

Conference on
Detection, Investigation and Prosecution of Bribery

September 27, 2006
Santiago de Chile

Summary of Presentations

Background

This summary provides insight into the main issues addressed during the Conference on “Detection, Investigation and Prosecution of Bribery” hosted by the government of Chile. This Conference and the prosecutors meeting held the following day were organised in the framework of the Organization of Economic Co-operation and Development (OECD) Latin American Anti-corruption Programme. The programme is designed to strengthen implementation and enforcement of the regional anti-corruption conventions and to promote integrity in Latin America.¹

The Conference and the prosecutors meeting benefited from the co-operation of the Inter-American Development Bank (IADB), as well as the contribution from the Organization of American States (OAS) and the United Nations Office on Drugs and Crime (UNODC). The World Bank and the United Nations Interregional Crime and Justice Research Institute (UNICRI) also participated in the event.

The Conference and the prosecutors’ meeting build on earlier events held by the OECD in the region, including the 2004 “Conference on Implementation and Enforcement of the Convention on Combating Bribery of Foreign Public Officials in International Business Transactions” hosted by Brazil and the 2005 “Specialised Training on Anti-Corruption Case Work” for prosecutors and investigators from Latin America hosted by Argentina and supported by the UNODC and the IADB.

The summary follows the structure of the Conference. After the opening remarks, the anti-corruption standards resulting from the international anti-corruption instruments are reviewed, including the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions (OECD Anti-Bribery Convention) and the Revised Recommendation of the OECD Council on Combating Bribery in International Business Transactions (Revised Recommendations), the Inter-American Convention against Corruption (IACAC) and the United Nations Convention against Corruption (UNCAC). Key elements of the anti-corruption policies and regulations of the Latin American Parties to the OECD Anti-Bribery Convention are outlined prior to prosecutors’ interventions on their roles and functions in working towards effective detection, investigation and

¹ Argentina, Brazil, Chile and Mexico, the Latin American Parties to the Convention on Combating Bribery of Foreign Public Officials in International Business Transactions, act as a bridge between the OECD and other Latin American States.

prosecution of bribery. Contributions by non-government actors in preventing and detecting bribery are briefly discussed.

OPENING SESSION

Mr. Alejandro Foxley, Chilean Minister of Foreign Affairs

Mr. Mark Pieth, Criminal Law Professor at University of Basel, Switzerland

Minister Alejandro Foxley opened the Conference on Detection, Investigation and Prosecution of Bribery by stating that a growing and healthy feeling of intolerance can be sensed worldwide towards corruption phenomena and by highlighting the pioneering role played by the OECD in this field.

As countries perceive that interaction between public and private agencies lack transparency, the credibility of those agencies diminishes. In certain circumstances, this can even trigger political crises and weaken democracy. Transparency is instrumental to democracy.

Mr. Foxley underlined the need to firstly correct legislative deficiencies. Ensuring that the legal framework is thoroughly up-to-date and the relentless implementation of penalties under the law are priority aspects of the fight against corruption. Moreover, both ethical and technical standards need to be implemented so as to establish a democratic culture which is absolutely intolerant to any kind of corruption at both corporate and public levels.

Addressing legislative deficiencies will secure a healthy democracy, particularly in Chile which, like many other countries, has chosen to move towards globalization. Minister Foxley underlined the many benefits of globalization. He however drew attention to the message conveyed by Moisés Naim, editor of *Foreign Policy* magazine, in his book *Illicit*. The author describes how globalization has allowed illicit actions to surface all over the world. He illustrates how money laundering resulting from drugs, arms and human trafficking and other concealed movements penetrate the formal institutional systems of the world economy.

The fight against corruption needs international co-operation to succeed. As a global challenge, it also requires global answers. Accordingly, Chile has joined international efforts in this regard: the OAS IACAC, the OECD Anti-Bribery Convention and the UNCAC. Moreover, Chile has actively participated in the work of Asia Pacific Economic Co-operation (APEC) to foster the introduction in this forum of basic standards allowing member economies to undertake the fight against corruption by relying on common standards.

This conference is of utmost importance, since it will allow the various actors to exchange information and to devise coordinated actions against crime. Moreover, it will make clear that detecting and prosecuting corruption and money laundering crimes is in all stakeholders best interest.

Minister Foxley suggested that Chile could further strengthen its foreign policy to grow stronger and open up to world trade. Chile is already amongst one of the most

globalized countries in the world, boasting a foreign tariff hovering at 2% as the actual tariff. From the economic vantage point, Chile's integration in international markets is evidenced by the following latest developments: the Chilean Congress has unanimously passed the execution of a the Free Trade Agreement (FTA) with China, Chile is fine-tuning a FTA with Japan and is likely to start talks on an FTA with Australia in the coming months. Chile has FTAs with 54 countries. Hence, the subject matter of this Conference is critical for Chile.

The role played by the OECD in fighting corruption and in many other issues is of vital importance. Mr. Foxley mentioned that while in office as the Minister of Finance under the Aylwin administration, he had been responsible for taking the earliest steps to join the OECD in full. Chile has and will continue its efforts to attain full compliance because the country is willing to set the highest quality standards and requirements within its institutions, its economy, its companies, its political parties and its democracy. Chile is committed to enforcing the most rigorous regulations worldwide. He noted that:

“a small country can only aspire to be on equal grounds with larger ones if it boasts exemplary foreign trade operational standards. That is the road to gaining respect and increasing what some refer to as “soft power”, the conceptual power of a small country, so that it can encourage others to follow suit”.

Mr. Foxley added that although Chile ranked well in international comparative assessments on transparency the government would only be satisfied when having succeeded in sweeping away corruption, lack of transparency and connivance among public and private stakeholders.

Professor Mark Pieth acknowledged Chile's reputation in the Americas and that the country ranked 20 –with a score of 7.3- in the *Corruption Perceptions Index (CPI)* published by Transparency International.

With Eastern countries increasingly following an outward-oriented approach, new markets have arisen but in many companies bribe, officials' abuse and dishonest financial traders step onto the scene. Corruption definitely is an obstacle to development and foreign investment. For a country that lives of its exports, it is critical that its rivals observe the same rules of the game. This factor has encouraged the OECD to engage in the fight against transnational corruption.

The OECD has developed a series of tools to fight corruption. The most prominent one is the OECD Anti-Bribery Convention. Other conventions in this area of fighting corruption include the OAS IACAC, the Criminal and Civil Law Conventions against Corruption by the Council of Europe and the UNCAC. The UNCAC has relied on regional conventions to build a comprehensive framework encompassing prevention and prosecution and to add new elements like asset recovery and financial operators. The Multilateral Development Banks (MDBs), including the IADB, also developed new and important policies to fight corruption.

The OECD started its work by fighting a form of unfair competition. Parties to the OECD Anti-Bribery Convention are committed to halt the supply of bribes by their nationals (individuals and companies) to foreign public officials i.e. also officials operating in countries not Party to the Anti-Bribery Convention (also referred to as

“supply-side” bribery or “active” bribery). Parties to the Convention have made bribing of foreign public officials in international business a criminal offence according to the “functional equivalence” approach. This means each country transposes the agreed standards in line with its own legal tradition. The major contribution made by the OECD is the peer-review process which through a self and mutual monitoring process ensures implementation and enforcement of the Convention and its related instruments.

In Latin America, Argentina, Brazil, Chile and Mexico are members of this Convention. Mr. Pieth had visited three out of these four countries over the past two years. He had been invited by Mexico to present the outcome of the *Phase 2* monitoring review and Argentina to give a series of presentations on money laundering. In Brazil he had met with Petrobras and a group of representatives of about 100 companies to talk about private-sector efforts to overcome corruption.

Compliance with the law is essential – and this needs to be ensured everywhere. It may be that some law enforcing agencies are protecting exporting activities in some countries but this assumption is very difficult to prove.

The OECD is engaged in developing a new monitoring cycle in which Parties will engage after completion of the current *Phase 2* reviews of countries’ enforcement of the OECD Anti-Bribery Convention. The new monitoring process would need to be less costly and more focused.

Another challenge for the OECD is to determine whether support in Latin America is sufficient or whether other countries of the region need to join the OECD Anti-Bribery Convention.

The contribution of the OECD is sharply focused. It is interesting to observe that the private sector is increasingly dynamic and proactive in terms of addressing anti-corruption issues, notably facilitation payments, solicitation (of bribery) and public procurement.

Session One

DETECTION, INVESTIGATION AND PROSECUTION STANDARDS STEMMING FROM INTERNATIONAL ANTI-CORRUPTION CONVENTIONS

Chair:

Ambassador Luis Winter Igualt, Director of Special Policy, Ministry of Foreign Affairs of Chile

Speakers:

Mr. Patrick Moulette, Head of the Anti-Corruption Unit, Directorate for Financial, Fiscal, and Enterprise Affairs, OECD.

Mr. Jorge García González, Head of the Office of Legal Co-operation, Department of International Legal Affairs, Organization of American States.

Mrs. Sandra Valle, Senior Interregional Advisor, Legal Advisory Section, Division for Treaty Affairs of the United Nations Office on Drugs and Crime (UNODC).

Ambassador Luis Winter Igualt presented the various fronts in which the Ministry of Foreign Affairs fights corruption through the Special Policy Directorate. He presented Chile's role as a founding member of the APEC Anti-Corruption Task Force, through which efforts are being made to foster ratification of the UNCAC. Furthermore, work is carried out with the support of the Anti-Corruption Experts Group which monitors national implementation of the IACAC as well as the OECD Anti-Bribery Convention.

Mr. Winter noted that the representatives from the different organisations in charge of the implementation and enforcement of the mentioned instruments were invited to put the respective standards and objectives in perspective and highlight overall results and progress achieved.

Mr. Patrick Moulette, welcomed that Chile hosted the Conference. He acknowledged this as a good example of international co-operation and a means to building alliances and networks with OECD non-member economies.

Mr. Moulette's addressed four issues:

1. Why the OECD fights bribery;
2. The response by the OECD to an international phenomenon;
3. How the OECD monitors compliance; and
4. International co-operation.

1) Why is the OECD fighting bribery? When the OECD engaged in analyzing ways to combat bribery of foreign public officials in international business transactions the objective clearly was to ensure a level playing field for international business. The OECD seeks to ensure equal treatment for all engaging in international business. To achieve this, OECD members and non-members adopted a number of anti-corruption instruments which call for a multidisciplinary approach to fight corruption.

2) *The response by the OECD to an international phenomenon.* Professor Mark Pieth referred to a list of anti-corruption conventions. The most significant OECD instrument is the legally binding OECD Anti-Bribery Convention. This Convention is complemented by a set of recommendations. For instance, the 1996 Recommendation by the OECD Council bans tax deductibility of bribes to foreign public officials. The 1997 Revised Recommendations by the OECD Council set forth general provisions aimed at deterring, preventing and combating international bribery. For instance, the Revised Recommendations call for the establishment of transparency in book-keeping and auditing practices, adoption of sound procurement rules and practices as well as encourages adoption of internal company controls, including standards of conduct.

The OECD Anti-Bribery Convention entered into force in 1999. As of September 2006, thirty-six countries have ratified this Convention, namely 30 OECD member and 6 non-member countries, including Argentina, Brazil and Chile. This Convention requires Parties to criminalize “supply-side” bribery. Through self- and mutual monitoring, the OECD Working Group on Bribery in International Business Transactions (Working Group on Bribery) effectively controls the implementation and enforcement by Parties of the agreed anti-bribery standards.

Mr. Moulette highlighted that the Convention sets objectives based on the “functional equivalence” approach. As the Convention is not self-executing, an enforcing law is required. Each Party should transpose the Convention according to its own legal tradition. Ultimately, Parties’ anti-bribery standards need to be comparable. Another characteristic is the Convention’s criminal law statute. However, non-criminal provisions are also included.

The Convention most significant provisions require to:

- Criminalize bribery of foreign public officials.
- Set a definition of a foreign public official.
- Make bribery apply to international business transactions (excluding facilitation payments).
- Impose sanctions for natural and legal persons.
- Contain obligations in terms of jurisdiction (territorial and nationality).
- Establish money laundering as a predicate offense to bribery.
- Disallow economic and political considerations.
- Set accounting and auditing standards.
- Facilitate extradition and mutual legal assistance.
- Provide for systematic monitoring.

3) *How the OECD monitors compliance:* In signing and ratifying the Convention, countries agree to be part of this monitoring process. Each country must undergo a systematic and thorough evaluation of its implementation and enforcement of the anti-bribery laws and policies conducted by the entire group of States Parties to the Convention. In addition, each country must take an active role in evaluating other State Parties. Representatives of each of the 36 States Parties make up the Working Group on Bribery. The Group meets in Paris four to five times a year, and works together year-round to ensure that each country is meeting its commitments as laid out in the Convention and the Revised Recommendations. The self-assessment and mutual

evaluation of countries' work to implement the OECD Anti-Bribery Convention has unfolded in two phases.

Phase 1 examinations review each country's national laws and other legal texts to determine whether they meet the standards set in the Convention. Phase 1 reports cover the findings of the evaluation, assess the degree to which countries' legislation is in compliance with the Convention, and in some cases, identify outstanding areas where further attention should be given in the second phase of evaluation.

Phase 2 evaluates how well each country is performing in applying the laws and other measures to fight foreign bribery. The Working Group's findings, as well as its specific recommendations on how to improve implementation of the Convention, are captured in a report for each country.² The examined country must take action in response to the Group's findings and recommendations. These recommendations for improvement might include strengthening legislation, raising awareness, training personnel in specialised methods to fight foreign bribery, or imposing tougher sanctions against individuals and companies. Each country makes an oral follow-up report on its progress one year after the *Phase 2* examination. A written follow-up report is submitted two years after the *Phase 2* examination. In cases where the Working Group finds serious deficiencies in a country's implementation and enforcement of the Convention, a second *Phase 2* evaluation, a *Phase 2bis* review, is conducted.

4) *International co-operation.* The OECD Anti-Bribery Convention has been instrumental in ensuring progress in the global fight against corruption. While the main focus of the Working Group is centered on monitoring, the OECD is a global leader in forging alliances and building networks. The OECD has established support associations to fight corruption in various regions of the world, in particular in Asia-Pacific and Eastern Europe. It may be discussed whether further development in Latin America is desirable.

Mr. Jorge García González's presented the IACAC, the follow-up mechanism for the implementation of IACAC as well as some key findings.

1) *IACAC - the first Convention against corruption* was adopted in 1996 as a result of the Presidents' Mandate from the Miami Summit of the Americas. The Convention covers three large areas and its scope is wider than that of the OECD Anti-Bribery Convention. IACAC firstly deals with a series of acts of corruption that countries need to criminalise within their local legislation, which article 11 in the Convention refers to as "progressive development", as countries undertook to move forward in classifying those behaviors. Second, IACAC refers to measures inherent to extradition and mutual legal assistance. The third area concerns preventive measures.

IACAC has been signed by the 34 Member Countries of the OAS and ratified by 33. Only Barbados has not yet ratified it. After entering into force, some co-operation programmes and collective follow-up actions applicable to the Convention have been developed. Among these are co-operation programmes related to reviewing and amending criminal laws. Another co-operation programme with the support of the OAS

² All Phase 1 and Phase 2 country reports are available on-line at www.oecd.org/corruption.

and the IADB was developed a few of years ago. This programme was aimed at encouraging each country to analyze their criminal substantive and procedural law vis-à-vis the Convention. The survey conducted in 27 countries of the region provided very valuable findings.

Progress has also been made in providing model laws covering such areas as standards of conduct, access to information, protection to whistleblowers and the creation of a data exchange network that operates online, particularly on the issues discussed in the Convention.

2) *The Follow-up Mechanism for the Implementation of IACAC* (MESICIC, as per Spanish acronym) bears similarities and differences as compared to the OECD Follow-up Mechanism. The MESICIC consists of two main organs, the Conference of State Parties –a political organ- and a technical organ, the Committee of Experts.

Country reports are prepared by means of analysing progress made in terms of implementation. This is done through review rounds. Convention provisions are chosen for every round, the implementation of which is evaluated on a country-by-country basis. The aspects evaluated are: firstly, existence of a legal framework and other regulations with regard to the Convention provisions; secondly, whether that legal framework and the measures adopted by the country are suitable; and thirdly, the results, if any. Recommendations are issued concerning each of the aforementioned areas.

The First Round is now completed. 28 Member Countries' reports and one Hemispheric Report were issued. The Hemispheric Report is a compilation and analysis of the findings in the 28 country reports.

As to preservation and proper use of the resources allocated to public officials, 19 of the 28 States Parties were recommended to adopt measures intended to foster standard effectiveness. In addition, 22 of the 28 States Parties lack provisions on whistleblower protection. Regarding net worth statements (asset declarations), findings showed that the existing systems could be dramatically enhanced to optimize analysis of the contents in those statements. 23 States were found to require improvement in this area. Concerning access to information, 15 States were recommended to widen the scope of information managed by the government.

The Second Round of Review has started. The objective of this second round is to discuss, among other matters, government hiring, whistleblower protection and criminalization of corruption acts. Moreover, countries are to report on the progress made in implementing the *First Round* recommendations.

3) *Criminalization of bribery:* IACAC contains two provisions pertaining to bribery; domestic (passive and active) corruption is addressed in Article VI whereas transnational bribery is covered by Article VIII.

A very preliminary analysis was conducted last year on criminal law applicable to bribery among the 28 OAS Member Countries, with the following findings: Active bribery is classified as a crime in the 28 States, with varying forms, scopes and implications. In all the 28 countries bribery is construed as an act by an individual. No

reference is made to corporate liability when the individual is acting in the name and on behalf of the corporation.

With regard to sanctions, penalties range, on average, from one to six years of imprisonment, with some exceptions, like Mexico, Brazil and the U.S., where the law is more stringent, and in Peru, where the shortest penalties are longer than the average. Some legal systems provide application of fines, alternate or complementary sanctions and, in some cases, bans on holding public office and others.

Transnational bribery or bribes to foreign public officials is a crime in 10 of the 28 countries. Reference is made to individual's liability in all countries. Moreover, reference is made to a moral person's liability in 3 countries: United States, Jamaica and Mexico.

4) Related OAS programmes: A number of activities are currently underway which are of relevance, including studies on revision of the criminal law, support programmes for implementation of the MESICIC recommendations undertaken by the first states analyzed in the *Second Round of Review* (current reviews include Argentina, Paraguay, Nicaragua and Colombia) or a co-operation programme on asset recovery.

Mutual legal assistance and extradition are also addressed in the framework of meetings of ministers of justice or of ministers or attorneys general of the Americas. Meetings are held with central government authorities to discuss criminal assistance and extradition; an online information exchange network equipped with a public web page was created as well as a private page where information exchange operates through a secure e-mail system known as *Groove*. A great majority of central government authorities from OAS Member Countries participate in this process, which has resulted in a series of concrete outcomes. For example, progress is being made in building a model law for a good practices guide on mutual legal assistance and extradition.

Mrs. Sandra Valle referred to the UNCAC, the last of the instruments adopted. The IACAC and the OECD Anti-Bribery Convention were recognized as main sources of inspiration for the UNCAC, which consists of some 70 articles. However, the UNCAC goes beyond those regional instruments. Furthermore, UNCAC incorporates a new and interesting element: asset recovery. Further, this Convention provides for a comprehensive definition of "Public Official", including foreign.

According to Mrs. Valle, the UNCAC recognizes the importance of preventing corruption-related practices and devotes an entire chapter on this issue (Chapter II, articles 5-14), with measures directed at both the public and the private sectors, in recognition of the multidisciplinary approach that is necessary for addressing the phenomenon in an efficient manner

In the public sector, the State must prove effective commitment to the Convention, not just theoretically, but with a hands-on approach from the start, for example by facilitating access to information. In addition, very specific and clear rules have been defined for addressing corruption in the private sector.

A vital prevention measure is the need to rely on coordinated, self-governing anti-corruption agencies that count on sufficient human and financial resources to fulfill their tasks.

The UNCAC Convention sets forth some mandatory provisions which all countries have to implement, such as the criminalization of active and passive bribery of public officials, embezzlement, money laundering, obstruction of justice. Another six criminal behaviors stated in the Convention were not deemed mandatory. Illicit enrichment, trading in influence and passive bribery of foreign public officials are examples of a criminal conduct that State Parties have been recommended to criminalize. The optional criminalization of such conducts was due to the fact that some countries may have already established those offences in their domestic law, but other countries would be unable to do the same, often because of constitutional impediments.

Although countries are concerned with preserving the principle of presumption of innocence, States that have proven successful in their fight against corruption have specifically criminalized illicit enrichment.

Whistleblower protection and protection of witnesses, experts and victims constitute an important element of the Convention, which is linked and corollary to the criminalization and aimed at ensuring their effectiveness.

International co-operation is one of the key aspects in all these conventions because corruption is a crime that knows no boundaries and where evidence may be found in another country. For example, company headquarters are often based in one country and their subsidiaries are based and operate in several others. Hence, counting on an efficient international co-operation system, coupled with the establishment of multi-based jurisdiction, is of vital importance. Systems must guarantee that no corrupt person will find asylum anywhere in the world. Furthermore, the intention is to minimize the reasons to deny extradition and for those countries that do not extradite their nationals, they are required to prosecute them within their own territory.

UNCAC advocates extradition of criminals even if the dual criminality principle has not been fulfilled. Where, however, double criminality is required, it would be important for Member States to count on precise and standardized definitions that would allow for the adoption of common and consistent concepts in all legal systems and here is where the Convention may be very useful as the source of consistency. Moreover, the Convention does not require the same terminology for the fulfillment of double criminality, but instead requires that the conduct underlying the offence for which assistance is sought is a criminal offence under the laws of both States parties.

Concerning asset recovery, Ms. Valle pointed out that in the case of embezzlement of public funds or of laundering of embezzled public funds assets are to be repatriated in full to their country of origin. This matter, recognized as a major breakthrough compared to other instruments against corruption, is being prioritized as an important area of work for the Conference of the States Parties to the Convention

Finally, It should be kept in mind that upon ratification of the Convention and the deposition of the ratification instrument in New York, countries are required to

designate two central authorities: a central anti-corruption authority (Article 6.3. 6-1) and a central authority for mutual legal assistance (Article 46.13).

More information on the text of the Convention and its implementation can be found on the UNODC website:

http://www.unodc.org/unodc/en/crime_convention_corruption.html

Questions by the audience to the panel

- **Is there a mechanism or are efforts undertaken to exchange experiences on the implementation and enforcement of the three anti-corruption conventions presented?**
- **If we start from the premise that corruption is as old as humanity itself, why did the world only react to declare corruption a crime in the late 1990?**
- **Do companies from industrialized countries apply a double standard when they, on the one hand, increase their efforts to fight corruption in their own countries but, on the other hand, neglect to control of this kind of illicit activity when they engage in foreign trade and investment in poorer countries?**
- **What kind of support can the OECD offer to non-member countries?**

Mrs. Sandra Valle informed that efforts are being made to try to closely coordinate the work undertaken and the experience generated by the OECD and the OAS. She also underlined the need to grow mutually stronger, rather than to duplicate efforts.

Mr. Patrick Moulette underlined that the different anti-bribery instruments reinforce each other and noted that the ratification and implementation of the OAS and UN Conventions by a large number of countries will strengthen implementation of the OECD Convention. There were concrete examples of co-operation among the organizations in charge of these treaties and instruments.

Concerning adoption of the first conventions criminalizing corruption in the second half of the 1990s, Mr. Moulette underlined that the international community always needs some time to evaluate and assess a global issue. The United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances of 1988 is another example which illustrates this. The drug issue is rather older. Yet it took some time to grow aware, to define the problem, to devise a way to face it and then to negotiate a declaration.

Concerning support to non-member countries, OECD is engaged in regional anti-corruption initiatives. There is a very interesting association between the OECD and the Asian Development Bank (ADB) to support Asian countries in their efforts to enhance their anti-corruption laws and measures. This association takes the form of a policy dialogue, exchange of experiences among countries in that region, training activities, capacity building seminars, etc. Taking into consideration that Latin America also features major organizations such as the IADB and the OAS, maybe some similar concept could be worked out?

Mr. Jorge García González reminded the audience that in 1996, when the IACAC was adopted, the international community was discussing whether the fight against corruption was truly an international matter. Some countries were against negotiating a treaty at the time and it had been difficult to obtain the Presidents' mandate for a convention to be adopted in this field.

Various concerns have boosted interest on this issue and spurred progress on the implementation of these conventions. For example, the fall of the Berlin wall and the opening of new markets to international competition. Another example is the privatization process that took place in many of the Latin American countries, which gave a lot of room to international competitors and caused inequality between entrepreneurs from different countries.

The interests of all the countries involved had to be harmonized. Here is another example: the US was interested on having international bribery regulated, while in other countries like Colombia and Mexico, their primary concern was illicit enrichment. This led to the adoption of provisions regarding both matters by the IACAC.

Democratic governance is a core item in the OAS agenda. In many of our countries, people are disappointed about democracy and in many cases, corruption is the reason for such disenchantment.

Regarding the issue of countries' economic growth and investment, studies show that the greater the corruption, the smaller the possibilities for countries to be a point of destination for foreign investment. In terms of social development, there are studies demonstrating that the poor are the most severely affected by corruption. That is why the fight against corruption matters and arose to a key item in the international agenda.

Fighting against corruption has a beginning, but it should see no end. This is a process that takes place through various stages and different means. It involves multiple actors and working in unison is a must.

Session Two

TAKING STOCK OF PROGRESS IN DETECTING, INVESTIGATING AND PROSECUTING BRIBERY IN THE REGION

Chair:

Mr. Stephen Zimmermann, Chief, Office of Institutional Integrity, Inter-American Development Bank.

Speakers:

Mr. Isidro Solís, Minister of Justice, Chile.

Dr. Juan Carlos Duré, Coordinator for Investigations, Anti-Corruption Office, Argentina.

Mr. Luis Silva García, Head of the Transparency Networking Unit, Ministry of Public Administration, Mexico.

Mr. Luiz Guilherme Mendes De Paiva, Director of Legislative Processes, Secretariat of Legislative Affairs, Brazil.

Mr. Zimmermann introduced the members of the panel and invited them to report about their country's anti-corruption actions, including achievements and shortcomings in order to help determine areas for improvement. Fighting fraud and corruption is an endeavor everyone can contribute to; MDBs and international organizations alike.

Mr. Zimmermann specified that the IADB is studying an approach to enhance and reorient its tools to fight corruption, both in the Bank's projects and also in support of projects undertaken by many of the countries attending this meeting. Two years ago, the IDB created the Office of Institutional Integrity (OII). The OII is responsible for detecting, investigating and preventing fraud and corruption in activities financed by the Bank, which relies on an internal programme to punish fraud and corruption by means of administrative sanctions. Administrative sanctions usually consist of a period of inability to participate in projects financed by the IADB. This policy is applicable to the 26 borrowing member countries.

On the occasion of the World Bank Assembly, all MDBs agreed to create a framework for preventing and combating fraud and corruption. The agreement relates to standardizing definitions of corrupt and fraudulent practices and an increase of information sharing. In addition, he mentioned that consistency of investigative procedures has already been improved and efforts are now being undertaken to harmonize sanctions. MDBs are endeavoring to unify their efforts in this area and to orchestrate aid offered to member countries through their integrity and anti-corruption activities.

Mr. Isidro Solís, Chile's Minister of Justice, highlighted that Chile finds of utmost importance to rely on a public administration where the principles of honesty and transparency are key. He noted that any act of corruption is fought through all the tools

offered by the legal framework. Ratification of international conventions against corruption is a critical step in this direction.

Chile has ratified a number of treaties, including the IACAC (in 1998), the OECD Anti-Bribery Convention (in 2001) and the UNCAC (in September 2006).

Chile's institutional system grants self-governing agencies specific public powers and authorities to fight corruption. In this regard, it is important to mention the role of the Judiciary, the Public Ministry, the Office of the Comptroller of the Republic, the Internal Revenue Service and the State Defense Council as the judicial representative of the Chilean State.

Actions against corruption by both public actors and private sector players are required to prevent, control and eradicate this offence.

Minister Solís spoke at length about Chile's existing and forthcoming transparency measures. He underlined Chile's strong commitment to enhance transparency in all actions by the administration. He noted that free access to information may generate a high level of transparency, enhance citizen participation in public matters and prevent corruption.

Minister Solís reported that to comply with the obligations stemming from the ratification of the OECD Anti-Bribery Convention, Chile had introduced changes in its criminal code which involved the creation of a new criminal provision aimed at penalizing bribery of foreign public officials pursuant to international standards, as well as the various forms of accessory engagement to this crime.

In the area of investigation and prosecution of corruption, Minister Solís reported that on June 16, 2005, implementation of the new Chilean criminal procedural system was completed throughout all the regions of the country. This new system ensures compliance with international due process standards as it introduces public oral trials within a reasonable period of time and designates a self-governing entity responsible for prosecuting crimes. In addition, defendants are guaranteed the right to defense from the early stages of the investigation through the appointment of an attorney by the *Defensoría Penal Pública* (Public Defender's Office). In addition, the Public Ministry was created by the Constitution as an independent and autonomous agency exclusively responsible for directing the investigation of all potential crimes. The Office of the Attorney General, in turn, has created a Special Unit on Public Probité and Crimes by Public Officials. In conducting investigations, prosecutors rely on the *Carabineros* or *Policía de Investigaciones de Chile* (Investigative Police). Prosecutors' independence to investigate stems from the constitutional self-governing nature of this institution and the fact that the law forbids the Principle of Opportunity³ in this type of crimes.

In December 2003, Chile took a major step in terms of prevention and control of money laundering by enacting Law 19.913, which created the Financial Analysis and Intelligence Unit and amended the Penal Code on the subject of money laundering. In this context, a very clear signal has been given upon establishing a series of crimes as illicit traffic in narcotic drugs and psychotropic substances, arms trafficking, terrorism and its financing, among others, as part of a catalog on crimes of corruption and as predicate offenses. Establishing bribery as a predicate offense to money laundering

³ The principle of opportunity states that a prosecuting body can set criteria to determine which cases will be investigated.

allows the use of all the legal tools available in the Chilean anti-money laundering system in detecting, investigating and prosecuting this crime.

Chile is aware that its international obligations require efficient international co-operation. This is confirmed by the large number of bilateral and multilateral agreements Chile has adopted on extradition and rogatory judicial letters. At present, steps are being taken by Chile to join the European Convention on Mutual Assistance in Criminal Matters, so as to offer improved co-operation to Member Countries that are part of the OECD Anti-Bribery Convention.

Minister Solís concluded that Chile is clearly aware of the progress made, but due to the distinctive characteristics of this crime, the various forms it acquires, and the ongoing changes occurring in international crime, Chile needs to further progress in streamlining and customizing its standards and norms and in strengthening related control measures.

Dr. Juan Carlos Duré, Coordinator for Investigations, Argentina's Anti-Corruption Office, reported first about the role and activities of the Anti-Corruption Office (ACO), an agency within the Ministry of Justice which operates since the end of 1999. The agency participates in the MESICIC. Also, in the context of the IACAC, the ACO assists the Ministry of Foreign Affairs in conducting regular evaluations. ACO's responsibilities include receiving accusations on alleged acts of corruption, conducting preliminary investigations, determining the existence of acts of corruption and the persons responsible thereof and, if applicable, bringing the accusation to the courts of justice. In some cases, the ACO decides to act as claimant, but is vested with no special privileges.

The Principle of Significance accounts for a parameter of the Principle of Opportunity by virtue of which not all allegations received are investigated, as matters are addressed according to the significance of the economic amount, the impact of the crime on the society and the position or hierarchy of the accused public official. All other cases are directly referred to the ordinary courts of law. The ACO always takes part in the case if there is a higher-ranking public official involved and regardless of the amount at stake.

Mr. Duré specified that Argentina is, to a certain extent, in debt for failing to incorporate all the tools proposed by the various Conventions in the country's local legislation.

Concerning Argentina's experience in international co-operation, he pointed out that since the ACO reports to the Executive rather than to the Judiciary, co-operation takes place prior to the accusation. Therefore, it belongs to a pre-judicial stage.

Mr. Duré stressed the importance of this anti-corruption conference as an opportunity to establish contacts with other countries' authorities with whom a request for mutual assistance may be placed in the future. Argentina is willing to cooperate. In this regard, it should be noted that there is a difference when co-operation is requested when the case is already at a judicial stage. Access to information is critical during a pre-judicial stage, as it will allow for a stronger accusation and will prevent excessive or incorrect allegations.

Finally, Mr. Duré mentioned that the ACO consists of 15 officials and has acted as claimant in approximately 100 cases before the courts.

As a weakness, he pointed out that Argentina still lacks witness or whistleblower protection law. Notwithstanding the aforementioned, efforts have been made to operationalize the regular clauses on confidentiality and protection to good faith whistleblowers. The ACO accepts anonymous allegations. However, investigators are reluctant to accept this kind of allegations as credible.

In closing, Mr. Duré's noted that:

“in some instances, we need to find alternate names to bribery, such as embezzlement, fraud or negotiations incompatible with public office. I mention synonyms because we are always dealing with profits for a company, either due to over-billing or by manipulating contracts or specific clauses that lead to a single bidder, which incidentally is the determined firm. Then, we immediately suspect that bribery is involved. However, we still lack the tools or are unable to create the proper incentives to increase the reporting of these crimes.

When we are conducting an investigation related to a contract that involved overpricing or poor management from a civil servant who is related to a private company, we always try that both the official and the businessperson who allowed such criminal act appear in the process as defendants.”

Mr. Luis Silva García, Head of the Mexican Transparency Networking Unit, reported that the unit had been created to enhance transparency and fight corruption. The unit reports to the Federal Executive Power in the Mexican Ministry of Public Administration. Mr. Silva specified that this Ministry is the Office of the Comptroller General of the Executive Federal Power, which after some modifications has remained in charge of auditing and the Network of Public Auditors.

Over the past few years, these matters have been gaining strength in the good governance agenda so as to make progress, particularly regarding a behavioral change of public officials. Two areas have been established following a structural approach in the Federal Government: The *Comisión Intersecretarial para la Transparencia y Combate a la Corrupción* (Interministerial Commission for Transparency and against Corruption in Federal Public Administration) and the Transparency Networking Unit. The latter aims at building a culture of integrity, transparency, accountability and shared responsibility and in fostering a better relationship between government and business.

Following the *Phase 1* examination under the OECD Anti-Bribery Convention, Mexico introduced some amendments to the Federal Penal Code adopted in 2004. In particular, a new definition for foreign public official was adopted and monetary penalties were increased. During the *Phase 2* Examination, work was undertaken with the business sector, accountants and lawyers, other Powers of the State and other countries. Joint work has been carried out with the Ministry of Justice, which is called the *Procuraduría General de la República*, with the Ministry of Foreign Affairs and the Ministry of Internal Affairs.

Mr. Silva reported that the OECD evaluation acknowledged that Mexico shows political will and progress in fighting corruption. Recommendations included the need to strengthen efforts in the prevention and detection of money laundering and to accelerate

the processing of suspicious transaction reports in respect to this offence, or to develop systems to accommodate complaints, accusations and allegations similar to those available in domestic bribery.

The Inter-Ministerial Commission for Transparency and Against Corruption is the agency responsible for introducing changes in Mexican Federal government institutions. For example, “Declaranet” is an IT mechanism for public officials who are encouraged to disclose their personal assets.

Work is underway concerning the recommendations related to facilitate the reporting of bribery allegations. Measures are taken to ensure that public officials, accountants and lawyers comply with their obligation to file allegations. Mexico is also adopting whistleblower provisions. Furthermore, measures are taken to improve detection, investigation, prosecution and sanctions for transnational bribery. A special unit to deal with bribery of foreign public officials is to provide training to policemen and prosecutors regarding that offence as well as to provide guidelines. Mexico will also implement witness protection programmes as well as provide fast and effective access to bank information.

Further, work is underway to develop a network aimed at disseminating information about obligations and recommendations under the OECD Anti-Bribery Convention within the government, including the network of 220 Federal Government Internal Control Agencies; the *22 Oficinas Mayores* (administrative support offices) and *Direcciones de Administración de la Administración Pública Federal* (Federal Public Management Divisions); procurement agencies within Federal government; the 32 States including governors, comptrollers and Economic Development Secretariats; *Banca Nacional de Desarrollo* (national Development Banc); *Banco de Comercio Exterior* (Banc of Exterior Commerce), with more than 6,000 exporters; and *Nacional Financiera* with more than 30,000 small and medium-size companies.

Mr. Silva also referred to the need to strengthen legal reforms, for example public procurement laws. Penalties are still very low in Mexico concerning public procurement related crimes; however, reform bills are being discussed.

Luiz Guilherme Mendes De Paiva, Director of Legislative Processes, Secretariat of Legislative Affairs, Brazil noted that since Brazil’s evaluation under *Phase 2* is still outstanding, Brazil is still working on the recommendations made during *Phase 1*. Brazil was recently evaluated under *Phase 1* of implementation of the OAS IACAC.

Both examination processes have found that the Brazilian legislation is widely compliant with both the OAS IACAC and the OECD Anti-Bribery Convention. However, additional measures are required.

Among the main recommendations given to Brazil during the OECD examination is the need to establish corporate liability. The Brazilian framework was considered satisfactory by the OECD, as Brazil counts on civil and administrative sanctions for corporations, although the lack of legal precedent was made evident. In addition, it was mentioned that the Brazilian legislation contains a general prohibition to tax deductibility concerning illegal payments, although it lacks an express prohibition.

Mr. Mendes highlighted efforts made in fighting corruption on three fronts: the Office of the Comptroller General, the Federal Police and the Asset Recovery and International Legal Co-operation Department.

Over the past four to six years, investments in personnel and other resources have been very useful in terms of detection and investigation. As to the Office of the Comptroller General, Mr. Mendes expressed that measures are very similar to those implemented by Mexico. This office now features an additional mandate and has become the most important agency in charge of transparency and prevention of corruption, in addition to audits.

This year, an executive order of the President created the Office for the Prevention of Corruption and Strategic Intelligence, which is responsible for fostering strategic intelligence exchange with other government agencies. This is a major step in Brazil, where various agencies had to coordinate prior to establishing a centralized control. The Office for the Prevention of Corruption and Strategic Intelligence is also responsible for monitoring the financial condition of public officials who work for federal government organizations and identifying external signs of enrichment.

Mr. Mendes continued to describe the work of the Comptroller General concerning Municipality audits. Brazil consists of more than 5000 municipalities, all of which manage their own budgets. The Comptroller General is entitled to conduct audits on those resources. Three-hundred cities have been audited during the last year.

The Federal Police Department, a federal agency, conducts investigations of crimes against the Federal Government or its agencies and companies as well as crimes with inter-state and international implications. In other words, the Federal Police is responsible for investigating and repressing local and international corruption. Since 2002, the Federal Police has dramatically increased its staff, from 9,000 in 2002 to 15,000 scheduled for 2007. In addition, in a period of two years, the Federal Police's budget grew almost twofold, which has also resulted in increased efficiency.

The Asset Recovery and International Legal Co-operation Department reports to the Ministry of Justice and its main responsibility is to develop strategies to fight against money laundering and to recover assets illegally remitted overseas. This department is also the Central Authority of Brazil concerning international legal co-operation requests. At present, this department is putting together specific certified training programmes on money laundering and bribery for both public officials and the private sector.

Mr. Mendes mentioned that probably the largest deficiency of the Federal Republic is that it is largely decentralized. Brazil is a Union consisting of 27 states and 5,561 municipalities, each of which manages its own budget, which results in fragmentation of policies to fight corruption. This political structure affects mostly prevention efforts. In terms of repression of corruption, the Union may pass laws to prosecute state or municipal officials, but prevention measures must be managed through political effort, which is not easy to achieve.

Mr. Mendes concluded by saying that the stronger anti-corruption agencies grow, the more cases of corruption arise. That is to say that corruption is a major issue in public administration and that agencies are doing their job. Nevertheless, this leads to a paradox: increasing control also increases the general feeling that corruption is on the rise.

Questions by the audience to the panel:

- **Corruption is a problem that arises from people who fail to observe the law and from judicial authorities who fail to enforce the law. Could country representatives inform how their country addresses these problems?**
- **Has the Argentine Anti-Corruption Office encountered difficulties in conducting simultaneous investigations which are under the legal responsibility of the Attorney's Office? What are the expectations of whistleblowers?**

Dr. Duré informed that the Anti-Corruption Office and the Office of the Attorney work closely together but tasks do not overlap. In general terms, the Judiciary is reluctant to accept anonymous allegations as a premise for an investigation. Customarily, this kind of allegations is made by junior staff who works under corrupt officials, who opt for this kind of accusation because they have no other safe reporting channel.

Mr. Stephen Zimmerman noted that anonymous allegations are received at the Office of Institutional Integrity of the IADB. In his opinion, accepting anonymous allegations is a critical tool to uncover evidence of corrupt activities, particularly from individuals who are fearful and may be unwilling to come forward if their identities were revealed. It is important to note that all allegations, regardless of whether or not they are anonymous, must be substantiated based on evidence gathered through the investigative process before any sanction can be considered. An allegation itself is usually of little or no evidentiary value. The work really begins only upon receipt of the allegation and commencement of the investigation to determine whether or not the conduct alleged really occurred.

Session Three

THE ROLE OF THE VARIOUS KEY PUBLIC AUTHORITIES INVOLVED IN EFFECTIVE DETECTION, INVESTIGATION AND PROSECUTION OF BRIBERY

Chair:

Professor Mark Pieth. Professor of Criminal Law at University of Basel, Switzerland.

Speakers: Mr. José Grinda González, Anti-corruption Prosecutor, Special Prosecutor's Office for the Repression of Economic Crime related to Corruption, Spain.

Dr. Gunther Puhm, Senior Public Prosecutor, Oberlandesgericht, Munich, Germany.

Mr. Mark Mendelsohn, Deputy Chief, Fraud Section, Criminal Division, Ministry of Justice of the United States.

Ms. Ana Tulia Lamboglia, Public Prosecutor of the National Anticorruption Unit, Colombia.

Professor Pieth specified that this panel would address the role of public authorities and the hurdles they face from the point of view of prosecutors. If a Convention punishing corruption is in force, it must be observed and related laws need to be enacted and enforced. The questions are whether these laws are enforced and which are the difficulties to enforcing them? During an investigation, how do you move forward to prosecution and later to a lawsuit? A certain amount of evidence is required. The third level of problems is related to the lack of international co-operation. The fourth level of problems does not involve laws, but the adequacy of invested resources and training. Is there political commitment to eradicate corruption?

Professor Pieth invited speakers to briefly elaborate on their responsibilities and address the main difficulties they face when exercising their duties.

Mr. José Grinda González, Anti-corruption Prosecutor of Spain first wished to give some insight into the role of the Anti-corruption Prosecution Office (ACPO) in Spain. He noted that the State Prosecution Service is ruled by article 124 of the Constitution. Reasoning principles such as hierarchy and unity are subordinated to a more basic one, the principle of legality. Usually, prosecutors give priority to the principle of legality, as a result of which they strictly follow the law, to the extent possible. Accordingly, pursuant to article 2 of the *Ley de Enjuiciamiento Criminal* (Law of Criminal Procedure), which dates back to 1882, it is necessary to investigate aspects both in favor and against the case of the person under investigation.

In Spain, the prosecutors get their job through public competitions; hence there is no political or popular election to reach this position. In the judiciary, appointments are based on merit and eligible candidates are legal experts having recognized competencies.

Appointment of the State Attorney General is political. His responsibilities include the giving of a series of *instructions* on particular cases, producing official reports of a legal nature and disseminating *consultations* in response to queries from various prosecutors' offices with regards to specific cases. All of these materials will be applicable to all prosecutor's offices in the country.

Another distinct characteristic is that the State Attorney General does not conduct any investigation. Investigations are conducted by an Instruction Court Justice. Prosecutors follow the various procedures ordered by the Judge.

One way in which the State Prosecution Service participates in a criminal process is by intervening in an investigation by the Police before the investigation has been submitted to the courts of law. In Spain, as soon as there is a legal action underway regarding a case being investigated by the State Prosecution Service, the investigation must stop and be referred to the right jurisdiction. The inconvenience is then that the State Prosecution Service is not able to pursue the investigation or request later procedures to the police to incorporate them later to the proceeding.

How is an investigation conducted in a Prosecutors' Office in Spain? Up to five Attorneys can participate in an investigation, although they are not in contact with each other. Conversely, a single-attorney system has been implemented for economic crimes, where the attorney begins and finishes the criminal proceeding. In some places like Barcelona, the Prosecutor's Office even counts on the assistance of on-site economists and policemen.

The ACPO was established in 1995. In 2006, this office was vested with new powers and authorities by virtue of an instruction by the State Attorney General; the matters in which the ACPO should take part were specified. A particularly important entitlement introduced was to oversee money laundering and organized crime offenses.

There is a residual competence clause on the ACPO. Aside from the criteria set forth in the State Prosecution Service Statute and Instruction No. 4 of 2006, the State Attorney General may assign to this office any matter he or she deems transcendental to the economy or any matter on corruption to the ACPO.

In Spain, there is an ACPO based in Madrid that counts 13 prosecutors and a Chief Prosecutor. At present they are 12 plus one, as well as delegate prosecutors.

Mr. Grinda González mentioned a series of shortcomings that have been detected during investigations by the ACPO. As an example, he mentioned the infliction of political pressure and the action of international aid groups. Concerning the former, he referred to politicians that practice the legal profession who sometimes represent defendants who are to be prosecuted. Large corporations can hardly be touched by the ACPO when the State Attorney General is a political position and when the Chief Prosecutor is designated by the State Attorney General. It is difficult to grant independence. He pointed out that only recently an accusation has been filed against the president of one of the largest investors in Spain, *Banco Santander Central Hispano*.

He added that there cannot be any secret proceeding in the investigations of the ACPO. A person subject to an investigation should be kept informed thereon.

He also mentioned there are communication difficulties with the department in charge of money laundering. Spain has established an administrative Financial Intelligence Unit called *Servicio Preventivo de Blanqueo de Capitales* – SEPBLAC. The former director failed to disclose information to the ACPOs.

He concluded that it is not only a matter of requiring and obtaining information from banking and financial institutions. An ethical and morally respectable behavior by corporations, banking and financial institutions needs to exist. ([link to powerpoint presentation by Mr. Grinda](#))

Dr. Gunther Puhm, Senior Public Prosecutor in Germany reported that the Public Prosecutor's Offices in Munich are well equipped to fight against corruption. Since 1994, Munich has an Anti-Corruption Division (ACD), staffed by some 13 officials which have carried out over 11,000 investigations. It should be noted that in Germany, unlike in many other countries, bribery in private business is also a crime.

Public prosecutors in the ACD are highly motivated and very well trained; there are many anti-corruption training methods and modules available for prosecutors. Effectiveness of this division is illustrated by the number of investigations which resulted in 65 prosecutions of international bribery cases and several convictions over 2005-2006.

Concerning corporate liability, he mentioned that pursuant to the *Administrative Offence Act*, legal persons may be subject to monetary penalties for as much as one million Euros, in addition to the sanctions applied to the offenders and seizure and confiscation of the proceeds of the crime. The ceiling for the relevant monetary penalty was raised to one million euros in 2002.

The guidelines for criminal proceedings and administrative procedures, including sanctions, were amended as of September 1, 2006.

Prosecutors have a duty to bring criminal offenses to justice and undue influence by higher authorities has no room in their work. Mandatory prosecution is an underlying principle. German law encompasses specific provisions of criminal procedure that allow a prosecutor to discontinue a case or to dismiss proceedings under certain conditions. Decisions by prosecutors to dismiss criminal prosecutions must be authorized by senior officials in writing.

Mr. Puhm referred to the co-operation with other local criminal investigation authorities, like the police or tax examiners. Usually, the police is commissioned by prosecution authorities to conduct investigations. Special anti-corruption units are in place. Reports by the auditors engaged by financial authorities also play an important role.

Among the various guidelines in force since 2004 to prevent and fight against corruption in public administration, a Federal directive provides for the appointment of anti-corruption officials within the public administration. Any official in public administration is entitled to approach these anti-corruption officials to report a corruption event.

Regrettably, not all the big cities in Germany have special anti-corruption departments like the Public Prosecutor's Office in Munich. Corruption often surfaces in investigations conducted for other reasons. Where fewer corruption investigators operate, significantly fewer cases of corruption occur. This is another reason why no special anti-corruption offices are created. It would however be advisable to create anti-corruption divisions elsewhere.

Unfortunately, a country's reputation suffers as more cases of corruption are unveiled. For example, the Transparency International ranking worsens as the number of prosecutions increases and as new corruption cases are unveiled. Finally, Mr. Puhm expressed regrets for the lack of international co-operation. This issue was addressed in greater detail during the next day's technical meeting with prosecutors (see contribution by Mr. Puhm).

Mr. Mark Mendelsohn, Deputy Chief, Fraud Section, Criminal Division, Ministry of Justice of the United States, offered an overview of the strengths and weaknesses of the American system based on his experience in enforcing the law on transnational bribery: *the Foreign Corrupt Practices Act* (FCPA). He suggested that the American system may comprise elements that could be applied in other countries.

Mr. Mendelsohn's career started as a prosecutor in the US Department of Justice for about 10 years. Two years ago he joined the Fraud Section of the department. He is responsible for overseeing all the investigations conducted by the Department of Justice and prosecutions under the FCPA. In addition, he oversees a group of prosecutors in enforcing the aforementioned act and all "white collar" crimes, financial crimes, corporate fraud, securities fraud, accounting fraud, health-system fraud, etc. He is also the representative of the US Department of Justice in the OECD Working Group on Bribery.

The 1977 *Foreign Corrupt Practices Act* has been in force for almost 30 years. While corruption cases have not been abundant if compared to prosecution of other crimes, the impact of these cases has been significant. For example, corruption cases have fed a culture of transparency among American companies. This culture has helped develop systems of self-surveillance, corporate complaint systems and an acknowledgement that the company will face serious consequences if involved in bribery.

Prosecutors in this area can rely on the "stick and carrot" approach. On the "carrot" side, the US legal system allows indulgences in formal negotiations with the defendant during the proceeding and the ability to offer immunity to individuals and corporations so as to move forward in investigations. Concerning corporations, a number of provisions can be applied and sanctions imposed to produce corporate anti-corruption reforms. On the side of the "stick", the US have succeeded in imposing major sanctions, including imprisonment for individuals and significant sanctions and other improvement measures for corporations.

The strengths of the American system are:

- Proven capacity to investigate and prosecute bribery of foreign public officials.
- The "stick and carrot" approach referred to previously.

- Expertise in investigating complex financial and other crimes, including Bribery of Foreign Public Officials and the vast experience in obtaining mutual legal assistance through both formal and informal channels.
- The independence of the Fraud Section in the Criminal Division (it is free of political influence), its extraordinary powers and its large discretion. A case may be opened or closed based on an anonymous tip, an article on a newspaper and even public disclosure by a company.

Concerning weaknesses and shortcomings:

Resources are an issue. He mentioned that at present some 40 to 50 cases of transnational bribery are under investigation. Many of them started with allegations in one country and now involve from 5 to 20 different countries concerning the same company. There is often a pile of electronic evidence that is critical for the investigation and it takes a lot of resources to process the information. As a prosecutor, he stressed that there is nothing stronger as evidence than an e-mail written by the person who is the target of the investigation. This may turn into the most critical piece of evidence on which to work and it's overwhelming. Sometimes language is an issue, as one investigation can involve as many as a dozen different languages, which also requires important resources.

The complexity in the act of bribery accounts for one of the largest challenges. One aspect that is particularly difficult to deal with refers to intermediaries in global business transactions, most of the time in foreign jurisdictions. There are also some cases where American parent companies with subsidiaries overseas see one of the subsidiary officials get involved in bribery. The corrupt official has no contact with the US other than working for an affiliate of an American company and the person is not a US citizen. In some cases, the only possibility is to address other authorities to engage in an investigation and prosecution.

Finally, procedural discretion is one of the distinct characteristics of the American legal system. Mr. Mendelsohn mentioned that procedural discretion is both a strength and a weakness. It is a weakness in the sense that acting in a fair, balanced and unbiased way with regard to individuals and companies subject to an investigation represents an enormous responsibility.

Ms. Ana Tulia Lamboglia, Public Prosecutor of the National Anticorruption Unit, Colombia reported that the Colombian National Prosecutor's Office (CNPO) is deemed the key public authority to investigate and prosecute corruption. Established in 1991 following a constitutional reform, the CNPO is a self-governing entity from the legal and budgetary point of view. As a judicial entity, this office is part of the judicial branch of the Public Power in Colombia and it is not part of the Executive. This is the origin of its independence, which ensures fast and easier investigations. At that time, a mixed criminal procedure system was established.

Colombia underwent a new constitutional reform in 2002, which resulted in gradual implementation of the criminal accusatorial system starting in Bogotá and three judicial districts in central Colombia. The system is expected to be implemented in the whole country by 2008. Currently, roughly 75% of the country is still subject to the old mixed

system, even in the regions where the new criminal accusatorial system has been implemented.

These two systems have generated different roles and responsibilities. Under the mixed system, the Prosecutor's Office is not only the investigative party, but also the one that takes jurisdictional measures. In Colombia, prosecutors under the mixed system may issue arrest warrants, search warrants, seizure warrants and judicial measures. Prosecutors decide on the legal status of the people undergoing investigation, issue precautionary measures, assess the merits of the investigation through a sentence and, to a certain extent, they can preclude an investigation and arrive at an alternative arrangement without going to court.

Under the new criminal accusatorial system, judges are vested in an additional role: that of *Juez de Control de Garantía* (Guarantee Control Judge), aside from their other roles and responsibilities during proceedings and lawsuits. Prosecution of a corruption crime is different under these new circumstances because the process may be later reviewed for legal consistency.

Ms. Lamboglia mentioned that Colombian prosecutors belong to the judiciary branch and are entitled to some powers and authorities. They can make some decisions which are closer to those made by judges, which is not the case in the US. However, when issuing search warrants, tapping telephone lines or withholding mail they are required to submit their findings to a higher authority. The Prosecutor's Office is the key authority in an investigation, working in collaboration with the Judicial Police that reports to the Prosecutor's Office.

Colombia's best practices include reliance on special anti-corruption legislation, an Anti-Corruption Statute that set the foundations for the use of not only general procedural standards, but also of a special tool.

There is a National Special Unit of Crimes against the Public Administration, commonly referred to as the National Anti-Corruption Unit, which consists of 27 prosecutors, on average, who cover the entire country. In order to conduct investigations involving a high degree of complexity or where the State has suffered high patrimonial losses, some officials are commissioned to travel throughout Colombia. This allows prosecutors from Department Sections to be free of the political or any other kind of pressure that might arise in different regions. In addition, every Branch Directorate counts on its own Special Unit of Crimes against the Public Administration.

Moreover, they count on an interdisciplinary judicial police corps that consists of members of the Administrative Security Department, the National Police Corps and the Technical Investigation Branch, which is an investigation team that depends directly from the Prosecutor's Office.

Work groups within the Unit have been established according to sectors. Investigations are underway in the health sector, financial sector, electric power industry, tax sector and educational sector. Those specialized groups have ensured a better treatment of investigations.

There is also a Public Ministry, headed by the Attorney General, which works in line with the Prosecutor's Office and is different from the National Prosecutor's Office. The aforementioned agency is responsible for conducting disciplinary investigations, but also plays a role in criminal investigations through its agents. Furthermore, there is a group specialized in corruption.

The same is true for the Office of the Comptroller General of the Republic, which relies on a specialized group. The existence of these units has fostered the so-called inter-agency agreements among the three entities, so that irrespective of the administrative or criminal nature of their investigations and regardless of their independent and self-governing character, agencies cooperate to achieve better results.

There have been cases in which a disciplinary ruling has been pronounced temporarily separating the corrupt official from office, and simultaneously, at the political level, the administrative jurisdiction has removed the subject from his position, as the case may be. On the one hand, the Office of the Comptroller General has applied a fiscal sanction and on the other hand, the Prosecutor's Office has managed to obtain a criminal conviction.

Colombia counts on the *Ley de Extinción de Dominio* (Ownership Extinction Law) No. 793 of 2002, whereby irrespective of the criminal investigation on the grounds of corruption, the authorities are entitled to legalize the relevant copies for a specialized unit of the Prosecutor's Office called Money Laundering and Extinction of Ownership Unit, to undertake extinction of ownership of all of the offender's assets related to the crime or that account for proceeds thereof.

Some difficulties at the job concern the close relation between the paramilitary and the guerrilla, and corruption. Investigations have shown that public moneys are being used to finance those outlaw organizations, and it is terribly difficult to chase both the white-collar offender and the armed criminals who have a different intention and confront justice in a different way.

Another difficulty is the interpretation of the law. Perhaps Colombians expect that the largest white-collar criminals will end up behind bars. In many cases, the same standards and law interpretations result in imprisonment of these criminals in their own houses, rather than in a regular facility, which would be the exemplary sanction for them.

A further problem is the high complexity of matters which require extensive study.

Ms. Lamboglia stated that Colombia, Bolivia, Peru and Ecuador have been supported by UNICRI, United Nations Interregional Crime and Justice Research Institute. Some of that support takes the form of training and fostering measures to adopt international standards inherent to fighting corruption and the quest of a common language. All countries have standards and norms, but sometimes interpretations may differ greatly.

Questions by the audience to the panel:

- **Which are the major differences between the American and the European legal systems with regard to corruption crimes?**

- **Who protects prosecutors and judges when they are conducting investigations, prosecutions or pronouncing sentences? How do they cope with the fear of having their children threatened, which in many cases limits their action when prosecuting and judging? And then, if the prosecutor is unable to prove the crime, he may be sued for defamation. How do they manage to accuse without taking the risk of becoming a defendant?**

Mr. José Grinda said that it seems that the US applies the principle of opportunity to corruption crimes, which he sees as a shortcoming because it encourages exchange of information with the alleged criminal, and introduces a series of grave risks, like the case of the Bank of New York. He noted that a Chief Prosecutor in Spain claimed not to trust any information coming from whistleblowers or agents because they are all traitors who could not be trusted.

On the other hand, he admitted that quite often in Europe, at least in Spain, one misses some kind of regulated opportunity that allows some flexibility when in need of a fast sentence. In Spain proceedings are delayed and few people are willing to blow the whistle.

Mr. Mendelsohn suggested the American system is more flexible. In his view, prosecutions move faster towards an outcome if both parties - the government and the defendant - wish so. If both are interested on expediting the resolution of a case, the system allows various alternatives.

He understands the vantage point of obtaining help from criminals and how their truthfulness and reliability may be questioned, but in many cases witnesses are abroad and in jurisdictions from which they cannot be extradited. Accordingly, a system bearing some degree of flexibility is required, so that it allows co-operation, information, depositions and even documents to be obtained from those individuals.

Ms. Ana Tulia Lamboglia answered that the day she undertook this responsibility, she accepted the position with all it implies. She needed to learn how to behave and how to live her life in a sort of defensive way. The truth is that in Colombia one needs to know that behind a corrupt mayor or governor there is a guerrilla or a paramilitary commander. It's not easy. We are a sound team and we protect each other. She noted that prosecutors in Colombia need to protect each other physically and legally."

Session Four

MAKING ANTI-CORRUPTION ACTIONS WORK – ENLISTING THE PRIVATE SECTOR, TRADE UNIONS, NGOs, AND THE MEDIA

Chair:

Mr. Patrick Moulette, Head of the Anti-Corruption Unit, Directorate for Financial, Fiscal, and Enterprise Affairs, OECD.

Speakers:

Ms. Nicola Ehlermann-Cache, Policy Analyst, Anti-Corruption Division, OECD.

Mr. John Evans, Secretary General, Trade Union Advisory Committee (TUAC) to the OECD.

Mr. Davor Harasic Yaksic, President of Corporación Chile Transparente (Transparency Internacional Chile).

Mr. Moulette introduced this session, underlining that corruption is not only a concern for governments or international organizations. Other actors, like the private sector, trade unions, civil society and the press can play a major role in ensuring integrity and combating this crime.

Ms. Nicola Ehlermann-Cache, Policy Analyst, OECD Anti-Corruption Division, presented the OECD's observations on the important and increasing role of non-government actors in the fight against corruption. Non-government actors include the private sector. However, trade unions, civil society organizations and the media are also relevant stakeholders.

Globalisation and competitive challenges have resulted in the adoption and application of new rules and regulations in international business transactions. A number of legally binding as well as non-binding instruments have been developed at the regional and international levels to improve trade and investment and promote integrity. Implementation and enforcement of the recently developed international anti-corruption standards have a major impact on investment, international ratings as well as on loan policies.

A clear delimitation of the roles and functions of all stakeholders is key for a well-functioning, competitive economic environment.

Overall, *governments* are responsible for adapting the regulatory environment and ensuring that their institutional framework is adequate to grant enforcement of their commitments. The role of the private sector is to generate wealth in the light of the laws and regulations they must abide by, and without overlooking the more general social and economic environment. Trade unions, non-governmental organisations and the media are connected, informed, reasonably independent and can act as pressure groups to ensure compliance with regulations. Finally, MDBs provide financial assistance and can help the various stakeholders to develop and engage in appropriate, complementary and mutually supportive actions.

Core government actions include:

- Adoption of a clear and reliable legal and regulatory framework;
- Establishment of a strong and motivated civil service;
- Set-up of sound budgeting and financial management systems;
- Endowing the country with the capacity to detect, investigate, prosecute and sanction fraud and corruption when it occurs⁴.
- Raising awareness among all stakeholders about the home country's laws and regulations as well as about the resulting obligations.⁵

Businesses, their associations and industry federations are increasingly making valuable contributions to promoting best practices. The same can be said about civil society groups and trade unions. These actors play a fundamental role in developing and enforcing preventive, self-regulatory measures to eliminate malpractices and fraud. Over the last decade, a wide range of self-regulatory tools have been elaborated.

Business tools to raise awareness and prevent malpractice include⁶:

- Codes of conduct which mirror a company's values. In relation to anti-corruption, codes will generally reflect the company's commitment to obey the laws and regulations, prohibit the giving or receiving of bribes, restrict and guide the giving or receiving of gifts, restrict donations to political parties; etc.
- Compliance programmes ensuring that the values of the company are strongly supported by top management, that staff is trained and educated, that guidance exists for situations requiring judgment, that effective information and reporting within and by the company is granted etc.
- Integrity pacts.

Civil society, non-governmental organisations and the media can monitor the operation of the public and private sectors and unveil and report malpractices and offences.

In furtherance of mutually supportive actions, the OECD and its Member governments engage with the private sector, trade unions, and civil society to hold:

- 1) General consultations with representatives from the various groups;

⁴ While this can be achieved through various approaches, those who have established a central unit in charge of fighting corruption and in particular of enforcing anti-corruption laws, attest more successful results.

⁵ To that effect, the government can organize general or specific public-private sessions with companies, company federations, trade unions and civil society organizations and the media; produce documentation on the legal framework and its application; or issue guidelines to clarify specific provisions of the national law and its enforcement. Dangers associated with corruption and bribery acts may also be outlined. This list of tools is not comprehensive; further means can be developed and some countries rely on a combination of actions to raise awareness.

⁶ All the measures which regulate the behavior within a company can also guide relations with clients, suppliers, associates and public administrations.

- 2) Specific meetings to address particular themes that call for attention;
- 3) Meetings with representatives of the various stakeholders from non-member countries.
- 4) Non-government representatives are also invited to give their views in the course of the on-site visits organized in the framework of the *Phase 2* country evaluations by the Working Group on Bribery. These meetings are to inquire on the level of awareness and the prevention measures taken.

The OECD monitoring process shows that in many countries large companies have in particular developed integrity systems. They have been encouraged to do so in light of the prosecutions that have taken place in the United States and in other countries Party to the Convention. Some other motivations may be mentioned. For example, in some countries, if a company lacks a compliance system it is excluded from public bidding, a restriction which is a strong enough motivation to adopt integrity measures.

All players are important in the fight against corruption and they all need to enhance governance on a joint basis. Efforts from both parties must be sincere. The premise here is that the public sector makes proof of exemplary behavior that can encourage the private sector to follow suit. Accordingly, growth will be achieved that will be shared by all players.

Mr. John Evans, Secretary General, Trade Union Advisory Committee (TUAC) to the OECD noted that his organisation acts as an interface for trade unions with the OECD. TUAC is an international trade union organisation which has consultative status with the OECD and its various committees.

Mr. Evans referred to the over 58 national trade union centres in the OECD countries which are TUAC's affiliates. He further noted that the TUAC also works with trade unions from non-member countries, such as *Central Unitaria de Trabajadores* (Central Workers Trade Union) in Chile.

The purpose of his presentation was to highlight both the bright side and the downside of being an active player in the daily task of fighting corruption. He first stressed that there is a strong correlation between the most corrupt countries on the Corruption Perception Index by Transparency International and the countries that show the most serious violations of union rights, particularly freedom of association. Mr. Evans underlined that as a general rule, where labour rights are low, corruption is high -- except for Singapore, where corruption is low but labor issues important.

Second, Mr. Evans underlined that entire industries may be corrupt. Corruption has spread though investments by multinational enterprises, especially in non-OECD member countries.

Third, Mr. Evans stressed the importance of trade union regulations to provide protection to employees who unveil corruption in a company. The term "whistleblower" should be given a positive meaning as it relates to a person who reports or informs on a wrongdoer within an organization. Unions need to try to protect these persons. Fostering a climate where whistleblowers feel protected is critical. Some OECD member countries count on a special legislation, like the United Kingdom's *Public Interest Disclosure Act* that protects whistleblowers.

Fourth, Mr. Evans mentioned the need to scrutinize any privatization process. Evidence of wrongdoing related to corruption and conflict of interests is on the rise in this increasingly complex world. He noted concerns over transparency of some privatization contracts. In particular, when employees' livelihood and their future life depend on how these industries are transformed.

Mr. Evans illustrated his concerns by an example. The Philippines is the second highest risk country in terms of murders of reporters – in many cases because they report about alleged corruption. Trade unions in this country engaged in a four pillar initiative:

1. Zero-tolerance regarding trade union members: any member of the union who has been involved in bribery or corruption is expelled.
2. Centralizing whistleblower risks. This means that the person who wants to report a wrongdoer can approach the union and this entity takes the responsibility of publicly disclosing this information.
3. Cutting bribery opportunities. In the public sector, this may involve negotiating assignment of more staff to public agencies to cut waiting lines and reduce the risks of bribes paid to ensure promptness in service.
4. Campaigning to improve anti-corruption legislation in the Philippines.

Finally, Mr. Evans talked about some practical ideas and suggestions for action by trade unions:

Trade Unions less familiar with anti-corruption issues may contact the trade union anti-corruption network (UNICOR).⁷ UNICOR's overall mission is to mobilise workers to share information and coordinate action to combat international bribery. UNICOR in particular provides support to its members during the OECD on-site visits organised in the course of the OECD *Phase 2* country reviews.⁸

The OECD will engage in the review of the anti-bribery recommendations adopted almost 10 years ago. The Revised Recommendations deal with whistle-blowing in an insufficient manner. Consequently, trade unions will call for the revision of the Revised Recommendations and the inclusion of provisions which grant adequate protection to employees. It may also be envisaged that trade unions call for the amendment of the OECD Anti-Bribery Convention to include a reference about the protection of whistleblowers.

In closing, Mr. Evans referred to a recent joint statement by TUAC and the Business and Industry Advisory Committee to the OECD (BIAC) to the OECD Investment Committee on encouraging the development of concrete information about best practices, resources and useful points of contact for companies in relation to doing business in areas suffering from a lack of good public governance. The joint TUAC-BIAC statement suggests that such development rely on the Anti-Corruption Portal of the Danish Development Co-operation Agency (DANIDA), which is designed to provide advisory services to small and medium-size companies. This portal should be a

⁷ UNICOR was set up in 2001 by three international trade union bodies the Trade Union Advisory Committee to the OECD (TUAC), Public Services International (PSI) and the International Confederation of Free Trade Unions (now the ITUC). See www.againstcorruption.org

⁸ See Mr. Moulette's intervention during session 1

starting point to be developed further, possibly by the OECD, to include additional corporate responsibility issues, in particular those outlined in the OECD Guidelines for Multinational Enterprises⁹ (see presentation by John Evans).

Mr. Davor Harasic Yaksic, President of *Corporación Chile Transparente* (Transparency Internacional Chile) focused his intervention on the issues raised by Ms. Ehlermann during her speech when she stressed that the key is to make anti-corruption measures work. He underlined that to this goal, all actors need to be committed to fighting corruption, including civil society and the private sector.

Mr. Yaksic underlined that corruption and its consequences are addressed in economic, sociological, political and legal terms. A variety of definitions have been developed to support those analyses and the works undertaken have led to revise the traditional definition of corruption, which he qualified as rather “manichaeian”. Corruption can not be reduced to a temptation of a “good public official by an “evil” private entity that wishes to maximize its profit at no matter what cost, and results in the former’s gain of some things he should not have received. He underlined that corruption is a far more complex phenomenon.

Mr. Yaksic furthermore noted that a country’s appreciation of the damaging consequences of corruption unfortunately depend on historical and social factors. He choose to illustrate his point by some concrete examples of acts of corruption by senior public officials and the general appreciation of these acts in relation to the abuse of public power.

Conventions against corruption are extremely important tools which governments need to adequately address. The difficulty of non-government actors is to internalize the need to be involved in a more transparent society and to distance itself from the public-private “Manichaeian” divide. Of course, there is public-private corruption but also public corruption involving no private actor as well as private corruption. Consequently, beyond the anti-corruption regulations set forth by international Conventions and without disregarding their contribution, what needs to be done in a society, through civil society groups, is spurring transparency in all communication circuits and in this sense the private sector needs to stop thinking of international organizations and civil societies as its enemy.

Chile recently engaged in a new and interesting experience. A private enterprise which joined the Chilean chapter of TI has been invited to consider enhancing transparency. It is essential to place emphasis on public good governance. However, these efforts need to be complemented by private sector actions to enhance integrity, proper accounting, corporate governance and transparency to prevent corruption. Indeed, fighting corruption involves all players because they need to comply with the legal and regulatory requirements but also because they appreciate the benefits of public and corporate governance.

⁹ The Guidelines (www.oecd.org/daf/investment/guidelines) are recommendations addressed by governments to multinational enterprises operating in or from adhering countries. They provide voluntary principles and standards for responsible business conduct in a variety of areas including employment and industrial relations, human rights, environment, information disclosure, combating bribery, consumer interests, science and technology, competition, and taxation.

Questions by the audience to the panel:

- **The Chilean Labor Code provides for sanctions of anti-union activities. Nonetheless, multinational corporations do anything to get rid of trade union leaders. For instance they threaten them, force or buy them out. How should this be qualified - a labor offense, lack of ethics or a lack of internalization of corporate governance values?**
- **Which are the most successful private sector anti-bribery strategies in OECD countries?**
- **How can the media be engaged to objectively and effectively help fight corruption? How can the media commit to join forces with the authorities? Experience shows that in a country where there is virtually no research in journalism, reporters may affect investigations through hasty judgments and false expectations.**
- **Which mechanisms have been adopted to prevent bribery of staff?**

Mr. John Evans stressed that union leaders must be elected in a transparent manner by union members. Bribery destroys effectiveness and representation of unions. Therefore, unions need to be fully alert and apply measures to sweep the problem away. However, it is essential to reflect on the most appropriate way to achieve best practices. For instance, in a country like China, where the anti-corruption efforts have grown, the problems are not solved when an official is executed on corruption grounds. Such a practice just allows to get rid of a particular situation.

The question on the role of reporters is very important. In the Philippines, reporters have been murdered because they unveiled corruption cases. This is an extreme example. The most powerful tool available is transparency and this takes us back to the whistleblower protection question.

Mr. Davor Harasic. The significance of norms that set standards should not be disregarded. These standards are critical and to some extent, the Chilean Criminal Code complies with requirements of the earlier conventions. The adoption by Congress of the UNCAC raises new challenges. The best feature of the standard set by UNCAC is conduct internalization.

Concerning the media, *Chile Transparente* is trying to follow the example of “Poder Ciudadano” – the Argentine chapter of Transparency International. Poder Ciudadano had an amazing achievement in Buenos Aires, where it managed to unite for a campaign two newspapers: La Nación and Clarín. *Chile Transparente* is trying to do the same with three major local media players: *El Mercurio*, *La Tercera* and *Diario Financiero*. *Chile Transparente* wants them to become contributing members of Transparency International’s Chilean chapter and subscribe a commitment towards transparency. Chile Transparente has also worked towards involving radio stations. To date, major radio players have joined this initiative: *Bío Bío*, *Agricultura*, *Duna* and *Beethoven*, which means that they may be suspended as contributing members if they incur in any

action contrary to the interests of transparency and anti-corruption. This formula has been successfully devised, but it should not be forgotten that deficiencies in investigative journalism is a global problem.

As to transparency in institutions, there are no fixed formulas. *Chile Transparente* posts all its information on its website, including personal asset statements of each of its Members. The only information that is not posted are allegations of corruption; such declarations should follow a pre-established procedure which is duly described on its website.

Mrs. Nicola Ehlermann-Cache informed that the OECD does not build indices or rate countries' anti-bribery actions. Consequently, the OECD is not in a position to assess the most successful experiences regarding preventive actions by companies. Overall, it can be noted that many countries consult larger companies relatively easily whereas countries generally have more difficulties to reach out to small and medium size companies. Yet differences may be observed. Countries rely on different approaches which they develop according to their own traditions. Certain countries have given serious thought to how to involve all stakeholders in the fight against corruption and in particular the private sector. The challenge is to determine the adequate relation.

Mr. Patrick Moulette noted that the OECD does not grant loans but is engaged in the analysis of governments' policies in various areas, including anti-corruption. The bribing of an OECD official would, at best, result in a positive assessment report of a country. However, as a Committee oversees officials' work and since members are involved in the drafting of reports he doubted that bribes would have any impact on a country's assessment. Being a non-financial institution, it is very hard to imagine why staff members would be bribed. Internal integrity standards exist and efforts are undertaken to further enhance internal integrity standards.

CONCLUSIONS:

Professor Mark Pieth concluded that the meeting had brought to light problems or difficulties in relation to the local, the regional and the global levels.

At the local level, prosecutors are confronted, with:

1. The difficult task of collecting evidence for a crime which by nature is secret and which often is transnational and multi-jurisdictional with elements of the bribery offence committed abroad ;¹⁰
2. Difficulties to carrying investigations and prosecutions through when political influence is strong;
3. High personal risks when seeking to fight bribery in countries where this is matter is not a priority.

In addition, some elements of particular concern to Chile pertain to:

1. Financial flows and financial intermediation.
2. Absence of corporate liability.
3. The need of a holistic approach in the fight against bribery and corruption as indeed these phenomena are just one dimension of a broader picture that also needs to include economic crime, organized crime, etc., at local the level.

Law enforcement or impunity due in particular to a lack of extradition is probably the main issue *in Latin America*. He recalled that this observation had been at the origin of the adoption of the OAS Extradition Treaty of 1996.

At the global level, four topics were raised:

1. The role of the different institutions involved in the fight against corruption and their mutual relations including those of the OECD with the United Nations and the multilateral development banks.
2. Some speakers underlined the need to increase technical assistance to help develop the effectiveness of the judiciary.
3. Mutual legal assistance. Cross-jurisdictional co-operation and information sharing needs to be enhanced to ensure adequate investigation and prosecution of bribery and corruption offences.
4. Monitoring and evaluating countries implementation and enforcement of their anti-bribery commitments are essential to effectively fight against corruption. No monitoring means no change. In the Americas some progress has been made thanks notably to OECD and OAS monitoring. Regretfully, a number of countries and regions world-wide are reluctant to undergo evaluations.

In closing, **Ambassador Luis Winter Iguait** summarized the topics covered and suggested some avenues for follow-up.

A first session on standards revealed a tremendously rich horizon. The OECD Anti-Bribery Convention is specifically intended to prevent the supply of bribes to foreign public officials in transnational transactions. The IACAC covers bribery supply and

¹⁰ See also the issue of mutual legal assistance raised at the global level.

demand, detection, prevention and punishment with a primary focus on good public governance. The UNCAC significantly widened the scope of former two conventions by covering public and private sector corruption and asset recovery. Ambassador Luis Winter Iguait suggested that a comparative study of the three conventions should be conducted. This, he thought, would help avoid unnecessary duplications and probably facilitate UNCAC's implementation.

The second session focused on the differences in legal systems and the resulting divergences in prevention and detection. "Functional equivalence" between the different systems is of utmost importance to grant efficiency. Peer reviews play a fundamental role in achieving "functional equivalence". Mutual reviews by governments is a new experience in the OAS context. It would be interesting to examine the 28 first round country reports under the MESICIC in view of their legislative consistency.

In the third session, prosecutors from different countries presented their experiences in detecting, investigating and prosecuting corruption crimes. The discussion highlighted progress made in understanding that corruption is a worldwide problem involving everyone. However, it also made clear that prosecutors still face important difficulties in fighting and sanctioning corruption. Consequently, denouncing acts of corruption is not sufficient; additional resources, including technical and human resources, need to be made available.

Finally, the discussion on the involvement of non-government actors in the fight against corruption brought to light that the role of civil society needs to be strengthened in Latin America to impact on countries' anti-corruption legislations and programmes.

Ambassador Winter suggested that further attention should be given to training and exchange of experiences as it allows different parts of society to apprehend the manner in which corruption acts and to determine which instruments are necessary to prevent and fight the phenomenon. Training must be comprehensive and include very diverse areas. It must be conducted under the aegis of prosecutor's offices, judicial entities and civil society organizations. Civil society also requires training in order to react to corruption; in this sense, the words by Mr. Harasic are of special significance. One of the ways to work and educate civil society is by committing it to embrace anti-corruption principles. It is also necessary to train public officials through inter-governmental action. Training is also necessary to implement the various conventions through codes of conduct that have a high educational value. They are to establish minimum standards both for the private and public sectors.

As stated by Professor Pieth, there are many areas of co-operation besides extradition. For example, we can mention co-operation regarding investigation, as well as new elements to detect and share the information, among others.

Ambassador Winter concluded that fighting corruption calls for a titanic effort which, in our globalized world, must take a collective dimension.

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