corruption conventions and agreements.

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Romania

NATIONAL ANTICORRUPTION DIRECTORATE (N.A.D.)

ROMANIA

Daniel Marius MORAR
Chief Prosecutor

INSTITUTIONAL EVOLUTION OF N.A.D.

- Set up in September 2002 – following the ratification by the Romanian Parliament of the Criminal Law Convention on Corruption of the Council of Europe

- Reorganized in October 2005 and March 2006

MAIN FEATURES OF N.A.D.

- In the spirit of both the Council of Europe's Criminal Law Convention on Corruption and the UN Convention against Corruption, N.A.D. is:

a prosecution structure with autonomy features within the Prosecutor's Office attached to the High Court of Cassation and Justice of Romania, specialized in investigating and prosecuting high level corruption criminal cases

THE INTERNAL ORGANIZATION OF N.A.D.

- Led by a chief prosecutor appointed by the President of Romania at the recommendation of the minister of justice and with the opinion of the Supreme Council of Magistracy

- Has nationwide jurisdiction

- Is divided into a central structure located in Bucharest and 15 territorial services

N.A.D.'S PERSONNEL

- Prosecutors – 145 positions

- Judicial police officers – 170 positions

- Experts in economic, financial, banking, customs, IT fields – 55 positions

- Auxiliary and administrative personnel – 196 positions

THE COMPETENCE
Categories of criminal offences

- Bribery offences
- Offences assimilated to corruption
  - the offence of *abuse in functions* when committed by a public official with the purpose of obtaining an undue advantage (art. 19 of the UN Convention) was criminalized as an offence assimilated to corruption in furtherance of the ratification by Romania of the Un Convention against Corruption
- Offences directly connected to those of corruption
- Offences against the financial interests of the European Communities
- Serious economic offences

THE COMPETENCE
High level corruption - legal criteria

- the value of the damage caused by the perpetrator in cases regarding offences assimilated to those of corruption – 200.000 €

- the value of the damage caused by the perpetrator in cases regarding serious economic offences – over 1,000,000 €

- the value of the bribe over 10,000 €

- the position of the person who committed the offence

WORKING METHODOLOGY
The working methodology of N.A.D. is defined by the setting up of *operational task forces.* For each investigation, the case prosecutor sets up a team composed of police officers and specialists that work under his/her direct coordination and control, assisting him/her in the carrying out of

the investigation.

MEASURES INCOURAGING THE COOPERATION WITH N.A.D.

- The person who gave / offered bribe is exempted from the criminal responsibility if he/she denounces the offence before N.A.D. is otherwise notified
- The perpetrator of an offence falling under the competence of N.A.D. who denounces similar offences committed by other persons and facilitates the investigation is granted the reduction of his/her sentence by half
- The prosecutor, during the investigation, and the judge, during the trial can authorize that a witness be heard through a video communication channel, or that his/her real identity be covered
- The prosecutor can ask, when needed, that a witness be introduced in a Witness Protection Program

RELATIONS WITH OTHER
STATE INSTITUTIONS

- According to the law, the state agencies with control attributions, intelligence services and police – are under the obligation to provide N.A.D. with all the data and information they detain regarding the perpetration of corruption offences that fall under the N.A.D. competence.
- Some of the state agencies, according to their competence, give further assistance to the investigations carried out by N.A.D., following the prosecutors' request.

MEMORANDUMS OF UNDERSTANDING

In view of increasing the swiftness and the quality of the information received as well as for setting up the conditions for the assistance given during the investigations, N.A.D. signed Memorandums of Understanding with the following state agencies:

- The National Office for Preventing and Control of Money Laundering
- The General Inspectorate of the Romanian Police
- The General Anticorruption Directorate within the Ministry of Administration and Interior
- The Court of Accounts
- The Department for Fighting EU Frauds
- The National Control Authority
- The National Customs Authority

COOPERATION WITH THE ROMANIAN F.I.U.
– I –

- The criminalization of money laundering in Romania follows the *all crime approach*
- N.A.D. is competent to investigate money laundering when the predicate offence is a corruption offence or other offence that falls under N.A.D.'s competence
- The National Office for the Prevention and Countering Money Laundering sends Reports to the General Prosecutor of Romania whenever it has serious suspicions that a money laundering offence was committed
- The General Prosecutor assigns the case to N.A.D. whenever there are suspicions that the predicate offence is a criminal offence falling under N.A.D.'s competence

COOPERATION WITH THE ROMANIAN F.I.U.
– II –

- The prosecutors have the possibility to ask the National Office for the Prevention and Countering Money Laundering to carry out further analysis of the information reported, when the investigation so requires
- Whenever they are notified with a money laundering case from other sources than the National Office, the prosecutors can also ask the National Office to carry out a financial analysis that will help the investigation

STATISTICS

- During 1st of January and 1st of September 2006, N.A.D. prosecutors sent to trial 236 defendants for corruption offences, offences assimilated or connected to those of corruption

- Among the indicted persons there are 5 Members of Parliament, 1 member of the Government, 3 judges, 4 military superior officers, 2 presidents of county councils, 2 Financial Guard commissars, 46 police officials etc.

- The courts issued 54 initial conviction decisions regarding 116 defendants. Other 52 conviction decisions regarding 105 defendants remained final

- In the cases concerning money laundering of proceeds of corruption, N.A.D. prosecutors indicted 17 defendants

THANK YOU

DANIEL MARIUS MORAR
CHIEF PROSECUTOR

NATIONAL ANTICORRUPTION DIRECTORATE
ROMANIA

Serbia

Statement by Mr Zoran Stojković, Minister of Justice of the Republic of Serbia at the First Annual Conference of the General Assembly of the International Association of Anti-Corruption Organs Workshop 8: New Modalities for Law Enforcement Cooperation

Beijing, China, 24 October 2006

Distinguished colleagues,
Ladies and gentlemen,

I have the honor and the pleasure of greeting you on behalf of the Government of the Republic of Serbia and in my own capacity wishing you all fruitful deliberations at this conference. The topic of this gathering is, undoubtedly, one of the most important areas of fight against crime.

To understand corruption as a phenomenon, one must examine the concrete conditions prevailing in each individual state. A common characteristic of the states that have completed or are still going through the process of transition is a high level of criminality. Reasons include inadequate economic growth, general social crisis, crisis of morals, unemployment and bad functioning of public institutions. Corruption destroys the fundaments of every society. The effects it has on social tissue include reduced gross national product, lower investments, increased costs of the state, disturbances in the market economy and at democratic institutions. The most difficult task is to counter its consequences in terms of eroded moral values of society and apathy among citizens which all directly lead to a growing lack of trust in the institutions of the state among them.

To overcome this state of affairs it is necessary for all social factors to get mobilized. Cooperation among the countries in the region, as well as global cooperation, is necessary. This is also borne out by this conference. Serbia has ratified, as the fifth state in Europe, the United Nations Anti-Corruption Convention. Ratification procedure for other international conventions in this field is under way.

Legislative and judicial reforms play a major role in putting in place a stable regulatory framework which is the basis of security, equality and prosperity. The rule of law is key to effective functioning of the society and the economy. It also creates conditions and a comprehensive framework for economic development of society. A predictable and stable regulatory framework and a reliable and independent judiciary are the key factors of democratization, good governance and respect for human rights. Reform of the judicial system is the most important part of the activities to develop institutions of the system of every country. Absent such institutions there cannot be any reforms; absent reforms in the judiciary and legislative reforms there cannot be any proper anti-corruption struggle.

Societies in transition such as ours are, as a rule, characterized by a combination of old

and new legal institutions and abrupt changes in economic life and ownership structure of economic operators, which leads to dramatic changes on the social ladder. Against such a background, the corruption motive becomes a strong driving force mobilizing into action those persons that consider corruption to be a regular cost of their business policy.

One of the main threats looming is for corruption to riddle the system, that is for abuse of positions of public authority for personal gain to become an integral part of the way the institutions function. The systemic character of corruptive behavior makes corruption less visible. Therefore, it is necessary to promote prevention, especially in a situation where the anti-corruption policy does not produce good results, among other also due to the inefficiency of the bodies of the state which find it much easier than others to cover up corruption.

Serbia's goal in general is to eradicate corruption by raising the level of anti-corruption culture in keeping with international standards. We have hence taken up the anti-corruption task, as one of the state's priorities, in a most comprehensive manner. The anti-corruption fight has been understood as a matter calling for upgrading of regulations and institutions. The Government of Serbia has, therefore, exhibited political willingness and accorded full priority to developing further the criminal legislation also in the part concerning corruption.

The first step has been the adoption of the National Anti-Corruption Strategy. That was a prerequisite for the start of a systematic fight against this social scourge. The Strategy has proposed concrete measures which will help eradicate corruption. The Government of the Republic of Serbia has also adopted the Action Plan for National Strategy Implementation with concrete tasks entrusted to the competent bodies and time limits within which the tasks will be executed. The Action Plan also envisages tasks for non-governmental organizations, the media and other institutions of civil society. Pending adoption is the draft Law on the Anti-Corruption Agency, an independent anti-corruption body which will have the task to monitor the implementation of the Strategy and the Action Plan and propose new measures. By setting up this body we shall get an independent institution that will not only study and describe the state of play but will also be able to take concrete actions to enhance the fight against corruption.

Although so far a great part of the responsible and difficult task in the fight against corruption has been completed, this has been but the first step in this struggle.

The next step will be adoption of the National Strategy of Judicial Reform which will have as its goal to restore the confidence of citizens in the judicial institutions and will, hopefully, help establish a good judiciary as a prerequisite for the rule of law and a good judiciary is only the judiciary with no corruption.

The corruption in the judiciary is not an isolated phenomenon, it is helped by the fact that corruption is widespread in society in general. This indicates that the existing controlling anti-corruption mechanisms are not enough. Even those that should fight corruption are not immune to it. It is, therefore, necessary to discourage corruptive behavior in all the bodies of the state. Clear-cut rules of substantive and procedural law will narrow down the margin of appreciation for judges in taking decisions going beyond the regulatory and constitutional framework or beyond their powers. Supervising judges in their activities also deters them from corrupt practices.

When there is no adequate control of the activities in the judiciary the discretionary powers of the judiciary are arbitrarily extended and abused. As a result, public support and confidence in the institutions grow weaker and the principle of equality of citizens before the law is violated. By opting not to practice corruptive behavior with others, some citizens are refused the delivery of a public service.

Corruption can also be curtailed efficiently by means of transparency of the activities of judges and the courts of law. It is hence necessary for the main court documents of a case to be easily accessible to the public and for the entire trial to be transparent. If this is so, it will make it more difficult for the bodies of the state to take contentious decisions. It is essential to ensure that court decisions are made public so that the cases of different actions taken in similar disputes could be examined. Particular attention should be paid to different patterns of behavior of the same judge in similar disputes.

It is with pride that I can inform you that we have recently received from the Group of States for Fight Against Corruption of the Council of Europe (GRECO) the Evaluation Report for the Republic of Serbia with recommendations which clearly indicate that we are on the right track

in our anti-corruption struggle.

The Government of the Republic of Serbia can be satisfied with the progress made in the fight against corruption. It is clear, however, that corruption is a persistent social evil which also often has an international aspect to it. Therefore, there is no room for complacency. The anti-corruption fight is a lasting task for the Government of the Republic of Serbia.

One has to approach the fight against this type of criminality on a regional basis but also at a broader international level. Corruption does not pose a security threat only to Serbia or the Balkan region but threatens the entire international community as well.

In this context, this conference is encouraging all those that are dealing with the mentioned problems to familiarize themselves - with the help of international friends, states or organizations such as the UN Drugs and Crime Agency which I wish to thank for the assistance it has been providing to us – with the best experiences in promoting international anti-corruption instruments and mechanisms.

On a final note, I wish to thank in particular Supreme Public Prosecutor of the People's Republic of China Mr Jiao Chunwang for this excellent initiative that we are turning into reality with so much success. I wish to congratulate him on the excellent organization and important programme and to thank him for warm and whole-hearted hospitality which will make us keep this conference in lasting memory.

I once again wish our conference much success in its work.

Thank you for your attention.

Serchelles

The Role of the Civil Society in the Fight against Corruption

Corruption, the abuse of any office of trust for private gain, is an immemorial problem. It is not confined to a period of time or an area of space. It has been there from almost the beginning of civilization. It arises out of a basic human instinct, namely greed. Thus to deal with it, there should be not only a tremendous national and international commitment but also a revolution from within one's self which permeates all segments of the societal fabric.

Corruption is a crime against humanity. Depriving people of their money by corrupt means is theft, it is extortion. It has the effect of depriving the poor of their basic human needs of food, shelter, health and education, a violation of their basic human rights. According to a survey that was done by the Asian Development Bank, over the last 20 years, One East Asian Country is estimated to have lost $48 billion due to corruption, surpassing its entire foreign debt of $40.6 billion. We have to combat it not because it is economically and socially advantageous, although it is, not because of the laws of God command it, although they do, not because all people wish it so. We have to combat it for the single and fundamental reason that it is the right thing to do. The intricacies and dangers of corruption will not yield to obsolete dogmas and outworn slogans. It cannot be moved by those who cling to a present which is already dying, who prefer the illusion of security to the excitement and danger which comes with the fight against corruption. *"There is"* said Machiaveli *"nothing more difficult to carry out nor more doubtful of success, nor more dangerous to handle than to initiate a new order of things. For the reformer has enemies in all who profit by the old order and only lukewarm defenders in all those who profit by the new order."* Yet this is the measure of our task and the road is strewn with many dangers.

Most of all there is the danger of futility: the belief there is nothing one man or one woman can do against the enormous array and the multifacetedness of corruption. Yet many of the world's greatest movements, of thought and action, have flowed from the work of a single man. A bespectacled, lean man, in loin cloth and sandals who was called a 'half naked fakir' by his

colonial masters brought independence to the 2nd most populated country in the world. A small, fragile, Albanian woman started the Missionaries of Charity which is now spread out throughout the world. A Christian Pastor from Alabama fought against segregation and won civil rights for his people and freed them like Moses from their bonds of discrimination. *"Give me a place to stand"* said Archimedes *"and I will move the world."* These men moved the world and so can we all. Few will have the greatness to bend history itself, but each of us can work to change a small portion of events, and in the total of all those acts will be written the history of this generation. We have the capacity to make this the best generation in the history of mankind or make it the worst. This world should be a better place when we turn it over to the next generation than when we inherited it from the last generation. It is from numberless diverse acts of courage and belief that human history is shaped. Each time a man stands up for an ideal, or acts to improve the lot of others, or strikes out against corruption, he sends forth a tiny ripple of hope, and crossing each other from a million different centers of energy and daring, those ripples build a current which can sweep down the mightiest walls of corruption and resistance. *"If Athens shall appear great to you"* said Pericles *"consider then that her glories were purchased by valiant men, and by men who learned their duty."* That is the source of all greatness in all societies, and it is the key to combating corruption in our time.

The Civil Society should take the lead in the fight against corruption making use of the existing legal framework without sitting down and waiting for the necessary reforms. If we are to act effectively we must deal with the world as it is. We must get things done now.

The civil society, the watchdogs of Government should be encouraged to have recourse to public interest litigation also called social interest litigation. This is in addition to the role performed by the criminal courts in trying those charged with corruption, possession of disproportionate assets, misappropriation and other similar offences which are dealt with under the provisions of the penal law of a country. This could be done within the existing legal systems of many countries without much need for reform. All that they would need is the encouragement and support from various sectors of the community and an independent and fearless judiciary which does not kowtow to the Executive or other power blocks.

Most countries have a Charter of Fundamental Human Rights and Freedoms enshrined in their Constitutions. This could enable the citizens to counter corruption from a different perspective. Privileged treatment secured by an individual by the payment of a bribe to a public official is an infringement of the principle of non discrimination. Corruption like repressive State action may lead to the infringement of the right to a fair trial, the right to vote, the right to health care, the right to education, the right to shelter, the right to work, the right to social security and the right to life itself. Corruption and the diversion of national resources will prevent a government from fulfilling its obligations towards its people and to achieve the full realization of economic, social and cultural rights.

In India, a Minister, who held the Urban Development portfolio as Cabinet Minister was brought before the Supreme Court by a public-spirited individual under articles 32 and 226 of the Indian Constitution. The Minister, in collusion with her staff, had been allocating shops and other government properties in a highly arbitrary fashion and for corrupt reasons. The Court found that the allocations were vitiated by arbitrariness and gross abuse of power and opined that exemplary damages can be awarded in a case where the action of a public servant is oppressive, arbitrary or unconstitutional. Accordingly, the Minister was directed to pay a sum of Rs 6 million. It was also clarified that the order did not in any manner affect the criminal prosecution launched against the Minister. A similar decision was reached in the case of a Minister of the Union Cabinet.

In dealing with public interest litigation cases, the Supreme Court of India considered, whether it is within the domain of judicial review to activate the investigative process which is under the control of the executive. This was because of the inaction by the investigating authorities (CBI) into grave allegations of bribery by several Ministers and other high officials. The procedure devised was to appoint the Petitioner's Counsel as the *amicus curiae* and to make such orders from time to time as were consistent with public interest. Permission was granted to all who so desired, to render such assistance as they could and to provide the relevant material available with them to the amicus curiae for being placed before the court for its consideration.

Public prosecution should be supplemented by broadening access to the courts, with individuals and community groups being given the right to take legal action in the public interest.

The civil law in most jurisdictions can provide an effective remedy in the fight against

corruption. The identifiable plaintiff in a civil law action could be a citizen who has been unjustly excluded from public tendering procedures, who has lost legitimate earnings or forced to pay higher prices as a result of corruption. Members of associations could also be victims and hence, class actions may be available in certain cases. The damages which may be claimed in an action based on corruption could relate to pecuniary and non-pecuniary loss and may include punitive or exemplary damages in certain cases. The civil law could also be made use of to recover assets from a public official who has benefited from the wrongful exercise of a public function.

In the case of Rookes v/s Barnard and Others, 1964 Appeal Cases it was held that exemplary damages can be awarded for oppressive, arbitrary and unconstitutional action by all those who by common law statute are exercising functions of a governmental character. Lord Wilberforce said if public officers infringe men's rights they ought to pay greater damages than other men to deter others from the like offences. Therefore corruption which stem from a misuse of power involves tortuous conduct by agents of government and could give rise to any one of a number of causes of action.

In the case of Attorney-General for Hong Kong v/s Reid (1993) 3 WLR. Reid, a crown prosecutor in Hong Kong, took bribes as inducement to suppress certain criminal prosecutions and with those moneys acquired properties in New Zealand, two of which were held in the name of himself and his wife and the third in the name of his solicitor. He was found guilty of the offence of bribe-taking and sentenced by a criminal court. The Administration of Hong Kong claimed that the said properties in New Zealand were held by the owners thereof as constructive trustees for the crown and must be made over to the Crown. The Privy Council upheld this claim overruling the New Zealand Court of Appeal. Lord Tempelman, delivering the opinion of the judicial committee, based his conclusion on the simple ground that any benefit obtained by a fiduciary through a breach of duty belongs in equity to the beneficiary …… Accordingly it was held that to the extent that they represented bribes received by Reid the New Zealand properties were held in trust for the Crown, and the Crown had an equitable interest therein. The Learned Law Lord thus applied the theory of constructive trust which is a common law concept. Properties acquired through corruption are at the cost of the people and the State. The State is deprived of its legitimate revenue. These properties must justly go back to where they belong, to the State.

Judgments of civil courts are also enforceable in most foreign jurisdictions under Foreign Judgments (Reciprocal Enforcements) Acts.

Countries should either employ this common law concept where their legal system so permit, or enact a law providing for forfeiture of properties acquired by holders of public office by indulging in corrupt and illegal acts and deals. This is a crying necessity in the present State of our society. The law must extend not only to properties acquired in the name of the holder of such office but also to properties held in the names of his spouse, children or other relatives and associates. Once it is proved that the holder of such office has indulged in corrupt acts, all such properties should be attached forthwith. The law should place the burden of proving that the attached properties were not acquired with the aid of monies/properties received in the course of corrupt deals upon the holder of that property. Such a law has become an absolute necessity, if the canker of corruption is not to prove the death knell of this generation. Any person should be able to have recourse to such a law without having to depend on the investigative process which is under the control of the executive.

Widespread resentment of corrupt practices and popular support for firm action is the most powerful force in combating corruption. Public participation is a must in anti-corruption programs. They must be nationally owned and geared to meet national circumstances. All nations will not develop their anti-corruption strategies in the same manner, or at the same pace. Nations, like men, often march to the beat of different drummers and the precise solutions of one nation can neither be dictated nor transplanted to others. What is important is that all nations must march towards combating corruption, towards zero tolerance of corruption and towards justice.

Popular opinion can be mustered and focused through the educational impact of the media and through the activities of NGO's. The freedom of the press and of the other media contributes to public awareness of corruption and the commitment of governments to freedom of expression and association is therefore a vital factor in creating an atmosphere which is conducive to eliminating corruption. If there is to be transparency in any society information must be freely available in the public domain. Civil society should promote genuine competition in the media

market place to ensure diversity of ownership, so that alternative outlets can provide a broad range of views on public policy issues. Civil society can help ensure that access to foreign publications and broadcasts is unrestricted. Advances in information technology also provide civil society with new sources of information and channels of communications, which should remain open. The development by civil society of independent public policy research institutes and think tanks can provide increased domestic capacity to analyse deficiencies in the system of governance. Such bodies can help to study the particular types of corruption in a country and identify country specific remedial options.

Unless we make a commitment to combat corruption posterity would blame us for our inaction. We should pledge our honour before all mankind to enter into this venture in full sincerity and trust. If we loose in this historic gamble, the results could not be worse than those we may expect from a continuation of traditional policies. But if we do succeed we shall merit a place to come in the grateful memory of mankind.

A.F.T. FERNANDO
ATTORNEY-GENERAL OF THE REPUBLIC OF SEYCHELLES

South Africa

I

Introductory Remark on the Composition and appointment of the managing and administrative body of IAACA
Bulelani Ngcuka
Former National Director of Public Prosecutions
Republic of South Africa

Excellencies, Ladies and Gentlemen:

Good morning!

We are delighted to witness the successful convening of the First Annual Conference and General Meeting of the IAACA over the past four days. At the first stage of the General Meeting this morning, all the participants discussed the Nature and Strategy of the IAACA and its Constitution.

As an independent, non-political, and non-profitable organization, with anti-corruption authorities in all countries around the globe as its members, IAACA has been well recognized as an organization specifically working on the various aspects of international cooperation among the anti-corruption authorities which would be one of the most practical measures for the implementation of the UN Convention Against Corruption. We are totally convinced that the IAACA will function as a platform for the anti-corruption authorities to communicate, discuss, collect and share information and experiences, thus building trust and friendship. With the objective to promote implementation of the UN Convention Against Corruption, the IAACA will become a good platform for its members to identify the barriers in international cooperation and find solutions to reduce these barriers, improve the efficiency in conducting the mutual legal assistance, and also assist the relevant authorities or bodies with the need to reform domestic legislation in compliance with the regulations on prevention, criminalization, international cooperation and asset recovery of the UN Convention Against Corruption. The IAACA will be an efficient channel for global Anti-corruption Authorities to establish direct contact with one another, not only in seeking assistance in the investigation of corruption crimes, but also in the mutual exchange of experiences and techniques.

A promising organization depends on a strong and dynamic leader team and effective cooperation between member states which can help it to achieve its goal and priorities. Election and appointment of the managing and administrative body of IAACA is an important task of this conference. So firstly, it’s my great honor on behalf of the IAACA to give a brief introduction to

its managing and administrative body.

According to article 8 of the Constitution of the IAACA, there shall be an Executive Committee of the Association, which shall be the managing and administrative body of the Association and which shall have all necessary powers not expressly reserved for the General Meeting, the President or the Secretary-General. The Executive Committee shall consist of the President, the Vice-Presidents, the Secretary-General and the General Counsel and, in addition, at least three (3) ordinary members representing a fair spread of the Association's geographical members. Members of the Executive Committee shall be appointed by the General Meeting in their personal capacity. They shall serve for three years ending at the end of the General meeting in the year in which their term of office expires. No member of the Executive Committee may remain in office should he/she cease to be a member of the Association. Members of the Executive Committee are eligible for reappointment.

The Constitution of the IAACA also provides election principles for members of the Executive Committee which may be summed up as follows:

1. Professional expertise, namely law education background, rich experiences in prosecuting, investigating corruption cases or international cooperation on combating corruption;

2. Current post, reputation and influence, namely current Procuratorates, Attorney-Generals, Ministers of Justice, Commissioners or Director-Generals of Anti-Corruption Authorities, Directors of International Organizations or international celebrities are the priorities;

3. Universality principle, the membership of the Executive Committee shall reflect, as far as is reasonably possible, the regions of the world in which the Association has members, and the membership of the Executive Committee shall reflect, as far as is reasonably possible, the related law enforcement agencies such as Prosecutor General's or Attorney-General's Offices, Ministries of Justice, Anti-Corruption Agencies and other related institutions etc.

4. The last but not the least, the President, the Vice Presidents and the Executive Members are not honorary titles, the countries which the candidates represented should carry out anti-corruption program actively, their experiences in combating corruption should be the model for other countries, and the candidates ought to be actively involved in the founding preparation work of the IAACA and once elected, he or she shall promise to support the IAACA's activities in the future.

During our initiation process for the founding of IAACA, we consulted the preliminary name list of the members of the Executive Committee of IAACA with many co-initiated countries and international organizations in advance, and solicited sufficiency opinions extensively from a circle of institutions, many leaders from Procuratorates, Attorney-General's Offices, Anti-Corruption Agencies and other law enforcement agencies around the world responded actively and have great enthusiasm to apply for the posts of members of the Executive Committee. However, as everybody knows there are only a certain number of posts and, it's extremely difficult to include all competent participants.

Considering the above-mentioned elements, the IAACA propose a preliminary name list of the IAACA Executive Committee, which extensively includes Prosecutors-General, Attorneys-General, Ministers of Justice, International celebrities and Commissioners or Directors-General of Anti-Corruption Agencies or other law enforcement agencies, for the conference to approve.

1. the President
H.E. Mr. Jia Chunwang, the Prosecutor-General of the Supreme People's Procuratorate of P.R China as the candidate for the President of the IAACA. H.E. Mr. Jia Chunwang is the Top-Grade Chief Prosecutor of P.R China and President of Chinese Prosecutors Association. He graduated from the prestigious Tsinghua University in China. Before becoming the Prosecutor-General of the Supreme People's Procuratorate of P.R China, he served as Minister of State Security of P.R China for 13 years, as Minister of Public Security of P.R China for 4 years, and as the Prosecutor-General of the Supreme People's Procuratorate of P.R China for 4 years. He has rich experiences in criminal fields, specifically in investigating and prosecuting corruption cases. During his tenure of the Prosecutor-General of the Supreme People's Procuratorate of P.R China, he has successfully convened the First China and ASEAN Prosecutors-General Conference and the First ASEM Prosecutors-General Conference which won praise from the counterparts from around the world. He has established direct judicial cooperation mechanisms between SCO, ASEAN and ASEM countries which are great contributions to the international cooperation on

combating corruption. He also made great contributions to the initiation of the IAACA, and to the successful convening of the First Annual Conference and General Meeting of the IAACA. On the basis of the fore-mentioned, the IAACA propose H.E. Mr. Jia Chunwang as the candidate for the President and extend our profound gratitude for his contribution.

2. the Vice Presidents
The IAACA proposes the following 5 candidates as the Vice Presidents. Among them, two are international celebrities, the other three have rich experiences in international affairs and / or in domestic criminal law enforcement.

Honorable Mr. Minoru Shikita from Japan. Mr. Shikita is currently Chairman of the Board of Directors of the Asia Crime Prevention Foundation, a top category UN NGO with many branches and national chapters throughout Asia. He is also the Senior Vice President of International Association of Prosecutors. He graduated in Law from the prestigious Kyushu University in Japan in 1954 and then undertook graduate study at Harvard Law School (57-58). During 39 years of law practices in Japan, he experienced various posts, including Assistant Chief Prosecutor of Tokyo District Public Prosecution Office; Chief Prosecutor of Kyoto District Public Prosecution Office; Assistant Director-General of Criminal Affairs Bureau, Ministry of Justice; and Director General of the Correction Bureau of the Ministry of Justice. Mr. Shikita has also served regionally as Director of Asia and Far East Institute for the Prevention of Crime and the Treatment of Offenders (UNAFEI), which is a UN regional training center of senior criminal justice personnel. On an international level, he experienced such positions as Head of UN Crime Prevention and Criminal Justice Branch; Executive Secretary of 7th UN Crime Congress (Milan, 1985); Chairman of the UN Committee on Crime Prevention and Control (87-88) and Vice-President of the International Penal and Penitentiary Foundation (90-98). He practices law in Tokyo and is Honorary Professor of East China University of Politics and Law (Shanghai), Honorary Professor of China Senior Prosecutors College. For his great contribution to the world criminal judicial arena, Mr. Shikita was awarded the UN Secretary-General's Testimonial for his dedicated contribution to the UN Crime Prevention and Criminal Justice Programme and Medal of Honor of IAP.

Honorable Mr. Eduardo Vetere from Italy. Mr. Vetere received his doctorate in law/jurisprudence at the University of Rome, with specialization in criminal law and criminology at the Universities of Cambridge and Rome, where he studied with Prof. L. Radzinowicz and Prof. F. Ferracuti. He used to be the Director of the Division for Treaty Affairs of UNODC. During his tenure, he was specifically responsible for drafting the UN Convention Against Transnational Organized Crime and the UN Convention Against Corruption. He has been associated with the UN Crime Prevention and Criminal Justice Programme for more than thirty years, such as the Executive Secretary of Eleventh UN Congress on Crime Prevention and Criminal Justice. He served as or was appointed Director of many UN programs. He is also the author of several publications in the fields of human rights in the administration of justice, criminal justice statistics, developmental issues and international cooperation in criminal matters. He has lectured in various universities, in many countries of the world.

Honorable Mr. Fikrat F. Mammadov, Minister of Justice of the Republic of Azerbaijan. Mr. Mammadov graduated from Baku Social Management and Political Science Institute and the Law faculty of Moscow State University. He has 23 years experiences as a prosecutor, he has served as the deputy Attorney-General of the Republic of Azerbaijan for 6 years, as Minister of Justice for 6 years, and he has also served as Member of the Commission on Education under the President of the Republic of Azerbaijan. He is a Member of the Anti-Corruption Commission of the Public Service Management Council of the Republic of Azerbaijan and President of the Judicial Legal Council of the Republic of Azerbaijan. Currently, Mr. Mammadov is also Member of the Executive Committee of the International Association of Prosecutors, Member of the International Bar Association. On the basis of his great contribution to criminal judicial fields in Azerbaijan, he was awarded "The Order of Glory" - a governmental award, which is 1st rank State Counselor of Justice and the highest prosecutorial award "Honored prosecutor of the Prosecutor's Office of the Republic of Azerbaijan".

Honorable Sir Alasdair Fraser QC, Director of Public Prosecutions, Public Prosecution Service of Northern Ireland, United Kingdom. Mr. Fraser is a senior and experienced prosecutor, he was called to the Bar of Northern Ireland in 1970, has served as Assistant of Director of Public Prosecutions of Northern Ireland in 1974, as Senior Assistant of Director of Public Prosecutions of Northern Ireland in 1982, as Director of Public Prosecutions, Public Prosecution Service of Northern Ireland, United Kingdom since 1989. He was awarded the Special Achievement Award for his dedication to the ideals of prosecution in Northern Ireland throughout over 30 years of

civil unrest. Mr. Fraser is also a member of the Executive Committee of the IAP.

And Honorable Mrs. Pendukeni Iivula-Ithana, Minister of Justice and Attorney General of the Republic of Namibia. Mrs. Iivula-Ithana has served in her current post since 2000. Prior to that she was the Minister of Lands, Resettlements and Rehabilitation, Minister of Youth and Sport, and Founding Member and the First President of both African Women Sport Association and the Namibia Women Sport Association.

3. Secretary General
Dr. Ye Feng, Dr. YE is a Member of the Prosecution Committee of the Supreme People's Procuratorate (SPP) of the People's Republic of China and is also the Director General of the International Judicial Cooperation Department of the SPP. Concurrently he also holds the positions of Vice President of the International Association of Prosecutors, and International Director of Asia Crime Prevention Foundation.

4. General Counsel
Mr. Bulelani Ngcuka, myself. In South Africa, I was the first National Director of Prosecuting Authority and also the founder of anti-corruption authority, a very efficient prosecuting authority (If I might say so myself) and a special investigations unit, popularly known as The Scorpions. In international arena, I used to work at the equality of human rights branch of International Labour Organisation in Geneva, Switzerland for two years.

5. the Members of the Executive Committee
And the following Honorable 13 candidates are proposed as Executive Members of the IAACA, all of them are current Prosecutors-General, Commissioners or Directors General of Anti-Corruption Authorities or related law enforcement agencies, who have abundant experiences in combating corruption at the domestic and international level. They are(names listed alphabetically from A to Z):
Lt Gen(R) Shahid Aziz, Chairman National Accountability Bureau, the Islamic Republic of Pakistan.

Mr. Ille Botos, the Immediate Past Prosecutor-General of Romania. Mr. Botos graduated from the Law Faculty of "Babeş - Bolyai" University Cluj Napoca with Doctor in laws, he has served as judge for one year and as prosecutor for 15 years, he was the Founder of the First National Anticorruption Office in Romania, the current counselor to the Prosecutor-General of Romania and Executive Member of the International Association of Prosecutors.

Mr. David Bradshaw, Director Serious Fraud Office of New Zealand. Mr. Bradshaw was appointed to his current post in 1997, and got reappointment in 2002.

Mr. Richard Buteera, Director of Public Prosecutions, the Republic of Uganda. Mr. Buteera graduated from the Dar-Es-Salaam University with Bachelor of Laws, he obtained a Diploma in Legal Practice from the Law Development Centre, Kampala. He was appointed as Director of Public Prosecutions in Uganda in 1995. Mr. Buteera is currently the Project Director of the Netherlands-Uganda Support to Public Prosecutions Project, Advocate of the High Court and all other courts in Uganda and Executive Committee member of the International Association of Prosecutors and Member of the Prosecutorial Committee of the Association.

Mr. Jerrold Cripps QC, Commissioner of Independent Commission against Corruption (ICAC), New South Wales, Australia. Mr. Cripps graduated from the Sydney University with Master of Laws, he practiced as a barrister at the bar of New South Wales since 1959, he was appointed Queen's Council in 1974, and served as judge for 26 years before he took up his current post.

Mr. Jean-Louis Nadal, Prosecutor General, the Republic of France. Mr. Nadal took his current position in 2004. He also served as the Prosecutor General of the Court of Appeal in Lyon, Provence and Paris. He received the National Legion Honor and National Merit Award for his outstanding performance in justice.

YBhg Datuk Zulkipli bin Mat Noor, Director General of Anti-Corruption Agency, Malaysia. He received his Bachelor Degree in Political Science at Kansas University, USA, and Masters Degree in Strategic Studies & International Relations at Lancaster University, England. He first joined the police force of Malaysia in 1969 and was promoted as Superintendent of Police in 1984. In 1996, he was promoted as Deputy Commissioner of Police. In 2001 he was promoted as

Commissioner of Police and seconded to Anti-Corruption Agency Malaysia as Director General.

Mr. Edward C. Nucci -Acting Chief of Public Integrity Section□Criminal Division
Department of Justice of USA

Adv Vusi Pikoli, National Director of Public Prosecutions, the Republic of South Africa. Mr. Pikoli received his LLB degree at National University of Lesotho in 1986, and LLM degree at University of Zimbabwe in 1998. From August 1994 to May 1997 he was the Special Advisor to the Minister of Justice. He was appointed as Director-General of Department of Justice & Constitutional Development in December 1999. He has been in his current post since February 2005,

Mr. Abel Fleitas Ortiz de Rozas, Head of the Anticorruption Office, Ministry of Justice, of the Argentine Republic. Mr. Rozas graduated from the Law School of the University of Buenos Aires (U.B.A.) in 1967. He took postgraduate courses in the U.B.A., in the University of Madrid and in the International School of Strasbourg. He has developed a long career in the academic field and he has held important public positions within the three branches of Government. He served as Federal Judge until the military government dismissed him in 1976, and he was caused to drop his activities as a professor at the U.B.A. He resumed his post as a professor in 1984, carrying out an intense teaching activity ever since. For many years he formed part of the Executive Board of the Law School of the U.B.A., on behalf of the Professor's Body, until today. He has published three books and a great number of articles on public and private law related matters. As a public official, he served as General Counsellor for the Government of the Province of Buenos Aires (1987/91), Secretary of the Ministry of Home Affairs (1993), and Secretary of the Ministry of Justice (1992 and 2003/2004). He was also elected as representative for the Legislature of the City of Buenos Aires (1997/2000), and acted as alternate judge for the Supreme Court of the Province of Buenos Aires (2000/2002), hearing and rendering judgements on a great number of cases.

Mr. Pratyush Sinha, Commissioner, the Central Vigilance Commission of the Republic of India. Mr. Sinha has just taken the current position in September this year. Before that, he was Secretary of Union Ministry of Rural Development.

Mr. Robert Wardle, Director of Serious Fraud Office, the United Kingdom. Mr. Wardle joined the Serious Fraud Office in 1988, before that he worked as a prosecuting solicitor in Essex and Cambridgesshire and then for the Crown Prosecution Service of the UK. He has been the Director of the SFO since 2002.

Mr. Giuliano Zaccardelli, Commissioner of the Royal Commission of Mounted Police, Canada. Mr. Zaccardelli joined the RCMP in 1970, he was appointed as the Commissioner in 2000, he is also an active member of the Canadian Association of Chiefs of Police, the International Criminal Police Organization Interpol, an Honourary Vice-President of the Royal Canadian Legion, and the Chair of the Criminal Intelligence Service Canada Executive Committee.

Congratulations for the above-mentioned honorable candidates and thank you very much for your attention.

II

The National Prosecuting Authority of South Africa
Igunya Jikelele Labetshutshisi Bo Mzantsi Afrika
Die Nasionale Vervolgingsgesag van Suid-Afrika

STRATEGIES IN INVESTIGATING AND PROSECUTING CORRUPTION

The Chairperson, Heads of Anti-corruption Agencies, Heads of Prosecuting Authorities, ladies and gentlemen, it is indeed a pleasure to have this opportunity to present this brief paper to you today. The subject, "Strategies in Investigating and Prosecuting Corruption" is an extremely relevant one, considering the focus by Prosecuting Authorities, Anti-corruption Agencies and other law enforcement agencies in addressing and combating corruption in our respective countries.

This is also evident by the development, adoption and implementation of various significant anti-corruption instruments. In this regard, and more particularly for South Africa, the following are important achievements in the fight against corruption:

- On 14 August 2001 the SADC Countries adopted the *South African Development Community Protocol against Corruption.*
- On 11 July 2003 the African Union adopted the *AU Convention on Preventing and Combating Corruption*.
- On 31 October 2003 the General Assembly of the United Nations adopted the *United Nations Convention against Corruption.*

12 years into democracy South Africa has undoubtedly demonstrated its ability to become an important player in international affairs. This rings true not only in the political, economic and social spheres, but also in the fight against global crimes. In a short space of time, significant strides have been made to bring most of our legislation pertaining to combating serious crime, and more relevantly corruption, in line with international standards and instruments.

To indicate how we are progressing in this regard, an opinion was sought, assessing the South African domestic legislation to determine the extent to which it is in compliance with or gives effect to certain international instruments aimed at combating and preventing corruption.

In an opinion dated 19 January 2006, the drafter of the opinion, a senior advocate, reached the following conclusion:

"Based on our analysis of the various international instruments and relevant South African legislation, as summarised in this opinion and the schedules attached to it, we conclude that South African domestic law substantially complies with all material provisions and requirements of the international anti-corruption instruments."

While South Africa has various pieces of legislation and agencies that assist in the fight against corruption, more significantly for the purposes of this presentation, I mention that our Parliament enacted the Prevention and Combating of Corrupt Activities Act, 2004 (Act 12 of 2004), which came into operation on 28 April 2004. Unfortunately, time does not permit me to deal with the provisions of this Act. However, I do pause to point out, that instead of amending the 1992 Act on a piecemeal basis, a new Act was drafted which aims at giving effect to recommendations that emanated from a total review of the anti-corruption legislation.

Another very significant piece of legislation for the purposes of my presentation today, is the Prevention of Organised Crime Act, 1998, which in particular provides for forfeiture orders, search warrants and freezing of assets in respect of offences committed in an organised fashion.

Thirdly, the other very important Act on which we rely, which of course goes without saying, is the National Prosecuting Authority Act, 1998, from which we derive our mandate, powers and duties as prosecutors.

This being the position, the next step forward, was to ensure effective implementation. In this regard, it was important to ensure that strategies were developed to deal with both investigating and prosecuting corruption. As you will no doubt agree, strategies only become powerful and meaningful when you have appropriate structures and capacity to support it and which enables delivery on the strategies. We have in many ways become a strategy focussed organisation.

Our Strategies

The National Prosecuting Authority, when it was established in 1998, set up specific specialized units to combat organized crime and corruption. In this regard, the Directorate of Special Operations (DSO), better known to most of you as the Scorpions, was established to address national priority crimes of an organized nature. The DSO operates differently from other units within the NPA as it is the only unit in the country that has the power to investigate and prosecute crimes within its mandate. This unit works on a troika principle. In practice, the teams allocated to each case comprise of members from the investigation, analysis and prosecution units. Such a working relationship is essential when dealing with complex crimes such as corruption.

In dealing with matters which fall within their mandate, including corruption matters, the DSO has formulated various strategies to ensure their effectiveness.

I will briefly take you through some of these strategies:

INVESTIGATIVE STRATEGIES

- Understand and predict the business dynamics.
- Get in early, disclose early, act early.
- Quick wins, accumulate momentum & confidence.
- Creating disharmony / displacement in a group: let them know.

PROSECUTING STRATEGIES

- Prosecution-led, Multi-disciplinary, Analysis-driven Strategy.
- Combine indemnities, plea-bargaining, Interdiction, etc.
- Make criminal markets less profitable & money laundering simple to prosecute.
- Get minimum prosecutable case ready in shortest possible time.
- Use investigative tools & legislation i.e. searches, inspection, trans-national cooperation i.e. mutual legal assistance and extradition
- Focus on modes of communication including interception and monitoring, technology surveillance & value chain.
- Share achievement, proceeds, credit & approval.
- Honour inter-agency agreements & undertakings; & observe own rules

To give you some idea of the successes we have had in this unit in dealing with corruption matters, I point out that we have a conviction rate of 100% to date, as all cases that went on trial were finalized with a guilty verdict. We are proud of the fact that none of the accused in corruption matters have been acquitted. It seems that our strategies are working.

To further respond to the crime problem we face, the NPA established the Asset Forfeiture Unit (AFU) in May 1999 to ensure the implementation of the forfeiture provisions in the Prevention of Organised Crime Act. This unit, as small as it is, has proven its effectiveness, having caused more than R1, 8 billion worth of assets to be seized to date. The strong message we send out here is that "crime does not pay". We want to ensure that even if we convict people that they won't have an egg nest to return to.

POCA - Prevention of Organised Crime Act (1998) provides for two types of forfeiture

- Chapter 5 - Criminal forfeiture – depends on conviction, at end of trial
- Chapter 6 - Civil forfeiture – no conviction required (Prophet Case)

Asset forfeiture applications can turn into quite complex civil litigation. In the past i.e. before 1998 the lack of specialisation meant that forfeiture was little used. One of the strategies used here, is to ensure that we have specialists who are well trained and focussed.

Over the past 7 years our Asset Forfeiture Unit has grown significantly and comprises of senior advocates, investigators and administrative personnel. It is also extremely important that the partnership and close working together of staff in this unit, as well as the other units of the NPA and the Police Services are closely aligned to ensure that assets are targeted

where possible.

A further strategy is to focus on direct MLA to replace slow diplomatic channels. We have identified 2 key methods to do this:

1. Through a system of central authorities that are mutually recognised to make and receive requests for MLA directly from each other.
2. To channel requests to relevant domestic agencies.

We note that some states have adopted laws that provide that specified domestic law enforcement bodies can make MLA requests directly, and that they will accept MLA requests from foreign law enforcement bodies from specified countries (eg. Commonwealth). It is important to ensure that we are able to work together on such matters with as much speed as possible, as some assets, especially money, can disappear as quickly as we can locate them.

As a further strategy in dealing with corruption as well as other economic crimes, the NPA established the Specialised Commercial Crimes unit. This unit works very closely with the Commercial crimes unit of SAPS, and the key strategy here is that the police and the prosecutors are housed in the same building to ensure close co-operation and team work to enhance their effectiveness. The South African Police Service provides well trained investigators who work closely with the Prosecutors to ensure effective investigations and successful prosecutions. The creation of this specialist unit has proven extremely successful resulting in conviction rates of 94.7% of all matters taken to court. We currently have 4 branches in different Provinces and plan on opening two more in the near future. The model of having prosecution guided investigations works very well here, even though the investigators and prosecutors come from different departments.

A further very important strategy is to have an effective Witness Protection Programme. Witness protection is a critical element in the fight against organized crime and corruption. Without witnesses we could never succeed in our prosecutions. To respond to this demand, we have developed world-class Witness Protection legislation and established a Witness Protect Unit located in the National Prosecuting Authority. We are proud to say that no witness
or related persons who complied with protection agreement and rules of programme were threatened, harmed or assassinated since December 2000. This gives us a clean record for almost 6 years. This unit is extremely effective and is of enormous assistance especially when a witness is threatened and wants to refrain from giving crucial evidence. The programme deals with protection before, during and in many instances, after the case is heard. This gives witnesses a sense of comfort and security and is conducive to the wellbeing of the witness as well as being vital for successful prosecutions.

Another key strategy in dealing with corruption is to ensure that all personnel, i.e Investigators and Prosecutors are well trained. Training is something that can never be under-estimated and ensuring that personnel are at the forefront of international trends and best practices, is essential in our fight against such crimes. Crime patterns change, as does the modus operandi of criminals and if we, as part of law enforcement agencies, do not keep ourselves at the cutting edge of these developments, we will not succeed in fighting this scourge.

Conclusion

Finally ladies, and gentlemen, I am happy to say that in South Africa there is substantial political will to fight corruption. The level of transparency in this regard is reflective of our ever strengthening democracy. We have acknowledged that there is a huge market for goods and services in Africa.
Good banking systems, low costs and an attractive currency make it conducive for criminals to operate within such an environment. Currently, 13 national institutions have anti-corruption work as part of their mandate. The level of success that we have achieved to date in corruption matters is assuring and is clear evidence that the country is working. We are serious in our fight against corruption.

Thank you for your time.

Sri Lanka

FIRST ANNUAL CONFERENCE AND GENERAL MEETING
OF THE INTERNATIONAL ASSOCIATION OF
ANTI-CORRUPTION AUTHORITIES

Sri Lankan Law relating to Corruption and Cooperation between law enforcement and other relevant national authorities

C.R. De Silva, President's Counsel
Solicitor General
Democratic Socialist Republic of Sri Lanka

The legal infrastructure to combat bribery and corruption was introduced way back in 1954. The law introduced by Parliament, i.e. the Bribery Act created certain substantive criminal offences relating to bribery by state and public officials and provided for the investigation of such crime and the prosecution of offenders. The law did not directly recognize 'corruption' as a substantive criminal offence. However, law enforcement and judicial authorities made use of this law and its constituent offences of bribery to deal with instances of direct bribery and other instances involving more complex forms of direct and indirect bribery including instances of corruption. The main body of substantive criminal law is contained in the Penal Code. This law also contains offences such as Criminal Breach of Trust, which can be made use of for prosecution of instances of certain forms of corruption.

In 1994, in introducing a substantial change in the relevant law, the Parliament enacted a new law to supplement the previous law and introduced an amendment to the Bribery Act. This amendment created a new substantive offence relating to corruption. It reads as follows :

Any public servant who, with intent, to cause wrongful or unlawful loss to the Government, or to confer a wrongful or unlawful benefit, favour or advantage on himself or any person, or with knowledge, that any wrongful or unlawful loss will be caused to any person or to the Government, or that any wrongful or unlawful benefit, favour or advantage will be conferred on any person:-

does, or forbears to do, any act, which he is empowered to do by virtue of his office as a public servant;

induces any other public servant to perform, or refrain from performing, any act, which such other public servant is empowered to do by virtue of his office as a public servant;

uses any information coming to his knowledge by virtue of his office as a public servant;

participates in the making of any decision by virtue of his office as a public servant;

induces any other person, by the use, whether directly or indirectly, of his office as such public servant to perform, or refrain from performing, any act,

shall be guilty of the offence of corruption.

The new law created a new statutory entity referred to as the Commission to Investigate Allegations of Bribery or Corruption. This Commission which is a quasi-judicial and autonomous body is independent of the executive arm of the State, and is mandated by law to cause investigations into allegations of bribery and corruption and direct the institution of criminal proceedings against offenders. The Commission consists of a three member body appointed by the Constitutional Council. Two of whom are retired judges of the Supreme Court and the Court

of Appeal and the third being a person with wide experience relating to the investigation of crime and law enforcement. The Commission has its' own investigative and legal personnel.

Allegations of bribery and corruption against state officials and those holding public office including elected and appointed politicians functioning in the executive arm of the State, are not uncommon. Prevalence of such incidents have gradually, increased throughout the history of independent Sri Lanka. However, it took a turn for the worse with the introduction of a capital market economy in 1977. With the political leadership and government officials being required to negotiate and interact with private sector organizations and entrepreneurs and take decisions on complex high volume transactions and a stiff competition in the private sector to secure contracts from the government, understandably caused an increase in bribery and corruption. Other factors such as economic conditions, inapt political commitment, lack of effective law enforcement and high rate of acquittals of persons accused of committing such offences, have contributed towards the prevailing situation.

Investigation of allegations of corruption is complex and difficult. Collecting cogent admissible material to launch an effective criminal prosecution is an even more difficult task. Some of the reasons that contribute towards this are as follows.

1. Surreptitious and complex nature of the relevant transaction.

2. Lack of co-operation from parties who may have induced the relevant public official to engage in a corrupt act.

3. Absence or paucity of documentary material reflecting the relevant transaction.

4. Absence or paucity of corroborative material.

In view of the foregoing, investigation of incidents of corruption require detailed planning, preparation, efficacious implementation of investigational strategies by competent, independent & professional investigators and co-operation amongst various agencies. Co-operation may be required from the following.

(a) Parties who may have facilitated, abetted the suspect to engage in a corrupt practice or been directly or indirectly privy to the transaction.

(b) Organizations (such as banks) that may possess documentary evidence reflecting or relevant to the transaction under investigation.

(c) Other law enforcement (local) agencies that may have a useful role to perform in the investigation or to facilitate the investigation into the alleged corrupt practices.

(d) Foreign competent authorities whose services may be required by the local investigators.

Organizations and institutions of both the state and private sector could be used by those involved in corrupt practices to sanitize their ill-gotten wealth and to surreptitiously store and retain their unlawful assets. In particular banks, finance companies, lease providers, insurance companies, stock brokers, asset management houses and charities are some of the organizations that are frequently used for such purposes. Therefore, cooperation from such organizations is a sine-qua non for successful investigation in cases of corruption.

In view of the serious practical difficulties faced by the prosecution in establishing offences of bribery and corruption, the law in its wisdom, has introduced a presumption that all assets owned or acquired by a public servant which is inconsistent with his known income is deemed to have been acquired through bribery and corruption. This provision has been of immense benefit to the prosecution in establishing offences of bribery and corruption.

The Declaration of Assets and Liabilities Act enacted in 1975 is another important piece of legislation towards the control of bribery and corruption. In terms of this law all Senior Public Officials, Judicial Officers and Members of Parliament are called upon to make an annual declaration of all assets and liabilities both in Sri Lanka and outside. The declaration includes the assets and liabilities of the spouse and children of the declarent. The failure to make such declaration has been made an offence in terms of this law.

Recently, the Parliament of Sri Lanka enacted the Prevention of Money Laundering Act and the Financial Transactions Reporting Act. These two laws in conjunction with each other, recognizes Money Laundering as a substantive criminal offences and provides for effective investigation and prosecution of instances of money laundering. The Financial Transactions Reporting Act has provided for the establishment of the Financial Intelligence Unit which has wide powers to obtain information regarding financial institutions for the purpose of tracking down and monitoring suspect financial transactions. This law has also created a series of obligations on financial institutions to make available to the FIU information pertaining to suspect financial transactions.

As you would know, the corner stone of money laundering is the commission of a principal unlawful act referred to as a 'Predicate Offence'. Universally recognized predicate offences include drug trafficking and smuggling of weapons. Under Sri Lankan law, offences of bribery and corruption are also deemed to be predicate offences. Therefore, if a person who through the practice of corruption secures wealth, and channels the proceeds of such corrupt act for the purpose of transforming the true origins of such assets so that he could sanitize the wealth and thereafter use it according to his wishes, such process is deemed to amount to money laundering and is punishable. Therefore, Sri Lankan law enforcement authorities now have this additional tool to investigate instances of bribery and corruption.

Sweden

The Swedish National Anti-Corruption Unit

Developing networks to maximise efficiency

Background

The Swedish National Anti-Corruption Unit operates from the Office of the Prosecutor General. It is entirely independent from the national police force.

The unit has a team of only five prosecutors and two economists.

The unit's main role is to deal with all cases of bribery and corruption in Sweden as well as international cases that have a Swedish connection.

Of course, for a such a small team to succeed, its members have to be highly qualified and specialised. But even so, the team is clearly too small to do all the work itself.

It needs help from outside. For instance, the police force provides investigative resources, as the unit has none of its own. However, the unit's prosecutors lead all criminal investigations themselves.

This help alone is not sufficient to meet the wide scope of the unit's mission, which it currently sees as being threefold:

to identify crimes of corruption;
to take legal proceedings in serious cases that threaten the system; and;
to counteract the emergence of corruption culture, that is, the growing acceptance of petty corruption in society.

To be able to effectively combat corruption in this way, the unit has developed a special model. A model based on identifying: which external resources are needed; where they can be found, and; who best to cooperate with in those places.

The following activities form the key elements of the unit's strategies.

Identification of crimes

The problems involved in detecting corruption are well-known. There is no natural reporter of crimes of corruption – often no obvious victim.

Fortunately, many corruption cases come to light through the work of investigative journalists in TV and newspapers. In Sweden, the public, and therefore the media, has the right to access all official documents. This makes corruption in government agencies more difficult to hide.

For this reason, an important part of the unit's strategy is to monitor what is published in the media.

Another obvious source of information is police intelligence and reconnaissance work. The unit collaborates closely with the financial police.

A third very important element of the unit's strategy is its network of collaborators from within government agencies.

This network focuses on agencies that are involved in areas that are traditionally risk areas for corruption, such as: public procurement; international aid; social insurance; immigration; the penal system; defence; the financial markets, and; export credits.

Another key strand of this network includes government agencies that are well-placed to detect corruption. For instance, the National Audit Office. This office audits all government activities, including the administration of foreign affairs, where Swedish embassies are able to report on the activities of Swedish businesses overseas. The National Tax Board is also part of this network. This board is able to detect suspicious payment flows when auditing companies.

How the network operates

The effectiveness of the network depends on the authorities reporting suspicions to the unit early.

The unit then decides how to proceed: that is, shall they take over the case and begin an investigation, or should it be left to the relevant authority to handle it internally.

Once the unit decides to investigate, essential information can be protected by applying secrecy regulations. Early reporting has helped make this system effective.

Another benefit of the network is that during criminal investigations the unit is able to share the expertise that exists within the government agencies.

And likewise, the network makes it easier for the unit to inform the agencies of the regulations covering corruption and the legal procedures to be followed when investigating and prosecuting corruption cases.

The network is also a forum for recording and analysing occurrences of corruption and methods used by those involved in the crimes.

Broader knowledge base

The unit takes this research further in its formal collaboration with the National Council for Crime Prevention. This project records the factors that lead to corruption and identifies the risk areas.
The overall aim of the project is to achieve a better basis for decisions on how to combat corruption and how to prevent crime.

Another longer-term strategy of the unit involves developing links with university departments that do research in the area.

International cooperation

Internationally, the unit's chief strategy is to develop cooperation with EUROJUST. This form of international cooperation allows for more effective and efficient investigations into cross-border corruption crimes.

Meanwhile the unit continues to work on developing various forms of cooperation with other

international bodies; aimed at making the most efficient use possible of all available resources.

A central theme to this work is the need to follow the money flows overseas during international investigations.

The unit is an active participant in the OECD's anti-corruption work. This not only supports efforts to combat corruption worldwide, but also improves awareness within the unit of the opportunities and resources available to assist international investigations.

The effects of the strategy

The unit has seen a much greater inflow of cases and this has led to significantly more legal proceedings being taken.

The unit has been able to investigate cases of principal significance for the combating of serious corruption crimes, within both the public and private sectors.

The unit's work has had a substantial preventative effect. Due to the mass media attention generated by the cases and the structured measures taken.

Awareness of corruption has noticeably increased and the consequences of involvement are now clearer.

The degree of acceptance of petty corruption in business and in dealings with government agencies has declined. One indicator of this is the number of policy documents that agencies have produced that limit what benefits public officials may receive in the course of their duties.

The unit has been able to identify weaknesses in the legislation covering corruption, such as: protection for whistleblowers; the requirement for double incrimination, and; certain forfeiture issues.

Tanzania

Cooperation between Anti-Corruption Authorities and Financial Intelligence Units:
The Tanzania experience with Emphasis in the Southern African Region

Paper presented by Maj.Gen. A.R. Kamazima (Rtd) at the First Annual Conference and General Meeting of the International Association of Anti-Corruption Authorities, Beijing, 22-26 October, 2006.

Criminals recognize no borders. They operate and cooperate across states. Law enforcement authorities, on the other hand, are generally restricted by jurisdictional limitations. As Koffi Annan, the UN Secretary General said, law enforcement authorities must be able to follow criminals where they go. For this to happen, law enforcement authorities must be able to cooperate.

Institutional arrangements are vital in cooperating to prevent, reduce and control corruption at the national, regional and international levels. The Southern African Development Community (SADC) Protocol against Corruption was the first significant development in a multilateral approach to address corruption in the region. It was signed in August, 2001 by fourteen African states in this region.

The Protocol calls for SADC Member States to bring their laws into line with the requirements set in the instrument which will contribute significantly towards the harmonization of anti-corruption legislation in the region and simplify mutual assistance mechanisms. The United Nations Convention against Corruption 2003 and the African Union Convention on Preventing and Combating Corruption 2003 were later adopted by individual SADC states. They will eventually lead towards the enhancement of effective anti-corruption measures to combat corruption and improve international cooperation in the SADC region once they are

domesticated.

The Legal Framework for Cooperation
Article 2 of the SADC Protocol against Corruption states cooperation as one of the main objectives of the instrument. It provides:

(b) To promote, facilitate and regulate co-operation among the State Parties to ensure the effectiveness of measures and actions to prevent, detect, punish and eradicate corruption in the public and private sector.

The AU Convention on Preventing and Combating Corruption similarly provides in Article 2:

(b) To promote, facilitate and regulate cooperation among the State Parties to ensure the effectiveness of measures and actions to prevent, detect, punish and eradicate corruption and related offences in Africa

(c) To coordinate and harmonise the policies and legislation between State Parties for the purposes of prevention, detection, punishment and eradication of corruption on the continent.

One of the purposes of the UN Convention in terms of Article 1 is:
(b) To promote, facilitate and support international cooperation and technical assistance in the prevention of and fight against corruption, including in asset recovery.

In general one can say that the three instruments have the same objectives, namely, to promote and strengthen the development of mechanisms; to promote, facilitate and regulate co-operation among State Parties. Apart from cooperation measures such as extradition, mutual legal assistance and asset recovery, the UN Convention contains certain specific measures relating to cooperation with law enforcement authorities and between national and international authorities that are not covered by the SADC Protocol and the AU Convention.

The Southern African Forum against Corruption (SAFAC)
The SADC countries established a Sub-Regional Body in 2001 known as the Southern African Forum against Corruption (SAFAC) comprising of national anti-corruption authorities in the region. The body aims at assisting in strengthening national machineries in the fight against corruption by forging a strong collaborative partnership that will coordinate national efforts towards addressing corruption in the region. The Forum facilitates collaboration, mutual assistance and a united front against corruption in the Sub-Region.

SAFAC focuses its attention on strengthening the anti-corruption preventative, investigative and prosecutorial capacities in the region. It is also a forum for exemplification of Best Practices in the region. A Non Governmental organization known as the Southern African Human Rights Trust (SAHRIT), among others, formulates the implementation plan for the anti-corruption Protocol and acts as Secretariat to SAFAC.

A SAFAC Newsletter keeps its membership updated on current affairs with regard to corruption and anti-corruption in the *SAFAC News Bulletin* section which features stories on corruption in the SADC region from electronic news agencies.

Mutual Legal Assistance
Anti-corruption authorities in the region have been cooperating in Mutual Legal Assistance in numerous cases. Investigators from across the region provide the necessary assistance in investigations including locating suspects, witnesses and recording statements. The Tanzanian Prevention of Corruption Bureau (PCB) has cooperated with anti-corruption authorities from Malawi and Zambia in this regard.

Extradition
A number of extraditions have taken place on extraditable offences in the region facilitated by the competent anti-corruption authorities. The SADC protocol provided the legal framework for such exercises. A case in point was the extradition of a former Tanzanian government official from Botswana to face a Corruption trial in 2001.

Exchange of Experiences

Kenyan, Lesotho, Zimbabwe, Russia Federation delegations have recently visited the Prevention of Corruption Bureau. PCB officers have visited Botswana, Mauritius, the New York Department of Investigation, ICAC Hong Kong, the West Midlands Police and the New South Wales Anti-Corruption-Commission.

SADC's Initiative in Implementing the Protocol
Article 11 of the SADC protocol mandates a Committee comprising of delegates from member states to oversee evaluation of programmes and a programme of cooperation for the Protocol. However as the Committee has yet to be in place, SAFAC performs this function and it is envisaged it may well be subsumed into the Committee once it is formed.

Capacity Building Programmes
An attempt to build a partnership approach was the first seminar on Anti-Corruption Strategies with particular regard to Drug Control for SADC member states held in Botswana in October; 2001.

SAFAC's capacity development programmes have been very active. Two training workshops were held in the areas identified by the Training Committee at the 2004 Meeting.

The first was the investigators and prosecutors trainer of trainers' workshop targeted at anti corruption practitioners in the SAFAC countries. The workshop was held in collaboration with the United Nations Office on Drugs and Crime (UNODC) Southern African Region. The second training workshop, also using the train the trainer approach, was in applied research methodologies to encourage the development of anti corruption research in the SAFAC region.

Six SAFAC countries that have anti corruption agencies namely; Botswana, Lesotho, Malawi, Mauritius, Tanzania and Zambia took part in a research on the independence of anticorruption commissions in the SADC conducted by SAHRIT. The research study has been published and distributed to all SAFAC countries.

Annual General Meetings
SAFAC members hold Annual General Meeting. SAFAC held its 6th Annual General Meeting (AGM) August 2006. It was held in Mauritius. All SADC countries are encouraged to send delegates to the AGM. It is anticipated that more activities that strengthen the forum will be the outcome of AGMs.

Lobbying for Ratification of SADC protocol against Corruption
SAFAC continues to lobby for the ratification of the SADC Protocol against Corruption. A sufficient number of member countries have ratified the Protocol and it is now in force.

Challenges
The difficult task of implementing the SADC Protocol as well as the AU and UN Conventions, now constitutes a major challenge for the SADC member states. Domestication of the obligations in these instruments in their municipal law that will make provision for cooperation in Mutual Legal Assistance, Extradition, Asset Recovery, Money Laundering and a wide range of matters will need considerable effort.

The implementation of one or more of the three anti-corruption instruments will contribute significantly towards the harmonization in the sub-region of policies and domestic legislation relating to the combating of corruption in the public and private sectors. Tanzania is in the final process of putting in place a comprehensive anti-corruption legislation which encompasses the AU and UN Conventions as well as the SADC Protocol.

To be effective, timely cooperation measures are necessary to have meaningful results. Too much bureaucracy is a hindrance to effective criminal justice system administration. More focus needs to be put in place in establishing mechanisms for speeding up cooperation between anti-corruption authorities in the region, and internationally now that there will be an International Association of Anti-Corruption Authorities in place.

It is apparent that only some of the SADC members have functioning Financial Intelligence Units including South Africa, Mauritius and Zimbabwe. Tanzania, Malawi and others are in the process of establishing theirs. The whole region has to put in place FIUs within a reasonable space of time as they are indispensable in tracking corrupt transactions and discerning corruption patterns and trends.

United Kingdom

I

Northern Ireland

Brief Introduction to the Draft Constitution of the International Association of Anti-Corruption Authorities

Sir Alasdair Fraser CB QC
Director of Public Prosecutions for Northern Ireland,
United Kingdom Member of the Executive Committee of the International Association of Prosecutors

Distinguished Colleagues,

On behalf of the Organizing Committee of the First Annual Conference and General Meeting of the International Association of Anti-Corruption Authorities, it is my privilege to introduce the draft Constitution of the Association.

The Constitution sets out the fundamental principles and objectives under which the Association is formed. It also establishes in detail the manner in which the Association is to be organised including the role and responsibilities of the Executive Committee, the President, the Vice-Presidents, the Secretary General and General Counsel.

The present draft has been the subject of much thought and deliberation. The original draft was initiated by colleagues who attended the first ASEM Prosecutors General Conference held in Shenzhen, China in December 2005. In early 2006 experts from the United Kingdom and Argentina re-drafted the Constitution and it was subject to a further re-draft by experts from the United Kingdom, South Africa, Sri Lanka and Hong Kong. The third draft of the Constitution was circulated to many anti-corruption agencies and international organisations throughout the world for comment. It received enthusiastic support and great interest. It was subsequently discussed at the preliminary meeting on the establishment of the International Association of Anti-Corruption Authorities held in Vienna during April 2006. I would like to take this opportunity to formally thank all those who contributed to this final version which, I suggest, provides a sure foundation for the future of the Association.

The draft Constitution consists of 16 articles. I intend to comment briefly on each.

Article 1 describes the name, nature and objectives of the Association. It underlines that the Association is an independent, non-political, anti-corruption organisation. Its objectives include promoting the effective implementation of the UN Convention Against Corruption; assisting anti-corruption authorities internationally in the fight against corruption and for that purpose promoting international co-operation in the gathering and providing of evidence.

Articles 2 and 3 set out the basis upon which organisational and individual membership may be obtained. The Executive may admit an organisation to membership if it is established in a country or area for the prevention, investigation or prosecution of corruption. The Secretary General of the Association may grant individual membership to a person who has experience in the area of anti-corruption research or practice.

Article 4 allows the general meeting, on the recommendation of the Executive Committee, to elect an honorary member of the Association who has made an outstanding contribution to the Association's work as an honorary member for life.

Article 5 sets out the manner in which annual membership dues are established both for organisational and individual members. It permits the Executive Committee in exceptional circumstances to waive in whole or in part the dues payable by an organisational member or reduce the dues payable by individual members where the circumstances so warrant.

Article 6 addresses issues of cessation and suspension of membership. The Executive Committee may recommend to the General Meeting that members be expelled or suspended. The expulsion or suspension of an organisational member may be recommended only where the responsible state has abolished that authority or undermined its operational independence so as to make the authority ineffective. In the case of individual members, expulsion or suspension may be recommended if they have been found guilty of a crime or of a significant violation of administrative standards or, exceptionally, where their participation in the activities of the association is considered detrimental.

Article 7 prescribes who will represent the Association in legal affairs. This will either be by the President or by a member of the Executive Committee appointed by the President acting jointly with the Secretary General. In addition, the Executive Committee may by resolution authorise the Secretary General to act on behalf of the Association in particular legal affairs specified in the resolution.

Article 8 provides for the establishment, composition and appointment of the Executive Committee. It sets out the responsibilities of the Executive Committee to act on behalf of the Association. I should underline that the draft Constitution intends that the membership of the Executive Committee should reflect, as far as is possible, the regions of the world in which the Association has members. The extensive duties and responsibilities of the Executive Committee are set out in the third paragraph of the Article; its primary responsibility being to oversee the affairs of the Association generally. A member of the Executive Committee may be suspended from membership of the Executive Committee until the next General Meeting of the Association if two-thirds of its members consider that a person's membership is detrimental to the Association or he or she has failed to contribute to the work of the Association.

Articles 9 and 10 establish the procedures whereby the President and Vice-Presidents are to be elected. Each will hold office for a period of 3 years commencing immediately after the General Meeting at which that person was elected. Nominations for election as President or Vice-Presidents are made to the General Meeting by the Executive Committee. Nominations or election as President may also be made at the General Meeting by not less than 10% of organisational members or by not less than 100 individual members. Nominations for election as Vice-President may also be made at the General Meeting by not less than 10% of the membership.

Articles 11 and 12 provide for the election of the Secretary General and General Counsel by the General Meeting and for their duties and responsibilities.

The Secretary General is responsible for the day to day management of the Association. The Secretary General will hold office for 6 years. That person will make proposals in relation to budget and financial statements to be adopted by the Executive Committee; make proposals for annual working programmes; admit applicants to individual membership; organise meetings of the Executive Committee, and take forward decisions of the Executive Committee and the General Meeting. Provision is taken for the establishment of a Secretariat to the Association which will assist the Secretary General. The Secretary General may employ such personnel as are required to assist in the management of the Association.

The duties of General Counsel include providing legal advice in connection with applications for membership and assisting the Secretariat on all legal issues as may be required. General Counsel is appointed by the Executive Committee and serves for a period of 6 years.

Article 13, which is of particular importance, establishes the General Meeting. The General Meeting is the supreme authority of the Association. It consists of organisational members, individual and honorary members. It is responsible for the election and appointment of persons carrying out the offices established by the Constitution; the suspension or dismissal of such persons; the determination of policies for the Association; and, importantly, has power to amend the Constitution. Each individual member present at the General Meeting will have one vote. The vote of an organisational member will be the equivalent to the votes of 10 individual members. Unless otherwise provided by the Constitution the General Meeting will take decisions on the basis of a simple majority of members or associations present and voting.

Article 14 provides that an Annual Conference will be held together with the Annual General Meeting at a time and place determined by the Executive Committee. Regional conferences may be convened. Other organisations with similar purposes to the Association may be invited to

attend as observers and be permitted to speak.

Article 15 provides for the amendment of the Constitution either on the proposal of the Executive Committee or by not less than 10% of organisational members or by not less than 100 individual members. Any proposal for amendment is to be lodged with the Secretary General not less than 60 days before the next General Meeting and notice of such a proposal is to be communicated to members not less than 30 days before the meeting.

Article 16 provides that the official language of the Association will be English.

Finally, there are 2 Annexes to the Association. The first addresses the procedures for dealing with applications for membership and in particular the criteria upon which the decisions of the Executive Committee will be based. The second annex addresses the suspension of membership.

I hope this brief introduction to the draft Constitution of the Association ensures members that the appropriate structures and arrangements are in place to allow the Association to meet its important objectives. May I commend the draft Constitution to you.

II

By Mr. James Kellock

Deputy Director's speech on prevention of corruption to the delegates attending the United Nations Convention Against Corruption (UNCAC) hosted by China 23 October 2006.

Thank you very much for inviting me to speak today.

At first sight it may appear odd that I, a prosecutor, appear before you to talk about prevention rather than criminalisation and law enforcement. After all the business of the Serious Fraud Office in the United Kingdom is to investigate and prosecute cases of serious or complex fraud. But I'm only too delighted not to have to talk about prosecution and law enforcement for a change. Indeed, one might hope that if there was proper prevention, there would be no need for people like me.

However, when looking at the Convention, prosecution is only a part of the whole picture. And all the parts are necessary together in the fight against corruption.

As well as investigation and prosecution another vital part of prevention, of course, is the penalties available after a criminal conviction.

I wish I could tell you that prison is the ultimate deterrent for corrupt criminals. I'm afraid for too many are only too willing to serve a few years in prison provided they can keep the financial gains of their corrupt behaviour. They see prison as an unfortunate tariff or tax they have to pay, or just an inconvenience, provided they can hide and subsequently get hold of their ill-gotten gains upon their release (and of course some criminals are able to continue their criminal enterprises from within prison).

It is in fact the prospect of losing or forfeiting their proceeds of crime that is the biggest single deterrent for criminals.

Recent increased powers in my own country mean that the entire proceeds of what appears to be a criminal lifestyle, irrespective of whether there is a criminal conviction, can now be confiscated. Equally we are able to act on a request from a foreign country to restrain or confiscate assets.

UNCAC Prevention Articles

But to return to the Convention.

As you know an entire chapter is dedicated to prevention with measures directed at both the

public and private sectors.

Model preventive policies include:
the establishment of public and private anti-corruption bodies working in partnership
enhanced transparency in the financing of election campaigns and political parties.
safeguards to ensure public services promote efficiency, transparency and their recruitment must be based on merit.
public servants must be subject to codes of conduct, requirements for financial and other disclosures, and appropriate disciplinary measures.
the promotion of transparency and accountability in matters of public finance and
there must be specific requirements established for the prevention of corruption in particularly critical areas of the public sector, such as the judiciary and public procurement.

Those who use public services must expect a high standard of conduct from their public servants.

Preventing public corruption also requires an effort from all members of society at large.

For these reasons, the Convention calls on countries to promote actively the involvement of non-governmental and community-based organizations, as well as other elements of civil society, and to raise public awareness of corruption and what can be done about it.

Article 5 of the Convention enjoins each State Party to establish and promote effective practices aimed at the prevention of corruption.

Checks and balances

But as well as detailed actions how else can corruption be tackled?

A vital part of preventing corruption is building in checks and balances. One institution should be able to check and balance another: action in one area should not be capable of not being questioned by another area.

For example in the political arena, governments are subject to control by the legislative arm such as the Parliament in the United Kingdom. Both in turn are checked by the Judiciary when it comes to judicial scrutiny of legislation.

My own organisation, the Serious Fraud Office, is of course a public authority. We are all civil servants subject to the Code for Civil Servants which emphasises impartiality and independence. It also stresses honesty and integrity.

For example we are not allowed to accept gifts or gratuities or to engage in any political activity. We must not in any official capacity express our own political beliefs or show any political favour or bias.

Our public duty is to assist the government of the day, whosoever it is, formulate and deliver its policies. In turn we are accountable to the legislature, Parliament, for our performance, and the way we spend our budget.

The most important people we serve are of course the public. A member of the public who has a complaint against my office may take it further if he or she is not satisfied with our response. The fact that they can take their complaint outside my organisation to another independent body is another vital check.

Equally specific decisions we take as a public authority can be reviewed by the courts if a person affected by them thinks we have acted improperly

On a personal level I am a lawyer who has the benefit of my own professional body which also has a code of conduct stressing impartiality and independence: I can turn to them for guidance and assistance should I need to and I am subject to their regulation and to their discipline if I act outside that code of conduct

I am subject therefore to several checks and balances both as an individual and as part of an organisation especially when it comes to making decisions on prosecutions and how our budget is spent. But I in turn can turn to other organisations for impartial help if I choose to do so.

The Serious Fraud Office

I would like to take a minute just to outline the work of our organisation especially in the context of tackling corruption.

The Serious Fraud Office was established in 1988 by Act of Parliament to investigate and prosecute the most serious and complex cases of fraud in England Wales and Northern Ireland. To do that we have a staff of just over 300 people – lawyers, accountants, financial investigators and others. We buy in specialist skills we do not have in house and form case teams, led by a lawyer who controls the investigation, usually with support from the local police force, and any subsequent prosecution. At any one time we have about 70 cases under investigation or being prosecuted. Of course some of those will involve corruption but the majority of our cases do not. Within the United Kingdom though we do have a special role in relation to corruption since we maintain the register of allegations of overseas corruption (i.e. where it is alleged a British person or company has corrupted persons overseas)

Following the money- audit trails

As with fraud following where the money goes is an essential part of investigating corruption. It is also an essential skill for auditors. From big accounts to small, from budgets of millions to a small expense account, all must be verified by independent checkers.

Using outside accountants' firms for proper audits is one way of achieving a degree of impartial checking, but this is not always practical for many; the public and private sector often has its own auditors as staff members.

One of the easiest ways for corrupters to avoid detection is to corrupt the audit checkers. They too must be free to make impartial, independent assessments without fear or favour.

Independence

The corner stone in the fight against corruption is independence. Institutions need to be independent of each other and ideally one institution should not have too much power over another because this imbalance may create an unhealthy climate of dependence. Independence in turn re-inforces the concept of checks and balances.

Leadership

I'd like to conclude on one of the most important elements in the fight against corruption: leadership.

One can have completely independent and impartial institutions on paper. All the right checks and balances can appear to be in place. There might be a commendable set of published values the institution promises to adhere to. The books can be signed off by independent auditors. But the institution or the system may still be a corrupt one. The example of Enron comes to mind.

Corruption usually starts within a relationship and because of that its ultimate deterrent must be on the human level, supported by laws and strong institutions certainly, but we have to rely on individuals to combat it.

One person will try to influence another person unduly perhaps by offering inducements or by leaning on a personal weakness of the other person. If that other person lacks true independence because they fear they will not be supported, they will feel compromised.

A sense of belonging to a truly independent institution, private or public, gives individuals within it the security and freedom to resist corrupt attempts. But ultimately it is the leaders of such institutions by personal example and by careful scrutiny of and accountability for their departments, by creating an open and honest culture within the institution, that provide the vital human deterrent in the fight against corruption.

III

FIGHTING CORRUPTION, FRAUD AND MONEY LAUNDERING TOGETHER - A CRIMINAL LAWYER'S PERSPECTIVE

Mr. BRUCE BUTLER

I am honoured and privileged to speak to you, and I thank our esteemed host, Dr Ye Feng for his kind invitation. The theme of my presentation is the link between corruption, fraud and money laundering and how we can best use the criminal law to fight them effectively.

First, a few words about the government department that I work for in the United Kingdom of Great Britain and Northern Ireland. The Revenue and Customs Prosecutions Office (RCPO) is a new, independent prosecuting authority which was established by the Commissioners for Revenue and Customs Act 2005. It is a major Prosecutor in England and Wales and deals with criminal cases investigated by Her Majesty's Revenue and Customs (HMRC) and the Serious Organised Crime Agency (SOCA).

Its first Director is David Green QC. He is superintended by the Attorney General, Lord Goldsmith, who is accountable to Parliament for the department's work and that of the other major UK prosecuting agencies, the Crown Prosecution Service (CPS) and the Serious Fraud Office (SFO).

RCPO prosecutes complex offences of tax fraud, serious cases of smuggling and drug trafficking, cases involving the evasion of excise duty; and an increasing number of cases of money laundering. RCPO also confiscates assets from the criminals that it convicts. In its first year, it handled over 1700 cases and convicted at least one defendant in 89% of them. It also recovered from convicted criminals the proceeds of their crimes amounting to £21.5 million.

The dishonest pursuit of wealth is what most crime is about. Money laundering, fraud and corruption go hand in hand. They have a corrosive effect and a symbiotic relationship that undermines the fabric of society at every level and damages international trade and business.

Corruption reduces public revenue and increases public spending. It reduces investment and stunts economic growth. So does fraud. It reduces the funds available to spend on vital public services, such as health and education. Money laundering conceals the proceeds of crime and finances more crime, which in turn creates a breeding ground for corruption and fraud.

Money laundering has become an essential part of the toolkit of serious and organised criminals who feed off society and grow rich on the proceeds of their crimes.

All three - fraud, corruption and money laundering - ruin lives just as surely as the illicit trade in narcotics. So what can we, the law enforcement agencies, do to help stamp out these insidious activities?

First, can I emphasise the vital importance of international co-operation and a joined-up approach by law enforcement agencies and prosecution authorities. Gone are the days when crimes were confined within a nation's borders. The ease with which funds can be transferred world-wide, the availability of international travel and the growth of the Internet make it essential to regard corruption, fraud and money laundering as problems with a global dimension. But the law and more traditional means of combating them have not kept pace with the speed of their development. So we need to be more innovative in our approach to them. I invite you to consider whether there should be much quicker ways of gathering and exchanging admissible evidence internationally in cases of serious crime. In this age of 'e' commerce, and information technology, the concept of traditional letters of request for legal assistance seems somewhat outdated. Increasingly, prosecutors find that it can take months to obtain evidence from countries outside the UK. Courts will not always tolerate such delays and criminals, including those guilty

of serious fraud and corruption, can walk free.

The UK and its partners in Europe have already set up mechanisms to increase police and judicial co-operation between European Member States. They have a European Judicial Network, a European Police Office and Eurojust, which was established in 2002 to enhance the effectiveness of authorities from Member States when dealing with serious, cross-border cases. Furthermore, European arrest warrants now make it much easier to secure the return of fugitives from Member States. Internationally, as you will be aware, the G8 States are committed to the effective implementation of the United Nations Convention Against Corruption, including the effective identification, restraint and recovery of the proceeds of corruption.

In the UK, the Department for International Development is at the forefront of the fight against international corruption and has produced a UK Action Plan for 2006/2007. Two of the components of it are international co-operation and the drive against money laundering.

Close co-operation between investigating and prosecuting agencies at national and local levels is equally important. My own department, RCPO, is committed to giving robust, independent, legal advice to investigators from an early stage in every criminal case of any complexity. By involving our lawyers, we help to ensure that each investigation is properly planned and managed from the outset, and that good, admissible evidence is gathered as quickly as possible. This in turn helps us to prosecute cases effectively, to reduce delays in bringing cases to trial, and to secure convictions and the confiscation of assets from criminals. I cannot over-emphasise the importance and the benefits of involving prosecuting lawyers at an early stage in every criminal investigation of corrupt activity, fraud or money laundering.

But they need the tools to do the job.

It is therefore important to have robust, effective legal provisions in place. In the UK, we have well established, effective statutory provisions to combat bribery and corruption involving public officials, national and local government officers, police officers, private employers and public and private employees.

Under the terms of the Anti-Terrorism, Crime and Security Act 2001, acts of bribery and corruption committed outside the UK by UK citizens or UK companies are punishable in the UK. This demonstrates the UK's commitment to join forces with the international community in the fight against corruption.

The maximum penalty in the UK for all offences of bribery and corruption is up to seven years imprisonment, or a fine or both. Arguably, that should be increased where corrupt public officials conspire with criminals to defraud governments on a grand scale.

To emphasise the UK's commitment to the fight against organised crime and the confiscation of the proceeds of crime, the UK has recently introduced two important pieces of legislation. They are the Serious Organised Crime and Police Act 2005 and the Proceeds of Crime Act 2002.

The former established the Serious Organised Crime Agency (SOCA) to prevent and detect serious, organised crime; to contribute to the reduction of such crime in other ways, and to mitigate its consequences.

Criminal proceedings resulting from investigations by SOCA are conducted by my department - RCPO - and the Crown Prosecution Service. Because of its established expertise in combating drug smuggling, drug associated money laundering and the restraint and confiscation of the assets of drug smugglers, RCPO deals with these offences and the Crown Prosecution Service concentrates on other major aspects of SOCA's work, including people trafficking.

The Serious Organised Crime and Police Act 2005 also creates new powers to investigate serious crime. Amongst them is the power for the Director of RCPO and the Director of Public Prosecutions, who is the head of the CPS, to issue disclosure notices requiring a person, including a suspect, to answer questions, provide information and produce documents. These powers apply specifically to offences of money laundering and serious tax fraud, but curiously they do not apply offences of corruption. I suggest that they should apply to them.

I should add that a statement made by a person in response to a disclosure notice can not be used in evidence against him except in limited circumstances, but it can be used by lawyers and investigators to shape the investigation, and it can be shared with other law enforcement agencies

where the law permits.

The Serious Organised Crime and Police Act 2005 also gives RCPO and CPS prosecutors the power to make formal agreements with offenders who have offered to assist by giving information to the authorities. Agreements can be in the form of an immunity from prosecution; an agreement not to use certain evidence; or an agreement that an offender who has offered to provide assistance will be eligible for a reduced sentence on entering a plea of guilty. Other, less formal arrangements also exist for bringing information offered by an offender to the attention of the Court that sentences him.

The Proceeds of Crime Act 2002 is the UK prosecutor's principal weapon against money laundering. The Act creates a series of money laundering offences that criminalise all forms of dealing with criminal property: that is, any property constituting a person's benefit from crime, whenever and wherever the crime was committed, provided it would be an offence in the UK, and the offender knows that the property constitutes the proceeds of crime. So, money laundering will include handling the proceeds of drug trafficking, or transferring the proceeds of fraud, or possessing or concealing a corrupt payment of money or other property.

The Proceeds of Crime Act 2002 also places a requirement on persons in the financial services sector, including banks, accountants and lawyers handling client's money, to report to the authorities any suspicious activity connected with money laundering. The Third Money Laundering Directive of the European Union will be implemented by the UK by December 2007 and extends the reporting provisions to others, including real estate agents, traders in high value goods and casinos.

The Act also makes it an offence to disclose information likely to prejudice a money laundering investigation, for example by warning an offender that he is under investigation.

Arguably the most important provisions of the Proceeds of Crime Act 2003 are its provisions for confiscating the proceeds of crime. The Act came into force on 24 March 2003and gives the court of trial power to order a convicted defendant to pay a sum of money that represents his benefit from his criminal conduct.

The procedure following conviction is both simple and severe. The process starts when either the prosecutor makes a request, or the court decides that it is appropriate to proceed to confiscation. The Court first decides whether the defendant has a criminal lifestyle either because he has been convicted of one or more serious offences specified in the Act, such as money laundering or drug trafficking, or he satisfies other criteria concerning present or previous convictions.

If the court decides that the offender has a criminal lifestyle, it must assume that any property owned by him, or transferred to him, in the 6 years preceding the commencement of the current proceedings was obtained as a result of criminal conduct; and likewise any expenditure during the preceding 6 years was met by him from property obtained by his criminal conduct. The onus then shifts to the defendant to prove, on the balance of probabilities, that the court's assumption is incorrect. The only other way in which a criminal lifestyle assumption can be avoided is where the court considers that there would be a serious risk of injustice if the assumption were made.

If the court decides that the defendant does not a have a criminal lifestyle (for example if he has not be convicted of a 'criminal lifestyle offence') the court will determine the extent of his benefit only from the offence for which he has been convicted, not his benefit over the last 6 years. The court then determines the amount that is recoverable from the defendant and makes a confiscation order in that sum.

Once again, it is interesting to observe that corruption is not a 'criminal lifestyle offence' for these purposes, nor is cheating the public revenue, though money laundering is a 'criminal lifestyle offence'. I suggest they should all be 'criminal lifestyle offences', so that they can be dealt with equally severely. I should add that pending the outcome of the case, the UK authorities can 'freeze' a defendant's assets so that he cannot dispose of them.

The UK government is determined to ensure that the criminal law keeps pace with the fast developing scope and nature of fraud offences. A Fraud Bill is now going through Parliament. It will replace existing offences of criminal deception with a general offence of fraud that can be committed in several defined ways. But the offences of conspiring to defraud - the criminalisation of an agreement to commit fraud - and cheating the public revenue - tax fraud - will not be effected, and will remain powerful weapons in the prosecution of sophisticated frauds,

often committed by multiple defendants who steal public funds.

Furthermore, the UK Government recently commissioned a review of the detection, investigation and prosecution of fraud and the Attorney General, Lord Goldsmith, has published its final report.

It makes a number of key recommendations, such as establishing a National Fraud Reporting Centre, and a National Lead Police Force to combat fraud; together with measures to improve the effectiveness of fraud trials. It is designed as a comprehensive package to help tackle fraud.

Taken together, and used effectively, these measures provide a powerful deterrent to corrupt officials, and those who corrupt them, and to fraudsters and those who launder the proceeds of crime. They are strong measures individually, but even stronger when used together. Just as investigators and prosecutors are stronger when they work closely together, nationally and internationally, from the start of each case.

BRUCE BUTLER
16 October 2006

Ukraine

Alexander Shynalskiy
Deputy Prosecutor General of Ukraine
President of the Ukrainian
Association of Prosecutors

Dear Madams and Sirs,
Dear colleagues,

First of all, on behalf of the Ukrainian delegation I would like to thank the organizers for their invitation to take part at the conference and for such a great opportunity to deliver a speech On Ukrainian experience in the field of fight against corruption, identification, and return of assets of crime.

It is common knowledge that sometimes confiscation of proceed of crime is much more painful punishment for the offenders rather than a deprivation of freedom.

They are ready to serve prison sentence if they know for sure that after their release they will be able to live comfortably off and use these assets of crime without hindrance.

On the other hand, the offenders use the proceeds of crime not only for their personal needs. Very often these funds are the subject of further financing of illegal activity and its "safety" ensuring, in particular, bribery of officials, investigators, etc.

Under such circumstances confiscation assumes a great importance as an effective measure of crime prevention, and above all, prevention of the organized crime.

The stages of search and arrest /freezing/of the proceeds should have priority over confiscation as an act of forfeiture of proceeds of crime from the offender.

It should be noted that in a present-day world, where high mobility of funds and so quick development of new technologies of the execution of payment transactions exist, the offenders make reasonable efforts to conceal these assets.

In most cases, crimes, dealing with obtaining income, are often committing in one state, but the hiding process of these proceeds takes place in another country. Another method is to

channel the money through various financial transactions in a third country to give the appearance that the money was derived from a legal source.

It must necessarily follow that no one country can adequate counteracts this phenomenon without an effective cooperation between the relevant bodies of the different countries.

The level of implementation of such cooperation, in its turn, is directly depends on the existence of the correspondent legal provisions.

A great number of multilateral conventions, signed within the frames of the United Nations and other international organizations, regulate the issues on international cooperation on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime.

Among such Treaties it should be mentioned as well the International Convention for the Suppression of the Financing of Terrorism, United Nations Convention against illicit traffic in narcotic drugs, the United Nations Convention against Transnational Organized Crime, Convention against Corruption, and the other multilateral conventions.

At the same time, all these treaties contain an inherent defect. They do not provide the complex regulation for cooperation at all stages of criminal proceedings, the final stage of which is rendering the decision on confiscation. From a practical point of view, very often it is impossible to reach the positive result in virtue of the objective and subjective circumstances, for example, it is impossible to impose the sentence in the absence of the accused.

The above mentioned conventions contain the references to the domestic legislation of the Member-States, but, unfortunately, they do not provide the unique mechanism of fight against money laundering.

Therefore, the second problem is that the conventions do not include clear and simple approach to the disposition of the confiscated proceeds. Even, if the criminal proceeds are seized in the detection country there is no guarantee on their return to the state of their origin for compensation of damage.

The above mentioned conventions, as a rule, do not regulate the issues on sharing of the confiscated proceeds with another countries provided cooperation in tracing and confiscation of such proceeds. The United Nations Convention against Corruption, as an exception, contains the Member-States' obligations on cooperation in these spheres.

But, each State, solving such issues, is guided by its own domestic legislation and approaches, which are essentially, differ.

Legislation of Ukraine, Lithuania, and Czech Republic, for example, identifies that the confiscated proceeds of crime shall be return to the state budget. Domestic legislation does not directly provide the possibility to transfer or distribute such assets. Only the international treaty can make provision on another means of solving the given problem and the possibility to transfer the confiscated property to the foreign state.

The USA, Great Britain and Guernsey practice to conclude the agreements on sharing of assets. The British Party, as a rule, directs this money to the Confiscated Assets Trust Fund with a view to finance the law enforcement initiatives and community project in the field of firth against corruption.

We invincibly believe that only international treaties should establish the global approach to solve the problems, related to confiscation of proceeds of crime and their return to the state of origin or distribution among the relevant states.

In practice Ukraine faced these problems while investigating the infamous case against the former Prime Minister of Ukraine Pavlo Lazarenko.

First and foremost, I would like to note that not all states have experience of the investigation into criminal cases of corruption against functionaries of such a level.

In investigation into this case Ukrainian investigators faced a great deal of difficulty connected not only with a high status of the accused who was brought to responsibility for plenty of crimes, including abuse of power on lucrative impulse, embezzlement of state property to the amount of tens of millions of dollars with abuse of office, repeated bribery to the amount of more that 100 million dollars.

P. Lazarenko did not content only with corruption offenses. In the list of charges brought against him by Ukrainian investigators there is contracting and organization of intentional murders of his rivals as well.

Pavlo Lazarenko`s crimes affected not only the Ukrainian territory and interests, especially, financial ones, but also that of many other countries. And in these countries his

actions were adjudged criminal. For example, in Switzerland by the Geneva canton court verdict P. Lazarenko was found guilty of laundering of money obtained through crime on the territory of Ukraine and sentenced to deprivation of freedom and penalty to the amount of 10.6 million Swiss francs (6.5 million U.S. dollars).

In 2004 the jury court of the U.S. Federal court in the Northern District of California found P. Lazarenko guilty on 14 counts, in particular, money laundering, stolen property transfer and fraud. On August 25, 2006 the judge pronounced the sentence according to which Pavlo Lazarenko was sentenced to 9 years of imprisonment and penalty in the amount of 10 million U.S. dollars.

And now let us return to our subject – the ongoing Ukrainian investigation which has not been finished yet due to the fact that P. Lazarenko is beyond the borders of our country and can not appear before the Ukrainian court.

First of all, this case is very difficult to investigate in the terms of collection of evidence concerning a great number of crimes committed in many countries. First and foremost, I mean numerous international payments on sham contracts, under cover of which bribes taken by P. Lazarenko and given to other officials were carefully concealed.

As you understand, the immense number of transfers of huge amounts of money from several hundreds of thousands to tens of millions of U.S. dollars could not be carried out by Pavlo Lazarenko on his own. Together with him, under his guidance or on his direct instruction tens of persons committed criminal actions in many countries.

The question is of the whole system or rather the criminal organization, the main task of which was realization of illegal income. In this scheme commission of such general criminal offenses as murders was rather an exception and pursued the aim to remove impediments to its principal corruption activities.

Many members of this criminal group have been already sentenced not only in Ukraine but also in other countries, in particular, in Switzerland and in the U.S.A. As for the others, the investigation is continuing or cases can not be taken to court because the accused escape justice.

That is the question is not about the investigation into the only criminal case against Pavlo Lazarenko but that into a number of interconnected criminal cases against tens of accused persons both in Ukraine and in other countries.

While investigating only the criminal case against P. Lazarenko, investigators of the Prosecutor General's Office of Ukraine had to request assistance of their colleagues from 65 countries where 500 requests for legal assistance altogether were forwarded. They requested legal assistance of a different kind – accomplishment of procedural actions, including seizure and confiscation of incomes.

Through Interpol channels more than 1300 requests were sent with a view to identify firms, persons, telephone numbers holders or to obtain other information abroad.

To a significant extent it was through foreign colleagues` help that were detected and frozen today assets to the total amount of more than 280 million U.S. dollars that belong to P. Lazarenko or companies controlled by him, including:

- $150 million USD and more than £14 thousand GBP in the financial institutions of the Island of Guernsey;
- more than $87 million USD in banks of Antigua and Barbuda;
- over $5 million USD in Switzerland;
- $7 million USD in Liechtenstein;
- more than $29 million USD in Lithuania;
- nearly $2,5 million USD were arrested on the bank accounts in Ukraine.

Besides three apartments in Kiev owned by P. Lazarenko and the private residence priced at over $6 million USD in California were seized.

Referring to the seizure of assets revealed in different countries the investigator in each case made the relevant procedural decision according to the acting criminal procedural legislation whereas there have been no judicial decisions concerning the stated matter in Ukraine yet.

Arrest /freezing/ of such assets was carried out by the competent authorities of other states on the basis of requests for legal assistance and procedural decisions of Ukrainian investigators, or in connection with the carrying out of their own investigations and confiscation processes (Switzerland, Antigua and Barbuda, Liechtenstein, the USA).

In some cases the reason for "freezing" were also requests of the Ukrainian investigation agency, however the assets were blocked by the banks, where these accounts were located but not by the competent institutions of the foreign state. Thus the banks were guided exclusively by fears of possible charges in aiding and abetting laundering of the proceeds without taking into account the official instructions of the government authorities of their country. For example, the same situation happened with assets “frozen” in the financial institutions of the Island of Guernsey during 2000 – 2004 until they were arrested on the request of the US court.

Assets amounting to 10,6 million Swiss francs confiscated from P. Lazarenko on the basis of the decision of the Swiss court were actually returned to Ukraine. Authorities of Switzerland, following the principle of a "good will" made a decision on returning of actually all P. Lazarenko's confiscated assets to Ukraine except for an insignificant sum of the court expenses (approximately 30 thousand francs).

Besides in 2000 according to the decision of the Swiss court approximately $6 million USD belonging to one of the accessories to crimes committed by P. Lazarenko – Peter Kirichenko were transferred to Ukraine. These assets were placed to the deposit account of the Prosecutor General’s Office of Ukraine and remain under the seizure.

It should be noted that confiscation of assets blocked in different countries is possible only in the presence of the sentence with respect to P. Lazarenko on the charge of money laundering or a judicial decision on civil action. The necessary condition of confiscation shall be a statement of the origin of assets from crimes, specified in the sentence (judicial decision, taken subsequent to the results of the civil law confiscatory process).

After taking the judicial decision on confiscation of proceeds from crime by any state referring to the request for their returning to the country of origin the relevant decision shall be made. In most countries, the representatives of which have given consultations regarding the investigation of P. Lazarenko’s case, the administrative procedure exists and the relevant decision is taken by the government. Within the framework of this procedure or at the stage of taking the judicial decision the court expenses are subtracted from the confiscated assets.

Nowadays, Ukraine conducts negotiations with authorities of the USA, Antigua and Barbuda and also with other countries on conclusion of the bilateral intergovernmental agreements on mechanisms and distribution proportions of the confiscated proceeds from crime.

During these negotiations we had to face the problem, which has been already mentioned above – the absence of universal mechanisms of disposition of the confiscated proceeds from criminal activity and different legal regime of regulation of these processes in separate countries.

We know about those steps taken by the United Nations for the purpose of solving this problem. In particular, I refer to the development of the model legislation on money laundering and terrorist financing as well as the model agreement on distribution of the confiscated proceeds from crimes covered by the United Nations Convention against Transnational Organized Crime and the United Nations Convention on against Illicit Traffic in Narcotic Drugs and Psychotropic Substances.

At the same time we believe that such universal acts should also cover the confiscated proceeds from corruption and other dangerous crimes.

We strongly hope that exactly these issues will be the main tasks of the recreated International Association of Anti-Corruption Authorities.

Taking this opportunity, I would like to express confidence that the activity of the Association will make a serious step towards counteraction to transnational crime, first of all against corruption, and will promote effective cooperation between the specialized national institutions.

Therefore, I wish the Association would achieve great results in this sphere.

Thank you for your attention.

Translators of the Prosecutor General’s Office of Ukraine S. Yasinska
O. Kuprienko
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Yemen

Speech of Dr. Abdullah Abdullah Alsanafi, President of the Central Organization for Control and Auditing, Head of Delegation of the Republic of Yemen in the 1st Annual Conference of the International Association of Anti-Corruption Authorities, to be held in Beijing, People's Republic of China, during the period October22-26, 2006

In the name of Allah, Most Gracious, Most Merciful

Your Excellencies:
Ladies and Gentlemen
Assalamu Alaikum

At the start, allow me to express my thanks and appreciation to our host represented by H.E. Mr. Ye Feng, Secretary General of International Association of Anti-Corruption Authorities, and Vice President of the International Association of Prosecutors for Inviting us to participate in this important conference and meeting. I also would like to convey my appreciation for the outstanding organization and hospitality and for their excellent efforts to make it a great success. It is really a forum of distinction in exchange of information, experiences and practices. It creates a cooperative solidarity to fight corruption as a global phenomenon and not related to a particular country or region.

Ladies and Gentlemen

To us in the Republic of Yemen, taking part in such conference, as 1st International anti-corruption conference means a great deal to us, either in its timing or meaning or objectives.

As for its objectives and meaning, it has come along the lines of the directions of our high political leadership represented by H.E. President, Ali Abdullah Saleh, President of Yemen. The essence of these directions is to fight corruption down to its grass roots. He is also calling for disclosure of wrong doings of those offenders and take all necessary legal procedures in the court of law. These directions reflect clearly and tangibly the political well of our leadership in curbing corruption in its different forms and shapes and establishes a solid ground to allow all concern parties/ stakeholders in assuming and / or executing their mandates / duties, and responsibilities in combating corruption as an acute epidemic.

In terms of timing, this conference has taken place right after Yemen had ratified the UN Convention Against Corruption (UNCAC). and in time with our vigorous efforts to integrate the concepts and principles of the UNCAC into our local legislations.

Along those lines, the government of Yemen has recently tabled a proposed anti-corruption law. It is currently under discussion and elaboration at the parliament. It is expected to be issued in the near future. According to the proposed anti-corruption law, an anti-corruption agency will be established. On top of that a law has passed concerning property declaration, aiming at preventing corruption among civil servants especially middle and top management. This is just to mention a few. Alongside, our Central Organization for Control and Auditing (COCA), the Supreme Audit Institution of the Republic of Yemen has played a leading role starting from the negotiation stage of formulating the convention to its ratification and implementation. That is COCA had lead Yemen delegation to participate in the early negotiation of convention that took place in Vienna, Austria that eventually lead to initiating the convention in Merida, Mexico, in December 2003. Consequently, COCA and other government agencies continued their efforts to technically support the parliament during discussions and elaborations that took place prior to ratification of the convention. Those efforts resulted in Yemen Parliament's ratification of the UNCAC that was passed into law No 47 for the 2005.

In summary, we could objectively and confidently say, that in Yemen, my country, efforts have been exerted and results have been achieved in the area of fighting corruption. Above all, currently there are serious and tangible directions of the highest political level that we could build on and benefit from in combating corruption and dealing with the imbalance of our structures.

These efforts and directions could constitute a strong basis, if they are integrated into an overall strategic plan, to achieve more progress in curbing corruption and eradicating its causes.

In this context, I could point out in brief that Yemen, with the support of a number of international donor agencies , has achieved a great deal in the development of the following areas:

- legislative structure with the focus of enhancing transparency and accountability,
- judicial reforms,
- institutional building of government agencies, departments, and authorities,
- internal control systems, and
- COCA restructuring.

Ladies and Gentlemen

Finally, I trust that our getting together, and serious discussion of all topics, and papers will contribute a great deal in exchange of experiences, practices, knowledge and wisdom to achieve the intended results. Moreover, this discussion will help us identify mechanisms for international cooperation to collectively eradicate corruption at all levels, country, regional and global. These should include mobilization of the following mechanisms:

- Establishment of the conference of States parties to oversee the implementation of the UNCAC in areas such as mobilization of technical assistance, training, prevention, criminalization of corruption and knowledge exchange.
- The UN Office of Drug and Crimes, UNODC's Global Programme against Corruption (GPAC) mandated to address the anticipated increase in demand for technical assistance once the Convention enters into force. The primary goal of the GPAC is to provide practical assistance and build technical capacity to effectively implement the Convention.
- the International Group for Anti-Corruption Coordination, a body made up of multilateral organizations, international financial institutions, oversight bodies and non-governmental organizations. And
- Establish other/additional mechanisms within our newly born organization to re-dedicate ourselves to fighting this phenomenon.

In closing, I would like to reiterate by expressing my gratitude appreciation and admiration to our host and organizers for the Job well done and for the nice and kind hospitality.

Wishing all of us the best of success and achievement.

Wassalam Alaikum, Thank you.

Venezuela

LA CORRUPCIÓN Y SUS DISCURSOS

Dr. Isaías Rodríguez Díaz
Fiscal General de la República Bolivariana de Venezuela

El objetivo de esta reunión internacional, es tratar de hacer efectiva la implementación de los mandatos emanados de la Convención de las Naciones Unidas del 2003 Contra la Corrupción, con el propósito de preservar y proteger los sistemas democráticos de nuestros países.

Dentro de esta finalidad, quisiera exponer algunas consideraciones:

1. LA CORRUPCIÓN, MITOS Y REALIDADES

De corrupción hemos oído hablar desde los faraones. Las historias de abuso y mal manejo de los recursos del Estado, no son nuevas. Una de las dificultades es, sin embargo, como medir este fenómeno social. La corrupción es un tema flexible utilizado, de buena o de mala fe, para atacar adversarios, reales o imaginarios.

Cuando se habla de corrupción, tiende a simplificarse su origen "como una mera pérdida de valores y moral en una sociedad determinada", colocando el problema en la dicotomía de lo claro o lo oscuro; lo honesto o lo deshonesto; lo sano o lo inservible.

Se simplifica aún más cuando el actor que acusa a otro de corrupto es visto como bienhechor, virtuoso, elevado, mientras que al denunciado se le mira como despreciable. Sin embargo, desde el ámbito del funcionamiento del sistema político internacional, no puede abordarse el tema bajo estos esquemas tan simples.

En el sistema político internacional el debate debe centrarse en torno a la ética cívica, entendida ésta como la idea que, sobre los intereses públicos generales y sobre lo colectivo, debe poseer la ciudadanía.

Partiendo de esta base, la corrupción no es otra cosa que el menoscabo de los espacios que existen entre Estado y ciudadanía. Espacios que las corrientes neoliberales, auspiciadas por el Consenso de Washington, colocan bajo el traqueteo del mercado, promoviendo, para estremecerlo, la desregulación y el desmontaje de las instituciones.

A este pensamiento debe agregarse que la corrupción afecta hoy lo público con una ética capitalista; es decir utilitarista y permisiva, que debilita la credibilidad y la confianza en el Estado y se expresa de manera individualista disminuyendo la solidaridad y el ser colectivo.

Bajo este sistema de valores impuestos, la corrupción, en América Latina, ha sido construida durante siglos por una cultura de aprovechamiento, lucros, egoísmo, miedo, autoritarismo y exclusión.

1.1. Corrupción etiquetada

El problema de la corrupción no debe etiquetarse, ni atribuírsele sólo a los países subdesarrollados o periféricos.

Recordemos sólo algunos casos:

- "Watergate" (1972) Richard Nixon fue descubierto utilizando los aparatos de inteligencia del Estado para sustraer de una oficina del partido demócrata, un conjunto de documentos que tenía que ver con las relaciones comerciales de su hermano, Donald Nixon, con el millonario Howard Hughes.

- Los fraudes cometidos en el el Banco de Crédito y Comercio Internacional utilizados por Ronald Reagan para llevar a cabo el financiamiento clandestino de Irán-Contras y de los muyahidín afganos.

 Las denuncias de la ONG londinense Christian Aid respecto a la desaparición de 4.000 millones de dólares procedentes de la venta del petróleo iraquí, destinados a la reconstrucción de Irak y la confesión de Phillip Bloom, quien, en este mismo sentido, aceptó haber pagado dos millones de dólares a las administraciones civiles y militares de EEUU, en el 2003 y el 2004, para gestionar la reconstrucción de Irak.[46]

La "corrupción en los países en vías de desarrollo es de 20 mil millones de dólares al año, mientras que las transacciones ilícitas de los grandes países están en el orden de los 539 mil millones de dólares" ¡27 veces más que "los paisitos" que Transparencia Internacional, coloca en los primeros lugares de su lista![47]

Como vemos, la corrupción no es un problema exclusivo de los países "en vías de desarrollo" ni, mucho menos, un fenómeno monopolizado solamente al sector público. Se expresa en actores públicos o privados.

2. ¿UN PODER NORMATIVO INTERNACIONAL NOS HACE CREER QUE HAY FORMAS DE ENFRENTAR LA CORRUPCIÓN?

El daño y la amenaza que representa la corrupción para nuestros Estados, instituciones, democracia y valores sociales es atroz, pavoroso y aterrador y, por ello, son necesarias las políticas de prevención y control sobre este fenómeno. Sobre todo cuando a través de los avances tecnológicos las modalidades delictivas se adaptan y maniobran con soltura los nuevos tiempos. De allí la verdadera necesidad de tipos penales flexibles y nuevos que puedan ensamblarse a esta dinámica.

Cualquier norma de derecho penal, dentro de un sistema democrático y humanista, parte de la protección de bienes jurídicos expresamente determinados; de lo contrario, el poder punitivo puede expandirse, de manera abusiva, extendiéndose a tareas que necesitan otro tipo de intervención del Estado

Es, por ello, indispensable responder esta pregunta: ¿Qué bienes jurídicos protegen las Convenciones Internacionales que tratan el tema? ¿Se está amparando al Estado, como espacio de intereses públicos y sociales, o se está defendiendo a grupos económicos, que buscan sostén, ayuda y refugio para sus capitales y sus mercados?

3. EL DERECHO PENAL DEL ENEMIGO COMO UNA ESTRATEGIA

Lo han dicho algunos estudiosos del tema. Esta categoría de crimen organizado puede

[46] Eduardo González: *Corrupción EEUU. Mafia anglosajona.* http://bolivia.indymedia.org/es/2003/10/4049.shtml y http://www.sodepaz.net/modules.php?name=News&file=article&sid=3375

[47] Alfredo Jalife-Rahme: *Los países más corruptos del mundo: EU, Gran Bretaña y Suiza, según Tax Justice Network*. http://rebelion.org/noticia.php?id=37076

ser una estrategia para la expansión del "derecho penal del enemigo". Esta categoría de derecho se adecua funcionalmente con fines hegemónicos porque, al ser amplia, no protege ningún bien jurídico en concreto y, por el contrario, sirve para el uso abusivo y discrecional del poder punitivo del Estado.

Para el argentino, Eugenio Raúl Zaffaroni, el crimen organizado es una denominación que especialistas, medios de comunicación, autores de ficción, políticos y operadores de agencias del sistema penal (policías, jueces y administradores penitenciarios) aplican a un número incierto de fenómenos delictivos "con objetivos propios y específicos."

El posicionamiento de este discurso se evidencia fácilmente en películas como The Untouchables y de Godfadther. Con el éxito y la permeabilidad del crimen organizado se sostiene "el paquete bélico norteamericano" (drogas y terrorismo entre otros) vestida de "legislación patriota necesaria" con la cual se vulnera, aún más, nuestra soberanía. Los discursos de Evo Morales y Hugo Chávez en la ONU, recientemente, denunciaron el tema.

4. ¿SON LOS CONVENIOS UNA ESTRATEGIA PARA LLEGAR A ALGUNAS AREAS INTOCABLES DENTRO DEL MERCADO DISCIPLINADO?

No lo sabemos, pero resulta extraño que la Cámara de Comercio de los EEUU afirme que el crimen organizado opera impunemente en el mundo. ¿No suena esta denuncia a un reclamo contra una especie de competencia desleal?

¿Las actividades que se pretenden categorizar como crimen organizado no están, acaso, vinculadas con las otras actividades ilícitas que operan en el mercado y cuyo propósito pudiera ser "un proteccionismo especial raro y extraño", para poder llegar a algunas áreas del capitalismo salvaje que éste ha mantenido aún como intocables dentro del mercado disciplinado?

Es precisamente en este punto donde entra "el lavado de dinero", que no es más que un aprovechamiento de cosas provenientes del delito, tema complejo donde no se sabe hasta que punto el dinero es "verdaderamente negro y cuando comienza a ser blanco".

A todo lo anterior se añade la globalización que apertura nuevos mercados donde, en ocasiones, las empresas lícitas e ilícitas se confunden o se confrontan por intereses netamente económicos.

Lo cierto es que, desde esta perspectiva, todo hace ver que estamos más ante un tema de confrontación entre sectores económicos, que ante una auténtica preocupación por los intereses públicos. En este contexto, no es descabellado pensar que sectores económicos, manipulando normas nacionales o internacionales, exijan al Estado protección y hasta alianzas para evitar –entre otras cosas- la fuga de divisas y de

capitales.

No pretendemos con nuestro discurso negar la necesidad de castigar el aprovechamiento de bienes provenientes del delito. Lo que se quiere es dejar en evidencia que no necesariamente, con Pactos de esta naturaleza, se está protegiendo al Estado y a la administración pública.

5. LA CONVENCIÓN CONTRA LA CORRUPCIÓN, EL LAVADO Y LA RECUPERACIÓN DE ACTIVOS

Esto se manifiesta cuando en la CCCNU se le dedica al tema del lavado y a la recuperación de activos 15 artículos, dos (artículos 14 y 23) al lavado; cuatro (artículos 1, 40, 51 al 59) a la recuperación de activos; uno (artículo 31) al embargo preventivo, uno (artículo 36) a las autoridades especializadas, mientras que "a la participación ciudadana" sólo se le dedica una sola norma (artículo 13) y a la administración pública ocho (artículos 1, 5, 6, 7, 8, 9, 10 y 11).

Este comentario no quiere sugerir una mayor o menor presencia cuantitativa de lo público frente a lo privado, sino hacer notar que en este tipo de instrumentos se plantea un problema de contenidos y de direccionalidad política.

Llama especialmente la atención, la formulación del artículo 51, donde se establece que la restitución de activos es principio fundamental de la convención, dejando de lado la construcción de una nueva institucionalidad en la que la participación ciudadana y las prácticas democráticas ejerzan la contraloría social; en fin colocando en un segundo plano el fortalecimiento del Estado respecto de la protección del capital.

En esta misma línea se establece una serie de regulaciones a la administración del sector privado (artículo 12), e incluso se habla del "soborno" (artículo 21) y de la "malversación o peculado de bienes del sector privado" (artículo 22), y en estos artículos se delata, de la manera más obvia, la intención de proteger a los sectores económicos transnacionales.

Asimismo, llama la atención el artículo de las "autoridades especializadas" (artículo 36) y el de la "aplicación de la Convención mediante el desarrollo económico y la asistencia técnica" (artículo 62), ambos de la CCCNU, en los cuales se habla, en el primero, de la necesidad de formar cuadros especializados para llevar a cabo la "lucha contra la corrupción" y luego, en el segundo, se explica como financiarán los países "desarrollados" (donde "no hay corrupción") a los "subdesarrollados" (azotados por la corrupción) para ayudarlos a librar la lucha contra la corrupción. ¿Ustedes saben de qué manera? prestando asistencia técnica y formando policías que protejan los intereses de los financistas, con la excusa de la "lucha contra la corrupción".

6. LA CORRUPCIÓN Y LA ESTIGMATIZACIÓN DE LOS PAISES DEL TERCER MUNDO

"La estigmatización" es una consecuencia directa de la imposición unilateral de criterios. Ya hemos visto la referencia en contra de los países llamados "subdesarrollados" como los más corruptos, pretendiendo afirmar, de esta manera, un vínculo directo entre "desarrollo" y ausencia de corrupción, aún cuando, como ya lo afirmamos, la corrupción también existe ¡Y cómo existe! en estos países "desarrollados".

Un ejemplo de ello, es la aprobación de leyes sólo para "el primer mundo". ¿No es eso lo que se pretende con la Convención Antisoborno de la Organización para la Cooperación y el Desarrollo Económico de 1997, suscrita solamente por los países desarrollados? ¿Se blindaban a sí mismos, estos Estados de los sobornos, con esa Convención y, calculadamente, dejaban abiertas las puertas, en los otros países, para que algunas empresas poderosas continuaran, en ellos, realizando los sobornos de los que supuestamente los grandes se blindaban?

7. ESFUERZOS DESDE VENEZUELA EN TORNO AL TEMA

La nueva Constitución de la República Bolivariana de Venezuela (CRBV) en varias de sus disposiciones ordena la protección del patrimonio público (artículos 65; 116; 271; 274 y 289.4). La CRBV establece que Venezuela es un Estado democrático y social de Derecho y de Justicia, consagrando, como principios de derecho positivo, la justicia, la responsabilidad social y la ética (artículo 2). Lo más importante de nuestro Texto Constitucional es haber propiciado la creación de la contraloría social, mecanismo mediante el cual los ciudadanos ejercen funciones de supervisores de la gestión pública.

Asimismo, ordena la sujeción de todas las personas y de los órganos que ejercen el Poder Público a la transparencia, la rendición de cuentas y la responsabilidad en el ejercicio de la función pública.

La CRBV establece el sistema de democracia participativa ampliando el campo de lo público para fortalecer la sociedad mediante la interacción entre Estado y ciudadanía. En efecto, este modelo "socializa al Estado y estatiza la sociedad", tratando de eliminar los linderos difusos entre uno y otro, para caracterizar un verdadero Estado Social de Derecho, desechando el alejamiento creado por el neoliberalismo cuando

limita al Estado para comprender las necesidades de la gente, sus aspiraciones, su cotidianidad y hasta sus divergencias.

Venezuela, por lo demás, desde 1982 cuenta con una legislación que contempla sanciones contra todos los ilícitos que desde 1996 se establecieron en la Convención Interamericana contra la Corrupción. En el 2003 entró en vigencia la Ley contra la Corrupción, que perfecciona la regulación anterior.

En cuanto al uso de esta terminología de "lucha", "combate" o "guerra" en materia de derecho penal, queremos decir con Zaffaroni que:

"Siempre que se producen estos fenómenos… se hacen en el marco de una guerra contra un enemigo cósmico… en el que se personifica el mal mismo. (…) No es la primera vez –y por desgracia, tampoco será la última- que se emprende una guerra contra un problema de naturaleza económica por la vía penal, con el consabido resultado de que siempre estarán en peligro nuestras instituciones y de que estas fábulas proporcionen ejemplos negativos".

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Vietnam

Speech of the delegation of the Supreme People's Prosecution Office of
The Socialist Republic of Vietnam at the First International Association
of Anti-Corruption Authorities (IAACA) Conference
Beijing, 22 - 26 October 2006

Mr. Chairman,
Excellencies,
Ladies and Gentlemen!

On behalf of the Supreme People's Prosecution Office of the Socialist Republic of Vietnam, I would like to express our sincere thanks to H.E Jia Chunwang, Prosecutor General of the Supreme People's Procuratorate, People's Republic of China for having invited us to attend the First Annual Conference and General Meeting of the International Association of Anti-Corruption Authorities (IAACA). We highly appreciate the initiative and efforts of the Supreme People's Procuratorate of China in organizing this very important Conference. The world witnesses the international-cooperation–against-corruption flag flying high for the first time in the land of the Great Wall. This is very meaningful in many aspects. Vietnam welcomes the establishment of the IAACA, considering it as a historic event. Vietnam shares the idea of China in this Conference: fighting corruption to safeguard peace, promote development, strengthen international cooperation and build a harmonious society. Obviously, these are noble aspirations universally shared around the world.

Ladies and Gentlemen!

Concerning the threats of corruption and acknowledging the needs of further strengthening international cooperation in the fight against this serious crime, in October 2003, the United Nation Convention Against Corruption (the Convention) was adopted by the General Assembly. The Convention has met practical requirements of an independent international instrument dealing with anti-corruption in a comprehensive manner. From our point of view, the Convention is a flag, under which member countries, despite the differences in political and economic systems, cultural practices and levels of development, gather round a network for mutual confidence and effectively combating corruption.

Vietnam is one of the early signatories to the Convention (December 2003) and now is in an on-going process of transferring the Convention's requirements into domestic laws. In 2004, Vietnam adopted the Anti-Corruption Action Plan of the Asia-Pacific region initiated by ADB and OECD, and actively participated in the APEC's Anti-Corruption Action Plan.

Legal framework for anti-corruption has been set up, strengthened and further

improved. Notably, the Government, the policy-makers and the society as a whole have been fully aware of the fact that the corruption in the country remains rampant. Corruption seriously hinders Vietnam's social, economic development and its achievements in the renewal process. The Vietnam's economy and society have been in the transitional period and made extensive progress. However, no one can make sure that "loopholes" in such a transitional economy will be closed soon.

Vietnam is of the opinion that fighting corruption is not an exclusive mandate of the criminal justice system alone. Commitment to combating corruption on the part of the Government is also crucial factor. It means that the Government must scrutinize itself in both policy-making and policy enforcement activities. The Government must function within the scopes set up by laws. Therefore, building the *rule of law* is considered as one of fundamental conditions for effective anti-corruption. Corruption often goes hand in hand with power abuse. Thus, corruption must definitely be dealt with by power. And anti-corruption efforts cannot be successful without support of a *truly democratic society*, in which the state and other power systems must come under close scrutiny of lay people. Hence, promotion of democracy is one of pre-conditions for effective fight against corruption. In order to maintain sustainability, economic development should be in combination with political, cultural and social reforms, which must be conducted in a transparent manner. With participation in IAACA and accession to WTO, Vietnam, like some other countries, is urgently required to make its legal system *compatible* with international legal system. It is a challenging work, first and foremost requiring improvement of domestic legal framework, both public and private laws, making it compatible with domestic situation and international laws.

In order to prevent and control corruption, from our point of view, domestic efforts of each and every country in overcoming challenges will play a decisive role. Commitment to combating corruption must be translated into firm, uniformed measures taken by the society. Additionally, to meet the goals of the Convention, Vietnam is really looking forward to enhancing close cooperation with international anti-corruption authorities, especially those who have extensive experience in fighting corruption. The cooperation in the training for officials who are directly responsible for preventing corruption, promotion of effective collection and exchange of information on corruption and other technical assistance between the member countries of the Convention, among other things, is important for our anti-corruption successes, domestically and internationally. With the establishment of IAACA, I believe that this Conference has opened such a precious opportunity for all of us. It is expected that the IAACA Constitution will set up a legal framework for a comprehensive and permanent cooperation among member countries. The IAACA Executive Committee should act on permanent basis in order to promote the effectiveness of international cooperation and disseminate the best practices in preventing and controlling corruption around the world in a timely manner.

Thank you very much for your attention!

Zambia

ANTI-CORRUPTION AGENCIES, POLICIES, STRUCTURE AND FUNCTIONS – THE ZAMBIAN EXPERIENCE

A PRESENTATION MADE TO THE FIRST ANNUAL CONFERENCE AND GENERAL MEETING OF THE INTERNATIONAL ASSOCIATION OF ANTI-CORRUPTION AUTHORITIES (IAACA)

AT THE GRAND EPOCH CITY INTERNATIONAL CONFERENCE CENTRE, BEIGING, PEOPLE'S REPUBLIC OF CHINA

25TH OCTOBER 2006

INTRODUCTION
Corruption a global problem.
Corruption a predicate offence to money laundering and financing of terrorist activities.
Affects developing more than developed countries.
Anti-corruption measures vary from country to country but there is a point of convergence
Around the African region and SADC in particular the trend is setting up of Anti-Corruption authorities or agencies and Zambia is no exception

INTRODUCTION ……
The Government of the republic of Zambia realised the devastating effects of corruption as far back as the 1970s
Enactment of the Corrupt Practices Act No. 14 of 1980
Anti-Corruption Commission (ACC) established 1980, operational 1982.
Therefore one of the oldest Anti-Corruption Agencies in the SADC Region
INTRODUCTION ……
Has continued to exist under three main political leaders with varying degrees of commitment to the cause.
The CPA repealed and replaced by the Anti-Corruption Commission Act No. 42 of 1996.
Removed power from DG to issue Warrants of Search and Bank inspections.

THE ANTI-CORRUPTION COMMISSION
Has Legal Mandate to spearhead the fight against corruption in Zambia.
Has operational autonomy embodied in the law but depends on Government funding for operations as apportioned through budget process and Parliament.
Funding comes from cooperating partners also for specific programmes

THE ANTI-CORRUPTION COMMISSION……
Mandate extends to both public and private bodies.
Powers of Arrest even without warrant.
Powers of Search after obtaining Warrant from Magistrate or Judge.

THE ANTI-CORRUPTION COMMISSION……
Powers to Inspect Banker's Books after obtaining a warrant.
The Director-General has power to restrict disposal of Assets under investigations
DPP's Consent required to Prosecute.

STRUCTURE OF THE ZAMBIAN ANTI-CORRUPTION COMMISSION
Board of Five Commissioners
Chairperson - qualification to be appointed Judge of the High court.
The Board is appointed by the President ratified by Parliament.
Arguments for and against presidential appointments.
General Policy direction.

Submits Reports to the President and to the National Assembly simultaneously.
DIRECTORATE
Director-General same qualification as Chairperson.
Appointed by the President but ratified by Parliament.
Same arguments for and against such appointments.

Director-General has security of Tenure embodied in the Law.
Below is Deputy Director-General and 4 Directorates with Directors, Chief Officers, Senior Officers and Officers.
Operational autonomy but not financial.
FUNCTIONS OF THE ANTI-CORRUPTION COMMISSION
Three pronged approach like in many jurisdictions especially around the SADC Region.
The ACC Strategic Plan 2004-2008 in place.

INVESTIGATIONS AND PROSECUTIONS
Receiving and investigating cases of alleged or suspected corrupt practices and subject to the Directions of the DPP Prosecute.
Some stakeholders criticise the role of DPP while others support it.

Investigating conduct of any public officer which is connected or conducive to Corrupt Practices including lifestyle of public officials not commensurate with official emoluments .
Approaches sometimes require joint efforts with other Law enforcement agencies like in the case of the Task Force on Corruption.

Corruption Prevention
ACC has mandate to Prevent and take necessary and effective measures for the prevention of corruption in public and private bodies.
The Strategic Plan shifted emphasis in approach from investigations and prosecutions to corruption prevention.

CORRUPTION PREVENTION…..
The National Governance Baseline Survey-2004 listed corruption as one of Zambia's most serious problem.
Over two thirds of the respondents and more than 50% household and public officials had this view.
Survey identified Areas in which corruption is most prevalent e.g.. Land allocation.
CORRUPTION PREVENTION POLICY
Other studies established lack of proper coordination of institutions having a role to play in corruption prevention.

In consultation with stakeholders, ACC has developed a draft National Corruption Prevention Policy and Strategy (NCPPS).

CORRUPTION PREVENTION POLICY……..
The Policy will provide coordinated approaches to the prevention of corruption in Zambia at:
Situational
Legal
Institutional and
Social levels.
CORRUPTION PREVENTION POLICY……
Concept of Integrity Committees is one component at situational level.
Through these the fight against corruption will be institutionalised.
8 pilot programmes have been formed,
Among their functions are facilitation of development of codes of ethics and actions plans targeted at preventing corruption in their institutions.
EDUCATION
Disseminating information
Soliciting and enlisting Support
Various ways including partnering with the private sector, civil society, artists and the general public.
EDUCATION……..

ACC has developed deliberate policy of inculcating a culture of zero-tolerance for corruption among the youth through;

youth festivals
school anti-corruption clubs
school curriculum

CONCLUSION
The legitimacy of the Government in Zambia is through the Electoral process.
Elections have recently been held.
The President has exhibited demonstrable political will and leadership.
Political Will is sine qua non of a successful fight against corruption.
CONCLUSION……
This however, varies from leadership to leadership as experienced by ACC over the 24 years of existence.
No written Policy till recently.
Shift in emphasis from Investigations and Prosecutions to Corruption Prevention is a new challenge.
NCPPS to be presented to Cabinet for approval soon.

CONCLUSION…….
Zambia has ratified the SADC Protocol Against Corruption.
Zambia is soon to accede to the AU and UN Conventions Against Corruption.
Zambia is currently reviewing the Anti-Corruption legislation.

CONCLUSION……
Has taken into account some aspects of these international instruments.
Member of SAFAC
Member of ESAAMLG and Chair till recently.

Mutual legal assistance in criminal matters is vital.
However, Zambian experience has shown that there is room for improvement in the pace at which requests are responded to among member countries
CONCLUSION……
ACC is determined to support and implement international best practice against Corruption.
ACC is committed to Regional and International Cooperation in the fight against corruption

_____
I THANK YOU FOR YOUR ATTENTION
_____

Zimbabwe

SPEECH BY THE HONOURABLE M P MANGWANA, MINISTER OF STATE FOR STATE ENTERPRISES AND PARASTATALS IN THE PRESIDENT'S OFFICE: GOVERNMENT OF ZIMBABWE, AT THE 1ST ANNUAL CONFERENCE AND GENERAL MEETING OF THE INTERNATIONAL ASSOCIATION OF ANTI-CORRUPTION AUTHORITIES: BEIJING – CHINA: 23RD OCTOBER 2006

All Protocols Observed

Mr Chairman

It is a great honour and humbling experience for me to address this very important gathering of the 1st Annual Conference and General Meeting of the International Association of Anti-Corruption Authorities in your beautiful capital, Beijing.

The friendliness and hospitality of the people of China, since our arrival, adds to our sense of belonging to the global family. We thank you for the very warm welcome extended to us, which welcome signifies the very cordial relations shared between our sister Republics and our fraternal partners across the globe..

My country, Zimbabwe, shares the common vision and purpose to improve the livelihood of our people through confronting the virulent scourge of corruption that is spreading like a cancer in our midst. Zimbabwe has, therefore, criminalized corrupt conduct and mounted a vigorous enforcement campaign at home, in collaboration with international partners who share the global anti-corruption vision.

Our partnerships have encompassed efforts by the Southern Africa Development Community (SADC), the African Union (AU), the United Nations (UN) and other multilateral agencies engaged in the global fight against corruption. These measures and undertakings have been embarked upon within the broad umbrella of the United Nations Convention Against Corruption, the African Union Convention Against Corruption, the SADC Protocol Against Corruption and related international cooperation agreements at bilateral and multilateral levels.

The Government of Zimbabwe placed the fight against corruption, money laundering and related economic crime at the apex of the National Agenda. It is part of our two-pronged economic and social development battle-plan, the other part being the fight against inflation and economic destabilization. The battle-plan has been adopted within the context of illegal economic and political sanctions imposed against our country by the West, our crime being the recovery of our land from foreign domination, and its salutary restoration of human dignity and pride to our hitherto deprived indigenous population.

To us in Zimbabwe, the ultimate corruption visited upon us by history was displacement from our land and resultant economic deprivation, loss of space, loss of dignity and loss of our intrinsic humanity. For daring to confront this dehumanization and disempowerment, we had to pay the ultimate price on the field of battle, to free ourselves from imposed poverty and loss of human dignity.

Having attained our primary goal of political liberation, we found ourselves confronted with the economic question, in which the enemy was more difficult to define, as it mutated from heavily protected private capital thriving within an unbalanced unipolar world governance system, to the unbridled self-enrichment ambitions of many of our own nationals at different levels of our society. We therefore found ourselves confronted by the scourge of corruption, in which the enemy wore the same uniform as ourselves, and therefore exposed many of our upright nationals to unholy economic temptations.

Indeed, the fight against corruption is a sophisticated fight, which is reason for us to join hands with others in this august Association, in which we as the world community, must assist each other's nations to confront the scourge, more so because it knows neither national boundary nor skin colour, nor does it respect national sovereignties.

Ladies and gentlemen, in its quest to eradicate the scourge, Zimbabwe established an Anti-Corruption Commission whose sole mission and responsibility is to fight and eradicate corruption. In this regard, we have endeavoured to define corruption on a sector-by-sector basis, and by reference to specific prohibited conduct in each given sector. We are now in the process of legislating these changes, in order to lend specific focus to our anti-corruption fight.

Primarily, our legislative review process seeks to specifically identify the following categories of corruption related offences, consistent with the provisions of the regional and international anti-corruption protocols and conventions that we have ratified –

- corruption relating to activities of public officials;
- corruption committed by foreign public officials;

- corruption committed by agents (as defined by municipal laws)
- corruption committed by employers and employees;
- corruption committed by auctioneers, vendors and procurers;
- corruption committed by sportsmen and sportswomen;
- corruption committed by contractors, such as in procurement, tendering and pricing;
- corruption by members of legislative authorities and political parties;
- corrupt attempts, conspiracy and inducement to commit any offences of corruption;
- corruption perpetrated by judicial officers;
- corruption by members of policing and prosecuting authorities;
- corruption by members of Government;
- illegal cross-border money transfers or laundering; and
- covert and overt terrorist financing.

We have also reviewed a myriad other common law offences relating to bribery, embezzlement and receiving or giving of irregular gifts during business transactions. This whole gamut of common law offences has now been codified under our Criminal Law (Codification and Reform) Act [Chapter 9:23], and they form part of the formidable arsenal that my country has deployed in the fight against corruption.

An Inter-Ministerial Committee was established to assist the process of developing a National Anti-Corruption Policy and a National Integrity Plan; review, strengthen and harmonize existing anti-corruption legislation within Zimbabwe and the region; review investigative, prosecutorial and judicial processes and sentencing practices to enforce deterrence against corruption; ratify international protocols and conventions against corruption; identify constraints inhibiting the fight; mobilize financial resources for the fight; execute a publicity and awareness campaign against the scourge; conduct a National Baseline Survey to identify the causes, effects and trends of corruption; coordinate the investigation, arrest, prosecution and punishment of corruption perpetrators; recover proceeds of crime; and, generally combat corruption and graft in support of national economic recovery. Study visits have been undertaken abroad in this pursuit.

Inter-Agency Task Forces of investigators comprising the National Economic Conduct Inspectorate, the Police, anti-corruption operatives, the Reserve Bank of Zimbabwe, external cooperating partners, contracted experts in diverse fields, were mobilized to confront the scourge. Consequently, convictions are being recorded daily in the courts, and the deterrent effect of these convictions is beginning to be felt throughout society.

Mr Chairman, the inter-agency approach has proved very useful in my country, as it

provides a broader resource base and synergies from which to fight the scourge. Credit accrues to inter-agency taskforces, which have scored successes in matters as diverse as exchange control violations, fraud, abuse of office, asset and resource abuses, anti-money laundering, procurement abuses, accountability for distribution and usage of public resources, goods and minerals smuggling, as well as other general offences too numerous to mention in this august conference. What is critical to us is that the nation has now fully appreciated the importance of the anti-corruption fight; its importance to economic recovery; and its centrality to the stability and security of the country. The nation now appreciates that the fight against corruption is central to the retention of legitimate national sovereignty.

My country has also revitalized the Economic Crimes Court to facilitate quick delivery of justice against perpetrators of graft, with a special prosecution facility being extended to lay direct emphasis on prosecution of economic crimes. Training programmes for the judiciary, prosecutors, investigators and anti-corruption administrators has become critical, and we are looking forward to close international cooperation in this regard.
The international fight against corruption must be escalated.

Zimbabwe has also commenced a process of establishing anti-corruption chapters at provincial and district levels, with local traditional leaders and their communities being urged to confront corruption at sub-national level. The increased reportage of both petty and grand corruption from this level upwards signifies successes in this awareness campaign.. Traditional communities have also been urged to revert to traditional methods of preventing and punishing corruption, including the enforcement of social mores and taboos with which the communities are familiar. The message is one of zero tolerance to corruption.

At multilateral level, anti-corruption agencies in my country have inter-faced with organizations such as the Southern African Forum Against Corruption (SAFAC – under SADC auspices), the United Nations Development Programme (UNDP), the United Nations Office On Drugs and Organized Crime (UNODOC), SADC (through ratification of the SADC Protocol Against Corruption), the African Union (through ratification of the African Union Convention Against Corruption); the United Nations (through ratification of the United Nations Convention Against Corruption), and African Parliamentary Nations Against Corruption (APNAC).

Our agencies have also interfaced with legitimate civic bodies within the polity, in order to keep abreast of concerns and developments in that sector.

My country has also embarked on general policy research within and without our borders, focusing on –

(a) the magnitude, manifestation, causes, effects and impact of corruption on

the country and the region;

(b) existing legal frameworks within and without the country for combating corruption;
(c) existing institutions and mechanism to combat corruption;
(d) the efficiency or otherwise of the institutions and mechanisms;
(e) necessary regional and international cooperation against the scourge; and
(f) whistleblower protection and reward systems.

To this end, inter-agency cooperation has been fostered at national and regional level, as among police forces, Ombudsman's or Public Protectors' Offices, security and defence agencies, Parliamentary Committees, Procurement or Tender Boards, Auditors General, Anti-Corruption Directorates and Bureaus, Attorneys General, Investigations units, Prosecutors, and International Organisations such as SADC, AU, UN and other multi-lateral partners cooperating in fighting the scourge. These consultative and operational processes are currently in hand, with regional investigative, policing and prosecution units bringing a common focus to the anti-corruption fight.

Mr Chairman, Zimbabwe is in the process of commissioning a multi-sectoral National Baseline Survey On Corruption to-

(a) define corruption on a national scale and categorize its facets;
(b) inform the process of anti-corruption policy-making, legal reform and other related reforms in the region;
(c) complement and reinforce the Government's stance and political commitment to the fight against corruption;
(d) garner Zimbabweans' views on corruption, service delivery and efficiency in the public, private and civic sectors;
(e) lift the veil on the role played by corporate managers and public officials in exacerbating corruption;
(f) profile private sector, public sector and civic sector perceptions of corruption;
(g) collate results which are empirically proven to be representative of corruption levels and incidence in the whole country, sector by sector; and
(h) compose a national profile on corruption and possible ways to combat it.

This programme is anticipated to run over a period of eight to twelve months, and will involve broad public participation, including political parties, religious and civic organizations. The survey is in the main financed by Government, with private and civic sector support, in order to create a common social consciousness against the evils spawned by the scourge and to implement appropriate response mechanisms.

A National Anti-Corruption Strategic Plan has been prepared, which encompasses the

following broad terms-

(a) research on systems characteristics and operations in both the public and private sectors;
(b) development of targeted interventions in both the public and private sectors;
(c) recruiting suitable expertise to prosecute the anti-corruption programme;
(d) adequate resource mobilization;
(e) inter-agency coalition and local, regional and international partnership;
(f) conducting a National Baseline Survey on Corruption;
(g) lobbying for Civil Service Reform and sensible remuneration packages as insurance against corruption;
(h) execution of publicity and education campaigns against corruption
(i) emplacement of coherent anti-corruption policies and legislation;
(j) continuous staff development locally, regionally and internationally; and sustained arrests, prosecution and punishment of both petty and grand corruption perpetrators.

The development of Corruption Monitoring Indicators throughout the economy is in progress, with a view to assist policy-making and legislative processes, as well as a tool to inform appropriate intervention strategies based on accurate data and cultural perceptions of the problem. We aim to:

(a) research information and data for policy development and strategic intervention planning;
(b) create corruption measuring benchmarks;
(c) define corruption and clarify key concepts and perceptions;
(d) review intervention mechanisms, institutions and strategies in place;
(e) develop specific skills to confront specific species of corruption or, where necessary, multi-skilling;
(f) giving corruption a visible, physical and identifiable face for ease of targeting;
(g) keep pace, strategic and tactical placement with the mutating scourge;
(h) locate corruption sector-by-sector;
(i) extract and focus political and administrative will against corruption, particularly from middle-level public, private and civic sector managers emerging globally as corruption conundrums and the least committed to the fight;
(j) improve normative and operational observation of corruption;
(k) address the cultural and gender aspects of corruption and power relationships therein; and
(l) compose a regional and international framework for harmonization of legal and administrative systems to combat the scourge, as well as

coordinate data sharing and trans-border operations against perpetrators of the crime.

All these processes will come to fruition through the outcomes of the National Baseline Survey Against Corruption. It is anticipated that a clearer definition of corruption and its antecedents will help law enforcement agencies to deal effectively with the scourge.

Ladies and gentlemen, Zimbabwe has not sought to reinvent the wheel in this regard. It has adopted international best practices that have guided legislative and regulatory processes in more developed anti-corruption jurisdictions, including -

(a) clear statement of acts of corruption through reference to specific prohibited conduct;
(b) prevention
(c) public education;
(d) confiscation, forfeiture and seizure of goods/assets/money used to commit the crime;
(e) deterrent sentencing where conviction is secured;
(f) protection of whistleblowers;
(g) black-listing of perpetrators of corruption from public tenders and contracts;
(h) extradition of suspects on corruption charges;
(i) mutual legal assistance with other countries;
(j) establishment of operationally autonomous anti-corruption agencies;
(k) minimization of discretionary power on the part of office bearers (because wide discretionary power absolves them from strict rules of accountability);
(l) public trial, conviction and sentencing; and
(m) compensation of victims of corruption.

The foregoing best practices inform Zimbabwe's on-going policy and legislative reviews; as well as inform regional harmonization of anti-corruption frameworks. Arrest and prosecution have also remained major tools in the fight, with equality before the law being a guiding principle.
Apart from fighting graft through the inter-agency partnership alluded to above, the Anti-Corruption Commission has also begun addressing corporate governance concerns in state enterprises, public companies and parastatals. The aim is to promote good corporate governance in which corporate and individual probity, transparency and accountability become the norm. The Commission has therefore sought to-

(a) establish causes of corruption in the para-state enterprises;
(b) collate information on the incidence and extent of corruption in the enterprises;

(c) identify the specific location of corruption in each organization;
(d) identify benefits being shared and the beneficiaries of corruption in these enterprises;
(e) assess the impact of corruption on organizational programmes and activities;
(f) establish the existence and effectiveness or otherwise of anti-corruption mechanisms within these organizations;
(g) arrest and prosecute corrupt elements; and
(h) advise the principal shareholder (Government) on how to protect and expand value in the organizations.

As with any other governmental undertaking of this magnitude, my country has grappled with constraints that are hampering progress in the anti-corruption fight, including –

. a hitherto weak and fragmented anti-corruption policy and legal framework;

. poor working conditions in the public law enforcement sectors;

. inadequate resources;

. institutional weaknesses and inadequacies, for example the existence of only two commercial crimes courts for the whole country;

. uneven commitment to the fight at different social strata;

. skills deficiency especially in forensic sciences, information technology, auditing, investigations, prosecution and intelligence gathering;

. inadequate provision of and for economic crimes courts;

. public's fear of reprisals for reporting corruption;

. increasing sophistication in corruption crimes;

. limited regional and international cooperation in the fight against corruption, for example in matters such as mutual legal assistance and extradition;

. lack of a comprehensive database as a basis for creating policy and legislative instruments and to understand the prevalence of

corruption sector by sector; and

. the conflicting ideological paradigm in which our economic affairs are being managed, which translates to a political policy issue.

My country has identified Civil Service Reforms and adequate provision of housing and amenities for public servants and ordinary workers as critical to the success of the anti-corruption fight. We hope that continuous improvement of conditions of service will assist in preventing the proliferation of corruption in the public sector.

Further, engagement with the private sector has been initiated in order to ensure that the astronomical profits realized in that sector are shared more equitably with the producers of those profits, namely the workers. Again, it is hoped that if conditions improve for ordinary workers, the temptation to indulge in corruption will be minimized.

The aggregated message in my country is one of complete abhorrence of corruption. The masses realize that they endured a hard-fought and hard-won struggle to attain independence and sovereignty; which achievements they realize are being threatened by the immeasurable consequences of corruption.

We therefore call upon all leaders on the globe, particularly within Government hierarchies, to shun corruption and to advocate against its practice. We also call upon ordinary citizens to reject, resist and report corruption, as their own contribution to posterity; and in order to assure a secure future for their children.

Surely, part of our leadership responsibility in the public, civic and private sectors is to serve the people. There is need for leaders in our countries to demonstrate political will in the fight to eradicate corruption, in order to underwrite global peace and stability. To this end, we must work on legislative instruments and institutional mechanisms for the protection of whistleblowers, and promote strategies to negate unfair business practices within the private sector in the expanded fight against corruption. Such an approach would help us to combat not just crimes of corruption but the whole area of anti-monopolies, in which rampant profiteering and abuse of access to resources has become a tool of control, intimidation and exploitation of the majority population.

It is clear that fighting corruption without addressing its financial source – the latter largely located in irregular and exploitative business monopolies- will not succeed. Wayward business practices that create spiraling inflation and social instability must be eradicated in our trading practices at home and abroad.

There should be no sacred cows in the fight against corruption within and without our

countries. This is the message from Chapter III and Chapter IV of the United Nations Convention Against Corruption. Zimbabwean country practice has heeded this message and proceeded to criminalize corrupt conduct, in the process mounting a vigorous enforcement regime that has seen the law applied at every level of society, without fear or favour.

I thank you.

ACPF

Address on the Opening Ceremony of the First Annual Conference and General Meeting of IAACA

Minoru Shikita
Chairman, Board of Directors, Asia Crime Prevention Foundation
Senior Vice President of the International Association of Prosecutors
Beijing, China, 22 October 2006

Excellencies,
Honorable Guests,
Ladies and Gentlemen,

It is my great honour to be invited to address the First Annual Conference and General Meeting of the International Association of Anti-Corruption Agencies(IAACA). First of all, on behalf of the Asia Crime Prevention Foundations(ACPF), I would like to extend my ardent congratulations to the IAACA and express my profound gratitude to H.E. Mr. Jia Chunwang, Prosecutor-General of the Supreme People's Procuratorate of P.R. China for his great leadership on initiating the establishment of IAACA and hosting this Conference of world significance.

It was 31 October, 2003 the UN Convention Against Corruption was adopted by the General Assembly of the United Nations, and more than 140 countries have ratified the Convention already. However, 3 years had elapsed without any particular initiatives for establishing special international organizations for promoting its implementation particularly by coordinating the efforts of all related authorities around the world to combat corruption, until the establishment of the IAACA. Indeed, with rampant occurrences of corruption around the world, it is clear that the international community needs the UN Convention Against Corruption and needs this kind of special implementation organization urgently. In this connection, the forward-looking efforts of Dr. Ye Feng, Member of the Prosecution Committee of the

Supreme People's Procuratorate of P.R. China, who had actively participated long in these various efforts of the world community, representing the China's international contribution in these matters and who had finally materialized the concept of IAACA, should be highly appreciated.

Since the establishment, the IAACA has been increasingly well recognized as the very practical measures for the implementation of the United Nation Convention Against Corruption. Because of the clear objective to promote implementation of this UN Convention and the participation of a large number of the anti-corruption agencies around the world as its members, I am fully convinced that the IAACA will execute this anticipated function well and become a good platform for the anti-corruption agencies around the world to communicate, discuss, collect and share information and experiences, so as to make the collaborative international efforts in this field more efficient, effective and significant.

Ladies and Gentlemen,
The Asia Crime Prevention Foundation(ACPF) is an international non-governmental organization which was established in 1982. It was granted special consultative status by the UN Economic and Social Council(ECOSOC) in 1991, and was promoted to General Consultative Status in 2000, a top category NGO status that has been granted to only a limited number of NGOs in the world. The ACPF has been providing a broad range of activities in many countries around the world, particularly in Asia, in close cooperation with UNAFEI (UN Asia and Far East Institute for the Prevention of Crime and Treatment of Offenders). The core members of national chapters of the ACPF are mostly the alumni member of UNAFEI and are former or incumbent leaders of criminal justice agencies. With the objective of promoting sustainable development, peace and stability in Asia and the world through more effective crime prevention, criminal justice policies and practices and mutual cooperation among all those concerned, the ACPF has been conducting survey, research, training and other programmes in many countries. The ACPF aims at contributing to the enhancement of effective measures for crime prevention and criminal justice in these countries, thus pursuing the ultimate goal of "Prosperity without Crime" and peace and stability in the world. In these respects, the ACPF and the IAACA shares the common goal. The ACPF therefore reiterates its heartfelt welcome to the establishment of the IAACA and wishes the IAACA a bright future.

Ladies and Gentlemen,
Nowadays, corruption has become the cancer of human being, which endangers the national economy, affects the countries stability, devastate credit and impairs the social justice, the Asia Crime Prevention Foundation is therefore looking forward to working closely with the International Association of Anti-Corruption Agencies in preventing crime of corruption, thus pursuing the ultimate common goal of peace and stability in the world.

In concluding, once again I would like to express once again my sincere appreciation to H.E. Jia Chunwang and to the government of the People's Republic of China for hosting this grand conference and wish all the success.

Thank you.

CISEC

RECOVERING THE PROCEEDS OF CORRUPTION – THE UNITED NATIONS CONVENTION AND THE PRACTICALITIES.

BARRY A.K. RIDER

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THE ASSETS OF CORRUPTION

The concept of corruption is protean and can and has, meant different things at different times in different societies. While most of us have a deep and instinctive understanding of what is corrupt, rather as an 'inner voice' as St Paul would have it, when it comes down to articulating and controlling such conduct through the law and institutions of the traditional justice system, real problems of definition, scope and proportionality arise. While history and our various religions, record and condemn instances and practices of corruption, in practical terms we have only attempted to address the issue at an international level relatively recently. Still our institutions of justice find it difficult to address corruption in the context of purely commercial and private sector transactions. Perhaps this is not surprising given the dominance of the notion of 'unfairness' in justifying legal intervention and the uncertainty that surround the use of this concept, as a source of obligation in our general legal and business dealings. It is only when our dedication to promoting good stewardship combines with our concern to promote fairness that we seem willing and able to intervene.

National governments have been slow to address the problems thrown up by corruption otherwise than through the mechanisms of the traditional criminal justice system. While history contains many early examples of attempts to penalise self-dealing and other forms of corruption, particularly where a clearly defined state or public interest is at risk, history records fewer examples of where such laws have apparently been enforced with tangible effect. It is axiomatic that almost by definition in public sector corruption one is dealing with 'crimes' of the powerful and while individuals remain in positions of authority it is extremely difficult for the ordinary legal system and its agents to intervene successfully. When someone ceases to hold authority, they may not be worth pursuing in a moral or political sense, or in the nature of things be beyond the reach of their state. Corruption is also, in common with other economic crimes, notoriously difficult to prosecute successfully. At the international level concern about corruption has tended to manifest itself in the desire of dominant and economically powerful countries to ensure fair competition, at least for their own businesses. Until very recently there was little real concern in governments and for that matter, inter-governmental organisations to address, at an international level, the problems and issues of corruption in the context of sustainable development and stability.

This is not the place to enter into an account, let alone appraisal, of all the various efforts that have taken place in recent years, both at national and inter-governmental levels, to articulate standards of behaviour and establish procedures that are designed to impede corruption, particularly by senior political figures and those in positions of influence in the private sector. Suffice it to say that while attention has rightly been focussed on the efforts of institutions such as the OECD, Council of Europe and United Nations, many other organisations, particularly at a regional level have made a

significant contribution. The work of the Commonwealth, since 1980, has received little recognition. Furthermore without the work of organisations such as Transparency International we would not be where we are today. Looking forward we now have the United Nations Convention Against Corruption, which when taken with the various initiatives that it has spawned and the other United Nations sponsored programmes against serious crime and in particular money laundering, is a major step forward in promoting integrity. While the Convention contains much of what one would expect to find in such an international instrument, there are some very important and novel provisions. In this paper, we will address just one of these – the issue of asset recover.

before we do so, however, it is important to appreciate that focussing on the desirability of depriving corrupt officials and in particular those guilty of looting their economies, of their ill-gotten gains is important, it is not entirely new. While it is true that specific legal provisions, other than those in general anti-money laundering and proceeds of crime statutes are relatively rare, over the last twenty or so years a number of civil actions have been brought in the courts of many jurisdictions seeking to discover, interdict and recover the proceeds of corruption. Indeed, he Society of Advanced Legal Studies, with the strong support of the then United Kingdom's Secretary of State for International Development, The Rt. Hon. Clare Short MP, published a report in 2000 advocating the greater use of civil restitutory proceedings and proposing that governments provide greater assistance, including financial support, in facilitating such.

The present author has long advocated the importance of attacking the profitability of economically motivated criminal activity. Indeed, in a report to Commonwealth Law Ministers in 1979 he raised the issue of pursuing the proceeds of bribery and corruption and has been involved in developing initiatives in the civil law to pursue and identify property involved in corruption. Consequently it is heartening that the Convention not only seeks to extend the panoply of anti-money laundering and proceeds of crime legislation to corruption, bit in Article 51 specifically states 'the return of assets …is a fundamental principle of this Convention, and States Parties shall afford one another the widest measure of cooperation and assistance in this regard'.

The 'nuts and bolts' of the Convention's provisions on pursuing the proceeds of corruption and the laundering of such, as well as those contained in Chapter V for asset recovery, are not the concern of this paper. While the present author is wholly committed to the strategy of depriving criminals of their ill-gotten gains or at least, impeding and disrupting such enjoying the benefits of their crimes, it is sadly the case, that little real thought has been given to the many issues that are thrown up by focussing on the assets of criminals. We have tended to reach for the legal devices that have been created, often as a reaction to an immediate problem, without much regard to whether they are appropriate, workable or cost effective.

The present author is convinced that having adequate legal provisions in domestic law, while a vital pre-requisite, is by no means the only or even primary issue. In practice even without specifically designed laws it has generally been possible, with a bit of imagination, to find suitable legal devices – often with the willing support of judges, to hang proceedings upon. What is perhaps more important, particularly in the context of developing and transition economies, is that there are in place adequate institutions through which the law can be delivered and enforced. The United Nation's Convention is by no means silent on this. It requires states to designate specific agencies to administer and police the relevant provisions. This is to be welcome. However, merely 'dumping' legal and political responsibility on an agency that is perhaps ill prepared and equipped to engage in a complex and often very difficult area of enforcement activity, may well create serious problems. The impact on the morale, efficiency and perhaps in extreme cases, even the integrity of ill equipped agencies in such cases, is a serious consideration. To place such burdens with unreasonable expectations of success is counter productive. The institutional and human history of countless specialised prosecutorial, investigative and recovery agencies around the world attests to this. It would be a sad indictment of the Convention if it contributed to destabilising law enforcement and alienating political support for what is a most significant initiative.

For the last twenty or so years one of the principal strategies in fighting serious crime, particularly criminal activity that is motivated by economic gain, has been to attack, through a number of legal devices, the proceeds of crime. Associated with this strategy is the concern to impede the laundering of wealth - which places a hurdle in front of those seeking to attribute wealth to a particular criminal act or course of crime. At the same time, far more attention has been given, for a variety of reasons, to the financial aspects of crime and in particular the development of financial intelligence. The horrific attack on the United States on the 11th September 2001 justified and mandated an extreme response. In part that response – the so called 'War on Terrorism' has involved far more attention being given by traditional and non-traditional law enforcement agencies to the funding of terrorist organisations. It was perhaps understandable that the now considerable experience that has been developed in a number of countries around the world in attempting to interdict the assets of organised crime, should be deployed against the threat of international terrorism. Indeed, if the 'War on Drugs' has been fought, at least in part, through the banking system, why not the 'War on Terror'? And, now why not the 'War on Corruption'?

There are several problems with this approach. The success that law enforcement agencies have had around the world in 'taking the profit out of crime' is very limited and does not commend itself as a particularly efficient strategy. Secondly, there are very important differences between property in the hands of criminal organisations and those who can be considered, at least in some jurisdictions, as terrorists. While the US and UK authorities have had some success in freezing funds associated with

the Taliban and groups identified in previous criminal investigations as being 'involved' in supporting terrorist outrages, it remains to be seen whether sufficient resources will be committed over a period, to enable this strategy to reap the benefits that President George Bush, among others, contemplates. It should not be forgotten that despite the tremendous efforts that the British Government has gone to in fighting terrorism, over the last year the records indicate that the United Kingdom Government was able to take out only £ 9,318.

In focussing attention on the proceeds of crime and the funding of terrorist organisations those who in the ordinary course of their business are involved in managing and looking after other peoples' wealth are brought into the fray. Those that deliberately decide to offer assistance to those who commit serious crimes in protecting their ill-gotten gains, are in the main legitimate targets for the law. However, the concept of 'laundering' has evolved and been stretched to include activity which perhaps only a decade or so ago would not have been considered, by most, objectionable. The list of what is a 'serious crime' has also been expanded and now includes fiscal and taxation offences, which in the past were generally treated differently – at least in the international arena. Moreover we have created new offences such as assisting in the funding of crime and terrorist activity and being involved in acts of corruption overseas. To facilitate the enforcement of these new laws aimed at identifying and interdicting 'tainted wealth' a highly detailed structure of rules and regulations has been erected imposing obligations on those who mind other peoples wealth, to identify sources, know their customers – and their associates, record and report transactions either because they are of a certain significance or because there is a suspicion that they may involve misconduct. All this greatly increases the legal, regulatory and other risks on those who operate in the financial world and on those who seek to advise them. Little thought has been given to the impact and implications of these additional burdens, which have invariably been designed, put in place and are now administered by officials with little or no experience of business!

There is also perhaps an even more serious issue. This is the impact of law enforcement action that is not undertaken within the confines of the traditional criminal justice system. The more apparent that it has become that these new laws cannot achieve, the results in terms of court decisions and convictions – that those who have advocated them promised, the greater temptation to adopt strategies of disruption. The problem with disruption is that it often involves actions that may not always be expressly sanctioned by the law, thereby imposing upon the business community exposure to serious risks of legal liability. Disrupting the funding of terrorist and other criminal organisations is not a new strategy. Indeed, the expertise, such as it is, that has been deployed in fighting organised crime, was first developed in the 1960s by the intelligence and security community to disrupt the activities of subversive organisations. To some extent, it was the freeing up of these resources and their deployment in traditional law enforcement at the end of the 'Cold War', that led

to the dramatic realisation that organised crime does present such a threat to security and stability. However, different countries have differing perceptions of risk. While the International Convention for the Suppression of Financing Terrorism was opened for signature at the UN, in New York, on 10th January 2000. Few countries considered this a priority before the events of 11th September 2001. Indeed, the interdiction of terrorist related finance was not even mention in the US Treasury's Strategic Plan. Given a risk based approach this was perhaps understandable. The statistics showed that in the previous ten years while only some 10,000 individuals had died worldwide from acts of terror, some 40 or so million had died from the consequences of organised crime and in particular the illicit drugs trade, and 1.3 million had died from falling masonry and coconuts! Indeed, even in the present, last year far fewer died across the world from terrorist activity, than drowned in their baths in the USA.

While there is little wholly convincing evidence that there is a real connection between corruption and terrorism, as opposed to 'conventional' organised crime, in many strategic forums a link has been made. Indeed, it has been maintained – forcefully by the United States, that societies where corruption is rife, terrorists find havens and supporters. It is certainly the case that the willingness of countries to bear their financial records – even for fiscal purposes, has been justified on the basis that, if you are not with us in the fight against terror, you are against us! A compelling argument. If the medicine has to be swallowed in the international 'crusade' against terrorists, why not in the case of corruption, which is at least a relevant issue in many developing and transition economies. Accepting that since the 11th September 2001 much has changed, let us examine the experience that we have had, now over many years, in pursuing the proceeds of crime and disrupting criminal and subversive enterprises. This examination may well lead us to take the view that as with the 'War on Drugs' we and in particular the business community, will still be counting the costs for some years to come.

THE MOTIVATION FOR CRIME

The acquisition of, and control over, wealth is the motivation for most serious crimes involving premeditation. This is all the more so when the criminal activity resembles an enterprise which inevitably requires capital to operate and with which to lubricate its aspirations. Money, or rather wealth, in its disposable form, is therefore not only the goal of criminal enterprises, but also the lifeblood of the enterprise. Therefore until the profits of crime are taken away from subversive and criminal factions, we stand little chance of effectively discouraging criminal and abusive conduct which produces great wealth or, through its profits, allows power and prestige to be acquired. As soon as the state devises methods for the tracing and seizure of such funds, there is an obvious and compelling incentive for the criminal to hide the source of his ill-gotten gains – in other words to engage in money laundering.

Like most social, let alone economic, evils, money laundering is nothing new. It is as

old as is the need to hide one's wealth from prying eyes and jealous hands. Of course, the modern money launderer will no doubt adopt rather more sophisticated techniques than the gem carriers of India or the Knights Templar, but his objectives and essential *modus operandi* will be the same. The objectives will be to obscure the source and, thus, the nature of the wealth in question and the *modus operandi* will inevitably involve resort to transactions, real or imagined, which will be designed to confuse the onlooker and confound the inquirer. In the case of corruption, the politician or official will, at least in a society that has some care about corruption, will strive to either hide or explain his ill-gotten gains.

The structuring of the process through which obscurity is created will inevitably be dictated by the purpose for which secrecy is desired. It is this which distinguishes most dramatically the terrorist from the ordinary criminal whose motive will invariably, at least where wealth is involved, be greed or the desire to protect his ill-gotten gains. The terrorist and subversive, will often, albeit not always have a rather different motive. In the case of those who seek to undermine the instrumentalities of our society, their objective will be to hide such wealth, and it may be relatively little, to enable them to more effectively and efficiently engage in their evil designs.

When the time comes to look back at the last two decades of the Twentieth Century, a future historian would be forgiven for thinking we were almost obsessed with organised crime, corruption and money laundering. Of course, when one considers the ignominious fall from favour of so many world leaders, in circumstances where serious corruption was at least alleged, if not self-evident, the exposure of rampant financial malpractice in inter-governmental organisations, the penetration of entire economic and political structures by, for what of a better notion, we describe as organised crime, then perhaps our historian's impression might not be too far from the truth. Although it is possible to find the odd comment in international meetings, about the serious implications of economic crime and the like, before the 1980's, these a few and far between. Most related to complaints from developing countries about the unwillingness of developed countries to assist in the enforcement of exchange control laws. In fact, it was not until November 1980 that the Commonwealth, an organisation or rather association of states, whose justification has increasingly been based on its ability to recognise and address problems related to small and relatively fragile economies, began to concern itself, at governmental level, with the implications of what appeared to be a growth in serious economic abuse and in particular corruption. In those days, there was little talk, even in such organisations as ICPO-Interpol about the threat of organised crime. Terrorism, whether by individuals or by state agencies, was then considered to be a matter almost beyond the remit of traditional law enforcement agencies. It was much later that, most came to recognise that organised crime and terrorist organisations might well be one and the same, and in this context, both need to exist and subsist in the comfort of corruption.

Some have argued that organised crime is a problem of the last quarter of the

Twentieth Century and in the case of most states is a new phenomenon. Of course, so much depends upon what is meant by organised crime. Groups of individuals, formed and managed to perpetrate acts against the law is nothing new. Nor is it novel that the primary motivation of such enterprises is economic gain. What has changed is the criminals' ability to operate beyond the reach of the domestic legal system and, therefore, be able to conduct an enterprise in crime that is not so amenable to the traditional criminal justice system and its agents. Of course, in truth, thinking criminals have always sort to place themselves beyond the reach of the law ant it was not just a matter of having a faster horse! Corruption of officials and the patronage of powerful individuals whose interests, for whatever reason, might be at variance with those of the state, are tried and tested tools. It has always been recognised that even if as a matter of theory, jurisdiction was unfettered, the practicalities are such as to render enforcement parochial. Developments in technology, communications, travel and the liberalisation of movement, whether of persons, things or wealth, have all combined to give the criminal enterprise of today, the same ability as any other business to move from one jurisdiction to another, or involve in a single act two or more different jurisdictions.

In addition, to these factors, which criminals have exploited no less imaginatively than legitimate businessmen, there is another and perhaps crucial consideration. This is the profitability of smuggling, and in particular the illicit trade in drugs. While the profitability of illicit drug trafficking has allowed the corruption of whole societies, let alone individuals within justice systems, the trafficking in human beings has produced levels of misery and exploitation that cannot be ignored. The enterprise of smuggling is a natural and predictable consequence of the imposition of restrictions or other costs, on the supply of a commodity for which there is a greater market. History records that highly developed illicit operations developed not just to evade the imposition of taxes, but also to avoid tariffs and other market controls. Indeed, by creating situations where otherwise law abiding members of society see advantage in resorting to secret and illicit suppliers of goods or services, we foster the existence and long term viability, of criminal and subversive structures. Otherwise law abiding individuals and enterprises, because they cannot compete on equal terms with those who use corruption to evade controls or secure unfair advantage, are drawn down a 'slippery slope' of criminality.

Drugs became, during the seventies, just far too profitable even traditional and 'conservative' organised crime groups to ignore. Within a decade, even terrorist groups, that conventional wisdom considered unwilling to risk the taint of drugs, entered into the market, and by so during became virtually indistinguishable from 'ordinary' organised crime. The relationship of this manifestation of organised crime to corruption is well documented. the vast sums of money generated by the illicit drugs trade enables criminals to corrupt officials at every stage of production and distribution. Of course, organised crime has always resorted to corruption not only as a means of furthering its illicit enterprises, but also in securing protection for itself

and its interests. Indeed, in countries such as China one of the primary concerns in fighting corruption has been to weaken the power of organised crime. However, even in Britain we have seen allegations of significant levels of corruption in, for example, the immigration service, given the demand by those who seek a refuge or are involved in people trafficking.

LAUNDERING

The reasons why an individual, not to mention an organisations, would wish to hide the source of money, or transmit it in a manner which obscures its ownership or character are legion. While a great deal of attention has been given to the vast profits that are being generated by the illicit trade in narcotics, it is dangerously misconceived to assume that the processes involved in money laundering cannot be, and are not, deployed just as effectively to wash and covertly transfer funds produced by other types of crime, or even activities which would not be generally considered criminal, but to which a certain amount of opprobrium might attach. There is need for "unaccountable funds" in many situations and the processes which are involved in washing money can be and often, are efficiently employed to create hidden reserves or secret money. Those organisations that stoop to corruption will often utilise such funds for making payments, thereby ensuring that their corrupt practices are not obvious from their ordinary financial records and statements.

It is important to appreciate that while the funds in such secret reserves may be used to facilitate illicit activity, they are generally not the proceeds of crime. there are very few examples of where the holding of funds that may be utilised for criminal purposes is itself constituted a crime, so as to taint the money in question. An important exception, is in regard to funds that are intended to be used for the purposes of terrorists. Of course, it may well be that wealth used to fund terrorism will be 'clean' in the sense of not being derived from other unrelated criminal activity. Where money is given to promote a terrorist act, then it becomes tainted ipso facto, under the laws of many countries. This is not the case in regard to most other serious crimes. Merely providing money that may be used in furtherance of a crime, while possibly resulting in criminal liability for those involved as aides and abettors or procurers of the resulting crime, will not automatically taint the money in question. Terrorism is a rare example, of where the law will criminalise wealth simply on the basis of intended use. Of course, this is not to say that in the case of hidden or secret reserves there will not be other legal issues of a fiscal nature.

It must also be remembered that the purposes for which money is required, will also influence, if not dictate, the transactions which are used to hide its true character and the way in which it is permitted to move. For example, individuals involved in facilitating the flow of capital from developing nations, in violation of currency and fiscal controls, may be able to operate with impunity and no embarrassment in other

jurisdictions where such controls are not part of the economic policy. Therefore, there will be little need to ensure that the money surfaces covertly. Indeed, when the money is escaping from a country which is seeking to expropriate wealth, whether pursuant to a programme of so called 'indigenization' or otherwise, those involved in such financial operations may even be held, by those whom they service and those outside the country in question, in high esteem. Furthermore, it must also be remembered that although an economic embargo may well be considered and appropriate device to employ against a country that is considered to be in breach of its international obligations, the perception in that country may be very different. State 'endorsed' and even employed, 'sanction busters', employ all the techniques of the money launderer, as have the intelligence and other state agencies for a variety of reasons. Of course, under general anti-money laundering laws there are issues as to the status of such transfers. It is possible that the means by which wealth is transferred may render the wealth tainted and subject to interdiction. Again, this is rather similar to the use of otherwise untainted funds for the furtherance of a terrorist crime. In this case, however, the criminalisation of the funds is a result not of the purpose of their transfer, but the manner of their transmission. One of the reasons why there is controversy as to whether the violation of such currency and fiscal regulations can properly constitute a predicate crime for general anti-money laundering offences, is the diversity of economic policy which seeks to justify or reject such measures. Of course, where the means employed to violate or rather evade the controls involve fraud and falsification of documentation, the situation is somewhat clearer as conventional offences may be brought into the equation.

A similar issue has arisen in regard to money involved in corrupt practices. While the United Nations Convention on Corruption seeks to address this, both in terms of proceeds of crime and asset recovery, everything depends upon the existence of appropriate domestic laws. If the relevant jurisdiction has not criminalised the conduct in question, then it is impractical and often impossible for other states to take action against the money in question and those who are involved in laundering it. Chapter 111 of the Convention obliges states to enact laws criminalising a wide variety of corrupt practices, ranging from the giving and taking of bribes to peddling influence. However, not all obligations to expand the scope of the criminal law are obligatory and there are important provisions, such as penalising unexplained wealth, that are merely for governments to consider implementing. It must also be remembered that the impact of these provisions remains primarily in the public sector. Corruption in the private sector remains effectively outside the scope of these new provisions. It has to be remembered that the legal position in regard to practices that are not expressly rendered criminal in the relevant jurisdiction is controversial. For example, under English law before the recent legislation outlawing the bribery of overseas officials, it was at least arguable that a director of a company who made commission and other facilitation payments to such persons, in the belief that this was necessary to secure appropriate business opportunities for his company could not be faulted. He has acted bona fide in what he considered to be the best interests of his company. Indeed, in one

case a prosecution was not brought under the relevant insolvency law, as in such circumstances the view was taken that it would not be possible to show that the director had acted dishonestly. In the case of overseas payments of a commercial nature other than to officials the situation remains problematic. It is also the case, that under certain laws, all that is required is the proper disclosure of what has been done. Provided this occurs then the actual payment is not tainted. the only inhibition on such conduct will be what might result, in terms of governance, as a result of the candid disclosure. Thus, while Chapter 111 and the supporting articles relating to the interdiction of the proceeds of crime and the provision of mutual assistance, are to be welcomed, not all the problems are addressed by the Convention, let alone resolved. Indeed, the Convention would have benefited, as would this general area of law enforcement, in a rather more thorough consideration of the issues.

Where the funds are the result of criminal activity it will be necessary to ensure that each material element in the laundering process is covert and the money must appear, when it finally emerges from the pipeline, seemingly clean. The purpose to which such funds are to be applied will also, to some degree, influence the processes involved. If money is to be reinvested in other criminal or subversive operations it will be important that the transactions which establish it, are not referable to other risk activity, but the money need not appear to those who receive it to be from a legitimate source. Where, however, the money is being used to penetrate an institution or organisation, then it will have to, not only be unconnected to the activity which generated it, but also be apparently acceptable to those in control of the relevant body. It should be obvious that the somewhat simplistic notions of money laundering that have been preferred in a number of recent reports and publications pre-suppose a clarity and simplicity of purpose that rarely exist.

While many appear to have assumed, often without much thought, that terrorist organisations will inevitably adopt the *modus operandi* of organised crime in laundering their funds so as to create secret money, there are important differences between terrorists and conventional criminals. We have already emphasised that the laundering process will be determined by the needs of those seeking to hide or disassociate the wealth in question. Of course, many terrorist organisations are almost indistinguishable from organised crime and in recent years there has been a tendency to label terrorists as almost a ‘sub-species’ of organised crime. Terrorists have stooped to ordinary crime to raise funds and secure their objectives and, of course, most terror networks would have the characteristics of a ‘continuing criminal enterprise’. However, while the objectives of most terrorists can be stigmatised as criminal, they are generally not acquisitive – at least in the proprietary sense. Indeed, it is a fact, most terrorist organisations fail to attain their political and social objectives. Many nonetheless continue and assume the fundamental purpose of any ‘political’ organisation – that of self-preservation. To sustain the self motivated organisation it is not unlikely resort will be made to activities which resemble and may well become indistinguishable from crime. Indeed, there are many examples of

so called ‘freedom fighters’ degenerating into organised crime, ranging from the mafia to the triads. As we have seen corruption will often play a crucial role in this transition.

Where terrorist organisations secure their funding from criminal activity, whether it be trafficking in drugs or running extortion rackets, they will have the same needs, in regard to the proceeds of their crime, as do traditional organised crime groups. They will wish to disassociate their wealth from crime and all that might befall them as ordinary criminals. It might well be necessary, depending on the nature of their business, to facilitate the re-investment of their illicit wealth back into their continuing criminal enterprises. Terrorist organisations have similar needs to ordinary criminals in securing the instruments of their crime. However, their need for security and secrecy is probably, in most cases, somewhat more compelling – given the stakes are somewhat higher. Perhaps to a greater extent than most forms of organised crime, terrorists with a political objective will require funds for a wider agenda. They will wish to maintain individuals and perhaps their families and networks, even when such are not directly pertinent to the prosecution of terror. They will also need to create secret money that can be easily accessed by operational units. Consequently, it would be rash to suppose that the expertise, such as it is, that we have developed in pursuing the proceeds of drug trafficking and serious fraud, is necessarily applicable, or even relevant, to pursuing and interdicting the funds of terrorist organisations. Indeed, as we shall see later, terrorist organisations will often seek to operate in large measure outside the formal financial and banking systems – through informal and underground systems.

Some countries have courted money and wealth on the basis that their legal systems will throw over its owners and their transactions, a cloak of secrecy thicker and rather more impenetrable than the traditional rules relating to professional confidentiality. In some instances, an assurance of absolute secrecy has been marketed as a privilege that can be bought for either a relatively small registration fee or for the cost of opening a deposit. The original justifications for laws that extend the more traditional privilege between a banker and his customer – were no doubt acceptable. It is hard to find fault with any attempt to protect those who are being slaughtered by an oppressive and evil regime. However, other countries have not been slow to perceive the benefits of becoming a depository for not only fugitive and flight capital, but also dirty money. There are countries, which have become so isolated from conventional sources of development finance that their leaders, even assuming them to be men of honour and integrity have little alternative to seeking funds from those who require ‘discretion’. The laundering of money, in varying states of cleanliness, through national treasuries and government-sponsored projects is nothing new. Some, governments would appear to have made a decision to do rather more than ‘stand on street corners’. Others have imposed additional legal devices that effectively block all inquiries from overseas, or for that matter even domestic, regulators and agencies. While the provision of tax efficient services are unobjectionable and there is

justification for many of the facilities offered on an 'offshore' basis, there can be no doubt that too many of these jurisdictions have become complicit in money laundering activities.

While there are few jurisdictions that today would market themselves on the basis of providing financial privacy, often this is implicit in other aspects of what they offer. For example, the government of Ras Al Khaimah, as recently ago as September 2006, in announcing the establishment of its 'International Companies Registry' emphasised that companies will be able to issue 'bearer securities'. While the identity of owners can be demanded under the relevant legislation by the Government, this 'facility' will render the detection of the sort of activity condemned by the Convention difficult to detect, notwithstanding that evidently the Government has hired three London law firms to assist it in vetting applicants for registration.

Of course, many have made very determined and genuine efforts themselves to improve their laws and their administration, in an attempt to discourage bad business and dirty money. This salutary process has been encouraged by the international community and in particular by bodies such as the OECD, Council of Europe and FATF. The concerns that initially focussed on the laundering of the wealth of organised crime have been re-focussed on terrorist organisations. There are those who, with some justification, contend that these initiatives are rather more to do with the US $ 34 billion of tax that the US Government misses collecting each year as a result of tax efficient use of such jurisdictions. However, in the context of our present discussion on recovery of the assets of those involved in corruption, the role of such jurisdictions cannot be disputed. It is also the case that the very financial trade that they have courted has contributed, in some cases, to the corruption of their own domestic values and institutions. Having said this, with developments in technology the notion of 'offshore' is practically meaningless, other than as a political expression.

THE LAUNDERING CYCLE

So far we have avoided attempting to set out what money laundering involves. We have spoken often in the same breath of money laundering, secret money and dirty money, without attempting to establish the interface between the process and the product. Definitions of money laundering range from the authoritative language of statutes to the 'punchy' comments of the judges. For our present purposes, and at the risk of adding yet another to the lists, it amounts to a process which obscures the origin of money and its source. Of course, this is a wide approach, which would encompass transactions designed to hide money as well as wash dirty money into clean. It is the processes of transfer and misrepresentation, which constitutes the *modus operandi* of washing and secreting wealth. Unfortunately, because of the attention that has been given, understandably, to the fight against drug cartels, the

topic of money laundering has become linked to, if not captured by, the debate on tracing and confiscating the profits from the illicit drugs and narcotics trade. This is problematic as not all crimes involve a continuing enterprise. We have already emphasised that history will in all probability record that we failed in the so called 'Financial War Against Terror' because we adopted inappropriate and too simplistic strategies. This much has already been widely acknowledged in the US Congress and agencies of the US Federal Government. The terrorist organisations that have been the priority of the wider 'War on Terror' are not organised in the same way as drug cartels and do not operate as traditional organised crime enterprises. When we turn to the issue of corruption, again we find the model does not fit. Most cases of serious corruption do not involve a continuous process of re-cycling tainted wealth. Indeed, in the majority of cases of serious corruption the wealth will be simply hidden and there will be no need to establish a 'back-flow' of funds to the relevant jurisdiction. While the typologies that have been developed by organisations such as the FATF are helpful, they are often simplistic and orientated to the enforcement priorities of the developed jurisdictions. Corruption has not been a priority issue.

Discussion of the processes involved in money laundering has been limited and essentially derivative, outside the USA. Few have recognised that even the now traditional process of laundering involves a series of actions and not a seamless process. In Britain, at least, until comparatively recently, the need to examine deliberate and sophisticated attempts to obscure ownership and control were rarely encountered, by lawyers and for that matter policemen. Thus, we still tend to a somewhat simplistic notion of the laundering process, even in the case of illicit drug trafficking. Laundering will involve a series of stages and different legal and enforcement considerations will be applicable to each.

Many forms of crime and misappropriation will produce quantities of cash in relatively low denominations. This will need to be consolidated into a form of wealth which can be more easily transported, particularly out of the jurisdiction. The methods of achieving this are limited only by the ingenuity of the launderer. Of course, high turnover and relatively low investment enterprises, which can be used to facilitate such a process, will be especially attractive, particularly if they are outside the conventional banking system. Those involved in consolidating cash at this stage of the laundering cycle will be most concerned to avoid the creation of any external record which could be used to initiate an audit or paper trail leading to subsequent stages or 'layers' of the operation. For example, in one case involving the National Police Commission in the Philippines, the proceeds of many individual instances of corruption were combined with payments for protection and extortion and channelled through a travel agent and nightclub.

Once the money has been converted into a form which can be transferred or smuggled, it will often be moved off shore. This has a number of practical advantages. Firstly, it will often in practical terms place the funds beyond the legal

reach of the authorities in the jurisdiction where the activity giving rise to the profits occurred. Even if the relevant laws are capable of application on an extra-territorial basis, and very few are, by involving another jurisdiction significant practical and financial barriers are placed in the path of investigators, in obtaining and securing evidence which would be admissible before a court. As has already been mentioned, certain jurisdictions are willing to offer banking and other facilities on the basis that secrecy will be assured – or at least, the papers will be lost! Sadly, there are countries that have been prepared to facilitate the receipt of money no matter what its source. Once the money has been taken offshore it can then enter either directly, or more likely, indirectly into the conventional banking system. Obviously, the more discreet this process is, the better for the launderer. Hence the attraction of jurisdictions that offer either secrecy or in which the level of corruption is sufficient to ensure effective non co-operation with foreign agencies.

Once the money has entered the conventional banking system it can move through usual channels. The launderer's objective will be to create a web of transaction, often involving a multitude of parties, with various legal statuses in as many different jurisdictions as possible, through which the money will be washed on a wave of spurious or misleading transactions. The purpose of this is to confuse even the most dedicated and well-resourced investigator and to defeat any attempt to reconstruct a money trail. Given the ease with which companies and other legal entities may be created in countries throughout the world, the launderer's only constraint is likely to be time. On the other hand, it must be remembered that the laundering of money is a cost and both he and his principals will only wish to expend what is necessary and prudent to ensure the relevant funds remain beyond the reach of law enforcement agencies or others interested in locating them. Obviously, the amount of effort and expense that will be required for laundering, for example the profits of a major drugs operation, would be rather more than that required for frustrating a regulatory authority, investigating a case of suspected insider dealing. It must also be remembered that while the money is in the pipeline it is unlikely to be fully usable. Consequently, most launderers are not only mindful of the costs involved in the actual process, but the length of time that will be involved in washing the money. Given the importance of ensuring the unreliability or preferably the unavailability of records, upon which an audit trail can be based, there is an increasing tendency, for those involved in money laundering to resort to the old practice of cash transfers and bulk movement of currency. Containerisation has provided the launderer with a relatively cheap and statistically reliable means of moving large amounts of money around the world without having to risk the creation of conventional records. Thus, the circumstances will to some extent influence the extent of the laundering process and its sophistication. Laundering operations will range from the simplest manipulation of accounts, to structures involving hundreds of companies, with thousands of bank accounts. However, it must always be remembered that the larger the organisation that is employed to launder the money the greater the costs and the higher the risk of detection or of something going wrong. In this context, it should not be forgotten that

developments in information and transaction technology have been of considerable assistant to the launderer. There can be little doubt that criminal and subversive organisations have been and are as well placed as anyone, to take full advantage of developments in technology and in particular communications technology.

The transactions which are used to obscure the source of the relevant funds will be structured in such a manner as to render it almost impossible for admissible evidence to be obtained, which would allow a court to establish the derivation of the money. Law enforcement agencies often refer to this process as 'layering', but this rather implies that with diligence the true facts may be uncovered through a progressive investigation. While there have been cases where dedicated, extremely lucky, and well resourced investigators have been able to peel-off a series of 'layers' to reveal what in fact took place, in the case of the more sophisticated structure, the concept of 'layering' is too simplistic. Certain operations are structured in a manner that resembles a mosaic or kaleidoscope rather than layer - cake. Transactions will not be progressive – but parallel, establishing mutual obligations which can be married or crossed, often on a contingent basis, and which can not be substantiated to the satisfaction of a court applying conventional legal rules. A better analogy than 'layering' is that, of a stone gradually dropping to the bottom of a pond, the longer money remains in the system the more difficult it is to follow and identify it. Furthermore such an analogy makes the important point that the money in flight, will be most noticeable when it first "splashes" into the pool. It is at this point of entry into the conventional banking system that regulations designed to create an "audit trail" are likely to be most effective.

Once the money has been agitated, to the satisfaction of the launderer, it will be necessary to place it in an 'end deposit'. Of course, the nature and location of this "end deposit" will depend upon a variety of factors. However, in many cases it will be desirable to return the money to the jurisdiction in which it was first generated. Those responsible for making such profits will often wish to enjoy at least part of the fruits of their endeavour, and where there is a continuing enterprise to return the washed funds will be crucial. Therefore, the launderer may well be required to ensure that at least a proportion of the money is repatriated to the country of origin. Thus, it will be necessary for him to create a transaction, or more likely a series of transactions, which will bring the "clean" money back home. This can be achieved in a number of ways, although it will be desirable to ensure that the repatriation is in a manner which can be explained, and which will justify the surfacing of wealth in the hands, or under the control, of the relevant principal.

It must be appreciated that money laundering involves a series of stages and each stage will have its own characteristics. Those charged with the detection and investigation of such matters, need to be alert to the implications of a process which will have been carefully designed and structured with the objective of minimising

exposure and, thus, the risk of interference. Sadly, legislators have often failed to appreciate the complexity of money laundering – both in terms of its character and objectives. They have taken for granted a somewhat stylised model, which rarely conform to reality. The deficiencies of essentially western crafted strategies, are perhaps, best shown in this regard in the context of underground and informal banking systems. Given the significance of these in the developing and transition economies, in the context of our discussion of asset interdiction it is desirable to briefly examine the more important issues.

INFORMAL AND UNDERGROUND BANKS

Underground banking systems have developed to a level in some societies, where they rival in terms of efficiency and capability the conventional banking system. While many such systems have developed within ethnic societies because of distrust for the host country's institutions, many have a history that is rather more complex and reflects rather more indigenous social and cultural factors. The importance of underground banking systems to money laundering operations has become more widely appreciated in recent years and particularly after 9/11. Given the dispersal of certain ethnic communities, there is little doubt that such systems exist on an international basis and may play a not insignificant role in the laundering of dirty money. The involvement of certain ethnic organised crime groups in highly profitable crimes, such as drug and human trafficking and the significance of these traditional banking systems should not be underestimated. Governments are increasingly recognising the distorting effect that the underground banking systems can have on money flows and the operation of economies. Most underground systems will also, at some stage, have to interface with conventional financial or banking institutions. There are innumerable types of underground banking ranging from highly sophisticated structures operated by overseas Chinese groups to relatively informal barter and smuggling based operations in Africa. Most systems do not involve the movement of cash and depend for their efficacy on tokens or some form of coded communication. The Chinese "Chit" or "Chop" system, the Pakistani 'Hundi System', and the Indian 'Hawallah' operate primarily within defined racial groups, often with some additional bond of a tribal or geographical nature. They rarely involve the physical movement of cash, or for that matter anything other than tokens which are regarded within the special structure of the system as the equivalent in value to the relevant cash sums. The Hawallah system is rather more a system of compensation through related transactions, but given the facility for aggregation and 'set off', actual payments between those operating the system are kept to the minimum. The efficiency of a paperless and practically record-less banking system, which is capable of transferring substantial amounts of wealth is obviously an attraction for those involved in money laundering. Money launderers have emulated the underground systems to some extent, and have shown an increasing willingness to make use of existing systems on a commercial basis. Laws and enforcement procedures that which have been fashioned to address money laundering through

conventional banking systems are of little practical relevance in the case of such underground systems.

The potential use of such systems in cases of corruption, is not well appreciated in the West. In countries such as China and India, the underground and informal banking systems have long been linked to the activities of smugglers and other forms of organised crime. Whether such systems are utilised for corruption unrelated to the protection and facilitation of a criminal enterprise, is more debateable. It is the case that underground networks have been used to move money in cases of significant corruption, such as the Lockheed/ All Nippon Airlines case in Japan, particularly through Hong Kong. It is also the case that support for politicians in many developing countries is channelled through such systems. The problem has also manifested itself in South Africa and, of course, Russia.

Interest in underground banking systems, particularly operative in the Sub-Continent and Middle East has blossomed after the 11th September 2001. It is tolerably clear that Al-Qaeda and its associated networks has utilised various forms of underground banking to move and hold money. What is of particular interest, is the way in which the operations more closely associated with Bin Laden, were able to interface these traditional and informal systems into the conventional financial world, largely through the use of nominee and front companies registered in certain 'off-shore' jurisdictions. It is also clear that religious foundations and even registered charities were utilised not only to collect funds from supporters, but also facilitate integration. Perhaps one of the most disturbing aspects of these revelations was the apparent and pervasive ignorance of law enforcement and intelligence agencies as to the nature, extent and operations of these underground networks. Major intelligence agencies were forced to admit that this was almost an entirely uncharted sea. Perhaps even more disturbingly, recognition is dawning that perhaps these networks cannot be penetrated to the extent necessary to provide the level of intelligence that is required for effective disruption. In the USA and Europe there have been exceedingly few instances where investigators have managed to penetrate developed underground systems and obtain evidence sufficient to mount a legal action, whether civil or criminal. Even the US Drug Enforcement Administration has managed only very rarely to penetrate networks operating in support of drug operations from the Far East. Immediately after 9/11 such limited expertise as was available was seized by the intelligence community and utilised in an attempt to interdict funds that were assumed to be available for Al-Qaeda and its associated networks. The results of this activity were mixed at best. In the few cases where law enforcement agencies have been successful in dealing with informal banking and transfer systems, surveillance and then action has been focussed at the interface between the informal system and the traditional banking and business world. This is often the weak point. However, there is a fundamental difference between criminals and others who wish to move in a clandestine manner large amounts of wealth and those who simply want relatively small amounts of cash placed at strategic locations to fund terrorist activity. The amounts of money

emerging from the underground networks were not sufficient to identify and provide targets.

It is most important to remember in considering these systems of moving wealth that the vast majority of transactions are unobjectionable and invariably serve a social purpose. In many developing countries the banks and other financial institutions may not be accessible to most – not least geographically. Furthermore, given the amounts of money that are often transmitted, the use of conventional money remittance services is uneconomic. It is also the case that given the virtual 'exclusion' of certain jurisdictions from the 'Western' banking system as a result of action in particular by the FATF and OECD, overseas nationals of those countries, in practice, have very little alternative but to use various forms of informal banking.

While certainly not in the same frame, it is convenient to address at this stage in our discussion, the position of banks and other financial institutions established under Shari'a law. In truth very little work has been undertaken as to the exposure of such businesses to the threat of money laundering. Of course, Islamic jurisdictions have not been slow to pass laws outlawing money laundering particularly in regard to the proceeds of drug related crimes. Given the rather closer involvement of the 'customer' in most forms of banking transactions it has often been assumed that those responsible for establishing probity would be rather better placed than in a non-Islamic financial relationship, to conduct due diligence.

Hiding money is one thing, but as we have already seen, attempting to disassociate wealth from its actual source, smacks of something rather more sinister. While those that have obtained their wealth through, perhaps rather disreputable methods no doubt, prefer their neighbours to remain in ignorance, until relatively recently there was little risk to those assets. Although it is possible to find in many ancient systems of law provisions which allow the state to forfeit the instruments of crime, and even the proceeds of crime, and in extreme cases all the 'outlaw's property, there are few contemporary examples of such laws enduring. It is much more recently that governments, have realised that were criminal conduct is motivated by economic gain, it makes a great deal of sense to attack the proceeds or at least the profits of crime. Furthermore, where the criminal conduct involves a continuing criminal enterprise, taking away, or otherwise interdicting, the proceeds of crime might well prevent the re-investment of this wealth back into the criminal operation, thus, causing serious liquidity problems. US agencies have been particularly attracted by the logic of this approach, the more so because in the main, those assets that are seized remain within the possession and use of law enforcement. Furthermore, the law as it has developed in the USA, particularly in regard to civil enforcement actions *in rem* has proved to be relatively effective. Given the manifest failure of various programmes based on drug supply and demand reduction, attacking the assets of the drug barons has appeared increasingly attractive. The significance of this strategy has

been elevated, by obtaining the support of other jurisdictions, and in particular inter-governmental organisations, to almost that of a 'crusade.' A series of international conventions and agreements have directly or indirectly, obliged countries to enact legislation, which enables their authorities to seize and then, on conviction for a drug related offence, confiscate property which represents the proceeds of that crime. Most states have extended these laws to cover property which can be shown to be directly, or even indirectly, the proceeds of such a crime, even though it took place in another jurisdiction. More recently, this approach has sensibly been extended so as to encompass the proceeds of all serious crime, whether drugs related or not. The United Nations Convention on Corruption, now provides in Article 31 that states 'shall take, to the greatest extent possible within' their 'domestic legal system, such measures as may be necessary to enable confiscation of the proceeds of crime derived from offences established in accordance with this Convention' and the instrumentalities of such. We have already noted that the Convention extends the scope of offences relating to corruption and abuse of office. While it is true that the laws of many states and particularly those that have been most supportive of the Convention already provide for the interdiction of the proceeds of crime, which would comprehend most serious forms of corruption, this provision is still welcome. By the same token the provisions in the new Convention facilitating investigation, freezing and control of criminal assets, while in many cases not novel, will also be useful.

Experience has shown, however, that no matter how well drafted and intentioned the vehicles for international cooperation are, for effective trans-national action, it is vital that there is competence in terms of legal powers, skills and resources within the relevant domestic agencies tasked with the pursuit and interdiction of the proceeds of crime. Sadly, it cannot be taken for granted, as experience shows only too well, that this is the case in every jurisdiction – even in regard to fighting drug trafficking and terrorism, let alone corruption. Enthusiastic and even dedicated commitment is not on its own enough. While training and support for those involved are critical, experience indicates that to retain the level of commitment and expertise dedicated and specialised personnel need to be retained, probably in an independent but authoritative agency. This is recognised in Article 6 of the new Convention.

In the case of crime that is motivated by economic gain it does make sense for the legal system to focus attention on the 'profit' that the criminal hopes to make from his illicit conduct. This is particularly the case in a crime such as corruption, which is committed almost always as a result of greed and the desire to acquire or maintain wealth. However, we recognise today that far more crimes than those that might be described as 'economic crimes' are motivated by greed and the prospect of financial gain. For example, the motivation driving most drug trafficking operations will be the prospect of taking financial rewards disproportionate to the risks involved. Organised crime, given its character and often its structures, will be particularly focussed on the ability to generate income. It also needs money - as well as the prospect of disproportionate rewards, to retain and foster its operational efficacy and the loyalty

of its members. Indeed, terrorist organisations may have similar needs, particularly once their 'political mandate' has become unrealistic. Because economic crime constitutes a relatively high reward and low risk activity, organised crime has become increasingly attracted to this sort of activity. Interdicting the proceeds of crime can also provide a useful mechanism for undermining the ability of criminals to invest in other criminal activities or their own enterprises - legitimate or otherwise. Although there is little evidence, other than on an anecdotal basis, as to the effect of such strategies, it stands to reason that inhibiting the flow of funds must have a disrupting effect on the enterprise. This is particularly so, when liquidity is at a premium, as it is in drug related crime, where a high proportion of transactions are in cash and yet retention of large amounts of cash is both impractical and high risk for the criminal.

Given the justifiable concern in the USA and other Western states about the implications of the illicit trade narcotics, and the elevation of their fight against organised crime to a matter of national security, it is not surprising that there is no shortage of legislation seeking to inhibit the laundering of the proceeds of crime. Of course, much of this is related to laws which seek to confiscate and forfeit wealth that can be shown to be derived, directly or indirectly from serious criminal activity. There are other devices within the legal system to deprive criminals of the benefits of their illicit enterprise, ranging from taxation to the imposition of fines. It is, however, the fear, rarely the reality, of confiscation under these relatively new laws that are thought to have increased the quantity of money laundering activity. Whether this perception is true or not, is a matter for debate. It was the view of some senior police officers within Scotland Yard, prior to the enactment of legislation in Britain allowing the courts on conviction, to seizure the proceeds of certain crimes, that this would drive criminal assets further underground. This could impact adversely on the availability of intelligence and curtail the effectiveness of 'financial based' investigations designed to identify relevant and better evidence. It is not without interest, in this regard, that a number of US authorities have recently expressed similar concerns in regard to the impact of the provisions in the PATRIOT Act on money remitters and exchanges. In law enforcement there is a balance to be had, and it may not always be in favour of more law and regulation. It has been argued that this is a particularly sensitive issue in the context of the control of certain forms of corruption. Indeed, increased legal intervention apart from providing greater opportunity for those who wish to 'sell' non-compliance, may also have the effect of converting abusive conduct into criminal activity and thereby driving individuals into the hands of other criminals and criminal networks.

HOW GOOD ARE WE AT RECOVERY?

A profound weakness in the strategy of attacking criminal enterprises through confiscating and forfeiture of ill-gotten wealth, is that the law has proved to be difficult to apply and problematic in achieving deterrence. Outside the USA, the value of property and money actually confiscated is very small when compared with

even conservative estimates as to the amount of wealth that is likely to be flowing through the criminal pipeline. While the quantum of property – representing directly or indirect the proceeds of crime and the instrumentalities of crime in the USA is considerable, the US experience is not easily relevant let alone transferable to other jurisdictions and systems of law. In fact, notwithstanding a highly regulated financial sector which facilitates the tracking of property, the existence of significant and sophisticated investigative, compliance and legal resources at many levels of government and a legal system which is both flexible and imaginative, particularly in the use of the civil and fiscal law, most seizures of criminal assets are either on arrest or in the immediate possession of the accused. While there are cases standing testament to the skill, dedication and resources of financial investigators, the greater proportion of forfeited property is not taken as a result of complex investigation. It must also be said that, while seizures have been strategic and had apparently a disruptive effect on criminal organisations, many consider they are but the tip of an ever growing ice berg. It is also the case that the results in terms of legal interdictions of terrorist related finance are not impressive.

Of course, estimates or rather 'guesstimates' as to what the figure for 'seizable' criminal assets might be, varies greatly depending upon the perspective and imperatives of those concerned. There are no really reliable figures and although various attempts have been made to quantify the amount of dirty money that may at any one point in time, be flowing through the pipeline, at the end of the day, it comes down to speculation and informed guess work. Of course, the situation is complicated by the presence in the systems, of money and wealth, which although not directly the product of crime, is for some reason or another susceptible to the same processes of laundering. In 1995 a former senior official in the Legal Directorate of the British Secret Intelligence Service and Security Service was reported in a respected UK national newspaper, as expressing the informed view that £200 billion a year of narcotics related money passes through the City of London. Whether such an astronomical amount is anywhere near the truth, remains to be seen. While some have 'confirmed' the accuracy of this guesstimate, others have been somewhat more conservative. The truth is that so little work has been done on this question in Britain, or for that matter anywhere outside the USA, no one really knows the extent of the problem. Ms Elisabeth Bresee, then Assistant Secretary (Enforcement) in the US Department of the Treasury in giving evidence to the Sub-Committees on Financial Institutions and General Oversight and Investigations, of the House of Representatives' Committee on Banking and Financial Services, was asked to quantify the amount of money being laundered through the USA. She stated, "partial figures can give one some idea of the problem. The Office of National Drug Control Policy estimates that approximately $60 billion is now expended in the purchase of illegal narcotics each year. If 80 per cent of that represents profit, the sales generate $48 billion to be laundered each year, simply on account of narcotics sales, without taking into account all of the other crimes whose proceeds require laundering. And even a fraction of that number, reinvested year after year, generates a sizeable and

frightening war chest of criminal capital." Ms Bresee, then pointed out, that if one sort to obtain a picture of the total amount of wealth being laundered in the USA, then one had to add the profits from crimes committed outside the USA that were laundered through the USA, or by utilising US currency or US institutions, and also the repatriation, either permanently or as part of the laundering cycle, of wealth generated by US criminals at sometime in the past, that had been held outside the USA. When one takes all this into account, perhaps the comment reported in the British press in 1995 was not as preposterous as some have made out. Of course, it must always be remembered that in reality it is not so much the quantum of illicit wealth that such concern us, but who controls it and for what purpose.

While the figures in regard to the illicit trade in drugs range from fantasy to Armagaddon, it is probably the case that at least the less speculative contain a greater measure of veracity that some of those banded about in relation to corruption. In the case of drugs there is a recognised trade with a defined product that does in various ways manifest itself in a manner that is capable of estimation. This is not the case with the wide range of activities that can be described as corrupt. It is recognised that in particular so called Grand Corruption can have a devastating effect on the national economy. It can in extreme cases cause international instability. On the other hand, in the cases that have been adequately pursued the amounts of money actually involved, as the proceeds of crime, in global terms m ay not be as great as some have contended. Rather as in the case of terrorism, of greater concern is the impact on wider issues, of the corrupt act and the wrongs that it permits or condones, than the actual money that passes hands. We have seen in the case of certain terrorist acts, very small amounts of funding have resulted in catastrophic financial, social and political consequences. While with confidence we can state that the amounts of money involved in Grand Corruption and in aggregate even lesser corrupt practices, may well be significant, any estimation of the whole is of little practical significance.

What is manifest and indisputable is that the amount of money derived from criminality that would, in theory, be susceptible to the application of legal forfeiture laws is vast. In Britain, however, the Third Report of the Home Office Working Group on Confiscation stated that between 1987 and 1997 the authorities in England and Wales have been able to confiscate only £37,261,600 of drugs related wealth. Under legislation designed to take the profit out of all serious crime including corruption, whether drugs related or not, the amount, since the law came into force in 1989 is just £4,484,659. If even a conservative estimate of the amount of wealth liable to confiscation during this period were compared with these figures, the results obtained would, if the matter were not so serious, be laughable. The Performance and Innovation Unit of the UK Cabinet Office in its Report, Recovering the Proceeds of Crime, published in June 2000 indicated that the results since 1997 have been no less disappointing. Indeed, the Cabinet Office's Report states that the law was simply not working! Perhaps even more surprisingly, the results under the various measures passed to deal with terrorism in Northern Ireland have been equally uninspiring.

While it is dangerous and often misleading to express the amounts of money or other property that have actually been confiscated as a proportion of the 'guestimated' amounts 'at risk' it would not be unfair to observe that in the United Kingdom, despite unquestionable dedication on the part of Government and the law enforcement community the proportion remains embarrassing.

New legislation, introducing civil asset recovery, along the lines contemplated in the new United Nations Convention on Corruption was enacted in Britain in 2002. The results achieved by the Asset Recovery Agency fail to inspire. Amounts in individual cases have tended to be small and in several it has simply been a matter of the Agency intervening to claim property included in an estate on death. It has recovered only £ 7 million, although its running costs are well in excess of £ 15 million. In the result, there is a serious issue of moral within the Agency and uncertainty as to its future role. Recovery of criminal assets pursuant to criminal law procedures has increased – and perhaps one good sign is that over the last two years the British authorities have been able to interdict more than in the previous fifteen years! However, while interdiction may result in isolating and signalling suspicious wealth and, thus, taking it out of the criminal 'pipeline,' it falls short of confiscation. The interdiction through freezing suspected criminal property, particularly on the basis of unexplained criminal lifestyle, has provided law enforcement agencies and the Asset Recovery Agency with an important weapon in disrupting criminal enterprises. The Asset Recovery Agency has frozen assets well in excess of £ 100 million, and the current total of all such orders in the United Kingdom amounts to almost twice this figure. However, as the experience of other jurisdictions has also shown, there is a very real problem in converting these essentially temporary freezing orders into final orders for confiscature. The legal and other costs associated with this strategy for law enforcement are also not inconsiderable. What is clear is that, on the evidence, the new provisions and procedures in the United Nations Convention on Corruption are no panacea. Indeed, the amounts of money associated with anti-corruption cases in the United Kingdom are derisory.

Of course, there are mitigating factors when judging the administration of these laws. The law is relatively new and in many respects untested; financial investigations are always difficult, time consuming and often complex; it is only recently that law enforcement agencies have been able and willing to commit the necessary resources to this strategy and the courts and prosecutors have yet to become entirely comfortable with this body of the law. Mention has already been made of the need to develop specialised competence, possibly within a single agency, to address the many practical and legal issues thrown in these cases. In Britain, as in many other jurisdictions, we have not been particularly successful in building up the required level of investigative and prosecutorial expertise and retaining it in government service. This is even more a problem in smaller and developing countries.

There is not the space in this paper to canvass the experience of other jurisdictions in

any detail. However, it is the case that across Europe the actual results have been little different that those obtained in the United Kingdom. A possible exception is in Italy where there has been considerable experience over many years in dealing with certain manifestations of enterprise crime. While it would be misguided, given the rather special history of Italy, to drawn over much from the relative success it has achieved, it is interesting to note that it has highly trained specialised investigative resources both in the police and the judiciary. It also places considerable emphasis on the fiscal aspects of enforcement. The general experience within the Commonwealth has not, possibly with the exception of Canada, been much different to that in Britain. Nonetheless, the 'world community' heralds this strategy as the way ahead and seeks to justify the considerable legal, financial and compliance burdens now placed on all those who look after 'other peoples money,' on the basis that this is our best strategy in protecting our societies.

The law does not operate in a vacuum and it is important to consider the impact of new measures and in particular the way that they are administered and enforced on the community and other important areas of public interest. Of course, in the context of much that we have been discussing there is such pressure from the international community and states, such as the USA, to enact and bring into force specific provisions, individual states have little opportunity to adapt them to local conditions let alone consider their impact on their particular circumstances. Sadly, there is a perception, particularly in the contexts of fighting organised crime and terror, that 'one size' does fit all. What works in Oklahoma will – or should be made to work, in Okinawa. The United Nations Convention on Corruption, while taking a robust stand on a number of issues, does provide in many places a degree of conditioning, allowing some level of derogation and adaption. It is not only, however, the unintended consequences of particular laws and regulations that is of concern, but also the shift in legal and regulatory risk that such provisions may bring about. While it is beyond the scope of this paper to address these vitally important issues, it is the case that the placing of burdens on financial institutions and intermediaries to not only 'know their customers and their transactions' but also 'police' them, has placed considerable new and often undefined legal risks on them. The identification of these legal and reputational risks is not always easy and their management problematic. The United Nations' Convention on Corruption significant increases the diligence, recording and reporting burden on those who mind other peoples wealth, particularly in regard to Political Exposed Persons. The legal, cost and risk burden placed on financial intermediaries by this, has now, with respect been adequately assessed and evaluated.

That there are very real areas of legal uncertainty has been generally ignored by governments and those who advocate theses strategies. For example, there are very real issues in many jurisdictions relating to the interface of the obligation to report a suspicious transaction to the authorities, liability for tipping off that an investigation of official action is imminent and the general fiduciary law. It has been accepted by

the Court of Appeal in Britain that a bank that suspects that funds in a customers account may be the proceeds of fraud or corruption, while under a duty – under the relevant statutory provisions, to report its suspicions to the authorities, may become effectively a constructive trustee of those funds for those who might, in the civil law, have a claim. In such cases there is an obligation to disclose the facts to such persons and facilitate their claim. This does not sit well with the law on 'tipping off'. The Courts in Britain have in practice offered little assistance to financial intermediaries placed in such a dilemma and observed that it is really a matter for their commercial judgement. In other countries, such as Sri Lanka, the potential conflict has been exacerbated by particularly board statutory provisions which appear not at all to take account of the general civil law. Of course, it may be said that, this is a particular problem of the common law jurisdictions which have developed restitution on the basis of either 'knowing receipt' of tainted wealth or the provision of assistance in its laundering, with the requisite standard of knowledge. However, there have been cases involving acts of corruption in countries which do not have the traditions of fiduciary law, such as China, Indonesia and Japan which have come to trial in countries that do, such as Singapore, Hong Kong and Australia, in which the relevant fiduciary law has been applied. Given the new provisions in the United Nations Convention these issues are going to be thrown up with rather more frequency.

The cases that we are concerned with will almost inevitably involve many different jurisdictions. Indeed, as we have seen those seeking to hide or disguise corrupt payments will ensure that this is the case. The involvement of different legal systems, itself throws up considerable additional legal risks and costs for those involved. For example, the statutory protection that most systems give to financial intermediaries when 'blowing the whistle' and reporting their suspicions to the relevant authorities can only operate within their domestic jurisdiction. Indeed, the present author on several occasions has found himself in court for reporting suspicions to the authorities in one country only to be sued for defamation in another. Indeed, the majority of such statutory protections focus on civil liability arising from the breach of an obligation of confidentiality, contractual or otherwise, and do not extend to defamation or malicious prosecution. Nor would they provide protection when it is alleged that the report has been made negligently. While such allegations might not in the result be vindicated in the courts, they bring into question the reputation and integrity of the institution that has only tried to do its public duty and often involve considerable financial expenditure. They are also time consuming and disruptive. Moreover, the law provides little or no protection, in regard to actions brought by third parties who claim that a disclosure or other action has prejudiced their interests. While it is rare for those accused of drug dealing to engage in litigation against financial institutions, it is not sadly so in regard to those accused of fraud and corruption. While the Convention does in Articles 32 and 33 require states to consider taking action to protect witnesses and those who report suspicions in good faith, it does not, with respect, address these vital issues with the requisite degree of concern and specificity. In

the context of asset recovery this is a serious weakness.

REASONABLE EXPECTATIONS

Given the burdens that are placed on the financial community and those who advise them, it is not unreasonable to expect that those responsible for the new law and its administration should account for its benefits. The more so given the considerable financial costs involved in compliance. In China from implementation of the relevant laws until June 2006, some 176,484,000 large transaction reports and 3,687,000 suspicious transaction reports have, according to the China Anti-Money Laundering Monitoring and Analysis Centre, resulted in only 855 'leads' and some 14 filled cases. Although the proportion of 'hits' is rather greater in many other countries, such figures are not compelling evidence that the systems are worth the time and trouble. The burden is clearly on those seeking to justify their existence and effectiveness. It has been estimated that the direct costs of compliance with the anti-money laundering laws in Britain is running at about £ 850 million a year. This does not include all the indirect costs of coping with the legal and regulatory issues that we have just discussed. In the USA, the combined compliance bill for anti-money laundering and Sarbanes-Oxley has been estimated at well in excess of US $ 3,000 million. While the actual direct costs in less developed jurisdictions is likely to be rather less, the cost of acquiring, training and retaining staff, is a major issue. Furthermore, all this is before one adds the additional costs of compliance under the new Convention and the law that it will spawn. In the United Kingdom there have been one or two studies on the 'cost effectiveness' of these laws. While most have been based on perception, rather than fact, which m ay or may not be different, the results are hardly encouraging for the Government. Most in the financial sector consider the laws are excessively costly to comply with and produce little if any tangible benefits for society let alone their own businesses. Indeed, many professional advisers are concerned that due compliance may actually expose their clients to considerable operational risks, albeit perhaps unintended and overseas. These issues cannot be ignored if the regime under the new Convention is to prosper and achieve the laudable results that we all hope.

There is a particular issue in regard to the laws and systems that have been put in place to deal with terrorist finance. These have imposed a considerable cost on financial institutions and exposed them to ill defined and uncertain risks. Of course, as we have seen the nature of terrorist finance is often rather different from the proceeds of crime and for that matter corruption. Before an event has occurred from which it is possible to initiate a trace, it is extremely difficult to characterise let alone identify the funds that are intended to be used in the furtherance of terror. The branding of individuals and organisations has not worked well. the amounts of money are often small and undistinguished in terms of source and transmission. Indeed, the FATF has observed that it is unlikely that financial institutions will in the ordinary course of business be able to identify terrorist finance as such. The US Congressional Committee reporting after 9/11, has gone somewhat further, stating that trying to

identify terrorist finance is rather like attempting to find a particular type of fish by draining the world's oceans. Indeed, it described attempts to achieve this as 'missteps'. However, despite the lack of manifest results through the justice systems, we continue to impose, under the threat of dire consequences, far ranging obligations on financial and many other intermediaries. To add what is set out in the Convention, may well be the 'straw that breaks the camel's back!'

If the strategy, which the present author commends, is to continue and be maintainable, then Governments and international organisations will have to do a rather better job in explaining and, indeed, justifying, their objectives and the results that are achieved. The problem is that, much depends on matters that politicians and the media have hitherto been ignorant or uninterested. Financial intelligence does not generally provide an opportunity for immediate and convincing intervention. Even if it has tactical value, its use will often manifest itself in a different context and arena. While the regime relating to terrorist finance may in fact not allow the authorities to seize measurable sums of money in the hands of known or suspected terrorists, it does allow the authorities to construct a financial picture after an event or once a target has been identified. This can be invaluable in terms of containment and control, whether through the traditional criminal justice system or some other process. While financial intelligence in the context of enterprise crime, can be used in a similar way, but given the commercial nature of the activities, it may also be deployed to disrupt funding and possibly interdict the larger flows of funds. It must be remembered that financial intelligence is not evidence and where legal processes are involved, whether they be the pulling of a licence or taking action against funds thought to be related to criminal activity, admissible and convincing evidence will be required. Given the nature of intelligence it is not always possible to develop such evidence or render it amenable to use in court. These very important practical issues are often ignored and misunderstood by those seeking to evaluate enforcement in this context. The amount of wealth actually confiscated is only one factor in the equation. The United Nations Convention on Corruption, like so many other laudable initiatives will be considered a failure, if its effectiveness is to be judged simply on the amount of money that is confiscated or recovered. These sums are likely, in the context of the wider picture, to be small, albeit perhaps not irrelevant.

It is not just politicians and the community that need to understand these issues. It is vitally important that those charged with administering and enforcing the law also fully understand the limitations of the strategies we are adopting. There are, sadly, many examples of specialised agencies having been set up, with specialist mandates often with considerable legal powers, to pursue inter alia the proceeds of criminals. In many cases distinguished lawyers and judges have been appointed, in a blaze of publicity, to head these elite organisations. However, almost without exception, within a few years, they have been branded failures or at least, their political support has evaporated. This is particularly the case in the context of economic crime and corruption. One of the reasons for this has been the failure to understand that no legal

system is capable of securing the results judged in terms of final confiscature orders, in the quantum and time required, for the often short-term political commitment. Another reason has been a weakening in morale and even the corruption of those charged with this task, given the practical problems that they come to perceive. The education, management and leadership of such agencies is vital and this is a very real issue in the context of the new Convention.

It is also the case that increasingly governments and their agencies talk about disruption of serious crime than dealing with it in the context of the traditional criminal justice system. It has proved equally difficult to secure convictions in the areas that we are discussing. Consequently, police and other agencies have moved increasingly to a posture of disruption rather than the traditional approach of investigation and prosecution. While this is understandable and perhaps inevitable given the increasing involvement in fighting organised crime and terror of intelligence and security organisations, it throws up a number of issues that, again have rarely been considered in any depth. For example, in Britain a primary task of the new Serious Organised Crime Agency (SOCA) is the disruption of organised crime. While this is to be welcomed, it is apparent from statements made by officials of this new agency, that little detailed thought has been given to the legal and other issues that will be thrown up by intervention. Indeed. the experience of similar agencies in other countries is not comforting. Rather as in the case of the comments that we have made in regard to the lack of interface with the civil law of the statutory provisions on 'tipping off' and 'whistle blowing,' encouraging those in the financial and business world to disrupt the activities of their clients and customers, albeit they might now be suspected criminals, without adequate legal and regulatory protection, creates uncharted areas of risk and liability.

USING OUR NEW WEAPONS

If we are going to make a significant attack on those who threaten our societies, a rather more radical strategy will be required than those we have adopted, or perhaps dared to contemplate in the past. It appears increasingly obvious that any strategy based on the ability of a prosecutor to prove, to the satisfaction of the court, that wealth represents the proceeds of a crime or even a pattern of criminal activity, can be expected to have only minimal impact on the totality of criminal and 'subversive' assets. Although it may be possible to facilitate law enforcement by providing more and more resources, fostering meaningful international co-operation, improving training and by even lowering thresholds and reversing burdens of proof, the need to establish a nexus between wealth and a specific crime will result in the vast majority of criminal assets remaining well beyond the reach of the law. sadly the new Convention is not going to change this. While the costs to criminal of using their ill-gotten gains may also be increased through taxation, regulatory laws and requirements, and even by law enforcement adopting a strategy of disruption, the

impact is likely to still fall far short of that required.

Consequently, the author is convinced that governments will need to devise a much more radical approach to this problem. The notion of taxing unaccountable wealth is not novel. Furthermore, there are many examples around the world, of laws which attach certain presumptions to the holding of wealth that cannot be satisfactorily explained. We have already noted that Article 20 of the United Nations Convention on Corruption provides that State subject to their Constitutions and fundamental principles of their legal systems should consider adopting laws which address 'a significant increase in the assets of a public official that he or she cannot reasonably explain in relation to his or her lawful income'. Of course, some jurisdictions have long had such provisions, albeit others have resolutely refused to go down this path. In the context, however, of the so called transition economies, it remains to be seen how practical such an approach can be. Or for that matter desirable in terms of long-term stability. However, the present author remains convinced that over the next decade, more and more legal systems will move over, to imposing obligations on those in possession of significant amounts of wealth the source of which cannot be publicly justified. These obligations may range across the spectrum, from mere transparency to effective confiscation. It will be for the society in question to determine the appropriate balance. What this new strategy will require, however, is a very different approach by law enforcement where the skills of the tax investigator and financial intelligence officer will be paced at a premium. The challenge for the future is to ensure that the steps we take to promote probity and stability do not stifle the very enterprise which drives our economies or trespass too much on the very ideals which remain so precious to a free civilisation.

A related issue, is that of the extent to which we recognise that our objective in dealing with serious crime and especially terrorism, is not to place behind bars the 'minnows' that we manage to catch, but to disrupt the enterprise as a whole. While it is becoming far more common, as we have seen, for senior police officers, although still not many politicians, to admit that the primary strategy today is one of disruption, the implications of this are rarely considered. Policing is essentially reactive, and even when we contemplate pro-active action we require the commission of a crime, or at least the reasonable suspicion of one - and one that might be proved, according to our exacting standards of justice, in the courts. Consequently, disruption of enterprises, whether criminal or subversive, requires skills and perhaps resources, not always easily identified within traditional policing agencies. In particular, the kind of intelligence that is required for effective disruption is rarely available in police forces. Hence, the tendency to develop dedicated and special resources often outside the traditional law enforcement environment. We have already seen this in regard to other areas of activity, which present practical and resource problems for ordinary police structures. Even if such activity remains properly within the law, both civil as well as criminal, there are profound issues of accountability and measurability.

The emphasis that law enforcement agencies and in particular specialised agencies within the security apparatus of the state, will increasingly place on disruption of criminal and subversive organisations also places agencies that provide relevant information and perhaps even assistance, in some difficulty. For example, what is the position of an official in a regulatory authority who is requested by an agent of, the intelligence service to intervene, within his legal powers, to assist in the disruption of a financial transaction. While the intervention may be pursuant to legal powers, it would not necessarily be for the purpose that those powers were provided to him. While it may well be that the suspect would be unlikely to invoke the law, others who have been disadvantaged or exposed on the transaction may well be only too eager to litigate. Again these are real and pressing issues.

In this paper the author has not laboured the human rights issues that will increasingly be thrown up by intelligence led responses to the threat of serious crime and in particular terror. As more agencies become involved in pursuing targets, within their own mandates and utilising their own legal and other weapons, profound problems are likely to arise in regard to the management of particular cases. Not only issues relating to the rights of an individual will arise, but also questions as to the management of evidence and the priority accorded to specific actions. In Britain the problems thrown up by parallel proceedings against the same individuals on the same evidence arising out of the same facts, in cases such as the BCCI have already caused very real problems. These are exacerbated when the proceedings involve foreign jurisdictions.

The United Nations Convention on Corruption places the interdiction and recovery of the proceeds of corruption on the part of public officials at its heart. This is commendable and timely. While as we have seen, the Convention throws its net over a wide variety of corrupt practices all are motivated by greed. While there will often be a relationship between the corrupt act and organised crime or other specific crimes, our primary purpose in attempting to interdict the proceeds of corruption is to prevent public officials benefiting from their betrayal of their office. We are concerned to take away or at least disrupt their enjoyment of their ill-gotten gains. The ability of the traditional criminal justice system, even refined by the additional of civil and administrative procedures, can, as we have seen, only hope to achieve a certain amount in this regard. What is novel, in the context of an international instrument, is the emphasis that the Convention places on civil liability. This is a matter that some of us have raised over many years and there have, of course, been some examples, albeit not always happy, of governments suing to recover wealth looted by former leaders in the courts of other countries. The Convention, in Chapter V attempts to facilitate this and interface such proceedings, in a facilitative manner, with the law relating to proceeds of crime and money laundering. This is to be welcome. However, while the Convention does provide a useful ‘road map’ so much will depend upon the domestic law and in particular procedures of the relevant states. Before a civil action can be

brought there must be a cause of action, and in practice this is not always feasible. Issues immediately arise as to whether the alleged looting was in fact authorised or condoned. Whether claims have been compromised, rights waived or settled. There are very real issues of determining, maintaining and in a collective context – controlling, the proper plaintiff. Differing limitation periods have caused problems in several cases. The issue of funding and in particular providing security of costs, is vital. Experience has shown that this is a major stumbling block. While the provisions encouraging mutual assistance, exchange of information and even technical assistance, are all commendable, there are real legal issues in attempting to combine and interface civil and criminal procedures. Indeed, evidence obtained pursuant to one process may not, as a matter of law, be admissible in other proceedings. There are real issues of parallel proceedings at different levels of the legal system and in different jurisdictions. There are real issues of fairness, proportionality and priority. In the cases that have come before the courts the results in terms of the monies actually remitted back to the claimants have rarely been significant. In many the recovery has barely covered the legal, investigative and other costs. Indeed, the British Government has contemplated assisting, in the context of development aid, this process, in an attempt to render certain claims at least financially viable.

THE TASK

The new Convention represents a significant achievement in the on going fight against those who seek to corrupt our societies. Of course, it does not and cannot provide a panacea. There are numerous compromises, fudges and lacuna. However, it does point in the right direction in regard to so many issues and provide a vehicle foe those who wish to pursue the fight. Of course, this fight must take place on many levels in many theatres. The law can play its role, but can only achieve a certain amount. Education in terms of ethical training, stewardship and leadership is vital. As is concern for the prevention, minimisation and control of opportunities for corruption, in its various forms. The efficacy of legal institutions and programmes, whether of interdiction, enforcement or disruption will depend so much on the environment within which they are conceived and operated. The international dimension in a world that increasingly lacks traditional boarders and where money is a creature of the international financial system, has an importance that perhaps it lacked in the past. The implications, for national and thus, the international economy, as is recognised in the Preamble to the Convention, of serious corruption are profound. However, it is important to remember that in addressing corruption as a crime, its seriousness is not simply determined by the amounts of money involved and the potential that this has to undermine and corrupt our societies. Perhaps of rather greater concern is the impact that the betrayal of leadership and stewardship has on our systems where increasingly we depend upon trust – virtual and otherwise, in our impersonal and disconnected dealings.

Barry A.K. Rider
20th September 2006.

IAP

INTERNATIONAL ASSOCIATION OF PROSECUTORS

Mr.Barry Hancock

I should first like to thank the organisers of this conference for their efforts in bringing together this group for the first time to consider an international response to the threats posed by wide-scale corruption.

We have already agreed that corruption undermines democracy and the rule of law, leads to violations of human rights, distorts markets, erodes the quality of life, and allows organized crime, terrorism and other threats to human security to flourish. However, there is little sign that there is any reduction in these problems. Indeed, the opposite may well be the case.

The adoption of the United Nations Convention against Corruption (hereinafter "the UNCAC"), which will enter into force on 14 December 2006, may be a new first step but it is only a beginning. We must all work to ensure the effective implementation of the UNCAC as soon as possible. It is the work which we do, rather than the statements which we make, which will change the world climate on corruption.

I have been asked to talk on how international organizations can help anti-corruption authorities implement the UNCAC and this is I believe the key. The signing and even the ratification of the UNCAC are significant steps but it is what happens next which is important. There is no simple blueprint. Of course, ratification is essential and I am pleased that my own country, the United Kingdom of Great Britain and Northern Ireland, is amongst the ratifying countries. If your country has not ratified the INCAC, this is a first target for you as an international organization. But let us move on beyond that. We are here representing a wide range of international organizations and our influences will be found in different fields. Let me ask you to consider for a moment the wide range of national entities which need to be free of and involved in the fight against corruption :

· Executive
· Legislature
· Political Parties
· Electoral Commissions

· Supreme Audit Institution
· Judiciary
· Public Sector
· Police and Prosecutors
· Public Procurement
· Ombudsman
· Anti-corruption agencies
· Media
· Civil Society
· Private Sector
· Regional and Local Government

Some international organisations work not only on a very wide basis but also have considerable influence. In recent years the World Bank has stepped up efforts to investigate internal fraud as well as corruption in its projects and the European Commission has placed higher priority on a candidate country's transparency and accountability in decisions on accession. The Group of Eight nations has made extensive and detailed proposals that – if followed through – will establish milestones for confronting and stamping out pervasive corruption in Africa and The Organisation of American States' Secretary General has made tackling corruption a higher priority, noting that it is essential to the development of democracy and rebuilding trust in government. These are big and powerful players. We wish them well and trust that the targets which they have set themselves will be met.

However, many international organisations work on a narrower canvas and/or have less visible power over those within their view. My concern is with prosecutors. My organisation, the International Association of Prosecutors (the IAP) represents prosecutors in 130 countries around the world. Now it seems to me that in the criminal justice setting countries need to establish as criminal offences bribery, diversion of property, trading in influence, illicit enrichment, money laundering and concealment of property. In most countries prosecutors do not have the power to introduce legislation but they do have an input into what laws are drafted and we should encourage them to ensure that such laws are in place within their jurisdictions.

In addition, prosecutors need to play an active part in cross-border law enforcement cooperation. This is essential to ensure that no countries provide a safe haven for those from who steal from the public in other countries nor for their stolen assets. In Europe we are fortunate that the European Union has established Eurojust, a college of senior prosecutors tasked with facilitating communication and effectiveness in the running of serious transnational cases, including corruption. The Eurojust model is rightly admired in other regions and the IAP supports its work and commends it to the rest of the world as an interesting model for international co-operation.

In addition the IAP has published a booklet, *Recommendations on Combating Corruption in Public Administration* and has worked with the United Nations on its

anti-corruption handbook and has supported its work to implement the UNCAC. These are but small building blocks in the large structure which has to be built as a defence against corruption but we hope that with similar efforts from everyone here, such a strong edifice can be built and that we shall see a world in which the powers of those who corrupt are increasingly reduced.

UNDP

I

Ref: China Presentation "How International Organizations can help Anti-Corruption Authorities Implement the UNCAC".

Dear Mr. Ye Feng

I hope this email finds you well.

With reference to my presentation entitled "How International Organizations can help Anti-Corruption Authorities Implement the UNCAC" in the 1st Annual Conference of the International Association of Anti-Corruption Authorities which will be held in Beijing in the period running from October 22nd until October 26th, 2006, Kindly note the following:

1\My presentation will be outlined as follows:

A. An overview on the main international institution that are operating on the issue of fighting corruption as well as the movements and activities on corruption.

B. The importance of translating the UNCAC into a template/guide and formulate a model of training for capacity and institutional building in order to effectively implemented.

C. A tentative strategy or policy approach on the following four pillars:

Capacity Building: by enhancing training activities and providing developmental sessions, organizational learning, strengthening the skills, abilities, processes and

resources that organizations and communities need to survive, adapt, and thrive.

Institutional Building: by promoting the development of institutions already existing and that are in need for organizational and management renovation and promoting the establishment of institutions through assisting them in drafting the internal bylaws, the procedures, the working plan, the strategies of development, the mechanisms of implementation.

Knowledge building: by conducting researches, surveys, studies in order to create knowledge. This process is executed after indicating the domain of research, the methodologies, and the mechanisms of implementation…

Advocacy and dissemination and awareness: by executing individual interviews, campaigns, workshops, seminars, conferences, discussion sessions as well as publishing and circulating data.

2\I will try my best to submit to you a detailed summary of the presentation before the end of this month. However and since I will be traveling for the rest of the month, I might extend it until the 10th of October 2006.

II

Najim

Mechanisms for Asset Recovery: Afghanistan's Ratification of
the United Nations
Convention Against Corruption
1st Annual Conference of the International Association of Anti-Corruption Authorities
Beijing- October 24, 2006

Introduction: Seriousness of Corruption
Problem in Afghanistan

Introduction: Strategy to Overcome Corruption
Government Anti-Corruption Strategy &
Timeline
Emerging Government Strategy to Tackle Corruption
Convention Approval Process

Progress made towards Ratification

Asset Recovery provisions of UNCAC
Art.51-59 (by Dmitri- Vlassis UNODC)
Return of Assets (Art.57)
Asset Recovery
Other Mechanisms
Direct Recovery of Property (Art.53)
Current Afghan Practices and Existing Laws Affecting Recovery of Assets
Institutional Way Forward
Statutory Recovery Mechanisms
Recovery Mechanisms: Proposed institutional Changes
Major Legislation consistent with UNCAC

CONCLUSION
The prospects for success in Afghanistan's Anti-Corruption fight are promising but the challenges are immense.

UNODC

First Annual Conference and General Meeting of
The International Association of Anti-Corruption Authorities

Antonio Maria Costa
Executive Director

Beijing, 22 October 2006

Ladies and Gentlemen,

It is a pleasure to take part in this first Annual Conference and General Meeting of the International Association of Anti-Corruption Authorities. My compliments to Dr. Ye Fen for initiating this Association. And my thanks to our hosts for the impressive organization of this internationally significant event.

The founding of this Association is the latest demonstration of the world's growing

intolerance of corruption and the global eagerness to do something about it. There is a no public support for crooked government officials or CEOs who end up behind bars for corruption, bribery or embezzlement. There is no public sympathy for those who are fired from public office because of abuse of their position or ethical violations.

Taxpayers, who are the stakeholders of our states, as well as investors, who are the shareholders of our companies, have grown tired of seeing their assets stolen or perverted for personal benefit.

Now the world is fighting back. In December 2003 an historic United Nations Convention against Corruption was adopted in Merida, Mexico. It came into force last December and has already been ratified by 68 States.

The Convention is the first and only global instrument to deal with the problem of corruption. It represents a warning to the corruptors and to the corrupted that betrayal of public trust will be prosecuted and punished and that their stolen assets will be seized and returned. This is not just a moral stand. It is a detailed blueprint for a world-wide anti-corruption regime.

It may be naive to think that we can rid the world of all corruption. But we can certainly minimize its impact on governments, economies and ordinary citizens. The Convention is a strong commitment backed up by legal and operational measures that can prevent corruption and limit its damage. My Office, the United Nations Office on Drugs and Crime, plays a special role in this process. UNODC helped to broker the Convention. We are its custodian, and we assist States in implementation, through technical and legal assistance.

The success of the UN anti-corruption Convention will not be measured by the number of signatories. Rather, it will be measured by the ability of States to implement its far-reaching measures. You, the anti-corruption authorities, have a leading role to play. You are the ones who must ultimately give this international instrument real teeth.

Fire proofing – preventive measures

Prevention is crucial. Preventive measures can reduce the possibility of corruption and contain its corrosive effects. The key is to have in place concrete anti-corruption measures and public sector management practices based on the rule of law, transparency and accountability. A culture of corruption should not be able to take hold.

You are the fire marshals. Your job as members of independent anti-corruption agencies is to ensure the safety of public funds and the integrity of the system. This fire-proofing includes raising awareness about the need for effective prevention, and

compliance with ethical norms and standards. Preventive measures include:

Integrity of the judiciary.
Effective accounting and auditing standards in the private sector, as much as in public budgeting. Also transparency in public procurement practices and in the management of public finances.
A comprehensive domestic regulatory and supervisory regime for banks and non-bank financial institutions.
Rules of behaviour and controls on funding to political parties and electoral campaigns.
Disclosure by public officials of their annual earnings and financial assets. Governments should routinely investigate obvious discrepancies between reported income and extravagant life styles.
Administrative and civil sanctions, in addition to criminal sanctions, that balance fairness to the individual with the public's right to expect integrity in their public servants.

To do your job effectively you need independence, sufficient resources and skilled staff. This is not just a good idea, it is an obligation of States that are party to the UN Convention against Corruption. This gives you a major responsibility which I am sure that you are all aware of. You should be "untouchables" with clean hands whose integrity and professionalism will strike fear into the hearts of corrupt officials.

Where assistance is needed, UNODC can help build capacity as we are already doing in countries as diverse as Albania, Brazil, Cambodia, and Nigeria.

Criminalization and law enforcement

Preventive measures alone are insufficient. Countries need to make corruption a crime and combat it with effective law enforcement. That means adopting legislation to criminalize bribery, embezzlement, abuse of power and misappropriation of property by public officials. And it means making trading in influence a criminal offence, along with abuse of functions and illicit enrichment.

Law enforcement officials – whether anti-corruption prosecutors or the Attorney General – should be empowered to investigate and prosecute the misconduct of public officials in the handling of public resources. They should have the tools, working with the judiciary, to ensure that cases are developed well enough to bring convictions.

Laundering the proceeds of crime must be criminalized, as should interfering in the course of justice. In each case, we need to hit criminals where they will feel it the most – by confiscating their assets. There should also be adequate protection of witnesses, experts and victims, and compensation for damage.

Furthermore, there should be no safe havens for dirty money. An effective anti-corruption regime means taking a hard look at bank secrecy and asking: is it protecting ordinary people or criminals? At times, the sense of impunity created by banking secrecy has allowed people to escape prosecution – and a factor behind the spreading of corrupt practices. The time has come to start looking at ways to isolate banks and even entire countries that are not taking sufficient measures to prevent money-laundering.

International Cooperation

Trans-national crime, by definition, does not respect borders. Efforts by one country to clamp down on corruption will be undercut if another country allows stolen assets to flow unimpeded into safe off-shore havens.

An effective anti-corruption regime therefore requires international cooperation. Borders and safe havens should not be an impediment to investigations or bringing guilty parties to justice. We therefore need greater co-operation on extradition and mutual legal assistance, trans-national law enforcement co-operation and joint investigations.

Such multilateral cooperation is especially important when stolen assets need to be identified and recovered. This is an area that can bring tangible results and therefore deserves special attention and support.

The International Association of Anti-Corruption Agencies is well-placed to play a key role in building such cooperation. Indeed, you have a strong vested interest in effective trans-border networking.

Asset recovery

When assets have been stolen it is hard to get them back. But it is not impossible. Asset recovery is a fundamental principle of the anti-corruption regime foreseen in the UN Convention against Corruption. Corrupt officials should no longer be free to spend their twilight years living in luxury in foreign countries, drawing on their ill-gotten gains from secret bank accounts. Thanks to the Convention, the stolen billions desperately needed for development in poor countries should be returned to where they belong.

This will happen if innovative tools for asset recovery are put in place – for example prevention guidelines, tracking systems and an assessment tool. My Office is working on these and helping countries to build capacity. Success also depends on the removal of banking secrecy as an obstacle, and a greater willingness by host-institutions to cooperate and return resources that are not rightfully theirs. This would be a significant breakthrough.

A Strong, Honourable International Network

Ladies and gentlemen,

Democracy requires that citizens and investors have confidence in their public institutions and the private sector. You are the builders of integrity and the voice of propriety. The public owes you a great deal of thanks and support since you are safeguards to prevent the abuse of public money and resources.

World-wide anti-corruption efforts are becoming stronger: at the international level thanks to the efforts of the World Bank, OECD, UNDP, USAID to name a few. The UN Convention against Corruption has given a backbone to this process – a common grid if you like – to ensure consistency and coherence at the international level. But more importantly, it has added a stable platform for anti-corruption efforts at the national level. However, ultimately, it is you – the anti-corruption agencies – who give flesh, voice and teeth to these efforts.

These various levels should interact more, for example at the first meeting of the Conference of the States Parties of the Convention against Corruption which will be held in Amman, Jordan in December. I know the voices of practitioners will be listened to with great interest.

We must also improve the way that corruption is measured. At the moment there is an over reliance on perception-based surveys. We need a more scientific methodology. A structured global monitoring mechanism is also essential to ensure that international anti-corruption commitments are being implemented. This would encourage healthy competition among governments and anti-corruption agencies, and enable effective implementation of the UN anti-corruption Convention. I urge you to hold your Governments accountable to the promises that they have made, and help us create build a robust world-wide anti-corruption regime.

To conclude, I believe that the Association that is taking shape here at this historic Beijing meeting will be a strong international network of experts dedicated to preventing and fighting corruption. The Association will enable peers to come together to compare experiences and exchange good practices. Your work is of the highest honour and is crucial in implementing the UN Convention against Corruption.

My best wishes for a successful inaugural meeting and I look forward to future partnership between IAACA and UNODC.