OECD SYMPOSIUM ON CORRUPTION AND GOOD GOVERNANCE

ORGANISATION FOR ECONOMIC CO-OPERATION AND DEVELOPMENT

Paris 1996

41741

Document complet disponible sur OLIS dans son format d'origine
Complete document available on OLIS in its original format
# Table of Contents

## Introduction (English)

5

## Introduction (française)

7

### I. Opening Session

Mr Jean-Claude Paye, Secretary General OECD ................................................................. 9

Mr Oscar Arias Sanchez, Nobel Peace Prize Recipient .................................................... 13

### II. Session 1. The Phenomenon of Corruption and Challenge of Good Governance

Professor Dionysis Spinellis .......................................................................................... 19

Mr Bertrand de Speville ............................................................................................... 35

### III. Session 2. National and International Solutions to Corruption

Professor Robert Klitgaard ............................................................................................ 37

Dr. Peter Eigen ............................................................................................................ 55

### IV. Session 3. Working Group A. Criminalisation of Bribery and Corruption

Mr P.M. Raphael ........................................................................................................... 61

### V. Session 3. Working Group B. Political, Economic and Administrative Reforms to Promote Good Governance

Mr Jon Wilmshurst ....................................................................................................... 69

### VI. Session 3. Working Group C. Experiences of Corporate Practices

Mr Thomas Pletscher ................................................................................................... 75
VII. Session 4. Concluding Session

Panel Discussants

Mr Jermyn Brooks ...................................................................................................................79
Mr Theo Frank ........................................................................................................................82
Mr Francois Falletti .................................................................................................................84
Mr Edmundo Vargas Carreño ..................................................................................................87
Ambassador David Aaron ........................................................................................................89

Summary of Proceedings ......................................................................................................93

Resumé des débats ..................................................................................................................97

Annex

Recommendation of the Council on Bribery in International Business Transactions ............101

Annexe

Recommandation du Conseil sur la corruption dans le cadre de transactions commerciales internationales ..........................................................104
INTRODUCTION

The governments of OECD countries share the conviction that bribery and corruption undermine democratic institutions, distort international trade, investment relations and development co-operation. Accordingly, they sponsored an International Symposium on Corruption and Good Governance on 13-14 March 1995 in Paris to highlight the importance of international co-operation in this area.

The OECD Symposium brought together high level policy makers and experts on the matters of corruption and good governance, leading academic and business executives, as well as international governmental and non-governmental organisations actively engaged in fighting corruption.

In May 1994, the OECD governments agreed to take collective action in the field of bribery in international commercial transactions. OECD countries adopted a Recommendation on Bribery in International Business Transactions which is the first multilateral agreement to combat the bribery of foreign officials. This represents an important breakthrough in a difficult area. While nearly all countries have laws against the bribery of their own officials, most do not provide legal sanctions for the bribery of foreign officials by their nationals or their domestic enterprises. This initiative might act as a catalyst for global action and help companies refuse to engage in such practices in host countries. Firm and joint actions against bribery can also strengthen the multilateral system for trade and investment by ensuring fair competition.

Previously, in December 1993, the OECD’s Development Assistance Committee (DAC) endorsed a set of Orientations on Participatory Development and Good Governance. These Orientations, which also address corruption from the perspective of good governance, reflect the current state of thinking on principles, approaches and areas where action is required and offer guidance for all concerned with assistance and policy dialogue to advance these goals. In considering ways and means to work with developing countries to tackle the problem of corruption, the Orientations address, inter alia, the need to establish or reinforce mechanisms to reduce the opportunities for corrupt practices, to strengthen institutional capacity to implement accountability standards and anti-corruption programmes and the need to support efforts to expose corrupt practices.

The OECD Public Management Committee (PUMA), has since its inception focused on ways to improve the efficiency and effectiveness of public sector management. In particular, the Committee has addressed the issue of probity in public sector operations in its work on financial management, organisational performance and management of the civil service.

The damaging effect of corrupt practices on good governance is well known and applies to all countries. It subverts the governmental decision-making process, distorts development inducing inappropriate expenditures and waste of needed resources and undermines the legitimacy of governments. Whatever the economic and political situation of a country, the impact of corruption can be very serious. Policies of good governance which create a favourable environment for corruption-free implementation of public policy need to be vigorously promoted.

Given the nature and scope of the problem, meeting these goals requires co-operation between governments throughout the world. The OECD Symposium, was designed to increase awareness of the importance of concerted actions, to share experiences of individual countries, and to find ways to strengthen international co-operation in this effort.
The Symposium dealt with the problem of corruption of public officials and its impact on international trade and investment, on good governance and on development co-operation. The first two sessions provided an opportunity to examine the phenomenon of corruption and the challenge of good governance. Participating countries and multilateral organisations exchanged their experiences with finding national and international means for effectively fighting corruption.

Participants met in separate Working Groups focusing on three specific issues:

-- the criminalisation of bribery and corruption,

-- political, economic and administrative reforms to promote good governance,

-- corporate experience with ethical codes of conduct.

Finally, the Symposium included a review of the ideas explored in the plenary and the Working Group sessions and make recommendations to strengthen international co-operation.

From this Symposium, the OECD aspires to continue its work in this area with additional effort from both Member and non-Member states. This includes promoting full implementation of the OECD recommendation, and continuing a strong dialogue with non-Member countries. It also includes facilitating the development of public procurement rules in developing nations as well as corporate codes of conduct internationally.
INTRODUCTION

Les gouvernements des pays de l'OCDE partagent la conviction que la corruption porte préjudice aux institutions démocratiques et perturbe les échanges internationaux, les relations dans le domaine de l'investissement et la coopération en matière de développement. C'est pourquoi ils ont parrainé un Symposium international sur la corruption et la bonne gestion des affaires publiques, organisé les 13 et 14 mars 1994, à Paris, dans le but de souligner l'importance de la coopération internationale dans ce domaine.

Le symposium de l'OCDE a réuni des responsables politiques et des experts de haut niveau dans les domaines de la corruption et de la bonne gestion des affaires publiques, des universitaires et des dirigeants du monde des affaires de premier plan, ainsi que des organisations internationales gouvernementales et non gouvernementales intervenant activement dans la lutte contre la corruption.

En mai 1994, les gouvernements des pays de l'OCDE ont convenu d'agir collectivement dans le domaine de la corruption dans les transactions commerciales internationales. Ces pays ont adopté une Recommandation sur la corruption dans le cadre de transactions commerciales internationales, qui constitue le premier accord multilatéral en vue de lutter contre la corruption des agents publics étrangers. Il s'agit là d'un progrès décisif dans un domaine difficile. Bien que la quasi-totalité des pays possèdent une législation sur la corruption de leurs propres agents, la plupart d'entre eux ne prévoient pas de sanctions juridiques à l'encontre de leurs propres entreprises ou ressortissants coupables de corruption d'agents publics étrangers. Cette initiative devrait servir de catalyseur à une action d'ensemble et aider les sociétés à renoncer à se livrer à de telles pratiques dans les pays hôtes. Des mesures fermes et concertées de lutte contre la corruption peuvent également renforcer le système multilatéral d'échange et d'investissement en garantissant une concurrence loyale.

Antérieurement, en décembre 1993, le Comité d'aide au développement de l'OCDE (CAD) avait adopté un ensemble d'Orientations sur le développement participatif et la bonne gestion des affaires publiques. Ces orientations qui traitent également de la corruption dans la perspective d'une bonne gestion des affaires publiques, témoignent de l'état des réflexions sur les principes, approches et domaines où une action s'impose et fournissent à tous ceux qui s'intéressent à l'assistance et au dialogue politique des indications pour progresser dans la réalisation de ces objectifs. Examinant les méthodes et les moyens de coopérer avec les pays en développement pour faire face au problème de la corruption, les orientations traitent, entre autres, de la nécessité de mettre en place, ou de renforcer, des mécanismes visant à réduire les possibilités de se livrer à des pratiques de corruption, à accroître la capacité institutionnelle de mise en œuvre de normes de responsabilité et de programmes de lutte contre la corruption et à souligner la nécessité de favoriser les efforts de mise à jour des pratiques de corruption.

Le Comité de la gestion publique (PUMA) de l'OCDE s'est concentré depuis ses débuts sur les moyens d'améliorer l'efficience et l'efficacité de la gestion du secteur public. Dans le cadre de ses travaux sur la gestion financière, le fonctionnement opérationnel et la gestion de l'administration, ce Comité a, en particulier, traité de la question de la probité dans les opérations du secteur public.

L'incidence dommageable des pratiques de corruption sur la bonne gestion des affaires publiques est reconnue et concerne tous les pays. Ces pratiques nuisent gravement au processus de prise de décisions du gouvernement, perturbent le développement en engendrant des dépenses inopportunes et une déperdition de ressources indispensables et compromettent la légitimité des autorités. Quelle que soit la situation économique et politique d'un pays, l'impact de la corruption peut être extrêmement grave. Les politiques de
bonne gestion des affaires publiques qui créent un climat favorable à une saine mise en œuvre de l'action
gouvernementale, doivent être absolument encouragées.

Compte tenu de la nature et de la portée du problème, la réalisation de ces objectifs exige une
coopération à l'échelle mondiale entre les gouvernements. Le Symposium de l'OCDE avait pour objectif de
développer la conscience de l'importance d'actions concertées, de permettre un partage des expériences de
ehacun des pays et de trouver des moyens de renforcer la coopération internationale dans ce domaine.

Le Symposium a été consacré au problème de la corruption des agents publics et à son incidence
sur le commerce et les investissements internationaux, la bonne gestion des affaires publiques et la
coopération en matière de développement. Les premières séances ont été l'occasion d'examiner le phénomène
de la corruption et le défi que représente une bonne gestion des affaires publiques. Les pays et les
organisations multilatérales représentés ont fait part de leur expérience en matière de recherche de moyens
nationaux et internationaux pour lutter efficacement contre la corruption.

Les participants se sont ensuite réunis en groupes de travail constitués autour de trois aspects
spécifiques :

-- l'incrimination de la corruption,
-- les réformes politiques, économiques et administratives visant à favoriser une bonne gestion des
affaires publiques,
-- l'expérience des entreprises en matière de code de déontologie.

Enfin, le Symposium s'est achevé par un bilan des idées explorées en séance plénière et au sein des
groupes de travail et la formulation de recommandations visant à renforcer la coopération internationale.

Partant de ce Symposium, l'OCDE qui souhaite poursuivre ses travaux dans ce domaine, espère de
la part des pays Membres et non Membres des efforts supplémentaires visant, notamment, à favoriser la
mise en œuvre complète de la Recommandation de l'OCDE, à poursuivre un dialogue étroit avec les pays
non Membres et à faciliter l’élaboration de règles de passation des marchés publics dans les pays en
développement et de codes de déontologie des entreprises au plan international.
Opening address by Mr. Jean-Claude Paye,
Secretary-General of OECD

I am most happy to welcome to OECD headquarters so many experts from Member countries, and a number of non-Member economies. You are gathered here to exchange ideas and experience, and to review the measures that can be taken to deal more effectively with a particularly insidious and damaging scourge of our times: corruption.

I extend particular greetings to participants from non-Member economies. In responding to our call, they have demonstrated their readiness to join in the fight which OECD is conducting against a global phenomenon, one which accordingly concerns us all without exception.

I wish also to thank the United Kingdom, and in particular the Overseas Development Administration, whose contribution has made this symposium possible. I further thank Japan, Switzerland and the United States for their active support for the endeavour.

Corrupt practices raise serious problems, and tackling them is complicated by their numerous facets: political, economic, social, legal and ethical. Corruption is by no means a recent development, of course. It has been going on for centuries, both nationally and internationally. At every level, concluding business deals and, in particular, securing procurement contracts all too often depends on handing out large sums of money and other favours to people who may be able to influence decisions. The expansion and globalisation of the world economy have given the problem a fresh dimension. The deregulation of financial markets, the virtual elimination of exchange controls, the spread of new information technology and the development of ever more sophisticated systems of payment are making it increasingly complicated to detect and punish corrupt practices.

Independent of the moral condemnation that they should receive, corrupt practices have a devastating effect on public management. They undermine political legitimacy by sapping confidence in government and institutions, and reduce administrative efficiency. They also pose a threat to economic performance.

They hamper the development of international trade by distorting competition, raising transaction costs, compromising the operation of free and open markets, and distorting the allocation of resources at international level. Corruption is a disincentive to investment: investors shun countries where it is endemic. Finally, corrupt practices in connection with development assistance cast discredit on the efforts being made, and provide justification for drastic cuts in aid budgets in donor countries.

Recognising all these dangers, the international community has looked into the problem in a number of bodies, with very varied results. The growing number of corruption cases coming to light in the developed countries has no doubt contributed greatly to recognising the need to combat this phenomenon at an international level. It has become much harder for a country to claim that any foreign initiative to sanction corrupt practices involving its own officials is unacceptable interference. It is in this context that the OECD has been considering the problem. The first outcome of its work, the Recommendation on Bribery in International Business Transactions, adopted in May 1994, was evidence that Member countries rejected these traditional arguments, which led to inaction in the past. The OECD countries thereby resolved to take effective measures to deter, prevent and combat the bribery of foreign public officials through action to be taken at both domestic and international levels.
At the national level, Member countries agreed to examine their criminal, civil and administrative laws and regulations and to take "concrete and meaningful steps". Internationally, each Member country is called upon to consult and co-operate with appropriate authorities in other countries. The OECD itself is requested to establish links with other international organisations and to consult on effective means to combat bribery. It has also to encourage non-Member countries to join in these efforts.

This symposium is being held in response to the last objective of the Recommendation. The aim is particularly to highlight the advantages of concerted action to combat corruption in international business transactions and to see how international co-operation can be made more effective in the future.

Recognising that corruption is a many-faceted problem, we were well aware that by reviewing it solely from the standpoint of international trade we would touch upon only one of its dimensions.

Therefore it seemed appropriate to give the symposium a broader mandate so that other aspects could also be tackled, including the impact of corruption on public management or on development co-operation. The harmful consequences of corruption in these two areas are now beyond question. Conversely, enhancing the quality of public management, to which development co-operation can make a valuable contribution, is a powerful means of deterring corruption. It entails substantial progress both in the recruitment and remuneration of public officials and in transparency and accountability procedures. These questions are at the heart of reforms set in hand by a growing number of countries.

Given that it marks a break with earlier prejudices and demonstrates the shared will and determination of the OECD Member countries, the 1994 Recommendation is an important milestone in strengthening the fight against corruption. Quite clearly it cannot be seen as an end in itself, but as a starting point. Success in the fight underway calls for concerted efforts by the whole international community. That is the challenge that lies before you in this symposium. I am confident that you will tackle it wholeheartedly.
Discours d'ouverture de M. Jean-Claude Paye,
Secrétaire Général de l'OCDE

Je suis heureux d'accueillir au siège de l'OCDE un si grand nombre d'experts venant des pays Membres ainsi que de plusieurs économies non membres. Vous êtes réunis pour échanger vos réflexions et vos expériences, et examiner les moyens d'action à mettre en oeuvre afin de combattre de façon plus efficace un fléau particulièrement insidieux et néfaste de notre époque : la corruption.

Je salue particulièrement les participants en provenance des économies non-Membres qui, en répondant à notre appel, ont manifesté leur volonté de s'associer à la lutte menée par l'OCDE contre un phénomène global, qui nous concerne donc tous, sans exception.

Je tiens aussi à remercier le Royaume-Uni, et notamment "The Overseas Development Administration", dont la contribution a permis l'organisation de ce Symposium. Je remercie également les Etats-Unis, le Japon et la Suisse pour le soutien actif qu'ils ont apporté à ce projet.

Les pratiques de corruption soulèvent de graves problèmes, d'autant plus difficiles à affronter qu'ils se posent sur des plans multiples : politique, économique, social, juridique, et éthique. La corruption n'est évidemment pas une pratique récente ; elle sévit depuis des siècles, tant au niveau national qu'international. A tous les niveaux, la conclusion des transactions et en particulier des marchés publics dépend trop souvent de la distribution d'importantes sommes d'argent ainsi que d'autres faveurs aux personnes susceptibles d'exercer une influence sur les processus de décision. L'expansion et la globalisation de l'économie mondiale ont donné de nouvelles dimensions au problème. La déréglementation des marchés financiers, la quasi-élimination des contrôles des changes, la diffusion des nouvelles technologies de l'information et la mise au point de systèmes de paiement toujours plus sophistiqués rendent de plus en plus complexes la détection et la répression de ces pratiques.

Indépendamment de la condamnation morale qu'elles appellent, les pratiques de corruption ont des effets dévastateurs sur la gestion publique : elles minent la légitimité politique en sapant la confiance dans le gouvernement et les institutions et réduisent l'efficacité administrative. Elles menacent en outre la performance économique.

Elles entravent le développement du commerce international en faussant la concurrence, en majorant le coût des transactions, en compromettant le fonctionnement des marchés libres et ouverts et en faussant l'allocation des ressources au niveau international. La corruption a un effet dissuasif sur l'investissement : les investisseurs se détournent des pays où le problème prend une dimension endémique. Enfin, les pratiques de corruption constatées dans le cadre de l'aide au développement jettent le discrédit sur les efforts déployés et justifient aux yeux des opinions publiques des pays donneurs une réduction drastique des budgets d'aide.

La communauté internationale, prenant conscience de tous ces dangers, s'est préoccupée du problème au sein de diverses instances, avec des résultats très variables. Le nombre grandissant de cas de corruption mis à jour dans les pays développés a sans doute beaucoup contribué à faire admettre la nécessité de combattre ce phénomène au niveau international. Il est devenu beaucoup plus difficile pour un pays de présenter comme une ingénère inacceptable toute initiative étrangère visant à réprimer des actes de corruption mettant en cause ses agents publics. C'est dans ce contexte que l'OCDE a été conduite à se pencher sur le problème. Le premier résultat de ses travaux, la Recommandation sur la corruption dans le cadre des transactions commerciales internationales, adoptée en mai 1994, a témoigné du rejet par les pays...
Membres de cette argumentation traditionnelle, qui conduisait à l’inaction. Les pays de l’OCDE se sont ainsi résolument engagés sur la voie d’une lutte efficace contre la corruption des agents publics étrangers, en convenant d’agir au niveau national et international en vue de dissuader, de prévenir et de combattre la corruption d’agents publics étrangers.

Au niveau national, les pays Membres sont conviés à examiner leurs dispositions législatives et réglementaires dans le domaine pénal, civil et administratif et à prendre des mesures "concrètes et pertinentes". Sur le plan international, chaque pays de l’OCDE est appelé à se concerter et à coopérer avec les autorités compétentes des autres pays. L’OCDE quant à elle est invité à établir des relations avec d’autres organisations internationales et à procéder à des consultations sur les moyens à mettre en œuvre pour lutter efficacement contre la corruption. Elle doit enfin encourager les pays non-membres à se joindre à cette lutte.

L’organisation de ce Symposium s’inscrit dans le cadre de ce dernier objectif de la Recommandation. Il s’agit notamment de mettre en évidence les avantages d’une action concertée pour lutter contre la corruption dans les transactions commerciales internationales et d’examiner comment rendre la coopération internationale plus efficace à l’avenir.

Conscients des nombreuses facettes du problème de la corruption, nous n’ignorions pas qu’en l’examinant exclusivement sous l’angle du commerce international nous ne toucherions qu’à l’une de ses dimensions.

Aussi a-t-il paru opportun de donner à ce Symposium un mandat plus large lui permettant d’aborder d’autres aspects, tels que les incidences de la corruption sur la gestion des affaires publiques ou sur la coopération pour le développement. Les conséquences néfastes de la corruption dans chacun de ces domaines n’est plus à démontrer. À l’inverse, l’amélioration de la qualité de la gestion publique, à laquelle la coopération pour le développement peut utilement contribuer, est un puissant moyen de prévention de la corruption. Elle exige que des progrès importants soient accomplis, sur le plan du recrutement et de la rémunération des agents publics et sur le plan de la transparence et des mécanismes de responsabilité. Ces questions sont au centre des réformes entreprises par un nombre grandissant de pays.

Parce qu’elle marque une rupture avec les préjugés du passé et qu’elle atteste de la volonté et de la détermination communes des pays Membres de l’OCDE, la Recommandation de 1994 constitue une étape importante du renforcement de la lutte contre la corruption. À l’évidence elle ne doit pas être considérée comme une fin en soi mais comme l’amorce d’un processus : le succès de la lutte qui s’engage exige un effort concerté de l’ensemble de la communauté internationale. Tel est bien le défi qui s’offre à vous à l’occasion de ce Symposium. Je ne doute pas que vous saurez le relever.
Friends,

I thank you for inviting me to speak here today. It is a privilege to share my reflections on one of the most urgent issues of our time: the need to rally individuals, communities, and nations to the cause of combating corruption.

Corruption is a malicious abuse of power. It will always flourish in the obscurity of totalitarianism, authoritarianism, and dictatorships -- regimes that limit power to an unaccountable few. By definition, absolutism and dictatorship are bound by fewer ethical exigencies than is democracy. Under totalitarian regimes, corruption is often directly linked to human rights violations. Torturers and murderers are shielded by their membership in security corps. They enjoy an impunity unthinkable in a truly democratic system. In China, cries for democracy are muffled by gunshots and run over by tanks. In Ivory Coast, former President-for-life Houphouet-Boigny built a monumental cathedral amidst a sea of poverty. In Burma, a repressive army deals heroin to finance its illegal government. In Latin America, many dictators justified their governments for years by pointing the finger at corrupt regimes of the recent past. These same dictatorships were often fronts for thieves and embezzlers. And in each of these cases, citizens and journalists were deprived of the legal resources necessary to expose the presumptuousness and corruptness of their government to a competent and credible judicial system.

Corruption is best exposed, and best attacked, in a democracy. Corruption can only be examined and eradicated in an environment of pluralism, tolerance, freedom of expression, and individual security -- an environment that only democracy can guarantee.

This is not to say, however, that democracy is immune to corruption. Let us not be so ingenuous as to believe that corruption only pervades organisations that operate outside the law, such as those that sell drugs, arms, and even children. Nor is corruption limited to the arena of international espionage. It is undeniable that such criminal activities often invite the talons of corruption. But these talons have also penetrated the power structures of governments from both the developed and developing worlds, from Europe to Latin America.

Large private organisations have also taken advantage of a respectability gained from the formal legality of their activities. They violate the public trust by relying on bribery as a standard and accepted business strategy. It is a strategy that wins them an unfair financial advantage -- one that they could not have gained through fair and free competition.

We must also remember the near-constant diversion of public funds to the private bank accounts and estates of government and military officials -- an all-too-common phenomenon in my own Latin America. Also common is the misappropriation of foreign aid and donations meant for development and the alleviation of suffering provoked by war or nature. At least a portion of these funds is often dedicated to the financial enrichment of corrupt officials.

One of the saddest faces of corruption appears in the poorest countries, where misery and socioeconomic inequality abound. And yet, the corruption of public office continues to thrive. In these nations, the bribery of public officials is also a theft from the poor. The immediate effects of corruption include not only the further impoverishment of the people, but also the weakening -- indeed, the corruption -- of democratic institutions. When Latin America was ruled predominantly by dictators, the soldiers of
democracy aroused public resistance by arguing against corruption prevalent in the autocratic regimes of the time. There is a long list of traditional Latin American dictators. From Peron to Batista, Somoza to Trujillo, it is a list that includes many men whose fall from power was due in large part to the public's fury over the corruptness of their regimes.

On occasion, the Latin American people have been so disenchanted with the prevalence of corruption in democratic regimes, that they have welcomed a new dictator. We must remember that many of these Latin American dictators were installed as a result of palace coups or military rebellions hypocritically claiming the corruption of democratic regimes. We must also remember the extent of their betrayal. We must learn the lessons of politics and the past. A corrupt dictator sullies only one name. A corrupt democracy, on the other hand, places the people in disrepute, implying that they are unfit to rule.

The perpetrators of corruption in developing nations are not always citizens of the Third World. The past twenty years provide several examples of industrialised countries interfering with the political processes of the Third World by supporting, maintaining, and even installing corrupt leaders. Many developed nations have followed a double standard in their foreign policy, promoting democracy at home and autocracy abroad. This double standard is also manifested in the tendency of Western nations to ignore the anti-bribery laws of developing countries. In some cases, they have even allowed their corporations to make the payment of bribes tax-deductible in order to boost their foreign sales. Such actions blatantly disregard the needs of new and fragile democracies, to prove the value of democracy to people who have lived for years under totalitarianism.

A nation emerging from repression may be unaware of the extent of corruption in past regimes that did not permit investigation and public information. At the same time, a nation experiencing the novelty of democracy may be struck by the scandals exposed by a free press. Unfortunately, the lack of transparency in antidemocratic regimes has given citizens the mistaken impression that democracy is fundamentally vulnerable to corruption. Democratic leaders are faced with the responsibility of addressing, and correcting, this misperception. Democracy must be characterised by total transparency, and by total dedication to transparency. The most effective guardians of transparency will be private citizens who organize themselves for this purpose. Their associations must raise awareness and argue for transparency, both within and across borders. The cynicism of powerful financial organisations has globalised corruption as an accepted tool of international business. The fight against corruption must be globalised as well.

The corruption we witness today is a consequence of the growing gap between the ethical demands of democracy, and a democracy's actual ability to ensure the scrutiny and evaluation of those exercising power. In other words, democracies cannot always do what they should do. Their limitations may be defined in part by economy and geography. But a democracy's greatest limitation -- and its greatest hope -- is its citizens. If the people do not act to preserve their democracy, if they lack civic virtue and commitment to their government, then democracy will certainly fall prey to the vulture of corruption.

Today, we Latin Americans find great satisfaction in the success of our democracy. We are gratified to hear of new and successful democracies in Europe, Asia, and Africa. The majority of nations maintain their commitment to repudiate any attempts to depose a constitutionally legitimate government. Gradually, we are solidifying our internal and external peace. Legitimate governments are now able to initiate the institutional reforms necessary for the modernisation of our societies, and to stimulate human development.

Unfortunately, the continued scandals of corruption are discouraging our people. Expectations of popular uprisings or coups d'état have been reborn in some countries. Political parties, formerly considered
the strongholds of the democratic system, are falling in disgrace. They are abandoned by the citizens who are distancing themselves from political decision-making, and as they are abandoned, democracy runs the risk of becoming a mere formality -- ambivalent and impotent.

It is the right and the responsibility of all citizens to actively join the fight against corruption. We must promote legislative and administrative measures that will counter bribery, extortion, and illegal commerce. But we must also realize that our work will not bear fruit until and unless all sectors of our societies resist the temptations of corruption.

Modern technological culture places an inordinate value on consumption and the possession of goods. More and more, personal success and prestige are measured by material wealth, rather than by an individual's contributions to society. Our civilisation suffers an ethical deficiency that can only be remedied through education. We must awaken the spirit of civic duty in all our people, especially our young people. In classrooms and board rooms, we must teach the responsibilities of citizenship and cultivate the dedication to be socially useful. Material wealth must be a value subsidiary to the wealth of citizenship. Social capital must overcome financial capital, for a culture that is unequivocally dedicated only to the accumulation of material wealth is fertile ground for the sinister weed of corruption.

Around the world, leaders of great courage are emerging to provide the vision and dedication necessary to channel public demands into organised action. And from this hall in Paris, the world's cradle of philosophy and politics, we hear voices from the east calling out for open, accountable government.

We must lend both our praise and our active support to those who struggle for open and honest government. Often, the leaders of anti-corruption movements face powerful and established elites. They may seem powerless Davids against gargantuan Goliaths. But, as shown by recent events in Latin America, David's spirit and will continues to triumph over Goliath's intimidating might.

When citizens call for a more accountable and decent government, they are expressing their anger about corruption -- corruption that humiliates the poor by forcing them to bribe minor officials to do their job; corruption that bankrupts the honest trader; corruption that empowers the partnership of unscrupulous captains of commerce and dishonest politicians; corruption that spreads like a cancer to infest all that is decent in society.

There are those who despair of arresting the cancer of corruption. But I refuse to join their despondence. Today, as we speak of the globalisation of corruption, we must also speak of the global tidal wave of public demands for good government. National leaders now accept that corruption must be discussed on the domestic and international stages. With the end of the Cold War aid flows are more closely watched and humanitarian assistance is now meant to help people, rather than to buy friends in the Third World.

But our most important weapon in the war against corruption will be the growing number of democracies and, consequently, free presses around the world. Without the freedom to ask questions, or to effect change, people are not empowered -- they are, instead, caught in a system of superficial democracy. One of the most important freedoms in a democracy is the freedom of the press. When the voice of one man or woman is suppressed, all voices are in danger of being silenced. When even the smallest part of truth is hidden, a great lie may be born. Every right of citizenship, though guaranteed by law, can be violated by incompetent or corrupt leaders. But the protection and restitution of rights is much more likely where there is a free press to denounce such leaders, and open a debate on their competence. Freedom of the press is the
"eternal vigilance" of which Thomas Jefferson spoke -- the endless duty to guard our government against corruption.

The OECD nations, with their strong democratic traditions and experienced media, should be at the forefront of the fight against corruption. You must set an example for the world by attacking corruption in your own nations. I challenge you to establish or strengthen penalties for your companies that bribe abroad and for government officials who siphon off public funds. I challenge you to combat the root causes of corruption -- poverty and ignorance -- by designing programs that will teach people around the world the disastrous impact of corruption.

The 1980s was a decade of international transition. Authoritarianism crumbled in dozens of countries, while citizens moved to establish open, accountable government. In many of these nations, democracy has only a fragile hold. The 1990s, then, must be a decade of consolidating the gains and building the institutions that will guarantee these political advances. I am confident that with time, dedication, and purity of spirit, we will, together, craft a world with more decency, more openness, and more humanity.

In seventeenth-century Mexico, one of that country's greatest poets, Sor Juan Inés de la Cruz, asked:

A cuál es má de culpar
aunque cualquiera ma haga:
la que peca por la paga
o el que paga por pecar?

Whose is the greater blame
in a shared evil?
She who sins for pay,
or he who pays for sin?

The poet means to expose the hypocrisy of men who scorned the moral character of the women with whom they sinned. I believe her words ring true even today, in a world where sinners often retreat into havens of wealth and power. Corruption requires two parties -- the corrupter and the corrupted. When industrialised leaders condone bribery in other nations, while condemning bribery at home, they are guilty not only of corruption, but of the application of a double standard for the developed and developing worlds. The existence of this double standard is dangerous to all parties involved -- to the rich nations who reserve ethics for the domestic stage, and to the poorer nations whose institutions are subject to a process of corrosion through corruption.

The OECD has taken important steps to attack this double standard of corruption. I applaud these actions. But we must still do more. We must fight corruption by removing the incentive for corruption. We must fight corruption by educating our children against this abuse of power. We must fight corruption by becoming champions of civic virtue, that quality of democratic citizenship that seems to have been lost with the passing of years. As we approach this new century, we must rededicate ourselves to our societies and governments, to maintain the good and root out the evil.

In the mind of any student of politics, Paris evokes images of the age of Enlightenment -- of great philosophical debates about the merits of democracy, the constitution of liberty, and the obligations of citizenry. Let us see the dawn of a new enlightenment. Let us work for a renaissance of the ideas that gave
birth to our democracies and shaped our governments, for our futures will only be saved by the sustained commitment to these same ideas. My friends, if we can rediscover our passion for liberty, truth, and justice, we will realize our dreams and surpass our goals. The hour has arrived to live up to our potential and shun the temptations of corruption. Let us, then, be true to our history and prepare for the future.

Thank you very much.
Session One

THE PHENOMENON OF CORRUPTION AND THE CHALLENGE OF GOOD GOVERNANCE

Professor Dr. Dionysios Spinellis
Panteion University, Athens

Scope of the problem

1.1 Introduction

The OECD has done excellent work so far in studying corruption in international business transactions, and in discussing strategies to combat this plague. Corruption, however, is a much wider, multi-dimensional and complicated phenomenon.

This Symposium first addresses the general problem, in order to isolate and better study the specific problem of corruption in international business transactions in its real dimensions and context. Therefore, in this paper, I will try to present the subject of corruption from a general point of view. I will first try to give a working definition of corruption, then describe and discuss its main types and categories, its perpetrators and its main causes. Finally I will refer briefly to its main effects.

1.2 The concept of corruption

(a) A very broad definition of corruption is the degeneration of the principles on which a political system is founded. Since the democratic system of government is the current aspiration of most of the nations of the world, the above definition should be applied inasmuch as it refers to the degeneration or violation of the basic principles of that system. Although it has been maintained that corruption could at times create de facto policies less objectionable than their "legitimate" alternatives, in this report I consider corruption as an unhealthy process in comparison to a relatively well functioning democratic system.

The above definition includes a great variety of forms of behaviour, most of which are serious criminal offences. Not only are economic offences, such as bribery, embezzlement of public money, abuse of insider information, etc. covered by this definition, but also high treason, violation of the constitution, political assassination, kidnapping, disappearance of political opponents, torture, abuse of power, illegal wiretapping, political espionage and unlawful arrests. To the above types of behaviour, violations of duties by politicians in power or civil servants may also be added. These do not constitute criminal offences, but have as a possible consequence only the political responsibility of the former or a disciplinary sanction for the latter. This concept of corruption would also include acts of private persons, such as active bribery or aiding and abetting high officials in committing the above crimes, receiving the remuneration of them, etc.

Finally, types of behaviour which are routine in some democratic countries, but not in conformity with the rules of a fair democratic system, should also be taken into consideration. These types of behaviour include small favours done by politicians within their area of competence, e.g. expediting the delivery of a work permit, the transfer of a civil servant, the finding of a job, etc., in the expectation of political support in the next elections.

In my opinion, it is worth considering this widest notion of corruption, because all these offences, violations or other types of behaviour may be based on the same attitudes or mentality of high officials, the
only possible differences among them being quantitative and not qualitative. More specifically, in all cases the high officials do not regard themselves as members of a democratic society ruled by law and as servants of the citizens, but as big or small lords holding positions which they may use as if they were their own property.

(b) Corruption has also been defined, more narrowly, as the abuse of public roles and resources for private benefit or the misuse of office for private ends. In these definitions, violation of duty and private benefit are stressed, which narrows the scope of corruption. The private benefit may be material or immaterial and therefore could also include the political advantage drawn by political espionage, assassinations or wire tapping. These definitions of corruption cover not only bribery but also offences such as theft and embezzlement of public money, intentional loss of or damage to public property or interests (managed by the official) or illegal use of public assets, equipment or manpower and every other dishonest method of diverting public resources that criminal ingenuity can devise.

(c) According to an even narrower definition, corruption is a form of social secret exchange by which those holding power (political or administrative) cash in on or profit, in some form or other, from the power or influence they exercise by virtue of their position or their functions. This definition focuses on exchanges between high officials and third parties, which are illegal and/or immoral. Attention is focused mainly on bribery, extortion and related forms of behaviour or agreements.

Each of these definitions and the corresponding delineation of the scope of observation has its merits. I consider the types of conduct covered by each of them as included in three homocentric circles: corruption in a narrow sense, (definition under (c)), in a wider sense (under b) and in the widest sense (under a). Although this Symposium may focus on some problems which are specified in the narrow sense, the general perception is that it actually deals with the widest of the above definitions. And, in this paper I am referring to corruption in that widest sense.

2. Phenomenology

2.1 The different forms of corruption

The most important cases of corruption are criminalised forms of behaviour, i.e. those covered under penal laws. Common experience identifies a number of forms of behaviour as being almost universally recognised as criminal offences. Examples of such offences were given above in the framework of the definitions of corruption.

Apart from these, however, there exist some other types of behaviour which may constitute forms of corruption, such as:

(a) Conflicts of interest between official duty and private self-interest. In the legislation of various countries such situations are criminalised or simply prohibited by law, their selection being very culture-bound.

(b) Violation of disclosure statutes existing in some jurisdictions, which require the comprehensive disclosure of all of a person's assets, etc. upon entering a government position, a periodic summary and/or the disclosure of certain reportable events.
(c) A very important potential form of corruption relates to the financial support of political activities. The expenditure of huge amounts of money to finance election campaigns and political parties or candidates by calculating enterprises, including multinational corporations and special interest groups, cannot all be motivated by ideology or the charisma of a political leader. It is a reality of life that significant financial or personal advantages are expected by major political contributors. In this way, serious cases of bribery can be covered under the veil of such contributions.

(d) Apart from and beyond these types of behaviour, there are other actions which may be considered as "corruption" according to the professional ethic of high officials, such as personal contacts with private persons, when an official has to decide on a matter concerning their interests.

(e) There are also types of behaviour which are not in conformity with the ideal of integrity of administration and good governance, although it would be difficult to say that they are affected by private economic or other material interests. These include corruption based on kinship, region, and especially political party affiliation, around which patron-client networks, nepotism and cronyism are built and maintained. They consist of allocating favours, ranging from intervening with the authorities in order to expedite a (sometimes perfectly legal) request of the client; securing him other benefits by not totally legal methods, e.g. finding him a job by-passing the legal procedures and the principles of equality; and to granting lucrative business concessions, appointments to key positions or preference in selling of state-owned business enterprises in the course of privatisation.

(f) Finally, there are many situations which cannot easily be classified as legal or illegal, moral or immoral.

In my opinion, the judgement of whether a particular case should be considered as corruption or not depends on the response to or treatment of the corresponding type of behaviour contemplated each time.

If penal provisions punishing certain forms of behaviour are envisaged, lawmakers should follow a prudent course in order to avoid the over-criminalisation of public life. If disciplinary provisions are drafted, they may cover wider areas of conduct, in order to induce civil servants to avoid ambiguous situations which may expose the public administration.

Finally, if only preventive measures are planned, e.g. disclosures of income and business activities or prohibition of patronage, nepotism and cronyism, then they may concern an even wider field. Therefore, the notion of corruption should not be understood as fixed and precise, unless criminal offences are provided, but should be flexible, according to the purpose of each particular measure.

2.2 Categories among them

Contrary to the assumption that corruption is only a problem in some countries and not in others, this phenomenon is omnipresent and only its extent and forms vary. The types and amounts of corruption to be found within political systems are influenced by a number of factors. These include social attachments and customs, such as political culture or the existence or lack of political attachment to government so that social ties such as kinship can pose norms and obligations contrary to official rules; attributes of the policy process, including its speed, patterns of access and exclusion; as well as anti-corruption laws and their
enforcement. They also include economic characteristics, such as the level of development and the relative size of the public sector.

2.3 Corruption of politicians

2.3.1 Who are considered to be "politicians"? As perpetrators of the various forms of corruption, "high officials" are usually mentioned. However, it is useful to distinguish two categories: (1) politicians and (2) professional full-time civil servants, both included by almost all legislations in the notion of "officials". To these categories of perpetrators a third may be added, namely (3) the persons or groups who participate in exchange relationships with persons of the other two, and who may be called the "clients" or the "buyers of corruption".

I consider as "politicians" (1) those who: (a) take part in politics and (b) hold public offices, after being elected or appointed by political parties which are in power. The special features of the politicians examined here are:

(i) the engagement in the struggle for, or the use of power and

(ii) the wide possibility of free decision during the use of it.

2.3.2 Special characteristics of their acts

The most important characteristics of the offences of politicians in office are the following:

(a) The fact that they commit them by taking advantage of the increased opportunities they have due to their official capacity. Therefore, all the offences examined here include the element of the abuse of political office. In fact, these offences are usually an illegal extension of legal functions and activities.

(b) The violation of trust or abuse of confidence. Of course, this element is especially salient in the case of a politician selected, directly or indirectly, by popular vote.

(c) The difficulty of detecting and proving the offence. Since the perpetrators are persons with influence and power, they usually take care to commit their offences by using subordinate persons -- civil servants or party employees who often are not willing to denounce their political superiors. Therefore, only a small part of such offences are prosecuted and even less lead to conviction.

(d) Since the above offences are attributed to politicians in office, it is inevitable that their political opponents often try to take advantage of any relevant accusations for political gains. They create publicity around these facts or they exploit the publicity created, sometimes paving the way to criminal prosecution for these purposes. Therefore the danger of penalisation of politics arises.

(e) Once criminal proceedings against a politician are opened, it is probable that the accused or his supporters or even the whole party will take his side by declaring that the accused is a victim of political persecution. They may try to influence the criminal proceedings, either by ways intrinsic to the criminal proceedings, such as the undertaking of the defence of the accused by distinguished lawyers belonging to his party, or by methods external to the
proceedings, such as by declarations to the press, by demonstrations, etc. This trend leads inevitably to politicising of the criminal proceedings.

These twin phenomena are sometimes very important characteristics of offences of corruption committed by politicians and they create many difficulties in their detection, prosecution and punishment. Experiences in Greek political life during the periods between 1989-91 and 1994, in which the roles of accuser and accused rotated between the two main political parties, are proof.

2.3.3 Corruption of political parties

Corruption of politicians leads to and is connected sometimes with the corruption of whole political parties. As the Italian process of cleansing government corruption (a process nick-named "Tangentopoli") has shown, politicians and public administrators who had acted as "sellers of corruption" on one side, and the management of construction and other firms having interest in business with the government on the other, were involved in a consolidated system. The political parties, through their local and national representatives, were regulating the payoffs and the bribes coming from managers in order to assign construction contracts\(^ {19} \).  

Therefore, disclosure laws governing political financing can be useful for compelling candidates or political parties to disclose any contributions they have received\(^ {20} \). Obviously, some parties or candidates will not be willing to comply (fully) with this obligation. The violation of provisions on disclosure is a form of indirect corruption, concerning measures destined to prevent direct corruption.

2.4 Corruption of civil servants

The category of persons examined here is the professional civil servants, i.e. persons appointed in a normal objective procedure, supposedly not influenced by political connections. The law is sometimes worded so that it includes in the concept of civil servants the political appointees and even the elected political leaders holding office\(^ {21} \). But it is of interest to examine the corruption of career civil servants separately from that of political appointees.

Civil servants as defined above differ from politicians with respect to corruption activities:

-- First of all, they are attached more closely to the civil service (usually until reaching the age of retirement) than politicians, who may consider their office as temporary. Therefore, they have an interest in being more careful in their conduct, especially if they consider that, in a democratic system of government, their political boss after the next elections may be a person belonging to the opposite party than the one presently in power.

-- Furthermore, permanent civil servants who have the necessary qualifications and experience for their office, are supposed to know much better the legal limits of their activities. They are the ones who should propose and recommend to their political bosses the measures to be taken and who are obliged to point out the possible illegalities of planned government acts.

-- A third characteristic is that they have their career to consider, which may include evaluations, promotions and disciplinary measures, while re-election is not their problem.

-- Finally, civil servants do not have the same reasons as politicians to hope for impunity. If an amnesty or abstention from prosecution takes place in the case of politicians due to
expediency reasons, it is by no means sure that the civil servants under suspicion will also profit from such measures.

In view of the above differences one would expect that civil servants would have a smaller propensity to corruption than politicians. In fact, civil servants of certain countries have this feeling and have expressed this view. However, there are reasons why, in reality, the situation may not be quite so:

Firstly, when they take office, the political bosses of civil servants have the possibility to select among their inferiors those with whom they can better co-operate. Therefore, when a politician wants to engage in corruption activities, he has at his disposal officials who would be willing to become accomplices. Their motives may be political -- personal connections with the party in power --, or material -- expectations that they will receive some portion of the advantages from the exchange --, or simply that they have difficulty in resisting the authority of their superior.

Secondly, civil servants may engage in forms of corruption which have nothing to do with politics and politicians. These may be trivial, e.g. the small bribes accepted or even demanded by policemen in order not to report a citizen for illegal parking or a small traffic violation. But they may be also serious, e.g. the important amounts received or demanded by a member of a committee deciding which of the competitors in a public works or procurement of supplies contract will be chosen; or, by a taxation officer in order to assess a smaller amount of taxes than those really due; or, finally, by police officers, in order to not report serious offences, especially those committed by criminal organisations.

In view of these considerations, corruption of civil servants presents some marked differences from the corruption of politicians, especially as to the motives of the perpetrators and as to the circumstances of their activities. Of course, this does not mean that these two categories do not co-operate in many cases.

2.5 Cultural notions of corruption

2.5.1 Cultural differences and functionality

If corruption is understood as a dysfunctional phenomenon in a democratic system of government and administration, the forms in which it appears depend necessarily on the circumstances of each country, its particular system, and its people. Social conditions, level of economic development, culture and traditions often differ and so do the forms of accepted or disapproved types of behaviour.

For example, in the U.S. the official attitude toward corruption is extremely strict, tending to suspect any social transaction as a potential act of corruption. In some countries social contexts are created, which may be characterised by widespread immorality, so that anyone who expects particular services or action from the civil service knows that money will have to be offered in order to obtain that which should otherwise and anyway be due. In Italy where such situations have been found to exist, they are called "background corruption." Furthermore, in countries of the former Soviet Union, scarcity of consumer goods has led people to adapt to large scale and routine black market practices. In the same countries, when the planned economy imposed unrealistic production quotas on public enterprises their employees were obliged to make false reports ("pripiska"). Both these cases of corruption can be considered as necessary by-products of the system conditioned by it.
It has been maintained that in certain developing countries the systems of government and administration, as well as the values declared as prevailing in public life have been imported and imposed, first by the colonial powers, without the corresponding implantation of the conventions and institutions within which they could work. Consequently, one detects the traditional phenomena of clientelism, nepotism and tribalism which creep into the wheels of the imported bureaucracy, encouraged also by the scarcity of goods and services. However, one may also submit, at least as a hypothesis, that the colonial powers had imported to these countries, along with the declared values and bureaucracy, also some corruption practices.

Patronage, nepotism and tribalism may be endemic in the cultures of people where the ties of family, regional solidarity and tribe are strong. Although these forces can explain why corruption in these forms is maintained, they are not a very convincing reason in favour of leaving things as they are.

One may recognise that corruption sometimes, and in some countries, is traditional and embedded in the culture and/or may be a necessary evil under certain difficult situations. That does not mean that it is beneficial in the long-run and that efforts to reduce it, and even to eradicate it, should not be made. The truth remains that corruption is socially and culturally deleterious.

3. Aetiology

3.1 Causes of corruption of civil servants

3.1.1 Over-regulation of economy, transformations of developing societies

Different types of corruption may have different causes. In the case of over-regulated economic systems such as the planned economies of the existing socialism, blackmarket activity and "pripiska" (false reporting) have become necessary, although undesirable, consequences of the dysfunctional production and supply situations created by these systems. One might expect that once the systems change and more free market principles apply, these types of corruption will gradually vanish. But reports from these countries show that after the changes corruption has not decreased but rather flourished. A possible explanation may be that the political change has not resulted in reducing state intervention in the economic and social domains fast enough, while at the same time the amount of freedom introduced is being abused by persons not sharing the values that should accompany a free democratic system. In any case, the question arises whether the over-regulation of the economy is the main factor causing corruption or whether other factors such as culture, traditions, the economic situation of civil servants, and their professional ethics are contributing more to the increase or decrease of corruption practices.

In some developing countries corruption can be regarded as a logical product of the transitional socio-economic situation, with the psychological and emotional make-up of the present functionaries.

Finally, one should not overlook the fact that long-lasting practices create habits, patterns of behaviour and attitudes, which cannot be easily eradicated.

3.1.2 Low-salary scales for public officials

It has been often said that one important cause of the corruption of civil servants is their low salary scales. If they are not adequately remunerated for their services, the argument goes, they are forced to resort to corruption in order to secure a decent living for them and their families. This is true in many cases,
especially of routine small scale corruption. It does not explain, however, a good number of corruption cases in which the perpetrators were high salaried civil servants or politicians in office. One can reasonably claim that the motives in these cases are a tendency to have and spend more and to overconsume, which all are closely connected with greed and passion for luxury, as it has been traditionally believed\textsuperscript{34}. Therefore, the amelioration of the civil servants pay should be always combined with other measures, destined to counterbalance these motives.

3.1.3 Lack of civil service professional ethic

An important reason for corruption is the lack of a civil service professional ethic, a collective phenomenon which is very dangerous. If widely spread, it can be contagious and induce even persons of integrity to follow the stream. A professional ethic is created mostly by tradition, but sometimes a penal procedure or two against a "big fish"\textsuperscript{35} may stress and strengthen the rules and the values recommended in the framework of an anti-corruption campaign.

3.1.4 Absence of concept of accountability and responsibility

Whenever checks and controls in the civil service are not functioning properly, a strong incentive exists for civil servants to commit various acts of corruption. If one or more of the other motives exist, (low salaries, lax professional ethic), the lack of adequate accountability and responsibility lead surely to corruption in the civil service. As it is often pointed out, the extension of corruption is determined mainly by a combination of values and opportunities\textsuperscript{36}.

3.1.5 The absence or non-application of sanctions

Among other reasons for the corruption of civil servants, the absence of adequate sanctions or the improper or infrequent application of sanctions can imply ineffective deterrent to involvement in corrupt activities. The utilitarian view holds that every civil servant weighs up the advantages and the disadvantages of following the rules or of allowing himself to be corrupted. If the benefits expected are interesting enough and the cost zero, corruption is going to be diffused and become even quasi institutionalised.

3.1.6 The influence of superior orders or instructions

Corruption of civil servants without the complicity or condoning of their political superiors is not rare. Of course, if the civil servants in a branch of administration engage repeatedly or continually in large-scale corruption practices, their political superiors, e.g. a minister, must be either an accomplice or totally incompetent, depending on whether he knew of the practice and tolerated it, or had been totally unaware of it.

But as it has already been pointed out, corruption of politicians cannot function effectively without the co-operation of civil servants, who usually are their subordinates in the administration. The reasons for which the civil servants co-operate may be the ones mentioned above. In addition, a certain moral pressure may be exercised on employees by the politician in power who has authority over them. Although most legislation provides that an inferior is not bound by illegal orders of his boss, in reality civil servants are not always integrity heros, prepared to come in to conflict with their superiors rather than obey illegal orders. For this reason politicians in power may count on the complicity of at least some of their inferiors.
3.2 Causes of corruption of politicians in office

The causes of corruption of politicians in office are in some respects different from those of civil servants. Some of the main causes are:

(a) The increased opportunities they have to commit corruption offences and engage in relevant practices, due to their leading positions and their discretionary powers.

(b) The belief of some politicians that their offences are not going to be discovered or that even if they are discovered, they will not be punished for a number of reasons, which are closely connected with the techniques of neutralisation mentioned infra.

(c) The "techniques of neutralisation" by which corrupt politicians may try to justify their acts. Some politicians may not just invoke them as excuses, but they may also believe in their validity. This can explain at least some of these acts. Such justifications or techniques of neutralisation are:

--- that the politicians intended the common good seen from a broader perspective;

--- that they were serving the interests of their party, which purportedly is the only one pursuing the common good;

--- that their political opponents were or are using illegal practices in much greater dimensions;

--- and in general, that they acted due to "political" consideration of the matters which gives more weight to expediencies, sometimes by-passing legality.

4. Effects of corruption

4.1 Economic significance

Although it is apparent that there must be an economic impact of corruption, it is difficult to assess with any precision. Obviously, where the decisions and the action of government officials or civil servants are not motivated by the public interest, but by the private interest of the official and/or of his "client", the effect on public finances or the national economy will be detrimental. If, for example, a public work or supplies procurement contract is given to the person or corporation which has bribed the officials and not to the best qualified and/or to the lowest bidder, it is obvious that the public finances are damaged.

Furthermore, if there is such a tie between a contractor and the civil servant whose duty it is to supervise him, any defects or violations of the contract may remain unreported and the public interest not be protected, with the result that further losses and damage to it will occur.

Bribes, illegal kick-backs, pay-offs, etc. become additional charges which inflate contract costs and burden the private business sector. Finally, if for example operation permits for business enterprises are granted only after bribery, it is very likely that the criteria provided by law for such permits in order to protect the consumers, the environment and the free competition will be neglected.
According to the notion of "economic functionalism" developed in the 1960s, in the socialist or Third World societies, corruption is a kind of "bureaucratic black market", which serves to re-introduce price mechanisms and competition into systems where administrative rules have banished them. According to this view, when moral considerations are set aside, one may recognise that corruption has the same advantages as other access mechanisms.

However, this notion overlooks the developments in these societies and countries, which have proven that corruption had deleterious effects and often caused serious social and political troubles. Corruption became a major factor of underdevelopment (see infra 4.3.) and contributed even to the absence of willingness to develop. As a result the economies in such countries do not depend on efficient productivity but rather on bribes and favouritism.

It has also been maintained that corruption can be an instrument of integration of minorities and of a balanced function of institutions, which are subject to the stresses and pressures of citizens situated in the margin of the political system. Consequently, the question is posed whether corruption is functional, sometimes aiding in the survival or successful adaptation of a regime, economy, or political system. This question is supposed to apply to corruption in all countries and cultures, but it is meant to be especially critical in such countries and systems where the relevant practices are attributed to the culture of the corresponding peoples.

In order to answer this question, one has to imagine what would be the alternative to corruption practices. It has been correctly maintained that whole systems rarely stand or fall because of the existence or the lack of corruption alone. Possibly some functional concepts may apply to specific aspects of the system, such as its regime, aspects of its economy, or particular accommodation among ethnic factions. But answers to functionality questions will then depend upon the particular aspects one chooses for analysis.

It has furthermore been observed that even if one takes for granted that corruption aids in the survival of a system or of some of its aspects, this can be valid only for a certain moment of balance, without considering the further and distant consequences of the corruption. Its effect to attach the persons who benefit from it to the political power lasts as long as benefits can be expected. Especially in cases where patronage changes hands less often, the proverb comes true that "a patron who has one available job and ten followers will end up with nine enemies and one ingrate". Besides, the ties in such cases are necessarily preferential and therefore by definition inegalitarian. Finally, since solutions given by the corrupt practices are individual and preferential, excluding collective ones, these situations can only last until the accumulation of problems leads to social explosion.

4.2 Impact on trade and investment

Obviously, the bad effects of corruption on the economy in general strongly affect trade, which cannot thrive where the whole administrative mechanism does not allow free market competition to function but instead burdens business with pay-offs, kick-backs and bribes. And where trade and business are not thriving, investment does not follow. Nevertheless, one could also argue that, since the chances of profit for investors prepared to pay the kick-backs and bribes are large, the incentives for investment by persons and corporations prepared to pay such extra charges also may be large.

4.3 Effects on socio-democratic institutions

By contrast, there is no doubt that democratic processes are adversely affected by corruption. As stated above, corruption practices result in disallowing freedom of decision. Therefore, the best decisions are
not taken, but the ones favouring the "buyers of corruption". No equality can be guaranteed in this way, since some persons will inevitably be regarded and treated as "more equal" than others. In the selection of candidates for office no meritocracy will prevail, in a competitive bidding neither the best nor the cheapest bidder is going to be chosen. Police officers will not do their duty to secure law and order if they receive bribes in order to look the other way when drug dealers are pursuing their criminal activities. Amounts of public money may disappear into the pockets of corrupt politicians or into the treasuries of corrupt political parties. These are some of the apparent disastrous consequences for socio-democratic institutions, mentioned in an indicative way. But, of course, this enumeration is not meant to be complete.

It should also be noted that in some countries corruption, by weakening the respect for probity and law and order, led even to rigged elections and to military coup d’états, as has been the case in Nigeria. So, corruption in the economic field led to serious corruption of the democratic institutions.

5. The challenge of good governance

5.1 The cultural notion of good governance

The consequences of corruption mentioned in the previous paragraph affect directly or indirectly the various aspects of good governance. The term “governance” is used in this paper as in other instruments to denote "the use of political authority and exercise of control in a society in relation to the management of its resources for social and economic development".

Important dimensions of good governance are: the rule of law, public sector management, controlling corruption and reducing excessive military expenditures. Although controlling corruption is named as a challenge in itself, it is obvious that its existence may distort the functioning of any of the other dimensions of good governance mentioned above. Therefore, corruption is considered as the principal opposite of good governance.

The rule of law cannot exist or function if the judiciary and the politicians in government and in parliament are corrupt.

Effective management of the public sector is impossible if accountability and information do not permit transparency in this management, allowing corruption to grow in the dark. Where the above conditions are not fulfilled, and probity does not prevail in the use of public resources, the credibility and authority of the state are shaken or disappear.

5.2 The impact of corruption on:

5.2.1 administrative efficiency

Corruption is a serious obstacle to administrative efficiency, since decisions are not taken with the goal of serving the public interest, but in order to promote the interests of individuals who are involved in secret and immoral agreements. Even if small bribes are being used as a matter of routine in order to expedite normal administrative procedures, such as a work permit or a driving licence, these procedures will become delayed in all cases in which the bribes are not paid. The result is that the whole administrative apparatus becomes inefficient.
5.2.2 - achieving equality of all citizens

Also, equality of all citizens is not achieved if such practices are applied. Those who are prepared to grant pay-offs, bribes and other advantages, including political support to those who take decisions, in order to ensure some benefits or services from the administration will be illegally and unfairly privileged in comparison to those who are not prepared or cannot do such things.

5.2.3 - establishing public confidence in the state organs

It is obvious that if corrupt practices prevail, the general public and each citizen will have no confidence in the state organs or in the personal security guaranteed by these organs. It is difficult to trade and make investments in a state in which such confidence does not exist. For developing countries the result will be, among other things, the lack of capacity to develop.

6. Conclusions

1. The above description of corruption showed that it is a multi-dimensional phenomenon, of which bribery is only one important symptom. The widest notion of corruption includes any violation of the democratic system of government and the ideal of good governance.

2. In order to plan strategies to suppress corruption, one should consider its causes, among which one should differentiate between causes concerning mainly civil servants and the ones which apply more to politicians.

3. With respect to civil servants some suggested strategies are:

   (a) Reduction of the over-regulation of the economy and of intervention by the authorities in social life.

   (b) Increase of salaries to a decent level.

   (c) Enhancing the respect of a professional ethic, and codifying its rules, if necessary.

   (d) Increasing accountability and responsibility, so that corruption offences will become difficult to commit.

   (e) Providing strict, proportionate and effective sanctions, penal and disciplinary, and securing their regular and frequent application, in order to dissuade the great majority of civil servants from such practices.

   (f) Finally the regular training and guidance of civil servants on their obligations, stressing that in case of conflict their first loyalty lies with the law and the civil service and not with their political bosses.
4. With respect to politicians, strategies are more difficult to propose due to the mixture of legal and political considerations one has to take into account. However, in addition to the above sub (3), one may suggest the following:

(a) Improving the accountability and responsibility of politicians in office.

(b) Transparency and accountability of financing of political parties and political candidates.

(c) Procedures of prosecution and trial of politicians for their offences in office which guarantee the maximum in objectivity and neutrality, so that the phenomena of penalising politics and politicising penal proceedings will be avoided.

(d) Enhancing the professional ethic of politicians and of the whole political life. This is the most difficult task, requiring long efforts from all sides, namely politicians, political parties and citizens.
Notes

1 Mény, La corruption de la République, 1992, 10.

2 Johnston, The Political Consequences of Corruption, 1986 Comparative politics, 462, with further references.

3 Johnston, id. 460.


6 Mény, id. 10-11.

7 Cf. many important criminalised forms are described in the Manual, 5-8. These are however the ones included in the “wide” sense of corruption, not the “widest”.

8 Manual, 6.


10 Cf. Italian Report, 7.

11 Johnston, id. 468.

12 Johnston, id. 469.

13 Mény, id. 205.

14 Mény, id. 206-207, mentioning the view supported by French politicians and civil servants that corruption in France is not a social problem but only a marginal phenomenon, which he considers doubtful.

15 Johnston, id. 463.

16 Italian Report, 4.


19 Savona, paper presented at the 11th International Congress on Criminology, Budapest, 1993.

20 About the recent legislation in France: Gaetner, “L’argent facile”, 126-128. Similar legislation is being prepared in Greece.
This is the sense of art. 13a of the Greek Penal Code (P.C.). Similar provisions include para. 11 Abs. 2 of the German P.C. and art. 110 para. 4 Swiss P.C. Cf. also the Italian Report, 4.

Cf. e.g., the “Carrefour du developpement” case in France, Gaetner, L’argent facile, Dictionnaire de la corruption en France, 1992, 60-73; also the tendency to divert attention from the politician by prosecuting the least important person involved in the political scandals in the Profumo and the Parkinson affairs in Great Britain: Moodie, Studying Political Scandal, in 3 Corruption and Reform, An International Journal, 1988/89, 246; Ridley Scandal, morals and politics in the same Journal, 293.

Mény, id. 206, concerning French civil servants.

Hagan, id. 353.


Italian Report, 5.

Johnston, id. 466, Mény, id. 225.


Mény, id. 209, Adeyemi id.

Adeyemi, id. 92; Klitgaard, Political Corruption -- Strategies for Reform, in Journal of Democracy, 90.

Adeyemi, id. 88.

Savona, id. 2.

Adeyemi, id. 88-89.

Klitgaard, id. 91.

Klitgaard, id. 98.

Savona, id.

See more extensively Spinellis, supra note 33, 8-12.

Adeyemi, id. 91 makes some estimates based on speculation. I think some research would be very interesting.

Reported by Mény, id. 214-215.

Mény, ibid; Adeyemi, id. 92.

Adeyemi, id. 91.

Mény, id. 223, attributing it to Merton.
43 Johnston, id. 462; Mény, id. 224.
44 Johnston, ibid.
45 Johnston, id. 469.
46 Mény, id. 225.
47 Mény, ibid.
48 Adeyemi, id. 92.
50 DAC Orientations, ibid.
I am honoured by the invitation from the OECD to attend this symposium. I congratulate Professor Spinellis on his fine presentation, an astute survey of the concept of corruption, its different forms and categories, its varying interpretation with regard to political parties, politicians and civil servants, the cultural notions, causes and effects, the challenge to good governance. Professor Spinellis has summarised and left us with a demanding set of conclusions and it is these I shall address in the short time allocated to me.

As Commissioner of the Independent Commission Against Corruption in Hong Kong, my comments will be based on our actual Hong Kong experience and on those aspects concerning international co-operation which I believe must be developed if the OECD is to continue its progress in combating this immense problem.

Professor Spinellis has concluded that in order to plan strategies to suppress corruption we should consider its causes and that we should differentiate between causes concerning mainly civil servants and those causes which apply more to politicians. From our experience in Hong Kong I suggest a further differentiation among what we term the private sector or the world of business and commerce, as opposed to the public sector, the world of the civil service, publicly constituted bodies and politicians. Concerning the private sector our attack is aimed primarily at the soliciting, offering and acceptance of illegal commissions in business activity and a clear differentiation between the principal and agent roles in such activity. We are also conducting a successful campaign in conjunction with the chambers of commerce to encourage all large companies to develop and issue voluntary codes of ethics.

The basis of any national strategy against corruption should comprise a clearly defined legal definition of bribery and corruption, including the creation of special offences, special powers for the investigative agency and special provisions to protect the confidentiality of investigations up to the point of arrest. All of this now has to be in broad compliance with the ICCPR and any domestic Bill of Rights. High level, overt and consistent support from politicians is absolutely essential.

Such a strategy will not succeed, however, unless it is long-term and backed up by two other prongs of attack: a strategy to prevent corruption, particularly in the bureaucratic public sector, and a strategy to involve the community thoroughly in the fight against corruption and gain its support. The media is a multi-faceted component in this important third prong. Our experience in Hong Kong suggests that the interdependence of these three prongs of attack enhances the effect of the campaign. Now a few words about each conclusion:

Conclusions - relating to civil servants:

(a) Hong Kong has been, for a long period, a territory in which there has been minimum regulation of the economy, and to quote the famous phrase of a previous Financial Secretary, a policy of "positive non-interventionism". However, central regulation and provision of more social welfare schemes is increasing;
(b) the Hong Kong Civil Service is one of the best paid in the world; there is a desire to serve in the public sector, there is respect from the public; but plain old-fashioned greed will always be a powerful factor in motivating corrupt activity;

c) the Hong Kong Civil Service has a highly developed code of ethics in relation to conflict of interest with duty, discipline, acceptance of advantages, political activity, indebtedness and personal conduct outside the office;

d) "supervisory accountability" is a well-established principle of the Civil Service and is a basic tenet of corruption prevention;

e) severe penal sanctions against bribery and corruption are covered by a range of anti-corruption legislation, and disciplinary procedures, although rather slow and cumbersome, are codified, tried and tested;

f) regular courses are attended by all civil servants at the point of recruitment, backed up by refresher courses, to ensure that all staff are formally aware of their moral and legal obligations with regard to corruption and many forms of personal conduct.

In short, over a period of 20 years in Hong Kong, we have established a balanced strategy of prosecution, prevention, education and community involvement, acceptance of the theory and necessary practice of supervisory accountability, a wide range of professional ethics in public service and all this in the context of a well paid public sector and, most important of all, unrelenting support from the highest levels in Hong Kong's Administration for a long-term campaign to change public attitudes and make corruption a high-risk and odious crime. Corruption in Hong Kong is no longer "a way of life"; it is held in check at a tolerable level. The attack on corruption will continue relentlessly.

Conclusions - relating to politicians:

Political processes in Hong Kong are still evolving. Not until September 1995 will the Legislature be completely elected, and many members of the Legislative Council are as yet unaligned with political groups or parties. Nevertheless, I would strongly support the conclusions that the speaker reached for non-civil servant politicians and we have in Hong Kong moved some way to achieving them.

First, accountability has been improved through the adoption of guidelines on conflict of interest by our Legislative Council, and by registering legislators' investments and business activities for public inspection.

Second, our legislators are even now debating how, and to what extent, funding of elections and political activities should be regulated through accountability and transparency.

Third, I hope without appearing too complacent, that in Hong Kong we understand that the rule of law is fundamental in keeping politicians and the power they wield in check. As Chris Patten, our Governor, said in Singapore only last Thursday:

"The rule of law means that everyone is subject to the law -- however mighty they are, as the British jurist Lord Denning once said -- governor and governed; lawmakers and law-abiders. In a free society under the rule of law, with a fairly elected legislature that itself makes the laws, the law isn't just there to police commercial life. You can't limit its scope."
Session Two

NATIONAL AND INTERNATIONAL STRATEGIES FOR REDUCING CORRUPTION

Robert Klitgaard
Professor of Economics
University of Natal, Durban, South Africa.

Summary

The OECD’s excellent work on corruption in international business transactions focuses on a lacuna in current law in most OECD countries. If I as a citizen of one country bribe you as an official in another, I am not guilty of a crime in my country. The OECD recommends that individual countries should develop appropriate laws and policies to deal with this problem, and the OECD will monitor progress.

This conception of both the problem of corruption (bribery in international business transactions) and the way of addressing it (legal reform) may seem limited. True, international bribery can involve big money, and it can add 15 per cent or more to the cost of major procurement contracts and public works. But as serious as the effects are, they are small when contrasted with the systematic corruption of legal systems, economic management, the delivery of public services, and policy making that plagues many developing countries. Systematic corruption can disastrously skew incentives, undermine voluntary compliance, deter investment, and render democracy ineffectual.

Systematic corruption is not inevitable or intractable, even in the poorest settings. Nor must we wait a generation for education, moral reform, cultural change, or other supposed long-run remedies. This paper summarizes a perspective for dealing now with systematic corruption -- a perspective that focuses on corrupt systems rather than corrupt individuals. The paper outlines a framework for policy analysis, which emphasizes incentives, monopoly, discretion, and accountability.

A framework provides guidance but not specific steps, which experience suggests must be developed in each country, by local people. Participatory diagnosis involving top policy makers and citizens has proven successful. In two-day workshops, local people work together through (a) successful case studies of anti-corruption efforts from other countries, (b) frameworks for appraising corrupt systems, and (c) their own analysis of the types of corruption present in the given country or government agency. This process has proven useful in demystifying corruption, devising practical strategies, and generating ownership.

The components of an anti-corruption campaign vary, but they often include such elements as:

-- experiments with incentive reforms in the public sector;
-- mechanisms to enhance accountability, especially through the involvement of business and citizens;
-- enhancing capabilities in investigation, prosecution, and the judiciary;
-- legal reforms in campaign finance, illicit enrichment, and regulatory and administrative requirements; and
-- structural reforms that designate an anti-corruption focal point and simultaneously facilitate inter-agency coordination.
Implementing these strategies requires political and managerial acumen. How might political will be generated, and how might the cynical culture of corruption be broken? In many countries, where ruling parties are known for corruption and top leaders suspected, helping the government attack corruption requires several pieces of convincing: (a) that something practical can indeed be done; (b) that doing it will not be political suicide, but in fact can become good politics domestically and internationally; and (c) that international help will be available, including a measure of political insulation. Once a government wishes to act, it must attack the culture of corruption, for example by “frying big fish” (apprehending a few big offenders to signal that impunity is over) and taking other high-profile steps. These political dimensions of fighting corruption are important parts of an effective national strategy. They, too, require specification in a given situation, a task of the utmost delicacy.

Despite the sensitivity of devising and implementing strategies against systematic corruption, international organisations can help -- and indeed already do help, through support for democratic reforms, more competitive economies, and improved governance. International aid can be allocated to countries willing to undertake reforms to address systematic corruption. International organisations can sponsor policy research where each country agrees to involve its private sector and civil society in investigations of corruption in a few areas, such as revenue raising, procurement, and the justice system. International organisations can help assemble and share examples of best practice and frameworks for policy analysis -- what might be called “tool kits” for fighting corruption.

International cooperation in the private sector may also be important in fighting corruption. The private sector is part of the problem and part of the solution. A promising idea is to help the business community develop standards of conduct and credible self-enforcement mechanisms, with international linkages and assistance.

The international community is also part of the problem and part of the solution. And it is in this light that the OECD Recommendation and its focus on bribery in international business transactions have strategic importance. Because of corruption’s sensitivity, foreigners will not be welcome discussants until they show that they recognize their own complicity in many corrupt activities. It may be only after the countries of the OECD show that they are serious about their part of the corruption problem in developing countries -- especially the bribes their citizens pay -- that developing countries will be willing to accept international assistance in addressing systematic reform.

1. Introduction

What is the problem of corruption, why is it surfacing now as an international priority, and what can individual countries and the international community do to control it? The present paper focuses on the last question, but in order to do so must briefly address the first two.

a. What is the problem?

What is the problem of corruption? Much of the OECD’s recent work on corruption, as well as that of the new international NGO Transparency International, focuses on “corruption in international business transactions.” A major example is bribery, where an international firm pays a government official to obtain a contract. Such bribery is only part of a generalised phenomenon of corruption, which now seems to threaten democratic and economic reforms in the former communist countries, in Africa and in some parts of Latin America and Asia. In some countries or sectors of countries, the “rules of the game” are
delegitimised by the perception and the reality that corruption can sway policies as well as particular contracts, can reshape legislation, and can make a mockery of the justice system. Systematic corruption generates economic costs by distorting incentives, political costs by undermining institutions, and social costs by redistributing wealth and power toward the rich and privileged. When corruption undermines property rights, the rule of law, and incentives to invest, economic and political development are crippled.

Tackling international bribery will only make a small dent in systematic corruption. Even if countries could agree upon and promulgate ideal laws against bribery in international business transactions and ideal codes of conduct for both public and private sectors, effective action must be complemented by changes in strategy, policy, and management. For these reasons this paper suggests that we ask ourselves what changes in strategy, policy, and management might reduce systematic corruption.

b. Why now?

This symposium is only one more important piece of evidence that the international community is now openly discussing a problem that even a decade ago was virtually taboo. Why is corruption surfacing now as an international priority? I have not encountered a fully convincing explanation. One possibility is that corruption is growing worse. But why? One argument cites the rapid rise of international trade and international communications, so that people are exposed to economic temptations as never before. Another points to the democratic and economic reforms that have swept the world, which have created new opportunities for corruption by rapidly changing the accustomed rules of the game and, in many cases, because policy changes are often not accompanied by sufficient development of the institutions and the public-sector incentives needed to make free markets and democracy work.

Or are we simply becoming less tolerant of corruption? One idea is that we perceive corruption to be a greater obstacle now that the Cold War has abated and economic policies and multiparty polities are roughly “got right.” Another possibility is that we blame corruption for the fact the neither freer markets nor democratic reforms have yet lived up to expectations, in order that we can avoid admitting that those policies and polities may not be right everywhere. Or perhaps because political reforms have granted new freedoms to document and complain about corruption, we are made more aware of it.

I raise this second question “why now?” not to resolve it but in the hope that after pondering it for a moment we can set it aside. Whatever the reasons for today’s greater concern over corruption, it is a change we should welcome. Simply put, corruption constrains economic and political development. Our work together at this symposium to distinguish different kinds of corrupt phenomena and analyze how we can work together to fight them is hardly an academic undertaking. It is an opportunity to catalyse badly needed change on a problem that has for too long been overlooked.

c. What works?

Which brings us to the third question: What can be done by individual countries and by the international community to attack deeply rooted corruption?
2. National Measures

   a. Legal reforms

      1. A legal lacuna

      The OECD’s preparatory work for this symposium usefully focuses on a void in existing national and international law. If I as the citizen of one country bribe an official in another country, I may not be guilty of an offence in my country. The OECD background papers make three important points about this lacuna.

      First, there are good reasons in legal theory, and reasons (if not always good ones) in domestic politics, for restricting the application of the law in this way.

      Second, there is apparently not the will among the developed countries to agree upon a law such as the U.S. Foreign Corrupt Practices Act, which does count bribery abroad as an offence at home. International organisations are limited in what they can do to forge that will.

      Third, it is nonetheless true that almost every country, even the poorest, does have laws against bribery that could be applied to both local bribe-taker and foreign bribe-giver, if there were sufficient will and competence to apply them.

      These three points suggest a strategic question: How can the international community help what OECD documents call the “victim” countries of international bribery to effectively apply the laws they already have against such transgressions?

      The OECD recommendation includes several possibilities, which are included in the agenda for this symposium. Countries could pass new laws concerning: the tax deductibility of bribes (or commissions above some small percentage of the value of the contract); the accounting requirements of companies participating in large-scale public contracts; banking and financial provisions to improve the availability of data relevant to investigations of bribery; simpler and more transparent rules concerning bidding, licensing, eligibility for subsidies and tax breaks; and others. The OECD documents are persuasive that there is room for international progress in each of these areas.

      Nonetheless, I wish to suggest two caveats. First, as noted earlier, progress in these areas will not attack the most serious manifestations of corruption in developing countries. Second, in most cases the principal obstacles to fighting corruption are not better laws.

   2. Four examples of needed legal reforms

      When most of us consider how to reduce corruption, our reflex is to think of legal measures. Better laws can make a difference. Let me provide several examples, before explaining why I think that anti-corruption efforts must go beyond legal reforms.

      (a) Financing political parties and campaigns

      In many countries campaign financing involves coerced payments, and sometimes straight graft, which benefit a party if not a particular corrupt individual’s bank account. When such behaviour becomes systematic, even an “honest” political party may feel compelled by the corruption of its competitors to shake
down businesses with implicit promises or threats. In the past in countries such as Bolivia and the Philippines, parties have used their members in public agencies such as the customs bureau or the internal revenue service to siphon off public funds for their political war chests. In Venezuela, parties and local politicians set up “foundations” and non-government organisations into which public funds for “local development” can be channelled, without the usual government auditing procedures.

Pressures for these sorts of corruption can be reduced through strict limits on campaign activities and party finances, both externally audited, coupled with the public funding for campaigns and mandatory, balanced time allocations on television and radio. (For the record, I would put several OECD countries at the head of the list of nations that would benefit from reforms in campaign financing.)

(b) Laws against illicit enrichment

Another example concerns the illicit enrichment of public officials. Corrupt activities can be tracked in several ways: the actual transaction, the change in policies or practices that the corrupt activity entails, and large increases in the wealth of public officials. In some countries government officials can be prosecuted not only for direct evidence of having received a bribe -- evidence which is always difficult to obtain -- but also for possessing wealth beyond what can be explained as the result of lawful activities. Some countries have even reversed the burden of proof: a government official may be required to demonstrate that his wealth, and perhaps that of his immediate family, was acquired legally. In some countries there is no need to prove the individual is guilty of a crime.

Obviously, illicit enrichment laws carry risks. The power to demand proof can be misused. Excellent potential candidates for public office may be deterred by the possibility of having to open up their finances and the finances of their families to public scrutiny. And it may not be too cynical to note that in very corrupt situations such a law will drive corrupt officials to hide their wealth in secure places beyond the country’s borders, which in the limiting case could leave corruption unaffected but reduce domestic investment and consumption.

Nonetheless, in Hong Kong the leverage obtained by a change in the law concerning illicit enrichment helped turn around the battle against corruption, as part of a wider-ranging package that included preventive measures, better enforcement, and public education and participation. A useful precedent internationally is the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances (E/CONF.82/15 and Corr. 1 and 2). The principle of forfeiture of assets applies, with the onus of proof on the accused. Because of possible abuses with regard to accusations of corruption, this reversal of the onus of proof probably should be restricted to the evidence and be made rebuttable.

(c) Laws relating to disclosure and penalties

“Sanctions by administrative authorities may not merely reinforce the threat of criminal prosecution but may constitute an even more credible threat.” Criminal sanctions against corruption have not had great success against corporate bribery. But if bribery reporting is made mandatory to regulatory and tax authorities, the prospects change. Compared with police, these agencies usually have access to better information and have more expertise. It is relatively easier for them to impose sanctions. Such agencies may also play on a divergence of interests within corporate structures (auditors and board members who may be reform-minded or merely self-protective).

A variety of informational requirements might be considered, and the OECD background documents mention several. The balance must be kept: obtain more information but also make sure not to
create dysfunctional transactions costs -- and make sure that enforceability is a prime consideration. Reporting requirements might be combined with self-policing by private corporate groups (see below).

(d) Laws affecting the ways anti-corruption efforts are structured

A fourth example: better laws can decisively affect the way anti-corruption campaigns are structured. For example, some countries such as Hong Kong and Singapore have set up anti-corruption agencies, whose job is to co-ordinate a government-wide effort. On a less grand (and less expensive) scale, anti-corruption statutes may simultaneously (1) create an anti-corruption “czar” from among existing agencies (such as the chief prosecutor, the controller general, the minister of justice, and so forth) and (2) enable and require various kinds of co-ordinating mechanisms and oversight functions, to ensure that the different parts of the effort are articulated and that the public has the ability to monitor what the anti-corruption effort entails. An exemplary anti-corruption statute of this kind, in my opinion, is the draft law prepared by the unsuccessful Colombian presidential candidate Andrés Pastrana for the 1994 election.8

3. “Better laws” are insufficient

There are many other examples of better laws that can help control corruption, such as when a flat tax or a simplified licensing law reduce the scope of illicit activities. But in my experience discussions of anti-corruption efforts are sometimes unhelpfully dominated by legal deliberations.

“Better laws” are usually insufficient to reduce corruption. In 1989, I interviewed a score of senior World Bank officials concerning corruption in Bank operations and in the countries with which the Bank worked. Typical was the judgment of one senior public works expert. He pointed out that Ecuador’s procurement laws were the most advanced and sophisticated in the world. Nonetheless, he said, corruption plagued government procurement there. He gave other examples where differences in laws could not explain differences in the corruption and inefficiency that he had seen in ministries of public works. Other Bank officials confirmed this insight.9

Consider, too, Mexico’s recent experience in fighting corruption. When Miguel de la Madrid became president in 1982, one of his first acts was to promulgate a new administrative law. His anti-corruption strategy, entitled renovación moral, coupled legal reform and ethical exhortation. Despite some successes, many observers believe that de la Madrid’s efforts against corruption were not as effective as he had hoped. President Carlos Salinas’s initiatives had more impact, and yet they relied hardly at all on new laws.10

What other approach might supplement a legal perspective? Instead of seeing corrupt activities as deviant behaviour by unethical individuals, we might examine them as the economic behaviour of calculating actors in corrupt systems. Instead of seeing the preferred response as legal reforms and better rules, we might consider how to reform corrupt systems through improved information, incentives, competition, and participation. In this approach, better rules and laws help to the extent that they enhance information flows, induce competition and reduce monopoly, and avoid perverse incentives while creating virtuous ones. But “better laws” comprise only a subset of the desired strategy.11
b. Analysing corrupt systems

1. Think systems, not individuals

Corruption is the misuse of office for non-official ends, usually personal enhancement although sometimes solely for the benefit of one’s company or political party. It can occur in public and private organisations, can involve acts of omission as well as acts of commission, can be internal to an organisation (for example, theft and embezzlement) or involve the organisation’s clients (for example, extortion, speed money, and kickbacks). As with other social ills such as pollution or disease, corruption involves questions of degree. It exists almost everywhere, but the forms of corruption and their extent differ, and therefore so do the social harms that corruption creates.

Corruption is a crime of calculation, not passion. Although it is true that different individuals react differently to the temptations of corruption, and many public and private officials refrain from corruption even when the temptations are great, it is crucial for fighting corruption to recognize that as temptations rise so do levels of corruption. As a first approximation, officials will be tempted to engage in corruption when the size of their corrupt gain is greater than the penalty if caught times the probability of being caught. The penalty includes the wage and other incentives they must sacrifice if they lose their jobs, as well as the severity of the punishment. And officials will have the opportunity to garner corrupt benefits as a function of their degree of monopoly over a service or activity, their discretion in deciding who should get how much, and the degree to which their activities are accountable. A stylised equation holds:

\[
\text{Corruption} = \text{Monopoly} + \text{Discretion} - \text{Accountability}
\]

One can therefore reduce temptation and opportunity by varying these parameters.

Improve the incentives facing public officials. In many countries pay levels have fallen so low that officials literally cannot feed their families without moonlighting or accepting side payments. Moreover, the linkages between pay and performance, and promotion and performance, have badly eroded. I believe that in many countries weak incentives are now the foremost institutional factor constraining the public sector.

In the next decade I believe we will see remarkable reforms in public sector pay, first in rich countries and later in developing countries, especially (1) the development of new ways to measure performance and (2) experiments-that-become-policies which base part of pay on performance. There are already encouraging examples, even in developing countries, of performance-based pay leading to improvements. What is needed are steps to change the conditions in which institutional reforms take place, such as improved information. Elsewhere I have tried to outline practical strategies for incentive reforms. 12

Increase the effective penalties for corruption. Because of ineffective investigatory, prosecutorial, and judicial capabilities, accusations of corruption seldom stick. If they do, the penalties are often minimal in practice (for example, the official is fired). As a result, the expected penalty for engaging in corrupt activities is insufficient to deter transgressions. A key step is to strengthen the capacity and improve the incentives of the police, prosecutors, and judges.

Limit monopoly. Promote competition in the public and private sectors. Avoid monopoly-granting regulations when possible (especially exchange controls and quantitative restrictions on imports). Open the economy to international competition.
Clarify official discretion. Simplify rules and regulations via what are called “bright lines” circumscribing what is permitted and what is not. Help citizens learn how public systems are supposed to work (through brochures and manuals, help desks, laws and rules in ordinary language, publicity campaigns, the use of citizen-service-providers, etc.). Improve citizens’ oversight of officials’ actions.

Enhance accountability and transparency. Promulgate clear standards of conduct and rules of the game, which make accountability easier. Encourage greater competition and openness in bidding, grant-giving, and aid projects. Strengthen internal auditors, government accounting, ombudsmen, inspectorates, specialised elements of the police, and specialised prosecutors. Involve citizens, unions, NGOs, the media, and business in a variety of ways, including citizen oversight boards, hot lines, inquiry commissions, and so forth. Generate and disseminate information about public service effectiveness. Commission external audits. Encourage self-policing by the private sector in procurement, contracting, regulating, and so forth.

To these headings may be added two more: the selection of officials for their moral and ethical character as well as their competence, and the encouragement of a more ethical “corporate culture” by exhortation, indoctrination, and example.13

These headings form a kind of “checklist for policy making” regarding corruption. A lesson from anti-corruption efforts is that although one can learn from general guidelines like these, specific measures must be devised by politicians, bureaucrats, and citizens in each locale. As a recent example, consider the recommendations of a Chilean commission (Box 1). These are still quite general and require a detailed working out. If locals must be involved in analysing the problems and devising the solutions, is there a proven process through which local people -- including government officials and people from business, labour, the press, and the church -- can do so?

2. Participatory diagnosis

In many countries, I have seen workshops emphasizing “participatory diagnosis” help generate this analytical mentality -- and help local people devise practical strategies for reducing corruption. Such workshops can and perhaps should occur at many levels, but it is important that the first one involve the highest levels of government. Ideally, the president issues the invitations for the workshop.14 The president invites ministers, military leaders, legislators, judges, police leaders, and perhaps people from the private sector (heads of labour unions, business groups, religious organisations, and so forth). The ideal number of participants is 20 to 25. The ideal format is a two-day retreat, but an alternative is 10-15 hours spread over the course of a week.

In such workshops, policymakers and officials are assisted in

a) working through a case study of an effective anti-corruption campaign,15
b) developing a systems approach to corruption,
c) examining a second success story, where the politics of reform is crucial (more on this below), and finally
d) facilitating their analysis of their own situation: types of corruption and their causes; how extensive; an analysis of alternatives building on the checklist of monopoly, discretion, accountability, incentives, the selection of officials, and the corporate culture; the politics of improvement; and concrete steps by participants in the next three months. One analyzes systems, rather than particular individuals or transgressions.
Such workshops have worked in more than a dozen countries, through no personal mystique but by helping local policymakers structure their thinking about anti-corruption activities and come up with their own locally appropriate lines of attack. It is remarkable how frank officials become when the focus is on corrupt systems rather than individuals. The abiding points are three: changing the way people think about corruption, using their indispensable local knowledge to design workable preventive measures and political strategies, and developing ownership of an anti-corruption campaign.

c. On the politics of fighting corruption

1. Overcoming corrupt equilibria

The idea of such a workshop, and a list of proposed anti-corruption measures such as Box 1, may engender a sceptical reaction. “What if the people on top are themselves corrupt? What if international business people have powerful incentives to do the corrupting? If the people on top in the public and private sectors are benefiting, can reforms have a chance of taking hold?” The worry is that corrupt officials on top are monopolists unwilling to sacrifice their rents, and international and local businesses people are locked in an n-person prisoners’ dilemma where the dominant strategy is to bribe. A corrupt equilibrium results, where rulers and top civil servants gain and some private companies gain, but society loses.

In such a situation what can be done? The reflexive answer is “nothing.” But consider the analogous question, “Why would national leaders ever in their self-interest undertake free-market reforms, privatisation, and the like, all of which sacrifice their personal control over the economy?” And yet such reforms have swept the world, as has a remarkable “third wave” of democratic reforms.

It is true that some governments resist good governance. But in the decade ahead the paradigmatic problem will not be how to induce governments to do something about corruption. Instead, increasing numbers of governments will be asking the international community for help in improving customs and tax agencies, cleaning up campaign financing and elections, reducing bribery and intimidation in legal systems and the police, and, in general, creating systems of information and incentives in the public sector that foster efficiency and reduce corruption. The international community can accelerate this process, provided we can develop analytical tools and examples of best practice, and can generate an international consensus that fighting corruption is important for economic and political development.

We must be sensitive to the politics of fighting corruption. In many countries, leaders are of two minds. They do appreciate and decry the costs of systematic corruption. But they also recognise that a lone actor has little chance to make a difference, even a minister or perhaps a president; and they are aware of the personal and party benefits of the corrupt system. To assist them in moving toward a long-term solution, several almost psychological steps are necessary.

First, leaders must see that improvements are possible without political suicide. Here is where the workshops mentioned above, with their examples from other countries and an analytical framework for analysing corruption, can be particularly helpful. This point is also applicable in international deliberations, where political sensitivities may also short-circuit the consideration of systemic reforms. An international workshop can be useful in validating the idea that corruption is not just one country’s problem (or one party’s, one leader’s, the public sector’s...) and in generating a practical approach to a problem too often relegated to exhortation.
Box 1

Forty-one Chilean Recommendations for National Measures to Fight Corruption

In July 1994 the Chilean Commission of Public Ethics presented its report to the President, "Public Ethics: Probity, Transparency, and Accountability at the Service of the Citizens." Here is a summary of its 41 recommendations.

1. Draft and implement a national policy of public ethics.
2. Give constitutional status to principles of honesty and transparency in public office.
3. Incentives of public service: Raise the status of public servants and their pay. Improve the merit system.
4. Establish a public sector code of honesty.
5. Assign jurisdictional boundaries and responsibilities in the public sector.
6. Create offices of internal affairs in the public sector to issue information and receive complaints.
7. Review procedures to determine administrative accountability.
8. Prohibit trafficking in influences and the misuse of privileged information.
9. Improve regulations governing conflicts of interest among public duties.
10. Improve the regulations that govern conflicts of interest between public duties and private activities.
11. Have the judicial branch provide more information to the public. Set up a system to hear complaints about improper behaviour by court officials. Eliminate irregularities and favouritism.
13. Require the declaration of assets and personal interests for people entering or leaving public service.
14. Strengthen prohibitions against personal interests influencing public decisions.
15. Regulate the transition of public servants to the private sector, to prevent conflicts of interest.
16. Regulate the acceptance of gifts, payment for speeches, and the payment of travel expenses for public servants.
17. Remove local and national legislators from office when they use influence over public decisions for their own benefit.
18. Extend the legislation on conflict of interest to cover higher officials, including the President.
19. Use blind trusts as an option for the assets of high-level officials.
20. Reinforce congressional oversight in the House of Representatives.
22. Have private accounting firms carry out selective audits supervised by high-level federal officials.
23. Publicize information on management performance and the profits (or losses) of state enterprises.
<table>
<thead>
<tr>
<th>No.</th>
<th>Recommendation</th>
</tr>
</thead>
<tbody>
<tr>
<td>24.</td>
<td>In order to increase public control over government management, use greater transparency, link resources to goals, provide information to the public and NGOs.</td>
</tr>
<tr>
<td>25.</td>
<td>Eliminate secret government accounts and discretionary executive spending unless fully justified.</td>
</tr>
<tr>
<td>26.</td>
<td>Review and strengthen municipal control and oversight mechanisms for contracts, competitive bidding, concessions, and contract awards.</td>
</tr>
<tr>
<td>27.</td>
<td>Draft and enact a framework law on contracts and competitive procurement.</td>
</tr>
<tr>
<td>28.</td>
<td>Bring greater objectivity to municipal procurement.</td>
</tr>
<tr>
<td>29.</td>
<td>Create a computerised adjudication system for state bidding to ensure transparency and the lowest purchase price on all items.</td>
</tr>
<tr>
<td>30.</td>
<td>Define criminal penalties for influence peddling, insider trading, and illegal enrichment.</td>
</tr>
<tr>
<td>31.</td>
<td>Strengthen mechanisms to report acts of corruption.</td>
</tr>
<tr>
<td>32.</td>
<td>Improve legislation against the crimes of bribery, extortion, and conflicts of interest, which may not be covered under criminal law.</td>
</tr>
<tr>
<td>33.</td>
<td>Reform the procedural code in order to introduce oral arguments into criminal proceedings, expedite court proceedings, and make them transparent. Create an executive branch public prosecutor's office so the judicial branch can remove itself from investigations.</td>
</tr>
<tr>
<td>34.</td>
<td>Create an Office of Anti-Corruption Prosecutor.</td>
</tr>
<tr>
<td>35.</td>
<td>Record and publicize contributions, over a predetermined amount, to political parties and campaigns, and introduce transparency into campaign funding in general. Elected candidates should declare funding sources. Political parties must use a single bank account and be denied banking secrecy privileges.</td>
</tr>
<tr>
<td>36.</td>
<td>Limit campaign expenditures and the length of campaigns. Prohibit televised campaign spots.</td>
</tr>
<tr>
<td>37.</td>
<td>Recognize and introduce public campaign financing in gradual stages.</td>
</tr>
<tr>
<td>38.</td>
<td>Enact a freedom of information law.</td>
</tr>
<tr>
<td>39.</td>
<td>Require government agencies to release regularly to the public their balance sheets and reports of activities.</td>
</tr>
<tr>
<td>40.</td>
<td>Introduce active ethical instruction into curriculum at all levels of the educational system.</td>
</tr>
<tr>
<td></td>
<td>Encourage ethical self-regulation of professional associations, trade unions, and other civic groups. Strengthen their internal codes.</td>
</tr>
</tbody>
</table>

*Source: Accountability, Phase II, No. 4 (December 1994), p. 9, with some editing*
Second, leaders must develop a strategy that recognizes that not everything can be done at once. The anti-corruption effort might begin where the public perceives the problem acutely (for example, with extortion in the Philippines’ Bureau of Internal Revenue; the licensing bureau in Venezuela; police and courts in many countries). One should undertake behind closed doors a kind of benefit-cost analysis, assessing those forms of corruption where the economic costs are the greatest (for example, corruption that distorts policies as opposed to who gets a specific contract) but also taking into account where it is easiest to make a difference. A good rule of thumb is that to be credible an anti-corruption campaign must have some tangible successes within six months.

Third, leaders need political insulation. Sometimes international collaboration can help provide it, as countries together admit a common problem and move to address it (“corruption is not just our problem”). The OECD’s recommendation helps all countries recognise that corruption is an international problem requiring an international solution. At home, leaders can cloak themselves in popular outrage over corruption by seeming to be compelled to take action, even when this hurts powerful members of the establishment.

Finally, the private sector itself can help overcome a corrupt equilibrium. The greatest enemy of corruption is the people. If only they are consulted, citizens are fertile sources of information about where corruption occurs. The mechanisms for consulting them include citizens’ oversight bodies for public agencies, the involvement of professional organisations, hot lines, call-in shows, educational programs, village and borough councils, and so forth. Business groups should participate in confidential diagnostic studies of how corrupt systems of procurement, contracting, and the like actually work -- where the emphasis is on systems and not individuals. Finally, self-policing by the private sector, especially when supported with international investigatory capabilities (and credibility), can help businesses say “no” to requests for bribes.

2. Breaking a culture of corruption

Once leaders are interested in change, they must first of all convince a cynical public that the rules of the game will henceforth be enforced. One way of doing so is “frying big fish”: punishing a few high-level offenders from the public and private sectors, preferably from one’s own political party.

Here are some examples. Hong Kong used to be awash in corruption. Then in 1973 a new Independent Commission against Corruption was formed. It had new teeth, and new eyes. It possessed powers to investigate suspected offenders and had new means for obtaining information about the wealth of public servants. But despite its powers, at first no one believed that the ICAC would succeed any more than previous efforts to rewrite laws and create investigatory bodies. Credibility came when the ex-police chief of Hong Kong was extradited from retirement in England and punished in Hong Kong. The ICAC also prosecuted the ex-number two and scores of other high-ranking police officials. To a sceptical public and a hardened civil service, frying these big fish sent a credible signal: “The rules of the game really have changed.”

Mexico’s President Carlos Salinas also created new capabilities of investigation and enforcement. But his efforts too were originally greeted with disbelief. They did not gain credibility until his enforcers pounced on the notorious head of the Pemex syndicate, on a leading narcotics trafficker, and on three high-powered business people who had fiddled with the Mexican stock exchange. One of the latter was the head of Salinas’s political campaign in one state. The message: If these big fish can be caught and fried, political impunity is a thing of the past.
Besides frying big fish, other high-profile actions may be effective in creating a sense of momentum, in signalling the end of a culture of impunity:

-- setting up an Independent Commission Against Corruption in the Hong Kong model or an anti-corruption “czar” who coordinates a government-wide effort against corruption;

-- enacting the OECD measures mentioned above;

-- aligning one’s country with the new international NGO Transparency International as a so-called “island of integrity,” including a new standard of conduct for public officials and for private firms engaged in government work, coupled with creation of a self-policing mechanism for private firms that participate in government transactions;

-- assigning a key activity to an international agency while retraining and reorganisation take place (for example, Bolivia assigned procurement to two international firms, while Indonesia gave the collection of customs duties to the Société Générale de Surveillance);

-- a dramatic offer to eradicate coca growing -- a major source of corruption -- in exchange for international assistance that guarantees today’s coca farmers attractive prices for alternative crops for five years (my proposal for Bolivia, alas not acted upon);

-- an experimental program in revenue collection agencies, where officials share a proportion of additional tax revenues generated above some target in the next two years (this worked in Bolivia in the mid-1980s).

Such measures may help create the political conditions under which the longer-term structural reforms outlined earlier can be effective in preventing corruption (and more generally, to improve governance).

d. Summary of national measures

Bribery in international business transactions is a small albeit important part of the corruption that undermines economic and political development. Some legal issues do need addressing: campaign and party finance, laws against illicit enrichment, making corruption a violation under administrative as well as criminal law, and laws affecting the way government structures the fight against corruption. But in the face of systematic corruption, changing the laws may make little difference, nor will moral exhortation. Systematic corruption is a problem of systems, not of unethical individuals. Fighting it requires a strategy, which means several things. First, anti-corruption efforts must emphasize systematic reforms of incentives, competition, bureaucratic discretion, and accountability. Second, the details of the strategy must be developed locally. The paper describes a participatory process involving top policy makers and citizens, which has proved successful in a variety of contexts. Third, a host of political obstacles must be overcome. In particular, one must rupture the culture of impunity by “frying big fish.”
3. **International Measures to Reduce Corruption**

Despite the obvious sensitivity of devising and implementing strategies against systematic corruption, international organisations can help -- and indeed already do help, through aid for democratic reforms, more competitive economies, and the improvement of governance. But a more focused effort is needed. If the past fifteen years were notable for macroeconomic and macropolitical reforms, the next fifteen years will be the era of *institutional adjustment*:

-- In the private sector, not just the declaration of “competitive markets,” but the improvement of market institutions, especially vis-à-vis the poor.
-- In public administration, not just (or even) less government and fewer employees, but systems of information and incentives which encourage productivity, decentralisation and participation, and which discourage rent-seeking and abuse.
-- In democratic policies, not just multi-party elections, but limits on campaign financing, legislative reform and strengthening, and improvements in local governments.
-- In legal systems, not just better laws and constitutions, but also systematic initiatives to improve the honesty and capacity of police, prosecutors, and judges.

These topics are obviously sensitive and context-specific, and there is less agreement internationally about the nature of the reforms to be pursued, compared with, say, the move to multi-party democracy. But the dynamics of reform in this area will not, I believe, require that all countries agree to the same anti-corruption agenda -- or even that all participate. The problem will be less and less how to persuade sovereign governments to “do something” about corruption but *how* to do it. The momentum is toward a systematic attack on systematic corruption. In coming years donor nations will face ever greater pressures from their citizens not to aid countries perceived as corrupt. At the same time, the new wave of democratically elected governments in the developing world will be looking to the international community for help in controlling bribery, extortion, kickbacks, fraud, and other forms of illicit behaviour. They are recognizing that neither free markets nor multi-party democracies will succeed if the institutions of the private and public sectors are riddled with systematic corruption. And as a few countries make progress in fighting corruption, others will follow.

Outsiders can assist in a variety of ways, ranging from the indirect and subtle (support for civic associations, training for legislators, the management of justice systems) to the direct and forceful (the EBRD only gives loans to countries with suitable political systems). This symposium will no doubt produce a host of useful suggestions. Space constrains me to focus on three categories for organizing a new international effort against corruption.

*a. Support three stellar national programs against corruption*

International aid should be allocated to countries willing to undertake reforms to address systematic corruption. As an illustration to stimulate reflection, suppose the DAC countries created a program that promised seven years of special and significant support to the three developing countries that proposed the best national strategies against corruption. To help kindle interest in this “contest” DAC countries would fund international and local *workshops* in “participatory diagnosis,” as described above. Then *cross-country studies involving both the private sector and the government* might focus on key areas such as revenue raising, procurement and public works, and the justice system. The focus would be on the vulnerability of systems to corruption, rather than on particular individuals. Participating countries would share the results of these studies, and national and international measures would then be designed to remedy
structural defects. At this stage, interested countries would prepare their national strategies against corruption. Three of the strategies -- perhaps one each from Africa, Asia, and Latin America -- would be supported by special funds from the DAC countries. Other country strategies, or components thereof, might well be supported by other donors -- and, of course, by the participating countries themselves.

The measures to be included in an anti-corruption strategy would depend on the context, but they would often include:

-- experiments with incentive reforms in the public sector;
-- mechanisms to enhance accountability, especially through the involvement of business and citizens;
-- enhancing capabilities in investigation, prosecution, and judging;
-- legal reforms in campaign finance, illicit enrichment, and regulatory and administrative law; and
-- administrative reforms that designate an anti-corruption focal point and simultaneously facilitate inter-agency coordination.

**b. “Tool kits”**

The international community can help to assemble and disseminate examples of best practice, as well as frameworks for policy analysis -- a combination that might be called “tool kits” for fighting corruption.

For example, working together, the OECD countries and others might select aspects of corruption, and more broadly participatory development and good governance, that are (1) close to their priorities as bilateral donors, (2) important to emerging democracies, (3) perhaps less the comparative advantage of international agencies such as the United Nations or the World Bank, and (4) areas where it is believed that we can all learn from each others’ experience. Three areas might be given priority in controlling corruption: revenue raising, including tax and customs agencies; the justice system broadly construed; and government procurement, licensing, and contracting. A fourth topic might be added where many OECD countries themselves have much improvement to make: the interfaces between money and politics, including political contributions, party finance, and campaigns.

In each of these areas, countries working together would try to create tool kits containing the following:

-- Analytical frameworks for diagnosing and dealing with corruption (generic frameworks but also specific ones for tax administration, customs administration, police, prosecution, judges, procurement, contracting, and so forth).
-- Case studies of best practice and success in reducing corruption, at different levels of government and in different sectors and domains.
-- Participatory pedagogies, which means a variety of devices to enable citizens, business, NGOs, the media, and government employees all to learn about, and teach each other about, corrupt systems and what to do about them.

The international community might also provide financial support for international institutions working for the control of corruption. For example, international NGOs might help organize the
participatory workshops, provide backstopping for thematic studies of corrupt systems, and help validate and disseminate case studies of best practice.

c. Strenuously pursuing the OECD recommendation

The international community should also take steps that acknowledge that international actors are also part of the problem and part of the solution. It is in this light that the OECD recommendation and its focus on bribery in international business transactions have strategic importance. Because of corruption’s sensitivity, foreigners will not be welcome discussants until they show that they recognize their own complicity in many corrupt activities. It may be only after the countries of the OECD show that they are serious about their part of the corruption problem in developing countries -- especially the bribes their citizens pay -- that developing countries will be willing to accept international assistance in addressing systematic corruption.
Notes


2. OECD documents refer particularly to "illicit payments," "bribery in international business transactions," and "illicit payments in international commercial transactions." (I do not cite specific OECD documents because they are marked "Restricted.") Transparency International refers to itself as "the coalition against corruption in international business transactions." See also Accountability and Transparency in International Economic Development: The Launching of Transparency International in Berlin, May 1993, ed. Fredrik Galtung (Berlin: German Foundation for International Development and Transparency International, 1994).

3. Two authors have recently and independently drawn the distinction between one sort of corruption that is analogous to a foul in sports, and another sort which is the breakdown of the rules defining and enforcing fouls, where the sports contest virtually collapses. The latter is the systematic phenomenon of corruption that they fear is undermining development. Moreno Ocampo calls it “hypercorruption.” Werlin’s label is “secondary corruption,” and he compares it to alcoholism. See Luis Moreno Ocampo, En Defensa Propia: Cómo Salir de la Corrupción (Buenos Aires: Editorial Sudamericana, 1993); and Herbert W. Werlin, “Understanding Corruption: Implications for World Bank Staff,” August 1994, unpublished ms. available from the Public Sector Management Division of The World Bank. Another valuable source is Jean-François Bayart, L’État en Afrique: La politique du ventre (Paris: Fayard, 1989).

4. Corruption exists in all countries and, as recent events have revealed, is a major problem in many rich nations. But corruption tends to be more damaging in some developing countries because it has a more devastating effect on property rights, the rule of law, and incentives to invest. For analyses of various indicators of corruption and their negative effect on investment and growth, see Paolo Mauro, “Corruption, Country Risk, and Growth,” Paper Prepared for Research Seminar in Positive Political Economy, Harvard University/Massachusetts Institute of Technology, November 1993. For a theoretical model of systematic corruption, see Andrei Schleifer and Robert Vishny, “Corruption,” Quarterly Journal of Economics, 1993, pp. 599-617, and Jean Tirole, “Persistence of Corruption,” IPR55, Working Paper Series (Washington, DC: Institute for Policy Reform, October 1992).


6. See article 5, section 7.


11. Sometimes, perversely, new laws increase opportunities for corruption by restricting information flows, creating mini-monopolies in government (such as the granting of licenses and permits), or increasing rent-seeking incentives.


13. A detailed checklist for policymakers appears in my Controlling Corruption (Berkeley and Los Angeles: University of California Press, 1988) and Adjusting to Reality: Beyond "State vs. Market" in Economic Development (San Francisco: ICS Press and International Center for Economic Growth, 1991). These are hardly the last words on the subject. In particular, more subject-specific checklists and guidelines would be valuable for specific areas such as procurement, tax collection, police reform, and so forth. See also the United Nations publication mentioned in fn. 5 and the as-yet-unpublished manuscript of Philip Heymann entitled "Fighting Corruption" (Harvard Law School, 1993). Valuable documents have also been prepared by Transparency International.

14. But this is not essential. In one country the Chief Justice of the Supreme Court was the convener; in another, the Minister of Planning.

15. Cases can be found in Controlling Corruption and Dealing with Corruption and Intimidation . . .

16. For reasons of space but not importance I omit here the phenomenon of using anti-corruption initiatives cynically to attack political opponents and curry favour with the international community.
Coalition Building for Islands of Integrity

Dr. Peter Eigen
Chairman, Transparency International (TI)

Introduction

Transparency International (TI) is an international Non-Government Organisation (NGO) committed to fighting international corruption. Its focus is on grand corruption as it affects developing countries. TI considers the Recommendation on Bribery in International Business Transactions of the Council of the OECD as a breakthrough in tackling corruption in the international arena. As we all know, the Recommendation is only one step -- albeit a very important one -- on a long and rocky road toward controlling corruption. TI and its more than forty national chapters and support groups all over the world are firmly determined to participate in translating this recommendation into practical reality.

The OECD Recommendation incorporates two important aspects of international corruption, which are also essential to the approach of TI. Firstly, in contrast to many earlier pronouncements from the OECD, it clearly addresses the source of international corruption, which, to a large extent, fuels grand corruption in the developing world. This more even-handed approach opens the way to forming a truly global coalition, including North, South and East, to tackle corruption. Secondly, it recognizes that an effective attack on international corruption has to be based on a coordinated approach, to minimize the risk that those firms or exporting nations that stop corrupt practices in the international market place will be penalised by losing contracts to competitors that continue with corrupt practices.

We therefore believe that the OECD approach is a promising landmark. We are pleased to have been involved in this effort and to be invited to contribute to this Symposium. In my presentation I plan to focus on these two key, interrelated elements of the OECD approach that we feel are crucial to dealing effectively with corruption in the international arena. I will try to illustrate this with concrete practical examples from TI's operations. They aim largely at coalition building against corruption and at promoting anti-bribery pacts in well-defined markets, promoting “Islands of Integrity”.

Coalition Building Against Corruption

TI itself is an international coalition against corruption. It spans across continents, cultures and religions, social strata, and the professional orientations of its supporters. Our approach is therefore balanced and professional; we seek to minimize confrontation and politics. We see the need for action in the North as well as in the developing world.

An essential element in TI's country programmes is the initiation of active citizens groups to accompany, as independent and supportive (yet critical) partners, the anti-corruption strategies of their governments. These groups, normally incorporated as National Chapters in the form of NGOs under local law, are expected to translate the international concepts and strategies of TI into a concrete, country-focused and sustainable reality.

At the end of 1994, there were more than forty national chapters formed or in the process of formation. Although a number of them are in the developed world, the majority are being formed in the South and in the East. They replicate, at the national level, the coalitions being forged by TI on the
international plane. The chapters are free to define their own mandates and work programmes. There are only two important caveats which all chapters have to respect or they will be dis-accredited:

-- TI does not investigate and expose individual cases of corruption. This would undermine its role of building coalitions in search of professional and technical improvements of anti-corruption systems. Our target is practical change, in laws, institutions and policies, that will drastically reduce the incidence of corruption in the future.

-- TI avoids party politics. It would damage the credibility of the movement if a national chapter fell under the control of a certain government or, inversely, focused on political opposition to government.

The objective of this policy and structure of national chapters is a two-pronged coalition approach: the responsibility of controlling corruption has to rest with both the government and the civil society. TI's role in building this interaction is mainly catalytic. Generally, country programmes have followed the same sequence and methodology.

First, it was ascertained from both the government and leading figures within civil society that a TI visit would be regarded as constructive. Discussions were held initially with senior government figures (usually including the head of government in person) to explain the nature of the mission and of TI's mandate. The purpose was to lay a sound basis for constructive dialogue between the government and civil society on an issue which is arguably the most sensitive of all.

Discussions were then held with relevant segments of civil society -- typically including business leaders, newspaper editors, religious leaders, academics, non-governmental activists, chambers of commerce, professional bodies -- to test the interest and the feasibility of forming a national chapter imbued with the TI philosophy and approach. An important aspect of the latter discussions was to identify prospective leaders of a TI chapter who would be seen as independent of government, as being "above" politics, and as being individuals of outstanding character and probity.

The TI team would conclude with a final round of talks with government leaders. A report would then be prepared, assessing the impressions gained by the mission and the prospects (and where the pre-conditions were appropriate) for an effective move against corruption. On this basis, last year TI teams visited Bangladesh, Benin, Mali, Russia, South Africa and Uganda, with follow-up missions to Ecuador.

A concrete example: In Ecuador this idea was enthusiastically adopted in numerous meetings with the private sector, particularly with the chambers of commerce and industry of Quito and Guayaquil, and with two pertinent NGOs. The necessary steps have been taken for the creation of Transparencia Ecuador and to ensure that it will be non-partisan, non-political and independent in its operations. The initial members of the Chapter include eminent persons from all walks of Ecuadorian social, economic and cultural life -- including representatives of the church, academia, business and banking, NGOs and present and former government officials. The Ecuador Chapter will become the centre of activity for TI support to Ecuador.

"Islands of Integrity" -- the Anti-Bribery Pact (ABP)

The second essential feature of TI of particular relevance for this Symposium is its evolutionary approach, the effort to establish "Islands of Integrity." This concept reflects the recognition that in view of
widespread corruption it is difficult for individual firms or even exporting nations to take the first step in ending corruption. They fear that their competitors will continue to bribe and get the contracts. Therefore, by entering into an Anti-Bribery Pact (ABP), TI has initiated attempts to arrange, in well-defined markets, a pact among competitors to simultaneously stop corruption. TI is promoting this concept in several countries.

If this idea works, it can serve as a model for many countries and other situations. In fact, it may even serve as an integral part of present efforts to implement the OECD Recommendations, which may also depend on a gradualist, confidence building approach for global implementation.

**A concrete example:** 1994 saw the first successful implementation of this mechanism in the energy sector of Ecuador. The Vice President of this country announced at the occasion of the first Annual Meeting of TI in Quito, that in the future all enterprises wishing to do business with the public sector in Ecuador had to enter into a mutual solemn pledge not to engage in any corrupt practices to get the contracts. This would apply to all firms, local and international, and to all types of government contracts -- although initially it was intended to focus on large public development projects.

Ecuador has made a start in implementing these steps. Most major corporations were briefed and requested to sign the anti-bribery pact. The government made its side of the pledge in June 1993 in the form of a letter, signed by the Vice President. It instructed its procurement officials “to require all bidders in projects involving international procurement of systems, equipment, or services to submit a signed statement that they will not offer or give a bribe to any public official in connection with such bids.”

The firms were expected to sign their acceptance of this pact as a corporate commitment, substantially in the form of a letter with the pledge that the firm:

- **a)** will not offer or give bribes or any other form of inducement to any public official in connection with its bid;
- **b)** will not permit anyone (whether its employee or an independent commission agent) to do so on its behalf;
- **c)** will make full disclosure in its bid of the beneficiaries of payments relating to the bid (both already made and those proposed to be made in the event of the bid being successful) to any person other than an employee of the corporation but including any bonus payments which may be made to employees (such disclosures being made under terms of commercial confidentiality if the corporation so requires), and,
- **d)** will formally undertake to issue instructions to all its employees and agents or other representatives in Ecuador directing them to comply at all times with the laws of Ecuador and, in particular, not to offer or to pay bribes or other corrupt inducements to officials (whether directly or indirectly).”

It was expected that both the Chief Executive Officer and the Executive of the local Subsidiary, if any, place their name on this pledge. The reason for this was the intention, through a strong personal, psychological commitment, to break the corrupt culture which has entered over time the business methods of many companies. Therefore, the ABP does not rely merely on legal commitments -- the legal prohibitions against bribery already exist in Ecuador as in many other countries -- but to create an effective attitude of transparency, a sense of mutual trust and confidence between the public and the private sectors and among the competitors themselves.
The intention of the government was to make the signature of the ABP a general legal requirement for all bidders competing for public contracts. However, the wording of the Presidential Decree to be issued raised a few legal issues. Consequently, the legal requirement to sign the ABP was not firmly established and its first application was therefore on a voluntary basis.

As it happened, the four bidders for a large Refinery Rehabilitation Project, estimated to cost the equivalent of US$160 million, considered this mechanism to be in their mutual interest and signed voluntarily. The procurement process has been successfully completed. It can be assumed that the participants considered the ABP as a useful component of this procurement round.

The government and Petroecuador in its board meeting on 3 February 1995 decided that the ABP will again be included in the required bidding documents for a very large Oil Pipeline Project (about US$600 million). In the meantime, the legal snags in the enabling legislation for making the ABP a binding requirement for all Ecuadorian public procurement, have been settled and the legal reform for making the ABP compulsory for all public contracts in Ecuador is being prepared.

It can be expected that in addition to the de facto impact, there will be significant legal sanctions connected with the ABP in terms of invalidating the contract, damages for the State and competitors, loss of bid security, etc., if the ABP is found to be false or to have been violated. This will hopefully give credibility to this instrument on which competitors can rely when they refuse to offer bribes.

**Coalition Building and ABP -- Window of Opportunity**

I singled out two vital elements in our approach to corruption. We commend them to this meeting as practical approaches, which when realistically and patiently applied promise tangible results also in implementing the ambitious OECD Recommendations. Of course, the use of Anti-Bribery Pacts is only one specific element in a whole spectrum of instruments that have to be addressed in a coherent way to make the integrity system as a whole work.

To facilitate this comprehensive approach, TI is, at the suggestion of Dr. Oscar Arias, in the process of developing an analytical framework called a "National Integrity Blueprint (NIB)", to be completed in 1995. This will serve both as a reference document for governments and policy makers and also as a source of action plans for national chapters. The NIB will be developed and refined further in appropriate areas, as funding permits, to serve as a handbook for governments and for civil society groups pressing for reform, which will tabulate "best practice" in salient areas of government and private sector activity. The project is currently funded by the Ford Foundation.

The gradualist approach proposed by TI under the concept of building "Islands of Integrity" is at the same time a specific part of the overall integrity systems and a strategic tool to bring about global coalitions. It can, as a "confidence building measure", bring in the support of those exporters and exporting nations, who fear losing contracts if they stop bribing and their competitors don't. These fears, a classical "Prisoners' Dilemma", act presently as a formidable deterrent for many firms and their home governments, be they OECD members or not.

The present time offers a window of opportunity for change. Many OECD Member and non member countries and their leaders, in the public and in the civil sectors, are keen to build international coalitions against corruption. The breakthrough at the OECD was by no means a singular event.
For the western hemisphere, the events in Miami, from 9-11 December, were wholly without precedent. At the Summit of the Americas the 35 democratically elected heads of government present shattered the taboo of an honest discussion on the issue of corruption at the highest level. Perhaps the first indication of a major change in Africa came with the Ministerial Conference Against Corruption held in Pretoria, South Africa, on 14 November 1994. The Pretoria conference established a Ministerial regional group to monitor corruption and to foster creative efforts to contain it. The Organisation of African States (OAS) has since notified us of its regional strategy for Africa.

At the European level, significant initiatives are afoot (European Union and Council of Europe). The International Chamber of Commerce has resumed concrete work to make its Code of Conduct operational. For the International Development Agencies corruption has become a major element of their "good governance" agenda and the new World Trade Organisation is also considering initiatives to include corruption as restrictive trade practice into its purview.

With all these elements in reach, the effort spearheaded by the OECD should be able to succeed in mobilizing a growing network of committed supporters, in defining opportunities for translating the actions recommended last May into practical change. This common effort will succeed.
Notes

1. Corporacion Latinoamericana Para el Desarrollo (CLD), Quito, and Frente de lucha Popular Contra la Corrupcion, Guayaquil.

At common law it is an offence, punishable by imprisonment and/or an unlimited fine, to bribe the holder of a public office and it is similarly an offence for any such officeholder to accept a bribe (*Whitaker [1914] 3 KB 1283; Lancaster (1890) 16 Cox CC 737*). If the offer of a bribe is not accepted, the offeror may be guilty of an attempt to commit the common law offence. However, in practice most prosecutions for corruption are generally brought under one of the relevant statutory provisions which are considered below.

1. **The Public Bodies Corrupt Practices Act 1889, section 1**

   (1) Every person who shall by himself or in conjunction with any other person, corruptly solicit or receive, or agree to receive, for himself, or for any other person, any gift, loan, fee, reward, or advantage whatever as an inducement to, or reward for, or otherwise on account of any member, officer, or servant of a public body as in this Act defined, doing or forbearing to do anything in respect of any matter or transaction whatsoever, actual or proposed, in which a said public body is concerned shall be guilty of a misdemeanour.

   (2) Every person who shall by himself or in conjunction with any other person corruptly give, promise, or offer any gift, loan, fee, reward, or advantage whatsoever to any person, whether for the benefit of that person or of another person, as an inducement to or reward for or otherwise on account of any member, officer or servant of any public body as in this Act defined, doing or forbearing to do anything in respect of any matter or transaction whatsoever, actual or proposed, in which such public body as aforesaid is concerned, shall be guilty of a misdemeanour.

   Under section 2 the offence is triable either way and in respect of penalties for this offence aside from a fine or imprisonment one may also be ordered to repay the bribe to the body in question, be prevented from being elected to such an office again and, if convicted a second time, banned from holding a public office entirely and prevented from voting at elections. Also the defendant would be liable to forfeit any compensation and pensions from the body in question.

   By virtue of section 4(2) of the **Prevention of Corruption Act 1916** the interpretation of a "public body" under section 7 of the Public Bodies Corrupt Practices Act 1889 is extended to include local and public authorities of all descriptions and not just limited to local government. Indeed the House of Lords in *DPP -v- Holly & Manners [1978] AC 43* held that by virtue of section 4(2) of the 1916 Act the definition of a public body is not restricted to local authorities but refers to any body which has public or statutory duties to perform and which perform those duties and carry out their transactions for the benefit of the public and not for private profit.
What is the meaning of "corruptly"?

The word "corruptly" means not "dishonestly" but purposely doing an act which the law forbids as tending to corrupt. In *R -v- Smith (John)* 44 Cr.App.R.55 the appellant had offered money to the Mayor of a borough in order that he should use his influence in favour of the Appellant. The Appellant had claimed that he made the offer in order to expose corruption which he believed then existed and that had it been accepted he would have exposed the Mayor. The Court of Appeal held that the trial judge's direction that "corruptly" meant "with intention to corrupt" and that motive did not matter, was correct.

The following direction of the Recorder of London was approved by the Court of Appeal in *R -v- Welburn and Others* 69 Cr.App.R.254: "Corruptly is a simple English adverb and I am not going to explain it to you except to say that it does not mean dishonesty. It is a different word. It means purposefully doing an act which the law forbids as tending to corrupt". The court pointed out that the mischief aimed at by modern statutes dealing with corruption is to prevent agents or public servants being put in positions of temptation.

However, it must be noted that the courts have distinguished between instigation and cooperation in corruption. Whilst in *Smith* the appellant had his appeal against conviction dismissed on the grounds that he actually instigated the corrupt act, in *Mills* (1978) 68 Cr.App.R.154 the court held that where the accused is offered a bribe by a third party and purports to accept in order to expose the offeror or gain evidence against him this is a case of cooperation and is clearly different from *Smith*.

It is possible that a corrupt payment may be accepted innocently -- the recipient not knowing the nature of the payment. Here the offeror would be guilty of corruption, not the recipient (*Milroy Window Cleaning Co Ltd* [1962] Crim.LR.99).

2. **Prevention of Corruption Act 1906, section 1**

**Punishment of corrupt transactions with agents**

(1) If any agent corruptly accepts or obtains, or agrees to accept or attempts to obtain, from any person, for himself or for any other person, any gift or consideration as an inducement or reward for doing or forbearing to do, or for having after the passing of this Act done or forbode to do, any act in relation to his principal's affairs or business, or for showing or forbearing to show favour or disfavour to any person in relation to his principal's affairs or business; or if any person corruptly gives or agrees to give or offers any gift or consideration to any agent as an inducement or reward for doing or forbearing to do, or for having after the passing of this Act done or forbode to do, any act in relation to his principal's affairs or business, or for showing or forbearing to show favour or disfavour to any person in relation to his principal's affairs or business; or if any person knowingly gives to any agent or if any agent knowingly uses with intent to deceive his principal, any receipt, account, or other document in respect of which the principal is interested, and which contains any statement which is false or erroneous or defective in any material particular, and which to his knowledge is intended to mislead the principal; he shall be guilty of an offence and shall be liable.

This Act deals with the corruption of agents, whether the agents of public bodies or not. The term agent has been given quite wide coverage by the courts. In *Barrett* [1970] 1 WLR 946 it was held that a
Superintendent Registrar is an agent of the Crown. However, outside of the public domain an agent would normally be an employee and thus an independent retailer/stockist and outside the scope of the Act. A bribe to this retailer to secure preference over certain products/services would not therefore be prescribed under the statute or common law, while a bribe to one of his employees would. It is important to note however that the agent need not be acting as agent of the principal at the relevant time as long as the act is done in relation to his principal's affairs (Morgan -v- DPP [1970] 3 All. ER 1053).

The prosecution have merely to prove that the defendant received a gift as an inducement to show favour. They are not required to prove that he did actually show favour in consequence of having received the gift (R -v- Carr 40 Cr.App.R. 188). Thus, a person who accepts a gift knowing that it is intended as a bribe enters into a corrupt bargain even if he makes a private mental reservation not to carry out his side of the bargain. However, Lord Goddard in Carr at page 189 stated that if the money was received in order to entrap the giver or to provide evidence for police listening or making a tape-recording and the acceptor did not intend to keep it, it plainly would not be corrupt.

In R -v- Braithwaite 77 Cr.App.R. 34 the Court of Appeal considered the meaning of the term consideration and held in line with the classic contract case of Currie -v- Misa (1875) L.R. 10 Exch.153 that "a valuable consideration, in the sense of the law, may consist either in some right, interest, profit or benefit accruing to the one party, or some forbearance, detriment, loss or responsibility, given, suffered or undertaken by the other".


Presumption of corruption in certain cases

Where in any proceedings against a person for an offence under the Prevention of Corruption Act 1906, or the Public Bodies Corrupt Practices Act 1889, it is proved that any money, gift or other consideration has been paid or given to or received by a person in the employment of [Her] Majesty or any Government Department or a public body by or from a person, or agent of a person, holding or seeking to obtain a contract from [Her] Majesty or any Government Department or public body, the money, gift or consideration shall be deemed to have been paid or given and received corruptly as such inducement or reward as is mentioned in such act unless the contrary is proved.

The problem is that this presumption applies only to payments, etc. given to or received by employees and this excludes councillors and applies only where a contract is being sought or obtained. Thus, for example, it does not apply where the accused seeks only planning permission (Dickinson (1948) 33 Cr.App.R.5).

Where the presumption does apply, the prosecution must prove that the payment was made or offered and that the person offering or giving it was holding or seeking a relevant contract. At this point the burden shifts to the defence to prove, on a balance of probabilities, that a payment was in fact not corrupt.
EXTRA-TERRITORIAL JURISDICTION

UK Law enables proceedings to be brought in cases of foreign corruption provided that some forbidden act takes place in the UK, i.e. some element of the corrupt transaction constitutes an offence under UK Statute law.

However, there clearly are a number of shortcomings in the UK system, as indeed there are in any country which seeks to penalise and prosecute activities which are not committed within its borders.

UK jurisprudence can point to very few successful prosecutions of bribery or corruption which have occurred largely overseas, and this may or may not have something to do with the legal and jurisdictional problems.

With the exceptions noted above where there is a presumption of corruption and where, on proof of the necessary elements, in very limited cases the burden shifts to the defence in UK law, the burden remains firmly upon the prosecution to prove to the jury's satisfaction all the elements of the offence. It is for the prosecution to prove that a transaction took place, that either one or both of the parties to the transaction fell into the categories of persons or legal entities specified in the various statutes, and that the transaction contemplated or completed was a corrupt one. The investigative powers in the UK are extensive, although, clearly, in cases of foreign element corruption, the UK authorities would seek the assistance of complimentary agencies in the countries in question, just as the UK renders assistance to enquiries from overseas.

With the coming into force of the Criminal Justice (International Co-operation) Act 1990, and the underlying membership of the European Convention on Mutual Assistance in Criminal Matters, the UK is now part of the international judicial assistance network. However, under the legislation in force in the UK, the UK Government are able to request assistance from overseas states and also to provide judicial assistance by way of the obtaining of documentary evidence and a sworn testimony for overseas investigators. Despite the fact that there is no requirement for dual criminality, there is still a discretion vested in the UK Central Authority, which is the clearing house for foreign requests, and it is unlikely that judicial assistance would be given in cases where the UK Government felt that the request was either oppressive or for conduct which was penal uniquely in the requesting state, e.g. conduct which formed the basis of a politically motivated prosecution.

In addition to these provisions, the UK is now a party to the European Convention on Extradition and has also entered into numerous bilateral extradition treaties. It has now moved away from the "list regime" to a "conduct-based regime", which makes extradition to and from the UK much easier. Certainly, extradition is available to and from the UK in connection with all cases of bribery and corruption.

It is not uncommon to find the proceeds of bribery and corruption laundered and, indeed, in corruption with a foreign element, it is almost de rigueur for the bribe in the form of money or monies worth to find its way into a foreign bank account. Where money is passed through the UK banking system, and is the product of a serious criminal offence, e.g. bribery committed anywhere in the world, the UK money laundering laws are sufficient to punish the offence in the UK. Again, as a result of the mutual assistance provisions which have been enacted, following the UK money laundering legislation, assistance can be given by and to the UK Government in all money laundering cases. This assistance includes the freezing of bank accounts, the issuing of search warrants and orders against financial institutions for the production of documents, as well as the enforcement of overseas forfeiture or confiscation orders. However, in the case of
money laundering, the conduct which gave rise to the proceeds which are being laundered must be recognised as constituting an offence under UK law.

Of course, there will be occasions when the seeking or the payment of a bribe will act as a fraud or deceit upon the agents employers and will therefore be punishable by UK law as a breach of the Theft Act or by virtue of the law of punishing conspiracies to defraud. In this connection, it is worth noting that, the Criminal Justice Act 1993, which has yet to be brought into force, extends the jurisdiction of English courts in relation to conspiracies to commit substantive offences abroad, where one of the following three conditions relating to participation is satisfied:

a) A party to an agreement or his agent did anything in England or Wales in relation to the agreement before its formation (e.g. he helped to bring it into being); or

b) A party to an agreement became a party in England and Wales by joining it either in person or through an agent; or

c) A party to an agreement or his agent did or omitted anything in England and Wales in pursuance to the agreement.

In any event, the agreement must be to do something which, if committed according to the parties’ intentions, would amount to an offence under English law.

Equally, under the Criminal Attempts Act 1981, as amended by the Criminal Justice Act 1993, an attempt to commit an act abroad may be triable in the English Courts, if the act done was done in England and Wales and would be regarded as more than merely preparatory to the commission of an offence, but for the fact that the offence, if completed, would not be an offence triable in England and Wales. Similarly, in the case of incitements to commit offences; following the coming into force of the appropriate section of the Criminal Justice Act 1993, a trial may take place in the UK for incitement which, itself, takes place in England and Wales, would be triable there, but for the fact that the offence incited was intended to occur abroad. There is the pre-requisite, however, in all these cases under the 1993 Act, that the inchoate offences must have as their purpose the commission of a crime abroad and that the prosecution must prove that the act or omission, if completed, would have constituted an offence under the law in force, where the act, omission or other event was intended to take place. How the conduct is described in the foreign law is irrelevant. It is enough if the conduct in question is punishable under foreign law.

Thus, although the United States of America seeks in its Foreign Corrupt Practices Act to extend the jurisdiction of its Courts to all US citizens and US companies, wherever the offence of bribery or corruption is committed, attempted or contemplated, this is not the approach of the English Courts. English jurisprudence has rarely based its jurisdictional pretensions upon nationality. Rather, it is, that UK legislature has adopted a practical approach, i.e. do we recognise that the conduct is an offence in the UK, regardless of the nationality of the perpetrator, and, wherever the offence is committed, can it practically be justiciable in the UK? By this, I mean can accurate and admissible evidence be obtained from abroad, which an English judge and an English jury would find acceptable. Are there effective machineries in place for obtaining the arrest and extradition of the miscreant? Evidence obtained by the UK from overseas governments, either by the issue of Letters Rogatory or under International Conventions, may be admissible in English Courts by virtue of the Criminal Justice Act 1988. However, while there may be methods of introducing evidence taken abroad into an English criminal trial, no machinery exists for compelling the attendance of witnesses from abroad.
There may be reservations about imposing UK jurisprudential culture on overseas countries, whose social mores and domestic legislation may differ. That is not to say that the UK cannot, or will not, punish any provable act of bribery or corruption which falls within its jurisdiction or such wider jurisdiction as arises from international convention.

**ALTERNATIVE SANCTIONS**

1. **Administrative Fines**

   There is a long tradition in UK jurisprudence of administrative penalties in the area of tax evasion. Although previously the requirement was that no penalty could be exacted from a tax payer unless the Crown were in a position to prove that a criminal offence had been committed, even though they did not resort to prosecution, this is no longer the case. Since the 1985 Finance Act, provided that some element of dishonesty is present, an administrative penalty can be exacted in the case of VAT evasion. This being the case, it would seem that no obstacle lies in the way of the English legislature, provided some evidence exists against, e.g. companies operating in the UK or their officers or employees for imposing, administrative penalties on such companies. The difficulty which obviously arises is that if the threat of prosecution could not be carried out because of evidential or jurisdictional problems, the exacting of administrative penalties might now be considered to be a futile remedy. Some consideration should, however, be given to the fact that no company likes to be under investigation, with the added possibility that the fact will leak out and damage its commercial operations. Further, a company refusing to pay an administrative penalty where it was properly requested, could find itself at a disadvantage in tendering for public contracts. The clear advantage for the company would be that fines would be exacted in a confidential manner. There is a school of thought which is in favour of making administrative penalties available for all offences, not just those in the tax arena, even where sufficient evidence exists in the UK to prosecute a suspect to conviction.

   The disadvantage of administrative penalties is that it is said to have no deterrent effect, as the process is confidential and secondly, that it is politically unattractive because it provides for two classes of miscreants, those who are dealt with in a condign way through the Courts and those who are dealt with apparently more leniently by way of administrative process.

2. **International Efforts**

   It might be considered that the cancer of international bribery is so serious that either the Financial Action Task Force, active in the area of money laundering, should have its activities extended into this area, or that a separate Financial Action Task Force be set up which would concentrate its efforts entirely on any area of bribery and corruption. The advantages of such a task force are that it:

   a) would create and secure adherence to recommendations of best business practice;

   b) would influence the creation of appropriate domestic legislation;

   c) could work alongside any contemplated convention like the Council of Europe has in mind;

   d) is not inconsistent with any directive that the European Union may wish to introduce;

   e) would create economic pariahs out of those economies who refused to fall into line with Task Force recommendations, and
f) would provide for monitoring similar to that which now takes place in the area of money laundering.

As an extension of, or alternative to, an umbrella Financial Action Task Force, consideration might be given to countries co-operating on a bilateral basis, by creating mini-task forces, by law enforcement agencies co-operating in identifiable areas of activity, i.e. the awarding of government contracts for large public works. The precedents for this are the bilateral task forces that already exist in the area of drug trafficking and money laundering.

In any event, until such time as a common business standard exists and there is a commonly high standard of investigation and prosecution pursued by non-corrupt or corruptible officials, some alternative international initiative needs to be considered.

3. Commercial Sanctions

The UK model might be followed in disqualifying those who have been engaged in bribery and corruption from holding public office or, indeed in certain extreme circumstances, from exercising their franchise. Also, as has always been discussed in the papers, the nullification of contracts which have been created as a result of bribery. This creates an enormous problem where the corruption discovered involves a pre-existing contract, leading to economic disruption, disruption of the infrastructure and problems with the unemployment of those already engaged in the contract. UK law disqualifies directors of failed limited companies or those associated with failed limited companies, from conducting the affairs of the limited companies for a period of time up to a maximum of fifteen years. It may well be a case for extending this disqualification into the area of those who either are convicted of bribery or corruption or where there is sufficient evidence which would satisfy a Civil Court dealing with a disqualification application.

4. Independent Inspection

It has been proposed that in all cases where public contracts are awarded, that the successful tenderer should open its books to examination by the country awarding the contracts. Ideally, the examination should not be conducted by the government in question, to avoid the allegation that its already corrupted officials will simply give the company a clean bill of health, but that the inspection should be conducted by some outside public or private organisation which could issue a certificate. This suggestion has also been extended to the monitoring of the contract during its progress and, indeed, signing off at the completion.

5. Tax Sanctions

What does not appear to be acceptable internationally is the actual rewarding of business for making corrupt payments, e.g. by allowing corrupt payments to be euphemistically described as a commission, and for the company to deduct these payments from its profits for tax purposes. In this connection, it is worth noting that under Section 122 of the Finance Act 1993, any expenditure by a UK taxpayer which involved the commission of an offence is non-deductible.

This paper is intended only as a short discussion document and the views therein expressed are the views solely of the author and do not represent in any way the views of Her Majesty's Government. It should be said in conclusion that the author is of the view that the only sensible way forward is by international initiative and consensus.
Introduction and Summary

This paper provides a brief review of corruption and efforts to deal with it, from the perspective of a bilateral aid donor. The focus is therefore on aid receiving countries and on the public sector. This is not, however, intended to imply either that corruption is a problem only in such countries or only in the public sector.

The paper is presented in two parts. The first discusses the problem of corruption in terms of the forms it takes (para 3), the costs it imposes (paras 4-5) and its causes (paras 6-7). It argues that corruption is more complex and widespread than bribery in international business, that it imposes a major cost over and above any direct financial costs, and that it needs to be seen in a broader governance context rather than as a problem which can be tackled in isolation. It also identifies a link with the economic policy and adjustment agenda. The second part provides an overview of political, economic and administrative reforms. Pursuing the interrelationship of corruption with a wider governance agenda, it identifies a variety of reforms which may be needed (para 8). It emphasises the key importance of political commitment (para 9), willingly given or demanded by the population at large, to anti-corruption measures and wider good government reforms. The role of donors is then discussed, emphasising that these are shared problems (para 10). The experience of the Overseas Development Administration (ODA), which runs the UK Government's overseas aid programme, is used to provide examples of positive assistance (paras 11-15). The important role of international dialogue and of NGO's (para 16) is also recognised.

The Problem of Corruption

Forms of Corruption

Corruption is an issue for all countries, but particularly for poorer countries which can least afford the damage it causes. It comes in a variety of forms. Bribery on international contracts is perhaps the most substantial but there are others. Examples include diversion of business, perhaps at inflated prices, to companies in which the decision-maker has an interest; providing permits or employment for a price regardless of merit; demanding a bribe to provide services which are nominally free; and to overlook infringements or illegally waive taxes.

Costs of Corruption

The costs, both direct and indirect, of corruption can be very large. They include:

-- the higher costs of capital contracts as a result of the bribes,
-- "commissions" on a recurring basis, for example on oil exports or imports,

-- purchase of equipment which is less productive, more costly to run or more difficult to maintain than alternatives,

-- bad investments, e.g. factories lacking markets or raw materials, earning no return or even becoming a continuing recurrent liability but with loans which have to be repaid regardless of project outcome,

-- delays, inefficiencies or obstacles in conducting business,

-- appointments of people who perform badly in key functions,

-- loss of revenue as a result of tax evasion,

-- erosion of standards in government at both political and official levels.

There is an argument that corruption is not as bad as it is made out to be, that it brings economic benefits through facilitating economic activity. It is understandable that an individual faced with a recalcitrant official or an executive trying to do business in a corrupt environment should think this. But the list above indicates that the costs of corruption can be huge enough to undermine growth. In the end, all but a few individuals lose, none more so than developing countries which are subject to corruption, but also business in general. All stand to gain from effective action against corruption.

**Causes of Corruption**

The Symposium has a particular concern with bribery in international business. This may be the most evident symptom for individual countries, but it cannot wholly be dealt with in isolation. Corruption undermines good government but is, in turn, also made worse by failings of governance. Any particular instance of corruption may be attributed to individuals, with both companies and governments disclaiming responsibility. But these failings are allowed if not encouraged by systemic problems. Lack of accountability in terms of political process, of accountability for performance and of stewardship of resources enables corruption to flourish. So do dark corners caused by a lack of transparency in government. A lack of appropriate balance between different areas of government -- political, administrative, judicial -- may undermine the possibility of preventing or catching corruption. These points illustrate why corruption cannot be seen in isolation from what context has been called Participatory Development and Good Governance (PD/GG), what ODA has called Good Government.

Other causes lies in the area of economic policy and performance. Excessive reliance on controls and permits or monopoly supply arrangements provide opportunities for corrupt exploitation. In some countries, substantial falls in real wages resulting from economic difficulties are another major factor encouraging petty corruption and undermining the effectiveness of controls and commitment against corruption at all levels.
Political, Economic and Administrative Reforms

The Reform Agenda

The interrelationship of corruption with a wider range of policy issues, in PD/GG and economic policy, calls for a correspondingly broad response. Some measures are of direct impact, others indirect; some are at the macro level, others at the micro level; some are arguably of universal application, others depend on local circumstances. A complete list would be beyond the scope of this paper but some of the main items on the menu are summarised below.

(i) Measures to promote political accountability: freer and fairer elections at national and local level; strengthening Parliamentary institutions; encouraging a more pluralist society by permitting and giving a role to a variety of institutions in civil society; encouraging independent and responsible media; controls on financing of political parties.

(ii) Measures to promote performance accountability in government: defining performance standards and mechanisms for open reporting against them; making official bodies more responsive to those they supply or serve; enhancing information systems; more transparent decision-making; ombudsmen.

(iii) Measures to promote better stewardship: enhanced accounting systems; strengthening audit and the follow-up to it; improved procurement procedures.

(iv) Measures to tackle existing corruption: creation or strengthening of anti-corruption bodies; strengthening of the police and legal systems.

(v) Reduction of opportunities for public sector corruption through abolition of controls, allocation of resources through market processes and greater reliance on competition and the private sector.

(vi) Reform of the civil service to increase effectiveness and efficiency; achieve a better balance between number of staff, levels of pay and operating costs; and ensure personnel and pay systems are based on merit.

(vii) Sustained attacks on the illegal activities which are often a cause of corruption, such as dealing in drugs.

(viii) Perhaps most difficult of all, promoting a greater positive commitment to ethical behaviour as distinct from preventing or exposing corruption.

A key issue, at the heart of any programme of measures, is the extent of commitment at the highest level to combat corruption. Much of the response to corruption is in the form of developing systems and skills which enable corruption to be discouraged or exposed and punished. If, however, there is no commitment to use such instruments then any programme will be seriously weakened. Most obviously, if those in leadership positions are themselves corrupt, or connive at corruption for political reasons, then efforts against corruption are likely to be jeopardised. In such circumstances corruption may have to be tackled indirectly, by first addressing wider weaknesses in governance and thereby creating an environment which is less conducive to corruption because it demands a higher standard of accountability.
The Donor Role

It is for each country to take responsibility for initiatives to overcome corruption within its jurisdiction. But it is an area in which a donor like ODA can and does help. This is not because of a perception that we have 'solved' corruption but as fellow-strugglers against a problem which requires constant vigilance. The UK, like everyone else, suffers from cases of corruption. We have systems which aim both to discourage and to catch wrongdoers. It is however an unending task. Our National Audit Office, Public Accounts Committee and, indeed, the media and public at large apply pressure to ensure alertness is maintained or enhanced against corruption. On international business, the review of measures we have recently been undertaking, in common with other OECD members, aims to ensure that we follow best practice in terms both of legislation and enforcement.

ODA's interest, as a donor, has a number of dimensions. Most narrowly, we have to satisfy ourselves, our own auditors and Parliament that aid is not being misused. That is an absolute requirement even if it involves special controls.

More widely, the existence of corruption is a potential threat to support in donor countries for aid programmes. There is little that so undermines the case for aid in the public's mind as the image of an aid recipient which misuses its own resources. For this reason, but also because decisions on aid partly rest on donor judgements about recipient governments policies and actions, corruption can properly be an issue in donor-recipient dialogue on aid and development issues. It has been a factor in our aid relationship with a number of countries in recent years.

It affects aid at several levels. At the extreme, donors may conclude that the risk of corruption and misuse is so high that only humanitarian aid can be provided. Or they may avoid general programme funding, such as balance of payments support or budgetary assistance. Corruption in aid recipients may reinforce commercial pressures to tie aid to procurement in donor countries, where standard audit procedures are more easily enforced, and it can deter aid to sectors where corruption appears to be rife.

We do not, however, only stand by and expect countries to tackle these problems for themselves. Support is available from the aid programme to reinforce countries' efforts to tackle corruption. This mostly takes the form of technical cooperation for appropriate activities:

-- consultancies to help create or reform institutions and design systems,
-- training in the UK or in-country,
-- long-term advisers or, more rarely, executive staff,
-- study visits to the UK or third countries to examine outside experience,
-- long-term or short-term support from equivalent UK institutions,
-- support for conferences which provide the opportunity for networking.

In some cases, assistance is primarily concerned with combating corruption. Institutional strengthening of an anti-corruption organisation, specific training courses and even in a few cases assistance with individual investigations are examples. At the other extreme support for structural adjustment programmes, and other assistance promoting better economic performance, indirectly helps against
corruption through the prospect of a more appropriate policy framework and thereby faster growth and improved public finances.

In between, there are many other cases where combating corruption is only one of the objectives of aid. Promotion of the institutions which support democracy and transparency in government is particularly important. The following illustrates the range of assistance currently or recently provided by ODA:

- institutional strengthening to customs and other tax departments,
- systems development and training in accounting, audit and financial management in both central and local government,
- institutional strengthening for Parliaments and lower level legislatures, for example related to the work of Public Accounts Committees,
- support for police forces both to undertake particular roles and to improve their internal management, both elements may involve anti-corruption issues,
- improving information systems and the use made of them to enhance transparency,
- support for media development,
- assistance for civil service reform programmes, where areas most relevant to corruption include recruitment and promotion systems, accuracy of records and controls on numbers,
- institutional strengthening of the legal sector,
- advice and training on economic liberalisation, for example reform or privatisation of public enterprises and financial institutions, and appropriate regulation of financial markets,
- support for multi-party elections.

In addition to the efforts of individual donors there are important roles for international action. At the government level, the Consultative Group process should continue and perhaps increase its focus on corruption issues where these are identified as a major developmental constraint. Dialogue in multilateral fora, both among donors and between them and aid recipients may help enhance commitment to tackle the problem and share experience of efforts to do so. Direct South-South dialogue through networking is also desirable. Finally, Transparency International has shown that there is a role for non-government organisations in promoting dialogue and action on these issues.
I. Introduction

From a business point of view, bribery constitutes a distortion of trade and undermines confidence in public authorities. Therefore, the business community favours steps undertaken to combat bribery. However, much bribery is, in fact, the response to extortion. In many countries, enterprises have too often had the experience of having to choose between giving in to extortion or not doing business. The choice has placed a strain on businesses' decision-making processes.

Corruption cannot be eliminated overnight by a stroke of the pen. Coordinated efforts of governments and of the business community are also necessary.

II. The Role of Company and Business Codes

The promotion of self-regulation in international trade has always been one of the major objectives of the ICC. In December 1975, the ICC set up an Ad Hoc Commission under the Chairmanship of Lord Shawcross (UK) to investigate the question of corruption in international business transactions. The final report included recommendations to governments and rules of conduct for companies to combat extortion and bribery. The report was adopted by the ICC Executive Board and Council in November 1977. Subsequently, a number of companies all over the world adopted their own rules and codes, often using the ICC rules as a model.

Self-regulation cannot completely replace legislation and measures by governments to combat bribery. Penal prosecution, rules for government officials or issues of tax deductibility are obviously questions to be addressed by governments.

Company procedures in the fight against corruption have to be integrated into the ordinary business process. Therefore, company codes can effectively complement legislation and governmental measures with respect to internal procedures, general behaviour of company officials, reporting requirements and accountancy. Indeed, company codes can be more specifically focused on individual situations than formal procedures imposed by the authorities.

III. The Role of Business Organisations

Business organisations should take part in the development and revision of legislation and other governmental measures to combat bribery. Business has an important role to play as a resource for legislators. Furthermore, businessmen can stimulate the climate for reform within the business community,
e.g. by providing models of codes of conduct and providing a forum for an exchange of information. However, it is impracticable to expect business organisations to assume a judicial or quasi-judicial function.

In recent developments, the ICC's Executive Board and Council agreed in June 1994 to set up an Ad Hoc Committee on Extortion and Bribery in International Business Transactions. The objectives of this Committee will be to revise the 1977 ICC Report, as appropriate, to coordinate the ICC participation in intergovernmental and non-governmental discussions on extortion and bribery issues and to contribute to the education of the international community about the long-standing commitment by international business to eradicate corruption.

IV. Company Practices

A large number of companies have adopted their own codes of business ethics. Many of these codes have a broader focus than simply bribery and extortion. The Financial Times reports that almost one-third of large UK companies and four-fifths of their US counterparts now have ethical codes of conduct. The enforcement of such codes varies significantly among companies, just as some governments are more effective than others in policing their own anti-bribery statutes.

A number of companies are finding that an ethics code can make good business sense. The UK's Cooperative Bank, by way of example, advertises that it will not do business with governments that have oppressive political regimes or with companies that needlessly pollute the environment. Following its advertising campaign featuring the code, the value of customer deposits at the bank was up 9 per cent in the six months to July 1993 over the corresponding period in 1992.

There are three main company approaches to company codes of conduct, depending on the general policy of the company:

a) Integration in Codes of a General Nature

Some companies include in their rather general codes on business ethics a reference to corruption and have a statement indicating that any form of corruption or bribery is a violation of company policy. For these companies, adherence to broad company standards is usually assured by the responsible management. The control is integrated into the normal internal control mechanism (e.g. company auditors, legal audits).

b) Detailed Rules on Corruption and Business Payments

Some companies have established detailed rules on business transactions which could cause ethical problems. Such rules may include regulations on expatriating or facilitating payments, political contributions, social amenities, gifts and entertainments or engagement of former governmental officials as consultants. Some of these companies have established special enforcement mechanisms complementing their internal audit procedures.

These codes often address the question of their employees' receiving payment or other advantages as well.
c) No Specific Rules or Codes

A number of companies do not specifically refer to the question of bribery or corruption in written codes, often because they do not issue general written policies. This does not mean that the management is not aware of the problem. Bribery and corruption are addressed in the course of normal business practices and enforced by the usual company procedures. Some of these companies have set up internal rules which prohibit illegal payments, although they may not be specifically labelled as anti-bribery rules (e.g. special approval for agents’ contracts, no discretionary payments by line managers). Surveillance of these general policies is usually ensured by the internal audit.

In addition to rules, companies are also obliged to properly record any special payments made to employees, agents or executives in order to observe the accounting standards to which they refer in their annual accounts.

V. Conclusions

There is no standard format for codes of conduct used by companies or business associations. Such codes have to integrated into the company culture. It would be inappropriate to oblige a company which does not rely on general written rules to introduce a special code on business ethics. On the other hand, companies using specific rules should address the problem of corruption as well. In either case, implementation of company policy is the key issue.

More important than formal rules is the establishment of an "anti-bribery culture" within an enterprise or a business sector. Education and training of management and employees are as crucial to this objective as in an integrated enforcement mechanism. In this respect, the formulation of "safe harbour clauses" may assist the individual company employee in responding to the temptations and perils of extortion and bribery.
It may help to preface my comments with a few personal remarks.

I am an English Chartered Accountant and a German qualified Wirtschaftsprüfer and apart from working many years in these two countries I have been closely involved with my firm's practices in the 1970s in Iran, in the 1980s in Turkey and in the 1990s in Eastern Europe and Russia. Most of this time I have worked as an auditor, often very closely with clients' internal auditors. I have had to cope as auditor with the practice of paying substantial commissions to government officials and rulers and have conducted a number of fraud investigations. So I am aware of the practical difficulties of containing corruption and promoting good governance.

Finally, in my present role of deputy leader of our worldwide operations I carry also the responsibility to ensure that my own firm takes the moral high ground on these issues everywhere in the world. Our very reputation depends on demonstrating every day, even in the most difficult circumstances and where necessary to our own financial detriment, that we never condone bribery and corruption.

So what can practically be done? First, let us look at bribery and corruption. The OECD Recommendations on Bribery in International Business Transactions are an important step in the right direction. It correctly puts the emphasis on the rich developed countries as the starting point. These countries must enact national legislation to make bribery and corruption a criminal offence whether committed domestically or beyond their borders.

Currently, many countries condone what happens outside their own frontiers in the interest of furthering exports. Yet it is quite out of keeping with the signature to the enlarged GATT arrangements that commissions paid to foreign individuals in their capacity as government servants or management of companies are expressly allowed as deductible expenses for tax purposes. In Germany, the world's second largest export nation, with large trade surpluses which should not therefore be in need of such dubious incentives, the ruling CDU has just confirmed the deductibility of foreign bribes, whereas the opposition SPD is campaigning to refuse tax allowances for all corrupt payments, whether domestic or foreign. The argument that a nation cannot legislate to control behaviour outside its frontiers is nonsense as shown again in the case of Germany which has made improper behaviour with minors by German nationals a criminal offence anywhere in the world.

A conscious decision needs to be taken therefore by OECD countries not to promote exports -- dare I say it, particularly of arms -- if these are achieved with the help of corrupt payments. Governments should be firm with their business associations who will want to argue that their members will be disadvantaged by comparison with international competition.

The above changes in OECD countries need to be flanked by the governments and institutions providing development aid by making the receiving countries sign on to non-corruption agreements such as those now followed by Ecuador, i.e. tendering organisations must be advised that bribery will be treated as a
criminal offence, that deposits will be required and that these will be lost if corruption is proven. Additionally, receiving governments should be required to demonstrate that they have taken anti-corruption measures, including the monitoring of the conduct of ministers and the management of state controlled enterprises.

As an auditor you will forgive me if I add that a monitoring role could usefully be given to independent accountants. This is not to say that every tendering process to countries receiving aid should be subject to audit, but that an empowering provision should be written into all tenders allowing an audit. The mere threat of an audit, which would be carried out on a selective surprise basis, could however be a very effective deterrent. Such audits it should be added are very specialised and can require also the specialist knowledge of lawyers and technical experts.

Now to good governance.

Good governance must be seen by corporate management and the shareholders as requiring a high ethical stance. Ethical behaviour should be established as a basic corporate value, extending to internal relationships, dealings with the market -- both suppliers and customers -- and relations with shareholders. Although outlawing bribery and corruption can be seen as endangering sales volumes in certain market sectors and countries there is counter-evidence that those companies which pursue unambiguous policies do not suffer, indeed that in the long-term they gain. Not selling at all to countries where orders can only be achieved by corrupt methods will also ultimately help change the attitudes of corrupt countries.

If managements needed any convincing of the advantage of taking the moral high ground in business transactions the examples of the last three years in Western Europe should suffice. When the public, and as a consequence the official, attitude to bribery changes as it has in Italy, but also to a lesser degree in this country, in Spain, Belgium and Germany, the negative publicity and sometimes criminal and civil charges which ensue can far outweigh the apparent advantages from corrupt acts. The time to stop such behaviour is now before the public mood catches out a company's dubious business practices.

To implement this change in corporate behaviour it is necessary to formulate and communicate to all employees a clear set of rules on acceptable conduct. The programme must be seen to be led by top management. It will probably require formal seminars with employees to ensure the rules are taken seriously, are understood and adopted. Employees must accept that adherence to these rules is part of the company's internal control system which will be monitored. They should acknowledge in writing that failure to follow them will lead to sanctions, including summary dismissal.

There are many examples of codes of business conduct promulgated by US corporations following the passing of the Foreign Corrupt Practices Act in the USA. Many non-US based MNCs have also adopted excellent codes.

Auditors, both internal and external, can provide support for these systems of corporate governance. Internal audit can give assurance on the detailed adherence to company policies and may be able to deter wrong or ambiguous behaviour, such as the use of fees to agents to expedite approvals from government bodies. External auditors can advise on the implementation of appropriate codes of conduct based on their ability to cull best practices from their clients in many countries. They can assist internal auditors, design testing programmes and define the scope of their work. They can also provide general assurance on the effectiveness of a company's internal control systems, including those parts of the systems which are designed to prevent unauthorised payments and fraud. Sadly there is no foolproof guarantee to
prevent bribes but the combination of a clear code of conduct supported by surprise audits can be an effective deterrent.

It is to be hoped that companies in Europe will take these issues increasingly seriously as is already the case with most US counterparts.
I am the Chairperson of a Commission of Inquiry appointed by the President of Namibia to, *inter alia*, inquire into:

"Any alleged instance of misappropriation or misapplication of State and public money (including any statutory fund) or Government property by functionaries of the Central Government and it's Ministries, including any receipt or appropriation by any person of any such monies or property which is unlawful or not properly authorised"

The Commission has completed its work and will hand its final report to the President shortly after my return home from this symposium. I draw from experience gained on this Commission to make a few brief comments on the possible effect of the present OECD initiative on non-member countries. It must be borne in mind that I can only speak as a Namibian and if my comments are somewhat parochial I apologise in advance. I also trust, however, that some of my comments will be or more general of universal application.

To concentrate on bribery "in international transactions" is a logical step for OECD countries, as they all probably have laws in place against bribery on the national level. As far as we in the third world (who are concerned about the problem of bribery and corruption) see it, this concentration has two further advantages which will be crucial to the eventual involvement of non-member countries in the OECD initiative.

Firstly, it is clear signal from the First World that it realises that the problem of bribery is not essentially a Third World phenomena but that it is of a global nature. Thus, for the First World to tackle its citizens (natural and corporate) shows that it has realised it is also part of the problem. This is a welcome change from the perception that bribery was a problem, more or less, exclusively of the Third World.

Secondly, this emphasis avoids the quagmire of differing values emanating from different backgrounds, customs, religions and ethnic origins. To limit the initiative to "international business transactions" will avoid charges of interference in internal affairs, neo-imperialism and neo-colonialism. In fact, the limitation will probably make the initiative acceptable to countries right across the globe, irrespective of their respective value systems.

In passing it should also be noted that the initiative in itself is an example of countries with divergent customs, languages and ethnic groups who came together and reached agreement on the topic of bribery. This in itself may be an important factor in encouraging others to attempt this on a regional basis (the countries of Southern Africa come to mind immediately) or to link up with the OECD initiative.

The implementation of the OECD initiative, as well as the mechanisms used to monitor its working, will have an impact on non-Member countries. The mere implementation of the initiative should act as a deterrent to those in non-member countries contemplating taking or offering bribes. They will surely realise that if the whistle is blown on the cohort in Europe, the whistle is blown by necessary implication on
them as well. Of course, the mere fact that bribery will now be illegal, even if done on foreign shores, should also deter European nationals from easily resorting thereto.

The mechanisms employed to monitor the international business transactions will not only be instructive but beneficial to non-Member states.

Thus, if in the financial records that are to be kept irregular payments show up, such as unduly high facilitating fees or commissions, the person or body to whom the payment was made will also be revealed. The nature and type of financial records to be kept will, in all probability, lead to more transparency and accountability. This is also a further deterrent to bribery.

The mechanism employed to monitor the anti-bribery initiative will in itself be instructive. This system of administration will be of great interest to reforming countries who have progressed from authoritarian regimes to democratic ones. To establish a proper system of administration where documents and procedures are created to record transactions cannot be over-emphasised. To make these transparent and to determine accountability all along the line is in itself a tool against irregularities.

For the European initiative to be effective it will have to be able to function extra-territorially. Thus, information and evidence will have to be available beyond national borders. This in itself will include co-operation between states and will, in some cases, necessitate the involvement of non-Member states. Where this happens the non-Member states will become involved in the intricacies and practicalities of operating such a multilateral initiative. This in itself will force those non-Member states to assess their positions with regard to the problem of bribery, with the concomitant internal debates in such a State raising public awareness of the problem.

Mention has already been made of the fact that exposure of bribery by a European national to a national of a non-Member state by necessity also involves the exposure of the latter. Although this in itself may do some good, this would normally be sufficient to convict the non-Member national of a crime in his country. To achieve this, the non-Member country will have to rely on the Member-country assisting it to collect, collate and present the evidence in a Court of Law in the non-Member country. This in itself should be motivation for non-Member countries to link up in some way or other with this initiative by the OECD governments.

Where a non-Member country does nothing to one of its nationals exposed for accepting or paying a bribe, this will reflect poorly on such country and the latter will have no excuse if branded as a corrupt country.

To sum up. The mere fact of the OECD governments' initiative is a positive step and example to others, indicating that countries can act in consort to address the problem of bribery. The focusing on their own nationals in international business transactions avoids recriminations of interference in internal affairs of other countries and serves as motivation for other countries to follow suit. The system of administration linked to the OECD initiative will lead to greater accountability, transparency, efficiency and cleaner government and will, by necessity, involve non-Member countries, thus heightening public awareness of the problem and slowly but surely, albeit peripherally in the beginning, tie non-Member countries to a greater or lesser degree in the whole scheme of things.

83
It is not possible, within the space of a few minutes, to give a complete picture of the various aspects of the phenomenon. I am keen to stress that the question is a fundamental one, which inextricably combines economic imperatives and considerations of democracy.

We are faced with interdependence between the two objectives of economic progress and the further development of the democratic system.

States must be utterly determined in committing themselves in this direction, whatever their level of development, and France, for its part, considers such action a priority.

The fight against corruption presupposes that a set of conditions be met, each of which would contribute to making government action fully effective.

I will confine myself here to citing six "golden rules", without claiming to be exhaustive. I would like to stress the fact that France makes a point of regularly updating its anti-corruption provisions, and when necessary, and with this end in view, keeps the situation under constant surveillance, as illustrated by the changes made during the last few years.

First rule: comprehensive criminal law provisions

In its new Penal Code, which came into force on 1 March 1994, French law defines a set of criminal offences to be used in fighting cases of bribery or corrupt practices involving public servants, government officials or elected representatives.

The new Code makes such behaviour liable to heavy penalties and makes it possible to prosecute corporate bodies under criminal law.

Second rule: preventive regulations

Penalties imposed after the event are not enough. The authorities are therefore endeavouring to improve the workings of public and administrative law, especially when awarding government contracts, with a view to greater transparency.

Elsewhere, administrative surveillance bodies have been set up both at regional and national levels to ensure that administrative, financial and budgetary rules are complied with.

Finally, professional codes of conduct are encouraged, both for enterprises and other economic partners, particularly through trade associations.

Third rule: systematic monitoring

The authorities have taken steps at a national level to ensure systematic analysis of domestic and international phenomena likely to encourage corrupt practices. The Directorate for Criminal Affairs and Reprieves in the Ministry of Justice, in particular, now has a new subdirectorate for economic and financial
affairs and for the fight against organised crime. This subdirectorate keeps a close watch on changing
criminal behaviour as revealed by cases before the courts or by information collected by other ministries,
international agencies or trade associations. There is also an anti-corruption unit within the Ministry of
Justice responsible for centralising any information that might help combat corruption.

In these circumstances, the law can be constantly adjusted in line with the above, as occurred
recently when several laws were passed to make the funding of political parties and the assets of elected
representatives more transparent.

Fourth rule: specialised courts

It has proved essential to create courts at a regional level specialising in economic and financial
matters, and these courts have recently seen their jurisdiction extended to cover bribery and corruption.
These courts are staffed by specialised judges who have received specific training.

The Directorate for Criminal Affairs and Reprieves in the Ministry of Justice provides these courts
with general information which may be useful in their work.

Fifth rule: independence of the judiciary and training within the administration

It is clear that nothing can be done to fight corruption without appropriate training and without
making officials and public servants aware of what is at stake. Moreover, the status and operating rules of
the judicial system must be such as to guarantee its independence and the transparency of its activities.

This policy must be pursued irrespective of countries' levels of development. For its part, France
has recently simplified the procedure, enabling a government member suspected of committing an offence in
the course of his duties to be prosecuted.

Sixth rule: strengthening international co-operation

This is vital and initiatives taken within the OECD framework or at regional level, for example by
the Council of Europe, should be welcomed.

Within the European Union, there have, in particular, been meetings between judges and
prosecutors from different countries faced with the growth in organised crime, including aspects relating to
corruption.

It should be noted that France accords mutual assistance to states which ask for it, subject to the
usual restrictions relating to national sovereignty and basic national interests, in the absence of double
jeopardy. Thus, although extradition could not be envisaged in the latter case, France can already
participate effectively in international action to fight corruption even though bribery of foreign officials is
not an offence in all countries.

Finally, France has finalised a bill designed specifically to criminalise money laundering of the
proceeds of criminal offences of any kind. In addition to updating its criminal law, France will proceed with
the ratification of the Council of Europe Convention on money laundering which provides, notably, for a
new kind of notification machinery between signatory states.
France is therefore constantly concerned with adapting its national law in order to equip itself with the means for eradicating all corruption within its territory. France also wishes to participate in all international co-operation within the various bodies competent in this area. Such international activity should be combined with resolute and pragmatic steps by each state individually. Only such complementary action will enable corruption to be defeated and thereby promote the cause of democracy.
It gives me great pleasure, in my capacity as Permanent Representative of Chile to the Organisation of American States and Chairman of the Working Group of the Permanent Council on Probity and Public Ethics, to address you here at this symposium. We all know that the 1976 OECD Declaration and Decisions on International Investment and Multinational Enterprises and its 1994 Recommendation on Bribery in International Business Transactions are necessary precedents for any international effort to tackle the problem of corruption, which has such grave consequences. Such is the case when those in public office accept private gain and in so doing defeat the purpose for which that office was legally established.

In 1994, the Delegation of Chile to the Organisation of American States proposed placing the subject of probity and public ethics on the Organisation's agenda since it felt that, as an organisation for regional cooperation, the OAS was an appropriate forum for the consideration and discussion of this extremely important subject. Moreover, this institution is in a position to evaluate the juridical instruments that can prevent and control corruption in the member states.

The Chile proposal was endorsed by other states of the region. In some of these states, corrupt behaviour on the part of high-ranking officials had very serious consequences for their institutional framework. In the OAS, there is a shared view that corruption is a problem which, of has assumed clear international proportions. The rapid development of international economic relations and communications has opened up new opportunities for corrupt practices. This internationalisation of the conditions for corrupt practices makes it necessary to institute cooperation mechanisms, also international, to combat such practices. It is also felt in the OAS that corruption not only diverts resources that should be allocated for socio-economic development purposes but also distorts institutions, breeds mistrust in the population and, in extreme cases, can affect the very survival of democratic institutions.

This is why the General Assembly, at the proposal of the Delegation of Chile, instructed the Permanent Council to establish a working group to compile and study national legislation in effect with regard to matters of public ethics, discuss experiences in the control and oversight of existing administrative institutions, develop a checklist of crimes related to public ethics as defined in national laws and work out juridical mechanisms to control the problem of corruption.

The Working Group has already received numerous bodies of law which have been forwarded by member states for the purpose of compiling the pertinent legal information. The Working Group also prepared a document for consideration at the Summit of Heads of State and Government, held in Miami, in the United States, in December 1994. I find it particularly appropriate to note at this symposium that the Working Group on Probity and Public Ethics recommended to the Summit that, in proceeding with this task, the OAS should take into account the work of other international organisations, such as the OECD, with which it should make contact in order to coordinate efforts to fight corruption.

The Heads of State and Government, meeting at the Miami Summit, declared that "[E]ffective democracy requires a comprehensive attack on corruption as a factor of social disintegration and distortion of the economic system that undermines the legitimacy of political institutions." The Plan of Action emanating from the Summit for its part establishes, along with other measures in the heading on Combatting Corruption, that the governments should "[C]all on the governments of the world to adopt and enforce measures against bribery in all financial or commercial transactions with the Hemisphere." Toward this end,
they should "invite the OAS to establish liaison with the OECD Working Group on Bribery in International Business Transactions."

My presence at this symposium is a first step in establishing cooperative ties which we expect to deepen in the immediate future. On this note, I should add that the Working Group has decided to hold a seminar, which Uruguay has offered to host, and at which we expect representatives of the OECD to participate. As soon as the Working Group has made some headway in preparing the agenda and other details as to how it will operate, the OECD will be advised accordingly.

I should also like to report that the Delegation of Venezuela submitted last December, for the consideration of the OAS, a draft Inter-American Convention against Corruption. This important document is under consideration by the Working Group and is expected to be the first international American instrument that will allow for international cooperation among governments in investigating and punishing corrupt practices, opening up the possibility for retrieving property that has been illegally obtained and simplifying the procedures for the extradition of those accused of corruption as well as eliminating bank secrecy and promoting expeditious mechanisms for judicial cooperation. Although this instrument will be adopted within the inter-American arena, we see no difficulty in other states outside the region acceding to it, as would be the case with most of the states of the OECD.

The OAS hopes to become a major international player in the establishment of international cooperation mechanisms to fight corruption. We hope to continue to work closely with the OECD so as to benefit from their experience and offer our contribution in this major task.
Ambassador David Aaron  
Permanent Representative of the United States Delegation to OECD

The problem of corruption is global. Solutions to the problem require effective actions in both developed as well as developing countries. But, if I may, I would like to address my remarks primarily to delegates from OECD countries.

Many forms of corruption have been identified and addressed during this symposium. Many solutions have been suggested. In order to solve the problem, measures -- including education, prevention, investigation and enforcement -- will have to be adapted to the situations in individual countries. At the same time, positive, immediate results are necessary to maintain the momentum generated by the OECD initiatives that have brought us together these last two days. These are the need to deter bribery in international business transactions and to promote good governance within and beyond the OECD community.

Much of our discussion has focused on the area of transnational bribery. We should never forget that there are two parties to every bribery transaction: the giver of the bribe and the recipient. Both are corrupt. Nor should we believe that we, the developed nations, are immune from the contagion of public corruption. Many of us have learned to our regret that our own officials have succumbed to the temptations of bribery. But all of us in the developed nations are reasonably vigilant in our efforts to detect and prosecute those of our domestic officials who are corrupt. Why, then, would we continue to condone bribery of foreign officials?

Until the OECD Recommendation, there had been little interest among the developed nations to address the problem of international commercial bribery. It is the transnational nature of this bribery which is most disturbing. It is important to recognize that it is not just limited to business between the developed and the developing countries -- it is also occurring in transactions between developed countries. This only underlines the harsh reality of this form of corruption: that we, the member states of the OECD, harbour the companies and individuals who, in the vast majority of instances, are the source of illicit offers and payments. The solution to this problem is in our own hands. What we, as members of the OECD, do to develop and enforce effective measures against the bribery of foreign officials by our nationals and companies will determine, in very large measure, whether such bribery is curtailed. If we, the OECD nations, do not take common, effective action to deter such bribery, the result will be that, by our failure to act, we endorse and promote such corruption.

For several years, we in the OECD have discussed the problems of corruption and bribery in international business transactions. In May 1994, the OECD Ministers adopted the Recommendation that member countries take effective measures to deter, prevent, and combat such practices. The Recommendation is the first concrete international condemnation of bribery of foreign public officials in international transactions. The Recommendation, which is an important first step, however, is only one step on a longer path to effective common action to eliminate such illicit conduct.

Several delegates have stressed the need for an international convention on bribery. While this might be useful at some point, there is much that can be done nationally, and this should come first. Negotiation of a convention must not delay the effective actions that already are in the power of governments.
All of us are committed to action. But we should not fool ourselves. The most difficult part is yet to be achieved. Success in combatting international bribery will only be achieved when each member has in effect -- and enforces -- measures that effectively deter its nationals and companies from participating in this form of corruption. The question is, how many more ministers will have to be put in the dock, how many more governments will have to fall, how many more corporations and shareholders will have to see their shares lose value, how many executives will have to be disgraced, before we take concrete actions?

As many of the speakers here have noted, our systems must change, either through enactment of new laws, enhancement of existing laws, or improved implementation and enforcement. Practical steps need to be taken that avoid creating environments conducive to corruption. As suggested at this Symposium:

-- Governments should move away from systems that rely on controls, permits and monopolies and instead encourage market mechanisms to operate freely;
-- Press freedom, public accountability and equitable incentives for public servants are also important;
-- We fully agree with points made by President Arias, Secretary General Paye, and others. OECD Member countries should give expedited attention to the criminalisation of bribery of foreign public officials and the removal of tax deductions and other benefits derived from the payment of bribes;
-- Concurrent jurisdiction over transnational bribery transactions must be regarded as essential to effective enforcement of criminal laws and not as an infringement on the sovereignty of any one country.

The view of the United States -- reinforced by our experience of the past 20 years -- is that the criminalisation of bribery in international business transactions -- and the denial of tax deductibility and other benefits related to such bribery -- is the most effective way to deter such conduct.

In my country, in 1977, we criminalised the bribery of foreign government officials in international business transactions, and we actively enforce this law. Long before our bribery law -- the Foreign Corrupt Practices Act -- was enacted, our federal tax code made it clear that bribes of any kind were not legitimate business expenses and therefore not deductible. It was the FCPA, however, and its enforcement, that had the greater effect upon the conduct of U.S. firms and nationals in their dealings with foreign government officials.

Now, almost eighteen years later, the United States remains the only nation which has specific laws to deter such bribery. This has not been without cost. U.S. firms have lost business to foreign competitors whose own governments have placed no impediments in the way of their illicit conduct. But, the United States Congress had a fundamental reason for enacting the FCPA: that toleration of the bribery of foreign government officials in international business transactions destroys the fabric which holds together our democracies -- the trust of the people in the integrity of their public officials. We all must realize that bribery destroys public trust not only in the corrupt official's nation, but also in the bribe payer's nation.

As for the developed countries, we have come to a greater recognition, in the OECD, of the importance of the principles and practices of good governance as a means of strengthening democracy and helping assisted countries achieve their development goals. Confronting the problem of illicit payments goes hand-in-hand with these efforts. In the OECD we have worked hard to improve the efficiency of foreign development assistance, but we would be cynical and inconsistent if we were not also interested in promoting good governance in the countries we assist.
We must, therefore, help advance good governance abroad. In my country, we have factored good governance programming into our foreign assistance policy. We take into account the efforts of recipient nations in effecting good governance when setting assistance levels.

Nothing is more damaging to the public's image of foreign aid in donor countries than the perception, however exaggerated, that we are pouring money into corrupt systems. This gives rise to the very negative view that, by providing foreign aid to these countries, we are taking from the poor of the rich countries to give to the rich of the poor countries. To allay these -- not altogether unwarranted concerns -- we need to re-evaluate the terms upon which we supply development assistance. Thus, donor agencies and recipient governments have a special responsibility to ensure that official development assistance is fully transparent and free of corruption.

Fighting corruption is not only the responsibility of governments, but also of citizens' groups and the private sector. This is why I applaud the efforts of organisations such as Transparency International and the International Chamber of Commerce. We welcome their continued engagement in support of these initiatives.

During the symposium, many valuable contributions have been made to the efforts to promote good governance and to deter transnational bribery. As I said before, this is only a step on the way to a solution. Whether we succeed or fail will depend upon what concrete, effective measures we actually take.
SUMMARY OF PROCEEDINGS

Introduction

Over 250 participants took part in a two-day discussion which focused attention on the growing threat of corruption to good governance, democracy, and the efficient functioning of international markets. All OECD Member countries, and 23 non-OECD countries, attended the meeting. The Symposium brought together representatives from government, international organisations (both governmental and non-governmental), business, labour, and academics. It was organised by the Directorate for Financial, Fiscal and Enterprise Affairs (DAFFE), in co-operation with the Directorate for Development Co-operation (DCD), and the Public Management Service (PUMA).

The Symposium sought to inject new momentum to the fight against corruption and bribery by promoting greater international co-operation. It also aimed at encouraging the effective implementation of the OECD’s 1984 Recommendation on Bribery in International Business Transactions among countries that had adhered to it, and at increasing awareness of the Recommendation's objectives among those countries which had not. The Symposium opened a direct dialogue with non-Member countries on the necessity of tackling corruption through concerted action by governments, the private sector, international organisations and the public at large.

The OECD's Secretary-General, Mr. Jean-Claude Paye, opened the Symposium by recalling the numerous factors -- political, economic, social, legal and ethical -- that complicate the fight against corrupt practices. In addition to the distortive effects on international trade, such practices impact adversely on public management and on development co-operation; hence the broad scope of the Symposium. The key note address by Mr. Arias Sanchez, former President of Costa Rica and Nobel Prize Laureate, echoed the message that corruption flourishes in the obscurity of totalitarianism, authoritarianism and dictatorship. An open, just, and democratic society must ensure that punishment is meted out to both companies that engage in bribing, as well as those corrupt public officials that accept bribes.

Overview

Plenary sessions looked at the broad phenomenon of corruption as well as possible solutions. Prof. Dionysios Spinellis' presentation enumerated the different forms of corruption and its various causes, including overregulation of the economy and the transformation of developing societies, the low-salary scales for public officials, the absence of the concept of accountability, as well as the absence or non-application of sanctions. Discussants examined national and international strategies for fighting corruption on the basis of Mr. Robert Klitgaard's paper which identified key components of an effective anti-corruption campaign. These components include incentive reforms in the public sector, mechanisms to enhance accountability, enhancing capabilities in investigation, prosecution, and the judiciary, and other legal and structural reforms.

Specialised working groups focused on:

-- the criminalisation of bribery and corruption,

-- the political, economic and administrative reforms to promote good governance,

-- and the experience of corporate practices.
For the working group on criminalisation, participants noted that all countries consider bribery of their public officials a punishable offence. The credibility of laws criminalising this behaviour depends on their vigorous enforcement, which in turn relies on the impartiality and independence of investigating and judiciary authorities. Monitoring should ensure that mechanisms such as international banking, international transfers, and tax havens are not used to facilitate illicit payments. International co-operation is necessary for the harmonisation of criminal legislation, extradition, exchange of information, and technical assistance.

Combatting corruption presupposes the existence and proper functioning of independent institutions which, besides the judiciary, include an auditing office, a free press, and political mechanisms ensuring free and fair elections. The working group on good governance also placed considerable emphasis on the building of a strong, professional civil service with independent recruiting and comprehensive and continual training. Accounting and auditing procedures can help to increase transparency and both donor countries and recipients must work closely to monitor the funding of development projects.

The business community should be the natural partner of government in the fight against corruption. Many companies are experimenting with various forms of self-regulation, the most prevalent being the internal company code of conduct or ethics, which can help to instill an anti-corruption culture in their businesses. Support by top management is crucial to the success of these internal rules. Audit functions can ensure adherence to company rules and provide advice on the implementation of appropriate codes.

Some of the discussants on the panel were of the opinion that the limitation of the OECD’s recommendation to bribery in international business transactions was politically sound. It signals that OECD countries recognise that they are part of the problem, a perception which may be welcomed by developing countries. By focusing on its own nationals, it avoids charges of interference in internal affairs which makes it acceptable to countries irrespective of their value systems. The implementation of the recommendation should act as a deterrent to those in non-Member countries who may be tempted to accept bribes. The nature and type of financial records to be kept might also add to transparency and accountability. Information sharing and provision of evidence may need to be made available across borders which will increase international co-operation and in some case involve non-Member countries.

On a national level, some panellists thought that the fight against corruption requires that a set of conditions be met. There should be comprehensive criminal provisions and effective preventive regulations, including administrative surveillance bodies at regional and national levels to ensure that administrative, financial and budgetary rules are complied with. Systematic monitoring is useful for the centralisation of information and to keep track of changing corrupt activities. Specialised courts for economic and financial matters can be given jurisdiction over corruption and bribery and measures should be taken to guarantee the independence and the transparency of the judicial system.

Participants were aware that corruption has assumed a clear international dimension. The rapid development of international economic relations and communications has opened up new opportunities for corrupt practices. This internationalisation of the conditions for corrupt practices makes it necessary to institute co-operation mechanisms, also international, to combat such practices. To this end, the Organisation of American States (OAS) has recently created a Working Group of the Permanent Council on Probit and Public Ethics which is planning to work closely with the OECD in order to co-ordinate efforts to fight corruption.
The OECD Recommendation called attention to the problem of international commercial bribery. This bribery is not just limited to business between the developed and the developing countries, it is also occurring in transactions between developed countries. This is why the measures developed by OECD countries will determine, to a large extent, whether such bribery is successfully curtailed. The Recommendation should be seen as a first step on a longer path to effective common action to fight such corrupt practices.

OECD countries attach importance to the principles and practices of good governance as a means of strengthening democracy and helping assisted countries achieve their development goals. Strengthening good governance should be factored into countries' foreign assistance policies. Donor agencies and recipient governments also have a special responsibility to ensure that official development assistance is fully transparent and corruption-free.

Conclusions

Mr. Robert Cornell, Deputy Secretary-General, chaired the concluding session and highlighted some points in the discussion.

Participants agreed that inaction in the face of corruption will increasingly stymie efforts to improve economic efficiency and development, to provide a level playing field for international trade, and to strengthen democratic institutions. Corruption also diverts scarce aid funds from their intended target and undermines support for assistance programmes in donor countries.

Anti-corruption measures must therefore be designed to promote maximum transparency and government accountability. Governments are responsible for ensuring an open forum for policy and decision-making, internal control systems, a civil service based on good pay and incentives related to performance, guarantees of judicial independence, and freedom of the press.

Participants discussed more specific ideas including proposals for anti-corruption laws that impose both criminal and administrative sanctions for violations; creating specialised agencies which could assist in the fight against corruption by focusing efforts to detect and pursue violations and offering protection to those who denounce corruption. Anti-money laundering efforts might also be extended to include the laundering of bribes.

In the area of public procurement, companies could be declared ineligible for further contracts if they were found guilty of past transgressions, and policies could require that companies would be eligible to tender only if they adopt codes of ethics or commit themselves to refuse to offer bribes or to pay them if demanded. International lending agencies should ensure that too they have effective rules on public procurement.

Agencies providing technical assistance to developing countries and to transition economies could help develop sound accounting and auditing systems for firms and training for government officials. International organisations could also develop model and anti-corruption laws and sponsor international agreements for co-operation in criminal investigations. They could collect and disseminate information on country experiences and "best practices".
Companies could develop codes of conduct in order to demonstrate their attachment to ethical principles; these codes need to be actively supported by staff training and tight internal procedures to ensure their effectiveness.

**Proposals for follow-up**

Mr. Cornell also summed up a number of practical follow-up steps which could be taken:

-- Each government, international organisation and private sector participant should take stock of the ideas discussed at the Symposium and examine for themselves what new measures they can take to make the fight against corruption more effective.

-- OECD Member countries should proceed with full implementation of the 1994 Recommendation on Bribery in International Business Transactions, including "concrete and meaningful steps" to prevent and combat the bribery of foreign officials.

-- The exchange of information needs to be improved between governments so that lessons learned can be shared more widely to promote the detection and prosecution of bribery cases.

-- Close contacts should be maintained with non-Member countries whose support will be indispensable to effective implementation of the Recommendation. Non-Members countries were encouraged to consider associating themselves with the Recommendation so as to maximise its impact.

-- An informal "network" for the exchange of information and experiences was set up among the international organisations, with OECD as co-ordinator. This network will provide the basis for close co-operation between the organisations concerned when arranging further activities concerning corruption.

-- Within OECD, a Secretariat "task force" would be formed to monitor developments pertaining to the fight against corruption and to co-operate in future OECD activities in this field.
RESUME DES DEBATS

Introduction

Plus de 250 participants ont pris part à deux jours de débats durant lesquels l'attention s'est concentrée sur la menace croissante que représente la corruption pour la bonne gestion des affaires publiques, la démocratie et le fonctionnement efficace des marchés internationaux. Tous les pays Membres de l'OCDE et 23 pays non Membres ont participé à cette réunion. Le symposium a réuni des représentants de gouvernements, d'organisations internationales (tant gouvernementales que non gouvernementales), du monde des affaires et des milieux syndicaux et universitaires. Il était organisé par la Direction des affaires financières, fiscales et des entreprises (DAFFE) en collaboration avec la Direction de la coopération pour le développement (DCD) et du Service de la gestion publique (PUMA).

Ce symposium visait à donner un nouvel essor à la lutte contre la corruption en encourageant une plus grande coopération internationale. Il avait également pour but de favoriser la mise en œuvre effective de la Recommandation de l'OCDE de 1994 sur la corruption dans le cadre de transactions commerciales internationales dans les pays y ayant souscrit et de sensibiliser les autres pays aux objectifs de cette Recommandation. Le Symposium a permis d'entamer avec les pays non Membres un dialogue direct sur la nécessité de faire face à la corruption grâce à une action concertée des gouvernements, du secteur privé, des organisations internationales et du public dans son ensemble.

Le Secrétaire général de l'OCDE, M. Jean-Claude Paye, a inauguré le Symposium en rappelant les multiples facteurs -- politiques, économiques, sociaux, juridiques et éthiques -- à l'origine de la complexité de la lutte contre les pratiques de corruption. Outre les conséquences perturbatrices sur les échanges internationaux, ces pratiques ont une incidence négative sur la gestion des affaires publiques et la coopération en matière de développement, d'où l'importance du champ couvert par le symposium. Les aspects-clés traités par M. Arias Sanchez, ancien Président du Costa Rica et lauréat du Prix Nobel, ont illustré le message selon lequel la corruption fleurit dans l'ombre du totalitarisme, de l'autoritarisme et de la dictature. Une société ouverte, juste et démocratique doit veiller à ce qu'aussi bien les sociétés qui se livrent à la corruption, que les agents publics corrompus qui acceptent des pots de vin, soient passibles de sanctions.

Aperçu général

Les séances plénières ont été consacrées à l'étude du phénomène de corruption dans son ensemble et des éventuelles solutions. Dans son exposé, le Professeur Dionysios Spinellis a énuméré les différentes formes de corruption et leurs diverses causes parmi lesquelles la réglementation excessive de l'économie et la transformation des sociétés en développement, les rémunérations peu élevées des fonctionnaires, l'absence d'idée de responsabilité, ainsi que l'inexistence ou la non-application de sanctions. Les intervenants ont examiné les stratégies nationales et internationales de lutte contre la corruption en s'appuyant sur le document de M. Robert Klitgaard où sont inventoriés les éléments-clés d'une campagne anti-corruption efficace. Parmi ces éléments figurent la refoante des incitations dans le secteur public, les mécanismes visant à renforcer la responsabilité, le développement des moyens au niveau des enquêtes, des poursuites et de l'appareil judiciaire et les autres réformes juridiques et structurelles.

Les groupes de travail spécialisés ont concentré leur attention sur :

-- l’incrimination de la corruption,
-- les réformes politiques, économiques et administratives visant à favoriser une bonne gestion des affaires publiques, et
-- l'expérience des pratiques des entreprises.

Les participants du groupe de travail sur l'incrimination ont noté que l'ensemble des pays considéraient la corruption de leurs agents publics comme un délit passible de sanctions. La crédibilité des lois incriminant ces types de comportement dépend de la vigueur avec laquelle elles sont appliquées, laquelle dépend elle-même de l'impartialité et de l'indépendance des services d'enquête et des autorités judiciaires. L'exercice de contrôles devrait permettre de veiller à ce que les opérations bancaires internationales, les transferts internationaux et les paradis fiscaux ne servent pas à faciliter des règlements illicites. L'harmonisation en matière de droit pénal, d'extradition, d'échanges d'informations et d'assistance technique exige une coopération internationale.

Lutter contre la corruption présuppose l'existence et le fonctionnement correct d'institutions indépendantes et, notamment, en dehors de l'appareil judiciaire, de services de contrôle financier, d'une presse libre, et de dispositifs politiques garantissant des élections libres et équitables. Le groupe de travail sur la bonne gestion des affaires publiques a également beaucoup insisté sur la mise en place d'une administration solide composée de fonctionnaires professionnels recrutés de façon indépendante et bénéficiant d'une formation globale et continue. Les règles comptabilisent les procédures de vérification des comptes peuvent aider à accroître la transparence et les pays donateurs, comme les pays bénéficiaires, doivent s'efforcer de contrôler le financement des projets de développement.

Le monde des affaires devrait constituer le partenaire naturel des autorités dans la lutte contre la corruption. De nombreuses sociétés expérimentent diverses formes d'autoréglementation dont la plus répandue est le code de déontologie interne qui aide à développer au sein de l'entreprise une culture anti-corruption. Le soutien des dirigeants est une condition fondamentale du succès de ces règles internes. Les services d'audit peuvent permettre de veiller à l'adhésion aux règles de l'entreprise et fournir des orientations sur la mise en œuvre de codes appropriés.

Certsains des intervenants ont jugé que, politiquement, il était bon que la Recommandation de l'OCDE se limite à la corruption dans le cadre de transactions commerciales internationales. Cette recommandation signale que les pays de l'OCDE reconnaissent faire partie du problème, une réaction dont les pays en développement pourraient se réjouir. En mettant l'accent sur les ressortissants du pays concerné, elle échappe aux accusations d'ingérence dans les affaires intérieures, ce qui la rend acceptable par tous les pays, quel que soit leur système de valeurs. La mise en œuvre de cette recommandation devrait dissuader ceux qui, dans les pays non membres, seraient tentés d'accepter des pots de vin. La nature et le type des registres financiers qui doivent être tenus, pourraient également contribuer à la transparence et à la responsabilisation. L'échange d'informations et la communication de renseignements devraient dépasser le cadre des frontières, ce qui permettrait d'accroître la coopération internationale et, dans certains cas, de s'assurer de la participation de pays non membres.

Sur le plan national, certains participants ont jugé que la lutte contre la corruption exigeait que certaines conditions soient remplies. Des dispositions pénales globales, une réglementation efficace en matière de prévention prévoyant et, notamment, des organismes de contrôle administratif aux niveaux régional et national sont en effet nécessaires à la garantie du respect des règles administratives, financières et budgétaires. Le contrôle systématique facilite la centralisation des informations et le suivi de l'évolution des activités de corruption. Des compétences en matière de corruption pourraient être accordées à des tribunaux spécialisés dans les domaines économiques et financiers et des mesures devraient être prises pour garantir l'indépendance et la transparence du système judiciaire.
Les participants se sont déclarés conscients de ce que la corruption a pris à l'évidence une dimension internationale. L'évolution rapide des relations économiques et des communications internationales a ouvert de nouveaux horizons à la corruption. Cette internationalisation des conditions favorables aux pratiques de corruption rend nécessaire la mise en place de mécanismes de coopération, également internationaux, pour lutter contre de telles pratiques. A cet effet, l'Organisation des États américains (OEA) a récemment créé un Groupe de travail du Conseil permanent sur la probité et l'éthique publique qui vise de collaborer étroitement avec l'OCDE en vue d'une coordination des efforts de lutte contre la corruption.

La Recommandation de l'OCDE attirait l'attention sur le problème de la corruption dans le commerce international. Ce type de corruption ne se limite pas aux relations entre pays développés et pays sous-développés, elle existe également dans les transactions entre pays développés. C'est pourquoi le succès de la limitation de la corruption dépendra largement des mesures mises au point par les pays de l'OCDE. La Recommandation doit être considérée comme la première étape d'une démarche à plus long terme visant à une action collective efficace de lutte contre ce type de pratiques.

Les pays de l'OCDE attachent de l'importance aux principes et pratiques de bonne gestion des affaires publiques, qui constituent pour eux un moyen de renforcer la démocratie et d'aider les pays assistés à atteindre leurs objectifs de développement. Le renforcement de la bonne gestion des affaires publiques devrait faire partie intégrante des politiques d'aide extérieure des pays. Les organismes donateurs et les gouvernements bénéficiaires doivent également tout particulièrement veiller à assurer une transparence complète et écarter toute corruption dans le domaine de l'aide publique au développement.

Conclusions

À l'occasion de la séance de clôture qu'il a présidé, M. Robert Cornell, Secrétaire général adjoint, a mis l'accent sur certains aspects abordés durant les débats.

Les participants ont convenu que, face à la corruption, l'inaction ne ferait que contrecarrer les efforts d'amélioration du développement et de l'efficience économique, d'harmonisation des règles du jeu en matière de commerce international et de renforcement des institutions démocratiques. La corruption entraîne également un détournement des rares fonds disponibles pour l'aide et compromet ainsi le soutien aux programmes d'assistance dans les pays donateurs.

Les mesures de lutte contre la corruption doivent donc être conçues de façon à favoriser une transparence maximum et une responsabilisation de l'administration. C'est aux gouvernements qu'il revient de mettre en place un cadre ouvert d'élaboration des politiques et des décisions, des systèmes de contrôle interne, une administration offrant des rémunérations satisfaisantes et des incitations fondées sur la performance, et des mécanismes garantissant l'indépendance de la justice et la liberté de la presse.

Les participants se sont penchés sur des propositions plus spécifiques comme des projets de loi de lutte contre la corruption prévoyant des sanctions tant pénales qu'administratives en cas d'infractions ou la création d'organismes spécialisés qui contribueraient à cette lutte en concentrant leurs efforts sur la recherche et la poursuite des infractions et en assurant la protection des personnes dénonçant des cas de corruption. Les efforts de lutte contre le blanchiment de l'argent pourraient être également étendus au recyclage des pots de vin.
Dans le domaine des marchés publics, les sociétés convaincues d'infractions par le passé pourraient être déclarées inéligibles et la politique en la matière pourrait consister à n'autoriser à soumissionner que les sociétés ayant adopté un code de déontologie et s'étant engagées à refuser à recevoir ou verser des pots de vin. Les organismes de crédit internationaux devraient eux aussi veiller à disposer de règles efficaces en matière de marchés publics.

Les organismes prestataires d'assistance technique aux pays en développement et aux économies en transition pourraient contribuer à la mise au point de systèmes de comptabilité et de vérification des comptes à l'intention des entreprises et de programmes de formation des fonctionnaires. Les organisations internationales pourraient également élaborer des modèles et des lois sur la lutte contre la corruption et parrainer des accords internationaux de coopération en matière d'enquêtes pénales. Ils pourraient recueillir et diffuser des informations sur les expériences des pays et les "meilleures pratiques".

Les entreprises pourraient élaborer des codes de déontologie, afin de démontrer leur attachement à des principes éthiques ; ces codes devraient être valorisés dans le cadre de la formation du personnel et s'appuyer sur des procédures internes strictes garantissant leur efficacité.

**Propositions de mesures complémentaires**

M. Cornell a également résumé un certain nombre de mesures complémentaires concrètes qui pourraient être prises :

-- Chaque gouvernement, organisation internationale et participant du secteur privé devrait faire le bilan des idées abordées au cours du symposium et examiner les mesures qu'il pourrait prendre pour rendre plus opérationnelle la lutte contre la corruption.

-- Les pays Membres devraient s'efforcer de mettre pleinement en œuvre la Recommandation de 1994 sur la corruption dans le cadre de transactions commerciales internationales et, notamment, prendre "des mesures concrètes et efficaces" de prévention et de lutte contre la corruption des agents publics étrangers.

-- L'échange d'informations entre gouvernements doit être développé, de sorte que l'expérience acquise puisse être plus largement partagée et permette aussi de favoriser la mise à jour et la poursuite des affaires de corruption.

-- Des contacts étroits devraient être maintenus avec les pays non membres dont le soutien sera indispensable à une mise en œuvre effective de la Recommandation. Ces pays sont invités à envisager de s'associer à la Recommandation, afin d'en maximiser l'impact.

-- Il a été constitué entre les organisations internationales un "réseau" informel d'échanges d'informations et d'expériences, dont la coordination a été confiée à l'OCDE. Ce réseau offrira aux organisations concernées une structure de coopération étroite pour la mise au point des activités futures en matière de corruption.

-- Au sein de l'OCDE, un "groupe d'étude" du Secrétariat sera formé pour assurer le suivi des faits nouveaux dans le domaine de la lutte contre la corruption et collaborer aux activités futures de l'OCDE dans ce domaine.
RECOMMENDATION OF THE COUNCIL

on Bribery in International Business Transactions

(adopted by the Council at its 829th Session on 27 May 1994)

THE COUNCIL,

Having regard to Article 5 b) of the Convention on the Organisation for Economic Co-operation and Development of 14 December 1960;

Having regard to the OECD Guidelines for Multi-national Enterprises which exhort enterprises to refrain from bribery of public servants and holders of public office in their operations;

Considering that bribery is a widespread phenomenon in international business transactions, including trade and investment, raising serious moral and political concerns and distorting international competitive conditions;

Considering further that all countries share a responsibility to combat bribery in international business transactions, however their nationals might be involved;

Recognising that all OECD Member countries have legislation that makes the bribing of their public officials and the taking of bribes by these officials a criminal offence while only a few Member countries have specific laws making the bribing of foreign officials a punishable offence;

Convinced that further action is needed on both the national and international level to dissuade both enterprises and public officials from resorting to bribery when negotiating international business transactions and that an OECD initiative in this area could act as a catalyst for global action;

Considering that such action should take fully into account the differences that exist in the jurisdictional and other legal principles and practices in this area;

Considering that a review mechanism would assist Member countries in implementing this Recommendation and in evaluating the steps taken and the results achieved;

On the proposal of the Committee on International Investment and Multi-national Enterprises;
General

I. RECOMMENDS that Member countries take effective measures to deter, prevent and combat the bribery of foreign public officials in connection with international business transactions.

II. CONSIDERS that, for the purposes of this Recommendation, bribery can involve the direct or indirect offer or provision of any undue pecuniary or other advantage to or for a foreign public official, in violation of the official's legal duties, in order to obtain or retain business

Domestic Action

III. RECOMMENDS that each Member country examine the following areas and, in conformity with its jurisdictional and other basic legal principles, take concrete and meaningful steps to meet this goal. These steps may include:

i) criminal laws, or their application, in respect of the bribery of foreign public officials;

ii) civil, commercial, administrative laws and regulations so that bribery would be illegal;

iii) tax legislation, regulations and practices, insofar as they may indirectly favour bribery;

iv) company and business accounting requirements and practices in order to secure adequate recording of relevant payments;

v) banking, financial and other relevant provisions so that adequate records would be kept and made available for inspection or investigation; and

vi) laws and regulations relating to public subsidies, licences, government procurement contracts, or other public advantages so that advantages could be denied as a sanction for bribery in appropriate cases.

International Co-operation

IV. RECOMMENDS that Member countries, in order to combat bribery in international business transactions, in conformity with their jurisdictional and other basic legal principles, take the following actions:

i) consult and otherwise co-operate with appropriate authorities in other countries in investigations and other legal proceedings concerning specific cases of such bribery through such means as sharing of information (spontaneous or "upon request"), provision of evidence, and extradition;

1 The notion of bribery in some countries also includes advantages to or for members of a law-making body, candidates for a law-making body or public office and officials of political parties.
ii) make full use of existing agreements and arrangements for mutual international legal assistance and where necessary, enter into new agreements or arrangements for this purpose;

iii) ensure that their national laws afford an adequate basis for this co-operation.

Relations with Non-Members and International Organisations

V. APPEALS to non-Member countries to join with OECD Members in combating bribery in international business transactions and to take full account of the terms of this Recommendation.

VI. REQUESTS the Secretariat to consult with international organisations and international financial institutions on effective means to combat bribery as an aid to promote the policy of good governance.

VII. INVITES Member countries to promote anti-corruption policies within and beyond the OECD area and, in their dealings with non-Member countries, to encourage them to join in the effort to combat such bribery in accordance with this Recommendation.

Follow-up Procedures

VIII. INSTRUCTS the Committee on International Investment and Multi-national Enterprises to monitor implementation and follow-up of this Recommendation. For this purpose, the Committee is invited to establish a Working Group on Bribery in International Business Transactions and in particular:

i) to carry out regular reviews of steps taken by Member countries to implement this Recommendation, and to make proposals as appropriate to assist Member countries in its implementation;

ii) to examine specific issues relating to bribery in international business transactions;

iii) to provide a forum for consultations;

iv) to explore the possibility of associating non-Members with this work; and

v) in close co-operation with the Committee on Fiscal Affairs, to examine the fiscal treatment of bribery, including the issue of tax deductibility of bribes.

IX. INSTRUCTS the Committee to report to the Council after the first regular review and as appropriate thereafter, and to review this Recommendation within three years after its adoption.
Annexe

C(94)75/FINAL

RECOMMANDATION DU CONSEIL

sur la corruption dans le cadre de transactions commerciales internationales

(adoptée par le Conseil lors de sa 829ème session, le 27 mai 1994)

LE CONSEIL,

Vu l’article 5b) de la Convention relative à l’Organisation de Coopération et de Développement Economiques, du 14 décembre 1960,

Vu les Principes directeurs de l’OCDE à l’intention des entreprises multinationales, qui appellent les entreprises à s’abstenir dans leurs opérations de corrompre des fonctionnaires et des titulaires de charges publiques,

Considérant que la corruption est un phénomène répandu dans les transactions commerciales internationales, y compris dans les échanges et les investissements, qui suscite de graves préoccupations morales et politiques et fausse les conditions internationales de concurrence,

Considérant par ailleurs que tous les pays se doivent de combattre la corruption dans le cadre de transactions commerciales internationales, quelle que soit la façon dont leurs ressortissants se trouvent impliqués,

Reconnaissant que tous les pays Membres de l’OCDE ont des lois sanctionnant pénalement la corruption de leurs agents publics et l’acceptation de paiements illicites par ceux-ci, alors que quelques pays seulement ont des lois spécifiques incriminant la corruption d’agents publics étrangers,

Convaincu qu’il convient, tant au niveau national qu’international, de poursuivre l’action pour dissuader à la fois les entreprises et les agents publics de recourir à des paiements illicites lors de la négociation de transactions commerciales internationales, et qu’une initiative de l’OCDE dans ce domaine pourrait servir de catalyseur à une action mondiale,

Considérant que cette action doit tenir pleinement compte des différences qui existent en la matière entre les principes et les pratiques régissant la compétence, ainsi que d’autres principes et pratiques juridiques,

Considérant qu’un mécanisme d’examen aiderait les pays Membres à mettre en œuvre cette Recommandation et à évaluer les mesures prises et les résultats obtenus,

Sur proposition du Comité de l’investissement international et des entreprises multinationales,
Généralités

I. RECOMMANDE que les pays Membres prennent des mesures efficaces pour décourager, prévenir et combattre la corruption des agents publics étrangers dans le cadre de transactions commerciales internationales.

II. CONSIDERE qu’aux fins de la présente Recommandation la corruption peut consister à offrir ou octroyer directement ou indirectement un avantage indû, pécuniaire ou autre, à un agent public étranger ou pour son compte, en violation des obligations légales de ce dernier, afin d’obtenir ou de conserver un marché\(^1\).

Action nationale

III. RECOMMANDE que chaque pays Membre examine les domaines suivants et, en conformité avec ses principes en matière de compétence et autres principes juridiques fondamentaux, prenne des mesures concrètes et significatives afin d’atteindre cet objectif. Ces mesures peuvent comprendre :

i) le droit pénal ou son application, du point de vue de la corruption d’agents publics étrangers;

ii) les lois et réglementations en matière civile, commerciale et administrative, de façon que la corruption soit illégale ;

iii) les lois, réglementations et pratiques fiscales, dans la mesure où elles peuvent indirectement favoriser la corruption ;

iv) les normes et pratiques comptables des entreprises, afin d’assurer un enregistrement approprié des paiements en cause ;

v) les dispositions bancaires, financières et autres, en vue de la tenue et de la mise à disposition de registres appropriés à des fins d’inspection et d’enquête ;

vi) les lois et réglementations relatives aux subventions publiques, aux autorisations publiques, aux marchés publics ou à d’autres avantages octroyés par les pouvoirs publics, de façon que ces avantages puissent être refusés à titre de sanction dans les cas appropriés lorsqu’il y a corruption.

---

\(^1\) Dans certains pays, la notion de corruption recouvre également les avantages en faveur de membres d’un organe législatif, de candidats à un organe législatif ou à une fonction officielle et de représentants de partis politiques.
Coopération internationale

IV. RECOMMANDE que les pays Membres, afin de lutter contre la corruption dans les transactions commerciales internationales, en conformité avec leurs principes de compétences et autres principes juridiques fondamentaux, prennent les mesures suivantes :

i) se concentrer et coopérer avec les autorités compétentes des autres pays dans les enquêtes et autres procédures légales concernant des cas spécifiques de corruption dans les transactions commerciales internationales, par des moyens tels que l’échange d’informations (spontané ou “sur demande”), la fourniture d’éléments de preuve et l’extradition ;

ii) faire pleinement usage des accords et arrangements existants d’assistance mutuelle internationale dans le domaine juridique et, au besoin, concluent de nouveaux accords ou arrangements à cette fin ;

iii) s’assurer que leur législation nationale offre une base appropriée pour cette coopération.

Relations avec les pays non membres et les organisations internationales

V. APPELLE les pays non membres à se joindre aux pays Membres de l’OCDE pour la lutte contre la corruption dans les transactions commerciales internationales et à tenir pleinement compte de la présente Recommandation.

VI. CHARGE le Secrétariat de consulter les organisations internationales et les institutions financières internationales au sujet des moyens permettant de lutter efficacement contre la corruption, afin de contribuer à promouvoir une saine gestion des affaires publiques.

VII. INVITE les pays Membres à promouvoir les politiques de lutte contre la corruption à l’intérieur et à l’extérieur de la zone de l’OCDE et, dans leurs relations avec les pays non membres, à encourager ceux-ci à se joindre aux efforts de lutter contre la corruption conformément à la présente Recommandation.

Procédures de suivi

VIII. CHARGE le Comité de l’investissement international et des entreprises multinationales de veiller à la mise en œuvre et au suivi de la présente Recommandation. A cet effet, le Comité est invité à créer un Groupe de Travail sur la corruption dans les transactions commerciales internationales et en particulier :

i) à procéder à un examen régulier des mesures prises par les pays Membres pour la mise en œuvre de la présente Recommandation et à formuler des propositions appropriées en vue de les aider dans cette mise en œuvre ;

ii) à examiner des questions précises concernant la corruption dans les transactions commerciales internationales ;

iii) à servir de forum de consultation ;
iv) à étudier la possibilité d’associer les pays non membres à ces travaux ;
v) en étroite coopération avec le Comité des Affaires fiscales, à examiner le traitement fiscal de la corruption, y compris la question de la déductibilité fiscale des paiements illicites.

IX. CHARGE le Comité de faire rapport au Conseil après le premier examen régulier et en tant que de besoin par la suite et de réexaminer la présente Recommandation dans les trois ans suivant son adoption.