

14TH INTERNATIONAL ANTI-CORRUPTION CONFERENCE
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**Plenary IV - Strengthening Global Action for an Accountable
Corporate World**

Panelists:

Timothy Large	Thomson Reuters Foundation (Moderator)
Mary Boakye	SNR Denton, Africa Financial Markets Group Head
Richard Boucher	Deputy Secretary General, Organization for Economic Cooperation and Development
Minister Idris Jala	Minister in the Malaysian Prime Minister's Office and CEO of the Performance Management and Delivery Unit
Mark F. Mendelsohn	Former Deputy Chief, Fraud Section, Criminal Division, U.S. Department of Justice
Homer Moyer	Chair, International Bar Association Anti-Corruption Group

Transcription

Emma Suwanarat

[missing opening].day of the 14th International Anti-Corruption Conference here at the Queen Sirikit National Convention Centre. Our plenary session today is “Strengthening Global Action for an Accountable Corporate World” and without any further hesitation, I will hand over straight away to our moderator from Thomson Reuters Foundation, Timothy Large.

Timothy Large:

Thank you very much, and good morning ladies and gentlemen. Welcome to this penultimate plenary session on corporate actions, corporate governance. My name is Timothy Large, I am from the Thomson Reuters Foundation where I work as an editor of two of our global news services. One of them is a humanitarian news service, but the other one, a recent one, called “Trustlore”, is dedicated to anti-corruption news. So I’m very pleased to be part of this discussion today, and I’m sure it’s going to be a lively discussion. It certainly is a timely one. What are we now, 24 months or so into the financial crisis? And a lot of people around the world, who might not normally be thinking in terms of transparency and accountability for the corporate sector, have started asking some pretty tough questions.

As a journalist for an event like this, I’m sort of instinctively trained to try to find a news peg (*Laughs*) ...as if we needed one for this discussion! But yesterday a very nice news peg fell right into our laps in the form the G20’s rather striking endorsement of a 9-point anti-corruption action plan. And several things for those of you who haven’t seen the outcome document of the G20 summit in Seoul, several things were striking about this. One of them was that the G20 has essentially thrown its full weight behind the United Nations Convention against corruption, which is the only truly global and legally binding framework for fighting corruption, although it exists...it complements very effectively the other ones such as the OECD Convention against Bribery. But in addition to that the G20 sent a very strong message, I think, to the private sector saying, “Look, basically it’s time to join the anti-corruption programme.” And it spoke about what it describes as “private-public partnerships.” And it’s this intersection between private and public that really concerns us today for this discussion because it’s in this space that of course corruption notoriously does most of its dirty work. Think of the corporate bribe paid to a corrupt public official for a procurement contract, for example. But I’d like to argue that it’s also in this public stroke private space that the fight against corruption can usefully be waged. And we’re seeing more and more that it’s here that compliance, on the one hand, the need for companies to do right by the law, comes face to face with enforcement, on the other....the need for governments and institutions fighting corruption to make sure that companies do that. And increasingly, I think, the burden is falling on the shoulders of the private sector to make sure that they’re doing the right thing, and that means signing up to voluntary initiatives such as the UN Global Compact or the Partnership

against Corruption Initiative. It means increasingly voluntary disclosures of wrongdoing, and it means putting in place effective compliance programmes at the company level. Of course this raises all sorts of questions about capacity and how applicable this is across the world as a whole, which I hope we'll discuss in a bit more detail in a minute. At the same time we're seeing very striking trends in enforcement. Thirty three years ago, I think, the Foreign Corrupt Practices Act was passed in post-Watergate America ...it sort of dotted on for years without doing a lot and then something very interesting in the late 1990s started to happen, and that is that the enforcement of that Act, which has surprising global reach, started to get tougher and more rigorous, peaking in 2008 with the landmark case, the Siemens case, where you saw almost, I think, 900 million in fines and disgorgements coming out of that case. A real record....25 times the previous record held by Baker Hughes at about 24....ah...44 million, I think. That's a very radical jump up in penalties and certainly gives pause for thoughts for companies who might thinking about how to adhere to compliance standards.

Well, we have a star studded panel here, I think we really are in for a treat...And I'd like to introduce each of them in turn and ask them to make 5 minutes of opening remarks, then we'll have a little debate. I hope it'll focus on compliance and enforcement as the major theme, and then we'll open it up to the audience for the next half an hour or so. I will try to be rigorous with my time keeping, because I know many people have questions.

So without further to do, let me hand over first of all Ambassador Richard Boucher.Ambassador Richard Boucher is Deputy Secretary General of the OECD, a man with a very long and distinguished career as a diplomat, in the foreign service. Richard Boucher would you like to make a few opening remarks?

Richard Boucher:

Thank you very much Timothy, and thank you all for coming and for allowing us to come here and share our views. The question in this plenary, is really important is how do we all get together from business from NGOs, from international organizations and try to make the work against bribery more effective, and especially, in the corporate world, how do we help corporations reach the standards that they all aspire to. The financial crisis has shown us the importance of that. I think we all know that companies now, under the law—but I could also argue that it is just good business practice—have a very clear responsibility to be active in fighting corruption. Corruption can be an overwhelming word, and I think just saying that we're fighting corruption doesn't get you very far. So we tend to focus more and more on what are the specific actions companies can take, what are the specific actions we can take with companies to help them implement a better set of standards and practices against corruption. We've recently adopted recently at the OECD something called the Good Practice Guidelines for Companies and Business Organizations on how to prevent and protect themselves from the effects of transnational bribery. Good practice is part of a suite of instruments that were developed based on a 10-year-old anti-bribery convention. The convention, as most of you know, is the first and probably most renowned international effort against the supply side of international corruption. The Working Group on Bribery that runs the Convention is made up of 38 countries, not

just OECD members but several beyond that, to make sure that each participant lives up to the obligations, has a very rigorous peer review process so we know... not only we know who's doing things and who's not, but we know what works and what doesn't and peer review is one of the ways in indentifying what are the steps that are most effective. And I think we've held each other to a very high standard in the...er....among the 38 countries. We've had something like 225 companies and individuals who've been subject to sanctions for foreign bribery.

Transnational bribery is only part of the picture....provides an example of how governments, businesses, and international organizations can work together. But we also think there needs to be a more general approach. We're looking at now how to bring together all the elements of a good anti-corruption strategy. How do you have good public procurement, good public integrity programmes, good corporate education, corporate audits along with a good domestic and foreign anti-bribery programme, and pulling all those pieces together and seeing how they fit together is, I think, the next level of task. We're trying to do that in conjunction with international organisations like the United Nations, like the World Bank, but also Transparency International and others because it is a comprehensive approach to fighting bribery and corruption that we think is necessary, and you can do it both by putting in healthy systems but also by punishing trans...trans....violations when you see them.

The other thing is sort of the social responsibility side for corporations. The guidelines for multinational enterprises that we work at the OECD are currently under review and they're being strengthened in a number of areas, including areas like human rights and the environment, but also employment and industrial relations, information disclosure, combating bribery, consumer interests, science and technology, competition and taxation. So again, we're specifically trying to take a look at all the corporate responsibility to see what we can do to strengthen corporate behaviour around the world.

So I think there's a lot of things going on right now, we're at a fertile period. We're glad to see the G20 coming out so strongly in favour of passing foreign bribery laws, but also a broader anti-corruption initiative. We're happy to do our part....So....thank you.

Timothy Large:

Thank you very much Richard.

Next I'd like to introduce Dato Sri Idris Jala, a minister from the Malaysian Prime Minister's Office, and significantly the first minister appointed ever not from one of the political parties. Idris Jala has a very distinguished previous life as a businessman....He worked for Shell for many years and, most recently, one of my favourite airlines, Malaysian Airlines, where he introduced some pretty effective whistle-blowing provisions which I hope we'll be hearing about it a little bit later. So over to you, Idris.

Idris Jala

Thank you. A couple of slides I'd like to take you through. Someone asked me a very simple question before, "This idea of corruption, can you describe it to me in a very simple, layman's term?" I always

believe there are three zones, what I call the white zone, which is what is right and what is legal and what is proper to do. And the black zone, things that we consider are clearly wrong, clearly illegal and clearly improper, such as fraud, or corrupt activities, or abuse of power. There is what happens in the middle..the shades of grey...things that are partly wrong and partly right, partly legal and partly illegal, and partly proper and partly improper always viewed in the eyes of the beholder. Many, many people and others who received it too...an example being, in my country, it's quite common within the culture during large festivities that you provide small gifts to people. It's the accepted norm. However, the question in many organisations are: if the quantum of what is granted as a gift is so large, it would then be deemed to be improper, not right to do. And so many organisations, actually to try and resolve this, they come up with certain guidelines, beyond a certain quantum and then it's considered not a right thing to do. Below a certain quantum is then considered a thing to do. But nevertheless, there's a lot of things, if you like, that are posited within what is viewed as grey.

Now I do believe that in the context of corruption and how we deal with this, there are two categories of things that happen. One is called the voluntary compliance. In voluntary compliance, if the society, civil society, including everyone in the government, families, individuals, NGOs, religion, and if everyone works together and put a core value that surrounds itself on the basis of integrity and transparency, actually a lot of issues, and people voluntary comply with what is considered right. Now, unfortunately when those things do not work in a society, then you have to move into category B, which is called enforced compliance: because people don't voluntarily comply, we then have to find mechanisms, and laws and rules and regulations to enforce the compliance, to do a set of desired standards such as the Whistleblower Protection Act, and such things as punitive actions...And this is what I call the enforced compliance.

The theme of why we're talking today is the issue around compliance and enforcement. But I do believe we need both the voluntary compliance as well as the enforced compliance. If the society is working fairly well in the arena of voluntary compliance because the values in the society is right, actually we don't need a lot of enforced compliance. Unfortunately I think the reality is we need both of them. Now, when I joined the government about a year ago, and we've launched a government transformation programme, we really wanted to fight corruption, and one of the key activities was to say that if we want to move from a middle income economy to a high income economy by the year 2020, we cannot get there until and unless we actually begin the fight on corruption. And so it began with that activity. Some of the things that we've done in 9 months so far in the journey....9 months....we've only begun this work in January this year...is to introduce the Whistleblower Protection Act. It's been approved in Parliament...It's been approved now in the Senate...By the end of this year we'll put down modalities so that we'll implement this.

A lot of companies already in Malaysia already have Whistleblower Protection Act. I worked for Shell for 23 years....Whistleblower Protection Act across the country where we operate over a 100 different countries...we already employed the Whistleblower Protection Act. When I was in Malaysia Airlines, we introduced it too. The point is companies *can* introduce their own whistleblower policies without the legislative support. However, in my opinion if you did have a Protection Act that puts it across,

then many companies would actually happily do it, and that's why we're introducing it in Malaysia. We've set forward 18 new Corruption Court cases to ensure a speedy trial in corruption cases. We've also introduced what's called a naming and shaming portal. Altogether 222 people have been found and convicted of corruption this year, and their names and pictures are also on the website with their identity card number. The issue here is that the more people begin to feel the naming and shaming is clear, then it becomes a deterrent. Since 2006 more than 2,890 people have been arrested for corruption...all across....the competitive tender has been announced by the government as the default process, altogether all government awards, when its tendered out and it is awarded, the winners of those awards are published on our website online. And that is also part of the transparency that is needed. I do believe the Integrity Pact that TI has championed is a good framework, and we are....in the government we have sent out the directives so that this will be adopted all and sundry. And obviously it will take time for us to make this happen, and also encouraging the private sector to come forth with it. We are setting up compliance units within the various divisions within the customs unit, etc., etc. and that's also important. We set up what is called the friends of the Malaysian Anti-Corruption Commission and they, of course... This is *all* being done. The work of the Malaysian Anti-Corruption Commission is really fantastic for us. We've got a long way to go, but I think in 9 months I can see there are some early signs of progress in this area.

And of course there are lots of other infrastructure that surrounds this work that is being done and to make sure this corporate governance is robust, Bursa Malaysia, our Exchange Commission....you can see the slides there...This year already 96...already... sanctions already have been put out on publicly listed companies. Sanctions on directors 232 sanctions on directors all on the slides there and those kinds of numbers are on-going...referrals to the Security Commission, who also put a lot of stringent rules to make sure the people do all the right work out there...So you can see on the slide.

I would say this, as a conclusion, is that none of the efforts that we put there will achieve the full success that we intend to have overnight. I do believe that the fight against corruption must begin with Category A sort of activities. That means it must prevail the entire society. And at the same time the enforcement that I described before, enforced compliance, needs to take place too. And when it gets down to enforced compliance, I do believe in basic building blocks...that you put all the basic building blocks in place...so that in time you'll start to make progress and you need to report and be transparent about it with the rest of the Malaysian public. We run open days in town halls larger than this where we invite 5,000, 6,000 people. The last time we had this 13,000 Malaysians came up into the hall, and we had *lengthy* discussions with the public with regards to their expectations on corruption and what do they want us to do in the government. But really it is critical for us to stay focused and of course, you know, Rome was never built over night. It's very important for us to make sure that we absolutely stay focused. We believe that a country will not achieve the status of high income until we deal with all the issues that we raise and the public one. And one of those is corruption and the fight against corruption begins. And it must be relentless and requires the whole society to be involved. Thank you.

Timothy Large:

Thank you very much.

It gives me great pleasure to introduce next Mark Mendelsohn, a man who sends shivers of fear down the spine of many corrupt CEOs, I'm sure. Formerly, Mark Mendelsohn used to be Deputy Chief of the Fraud Section at the US Department of Justice and, to my mind, is probably almost single-handedly responsible for that dramatic increase in enforcement of FCPA regulations....FCPA legislation....over the past few years. Prosecuted many a case on behalf of the DOJ, and has since gone into private litigation with Paul Vice, who works in white-collar crime and regulation, I think. So Mark, I'll be very interested to hear from the point of view of a former prosecutor, so over to you.

Mark Mendelsohn:

Thank you, Timothy, and thank you for having me here today.

I think among this community it's taken as a given that the fight against transnational bribery requires a coordinated effort among government including prosecutors, private sector and civil society. No one of those three groups can have a sufficient impact alone, and working together I think their efforts are only amplified. Having left the Department of Justice recently, where I've devoted many years to enforcement of our foreign bribery legislation, let me first speak from the perspective of a prosecutor, or former prosecutor, about enforcement, although I think as you'll hear from my remarks, it is my very strong view that enforcement and compliance are really two sides of the same coin and very interdependent.

I think it is quite clear that we are nowhere without tough, effective enforcement of both domestic anti-corruption legislation as well as transnational bribery laws across all of our jurisdictions, and countries, not just the US. We've had quite some interesting discussions over the variety of panels this week over exactly how that's achieved. And I think, you know, as in the private sector, it is also true in government and law enforcement, it really begins at the top of the organisation, at the top of our governments, that tone from the top concept that we talk about in the private sector is also true when it comes to government. The type of leadership that we just heard about that is taking place in Malaysia is, I think, quite instructive. Leadership and commitment at a higher level needs to be translated down into resources and into prosecutors and police and investigators because corruption cases are hard work. These are not easy cases, and I think sometimes that fact is underappreciated. These cases take a long time, as you all, I think, do recognize, corruptions lurk in shadows and behind closed doors and across borders and it exploits weaknesses in our global financial system. Capital and money moves much more easily internationally than evidence does. And so this is tough work. We've talked about the importance of having independent prosecutors as well as an independent judiciary, insulated from political influence, and it has certainly been my experience that having specialized resources devoted to the fight against corruption pays significant dividends.

International cooperation is obviously a critical piece of the picture here and I think part of the success story in this area over the past few years has been an increase in the level of cooperation and coordination among prosecutors and investigators internationally in dealing with these cases. There's

a very wonderful but still work-in-progress success story here in Thailand involving a case in which my former office, the Justice Department and the FBI enjoyed a high level of cooperation and wonderful relationship with the Thai Anti-Corruption Commission and the Thai National Police in a transnational bribery case which ultimately went to trial in the United States, resulting in the conviction of two individuals who bribed a Thai Minister in connection with the award of the contract to administer the Bangkok International Film Festival which, ironically, I think is underway again this week here in Bangkok, hopefully under new management. But that case is still under investigation here domestically in Thailand, but the point is that the relationship between the two sets of authorities was exceptional. Unfortunately there are too few examples like that to point to.

Even in the absence of very strong leadership, at the top of governments, you should know that there are many committed prosecutors and police who struggle even in countries that are systemically corrupt, who are professionals and who try to do their jobs and they need significant support as well as sometimes a little bit of pressure. And so I'm often asked about what can be done to assist them. Well, it's very clear that civil society as well as the media play a hugely important role in supporting those efforts. I think we could probably point to the recent enactment of the UK Bribery Act as a success story, resulting from pressure, much of it emanating from the OECD as part of a peer review process there, but also much of it resulting from civil society pressure, litigation in the UK court system, and I think the very important role that the British press play in highlighting some issues, some deficiencies, in the UK system.

So, tough, effective enforcement is critical but I must also say it only scratches the surface. We could have prosecuted a 100 cases a year under the US FCPA and that would have only been a fraction of what was out there. The vast majority of the iceberg is below the surface of the water. And so we talk a lot about the sticks and carrots. Even in a world where there are sticks, you need a variety of sticks. You need big heavy sticks, you need softer sticks, you need a variety of ways to create incentives, and part of the success story that I think we've had in the US in our enforcement of the FCPA is directly related to the use of a variety of sticks and tools to change corporate behaviour, to drive compliance within corporate organisations, to play a role in raising compliance standards, first in the US and then I think ultimately internationally. And by pushing the concept of external oversight of compliance systems through compliance monitors and hopefully in the near future through other compliance mechanisms. The goal of enforcement, well there are multiple goals of enforcement, one very clear goal is, of course to sanction the harm. Another is to drive remediation and reform within a company that is the subject of an enforcement action. But there's also a broader goal, which is to affect behaviour within the corporate community beyond the particular case that you're dealing with by again driving compliance, not just in the company you're dealing with but across the sector and across the corporate community so that mechanisms to prevent and detect bribery are put in place in companies so that you have really a multiplier effect through your work to address the fact that the iceberg lurks beneath the surface. So in doing that, really the Justice Department of the US has drawn heavily on the work that civil society has done. We've borrowed from many of the principles that have been developed, including TI's Principles for Countering Bribery. Thank you to Jermyn

Brooks and his team for your work on that. And ultimately Mr. Boucher mentioned the OECD Council Recommendation which was recently adopted at the OECD and I think a number of the points that I've highlighted in my remarks come through in that council recommendation, a number of the points about enforcement, about the importance of international cooperation. It's clear that that work must continue, but part of the question that I was asked to answer is to look a forward little bit and anticipate where we might go, where we should go in trying to achieve accountability in the corporate world and I think that OECD Council Recommendation and the Good Practice Guide that's part of that Council Recommendation makes plain the vital role that the private sector plays in combating corruption. I think that there is clear acknowledgement that governments can't do this work alone, and I think that that document hopefully lays the groundwork for a future stream of work at the OECD and beyond the OECD and I think the G20 9 point action plan only serves to reinforce that in emphasising the important role that the private sector has to play in the strength of collective action, in the value of compliance.

And so in my remarks here, what I have tried to do for you is to draw some of these connections between enforcement and compliance. And one challenge I would issue for this group to go forward in particular is to bring private sector increasingly into this dialogue. Civil society is very well represented here and there are a small number of companies that have participated, and I think their participation is helpful. But I think sometimes there is a gap between the dialogue within civil society about how to tackle corruption and the dialogue within the business community. And I think a challenge would be in two years time to try to bring the two closer together because I think that dialogue is where a lot of our future work lies. Thank you.

Timothy Large:

Thank you very much, Mark.

Well from one FCPA lawyer to another. I'd like to introduce Homer Moyer next. Widely regarded as one the United States' leading FCPA lawyers, Homer Moyer is the Chairman of the International Bar Association's Anti-Corruption Committee and also the founder of the CEELI Institute in Prague, which is an anti-corruption training institute. Over to you, Homer.

Homer Moyer:

Timothy, thank you very much and good morning everybody. Let me begin by saying how pleased I am to be a part of this very impressive conference and to be here with such distinguished colleagues. In my five minutes, I would like to share with you six slides and some thoughts on incentives for corporate compliance from a corporate perspective, including particularly the incentive, or incentives, created by enforcement. Now I'm a lawyer who advises corporations, so my purpose is not to advocate more enforcement with corporations, but at the same time, having worked with dozens and dozens of corporations on compliance issues and programmes provides some insight into those incentives and what a powerful incentive to compliance enforcement of anti-corruption laws can be and conversely what the absence of enforcement can do in terms of retarding compliance.

Now let's begin by noting that there are many, many incentives for resisting official corruptions. Many companies are deeply committed to ethical business practices and proceed on that basis; some comply with laws whether they are enforced or not; some view bribery as a cost they do not want to incur. One client said they were really too cheap to pay bribes. Some companies believe quite strongly that they can compete effectively purely on the quality of their goods and services and insist on doing that. Some are offended by requests for bribes and simply refuse to participate, or may see that as a troubling sign of a market that might be unpredictable with higher business risks. A few appreciate a theme that's been stressed here, which is that bribery, including small bribery, can facilitate much more heinous international crimes ranging from human trafficking to drug trafficking and the like. Some have made the insight that by refusing to pay bribes you ultimately get asked to pay bribes less. In National parks in the United States there are signs that say "Don't feed the bears". Well the purpose of those signs is that if you feed the bears, the bears will come back and that principle has some application in this context as well. A company that simply says "no" may take slumps initially, but over time will get asked for bribes less frequently. And finally, some companies, and I cite Siemens as an example here, have been able to use business integrity and a refusal to pay bribes as a competitive advantage. Peter Solmson pointed out yesterday that since all of Siemens compliance enhancements have been put in place at some considerable cost, their business performance has dramatically improved.

Having said that, I don't mean to at all distract or detract from many other initiatives, Collective Action, Integrity Pacts and the likes, all of which are exceedingly important. However, enforcement of anti-corruption laws does create unique and important incentives that are---I'm going in the wrong direction---that are unique. And if you look at the American experience, you see that dramatically. As was mentioned earlier, our law was passed in 1977 and enforcement was limited for some period of time. In 1995 there was an enforcement action against the Lockheed Corporation which paid a 25 million dollar fine. That was a wake-up call in corporate America, and you could see compliance patterns begin to change in the wake of that enforcement action. And over the last 5 or 10 years, including during Mark's tenure at the Justice Department, there have been dramatic changes in enforcement patterns and a very close correlation to changes in compliance patterns.

So what happens when anti-corruption laws are enforced from a corporate perspective? What are some of the risks or considerations at play? One is that when those laws are enforced in the very first instance there are costs of independent internal investigations into wrong doing for companies that are not compliant. These can cost millions of dollars, tens of millions of dollars. A company called us recently and said, "We need help in finishing an internal investigation. It's not a big set of issues....it's still going on and has cost 30 million dollars so far." Siemens which is unique, of course, spent more than one billion dollar in investigating its own issues. The extraterritorial effect of anti-corruption laws provides additional incentives. Under the US law, numerous non-US companies have been prosecuted. More than half of the ten largest companies in Europe have had FCPA enforcement matters resolved. Fines, disgorgement of profits, are obvious costs for non-compliance. Debarment, cost debarment—there was a panel on this at this conference—can be a huge cost. If you are a

defence contractor, for example Siemens paid a hundred million dollars, or committed a hundred million dollars to avoid debarment at the World Bank. Remediation can be very expensive for a non-compliant company. Fixing one's compliance programme, restructuring it globally, can easily measure in the millions of dollars. With the advent of deferred prosecution agreements, those dispositions of cases effectively put companies on probation for a period of two or three years, a significant cost, economically and otherwise. Many companies that have violated the laws have been required to retain independent compliance monitors. I have been such a monitor so I don't want to be too critical, but it can be very costly, very intrusive for a company. Loss of shareholder value: the larger the company, the less likely any particular violation may affect shareholder value, but it certainly can, in many instances. And finally, and perhaps most poignantly, the last few years as you have seen have involved many prosecutions of individual corporate officials. Those prosecutions are attention-getters in the corporate community. So let's spend a moment thinking about tipping points, and what I mean by that, tipping points is a term, as you know, that's used for what happens that causes, in this case a corporation, to move from one type of behaviour to another type of behaviour. Well, I would suggest there might be several and I'm sure there are others beside the ones I've mentioned, but meaningful and visible enforcement of the laws is certainly one. If you don't have that you will have a considerable amount of corporate indifference to those laws, simply because they do not pose a threat. If a company senses that there are financial or business costs to paying bribes and facing enforcement, *that* can be a tipping point. I also think that we lawyers are sometimes part of the problem. The International Bar Association did a survey recently of 642 lawyers from 95 different countries. Interesting results...That survey showed that 63% of those polled did not know about the UN Convention against Corruption. 40% were unaware that there were any conventions. And when asked if they knew of lawyers involved in corruption, in Latin America more than 40% said "Yes we know of colleagues who've been involved with corruption"; in the CIS it was more than 60%.

Another tipping point is the belief that self-enforcement and voluntary disclosure will be recognized and credited if a corporation has a problem and we're seeing that now. Finally simultaneous supply-side and demand-side enforcement. You've heard mention about the Bonny Island Case in Nigeria which has given rise to the prosecution of Halliburton and more recently, of Technique and ENI. Pause for a moment and think what might have been the impact if, when that matter was disclosed, without passing judgment on the guilt or innocents of parties, if France had immediately prosecuted Technique, if the UK had immediately prosecuted the lawyer alleged to be the intermediary, if Nigeria had immediately prosecuted the officials who received improper payments: what kind of a signal would that send? I think that might be a tipping point in terms of corporate compliance.

And finally the perception of where compliance and non-compliance is. When the US law was first passed, the initial reaction was everybody is paying bribes. Why am I being disadvantaged by compliance? When we've reached the point that the perception is that most corporations are complying, we will have reached a tipping point because non-compliance will be the exception not the rule. I told you I had only 6 slides, to get there I had to cheat and it's not important that you be able to read these but just see the trend lines because they reflect the number of enforcement actions. On

the upper right is a comparison between 09 and 2010. The bottom, increase in size of the average penalty and the number of prosecutions of individuals. At the same time what we have seen, and this is the final slide, is what has happened during the same time period with respect to corporate compliance. It has really gone through a bit of a mini-revolution. Companies now have freestanding anti-corruption policies as opposed imbedding that thought in the general code of conduct. They provide practical guidance of the types suggested that Shell had about what is the limit for gifts? What may you do? What may you not do? Audit Committees and Boards of Advisors and Supervising Committees are much more committed now than they use to be. Management accountability and discipline: some people take the view that the termination of one employee send a stronger message than 20 training sessions. If someone is fired for violating a company's policy or any corruption laws that sends a very clear message. Extending standards to third parties....agents, sales reps and the like....extends the impact and is now commonplace in corporate compliance programmes. And monitoring and testing programmes: is it just a written piece of paper? Is it just a policy? Or is it really working? Is it understood on the other side of the world by branch offices and employees of the company and is it affecting their behaviour? And finally, and ironically perhaps, is it achieving what should be the primary objective of a compliance programme and that is preventing bribes from being paid and having that effect? So those, I think, if we stand in the shoes of corporations, these are some of the incentives I think that you see from compliance.

Timothy Large:

Thank you very much Homer.

And last but not least I'd like to introduce Mary Boakye, a lawyer, a UK lawyer widely recognized as one of the leading lawyers on African matters. Mary was formerly a partner at SNR Denton now she's an off time consultant for S and R Denton where she advises the firm on African matters, investment in Africa, and expansion into Africa. So she brings a very interesting perspective to this discussion I think. Mary.....

Mary Boakye:

I've spent the last few years living and breathing and, I guess, sleeping African matters. Over the last ten years I've been advising international businesses investing in Africa and so my brief comments are mainly from that perspective. Often when the word Africa is mentioned there is this perception, or should I say misperception, that Africa is grossly corrupt. This is inaccurate because firstly Africa is not one country: it's a continent of 53 countries, so you can't make that generalization. Secondly, in my experience, African countries, when it comes to corruption, are actually babes in the woods compared to a number of other countries which I wouldn't mention. Now the benefit I feel of this is that corruption is not as yet entrenched in most African countries: as such there's still the opportunity to bring about effective reforms and perhaps entrench anti-corruption policies and initiatives into the fabric of African countries. Now while the extraterritorial effect of laws and OECD countries such as FCPA such as the new UK Bribery Act are good and effective for cutting the supply-side of corruption,

I think for Africa more is needed. Most importantly I think what is needed is a cohesive international action, as well as domestic political will. Without these two the extraterritorial effect of laws are not necessarily going to work in African countries and I'll come back to that during the debate. You can't create laws in a vacuum, you need to work closely together, government to government, perhaps to engender reciprocal initiatives in these countries. Again I'll take about it in more detail during the debate.

Timothy Large:

Thank you very much, Mary.

OK, before we move on to the part where we open it up to the audience, I'd to take this opportunity to ask a few questions of my own to panelists, and I think I'll start with you, Ambassador Boucher. Asking an almost philosophical question here, to what extent does ethics come into all of this discussion, when we're talking about corporate compliance, the need to do right by the law? Is there a moral imperative? Or is it purely a pragmatic one?

Richard Boucher:

I think there is a moral imperative but it has to go along with pragmatic ones. If you examine what are the real effects of corruption, in the end people who don't get to school, who don't get to teach in the school, who don't get the highway, don't get the job, don't get their drivers licence renewed, these are the most vulnerable people in the society. Everybody with some means finds a way around: the people with no means, the victims, are always the most vulnerable. And that's wrong, I mean, I think it is a moral question if you examine it that way, and it's just a matter of doing something about that. On an economic and economy-wide basis, corruption, there's a lot of different estimates, but it takes several growth points out of the GDP. So again, the people who deserve to grow, deserve to get richer, aren't getting richer. The people who already have money are getting even more. As Idris said, you know, it's one of the steps economies want to take when they are moving forward from mid-level to high-levels of income is to get rid of corruption, to have a more systemic approach. And it is also a step businesses have to take, and this starts getting into the self-interest part of it. For all the reasons that Homer mentioned, corporations have a lot of strong incentives, but let me add a one or two more. If there's the win some, lose some aspect because if you get a contract this time by corruption, you're going to lose the next one because someone's going to come along and pay more and no more will the quality of your product and the quality of your business be the determining factor. And so you're just putting yourself into a vicious cycle. Second of all, if you're engendering a bribery environment, you should be prepared to suffer as well. The business to business corruption is not something that we've really talked about too much but what are you going to do when you find out the guy who buys plastics for your corporation has been buying sub-standard plastics because he's got a bribe from somebody to put them on the procurement list and all your products are coming out defective because of it. So there's internal business to business links there. Finally, in the days of mergers and acquisitions, when you're trying to go into the big leagues, when you're trying to list on foreign

exchanges, when you're trying to sell yourself, companies have to be aware that bribery cases and potential bribery cases can be a huge corporate liability as Homer said and it can cost a lot of money. When I was in the US government, I remember in the 80s we heard a lot of complains from US companies about the Foreign Corrupt Practices Act. And the first four or five years, it was everybody else is out there paying and you guys won't let us buy somebody lunch. And after a couple of years, the company started coming to us and said, "Hey! You know what? This is good! If somebody asks me for a bribe, I can say 'Hey..this is America and we don't do that!'". And we're at that point now though where we see these countries where companies want to say, "My country is in the Working Group on Bribery.... My country is a member of the convention. I can't do that." Not all companies do that: we already know there's still bribery going on among companies that are part of the OECD Convention but it's an excuse not to pay, and it's an assumption that those countries, those companies. won't pay. And you really have to build that into the business as well, that that becomes the global standard, and that bribery becomes a...[inaudible]....a terrible exception.

Timothy Large:

Thank you very much, interesting. Next I'd like to come to you, Idris Jala, because you have an interesting perspective on the whole whistleblower protection issue and this was, of course, something that was mentioned quite prominently in the G20 document yesterday. The action plan, which actually commits to having G20 countries sign up to rules, whistleblower protection rules, by 2012 I believe. Now from your experience, what does it actually take at the corporate level to put an effective whistleblower protection in place? What examples could you give to other companies who might be thinking about doing that? Let's try to get concrete about this.

Idris Jala:

I worked in Shell for 23 years and for a large chunk of my time with Shell I lived abroad: in the UK for 4 years, in Netherlands for 4 years, in Sri Lanka and others. And we've introduced Whistleblower Protection Act, whistleblower policies in those countries, and also in Malaysian Airlines. And let me take the example, in Malaysian Airlines, they didn't have it when I joined the company and we introduced it. It was very simple. If anyone has any evidence on someone in the company, that is, you consider that they've done something for dollars XXXXX you can write a letter to a small panel... we called it the Whistleblower Panel. And as the managing director, I was the chairman of that panel. We had ladies inside the panel, we had members from the union inside the panel, and we had different ethnic groups inside the panel. The idea here is we wanted this panel to make sure that they can welcome any sort of employees that they can feel comfortable coming out with their complaints. And when that comes in, there are two things that are crucial to cause the whistleblower policy to succeed. The first one is protection must be given to the whistleblower: very important in terms of confidentiality. So let's suppose the complainant sends a whistleblower to one member of the panel and that member of the panel will make sure that the identity of the whistleblower is kept totally confidential. Only he knows the identity of the whistleblower. He takes the case and presents it to the Whistleblower Committee and says, "Mr. X. has made a complaint on so and so," and describes it.

Throughout the entire process of the investigation in that whistleblower case, the identity of the complainant is kept confidential. As it goes through, let's suppose you then get to a domestic inquiry to check whether that person is guilty or not. If there are not enough witnesses, the member of the Whistleblower Committee will approach the whistleblower and say, "Look, we don't have anyone that would come forward to testify, except you. It's only you that can come up and testify, in which case you'll have come out and identify your identity because you've now become a witness in a domestic inquiry." Now, if the person says, "I'm sorry, I cannot," then obviously the case will be closed. However, if the person comes, then we will proceed. In most of the cases that we have seen when we introduced this in Malaysian Airlines, the first year is an avalanche of loads of complaints and usually when we checked them quite a number of them are genuine cases. But quite a number of them come from sheer jealousy and hearsay. But the crux of what one must do in introducing a whistleblower policy is absolutely clear: protection and action. And those two words, protection and action...now, every case that is brought forward, you must act on it. You must take it right to the end. And in the event there's not enough evidence to take it right to the end, you must get back to the whistleblower, the complainant, and tell the whistleblower, the complainant, this is actually the reason we cannot take it any further. Because these are the effects of the cases is that there isn't enough evidence to take it forward. Very important is protection and action. Getting back to the complainant is crucial, because if you introduce a whistleblower policy and many people put forward their complaints and you don't do close the loop with them, before long people will say this is a whitewash... Nobody is taking this seriously. What will happen with that policy is that it's just one other policy, written in a nice document, but left in the cupboard. So the key here for the whistleblower policy to work, it must come with protection, it must come with action, in closing the loop.

Timothy Large:

Protection and action....Thank you.

Mark Mendelsohn, for countries that may have new laws on their books outlawing bribery, either domestic or international, what kind of advice would you have for them in terms of implementing and enforcing these laws?

Mark Mendelsohn:

That's a big topic. I think I'd start with the proposition that when you're fighting corruption, whether it's domestic corruption or international corruption, you're confronting the powerful, you're confronting either your own powerful officials, powerful foreign officials, multinational corporations who themselves have political ties and influence. And so while I think there is no one model that applies across different legal systems, common law, civil law and different legal cultures, I think there are a couple of principles that have to be respected, that I think are the foundation for effective prosecutions and those are principles that I think we've talked about throughout the week and in a variety of different fora. They are independence for the prosecution service as well as for the judiciary. Empowered and resourced, they need to be insulated from retaliation and protection in doing their

jobs. And I would probably add to that one which may be talked about a little bit less, which is they need to be connected...connected to civil society, domestically, if they are dealing with international corruption I think it's important to be connected to the growing international network of prosecutors in this area that mutually support one another through sharing experiences as well as assisting in gathering evidence. I think those are the kinds of principles that you want to try to reflect in your own institutions and laws in trying to build an effective corruption fighting body.

Timothy Large:

Homer, next I'd like to ask you a question. You deal with a lot of compliance programmes. You've seen good ones and bad ones, presumably. What's the difference? What are the hallmarks of a really effective compliance programme versus one that's just going through the motions, say.

Homer Moyer:

One distinction that is drawn sometimes on compliance programmes is the difference between a values-based program and a rules-based program. The implication is that if it's simply a set of rules, it probably has less moral force, less effectiveness than if it is also tied to and based on the values of the corporation.

Another good indicator for corporations as well as for countries, is tone at the top. And on the subject of how expensive are compliance programmes, setting the right tone at the top is something that can be done without cost. And if the tone at the top is right, if it reflects true commitment to compliance, people in the company understand that and the opposite is also true; if the company is going through the motions people sense that.

And then finally, other indicators if you would just look to see if it is simply a paper programme or if the company really mean what it says. Does it hold managers accountable for violations of its own code or the law? Does it screen third parties and monitor what they do...agents? Has the company ever walked away from a lucrative business opportunity because the compliance risks were very high? Those and other indicators can give you a sense, I think, of whether the programme is functioning effectively or is not yet there.

Timothy Large:

And finally before we open up to questions from the audience, I'd just like to ask Mary. You deal with a lot of companies that are looking to expand in Africa say, and these companies may have themselves very, very strict compliance standards. How realistic is it for them to expect the third parties they deal with, the agents or so on, to adhere to the same level of standards across different nationalities and different cultures?

Mary Boakye:

I think on the whole, in certain cases, it's possible to get third parties from different nationalities, different countries, different cultures to comply with a company's compliance standards. That's usually where they want to do business with the company, then they have to comply. If not then they don't get the business. And I'll give an example, I'm sure they won't mind me mentioning. Talu Oil for example has recently struck oil in different African countries. They have very strict procurement and local content policies. They also have a policy of trying to Africanize the company and have more Africans within the company. As a result you have various local companies who think, "Oh yes, we know somebody or have a cousin or an uncle or somebody in Talu.....we can get the business".... it hasn't worked. No, very, very, very strict rules. And if you want to do business with them, you have to comply with the requirements or else you won't get any business or any contracts from them. That's an example where it works. You also have the former Celtel, that had a zero tolerance policy, and I guess can proudly say that they managed to go into 15 African countries without ever paying a single bribe or facilitation fee. And again the various national third parties, if they wanted to work with Celtel, just had to comply with that zero tolerance policy. In fact, even beyond that Celtel would walk away from a country. no matter how lucrative it was, if it felt the risk was too high. That was under the leadership of Mery Berhim, who I'm sure a lot of you know about and what he's doing regarding good leadership and anti-corruption in Africa now. But Celtel is another company that was successful in getting companies to adhere to their standards. Generally though, I have to say that no, you can't really force them to adhere to your compliance standards. Particularly when there's always going to be somebody else, another company out there that might be willing to engage in corrupt practices to get the same deal. I think it comes to an issue that sometime's been raised about competition between companies and different countries. So for that reason you can't always force it. The other reason you can't force it is where there is no incentive or disincentive from the nationals and the other countries, and a good example is I think it was last year 2009, the Mabeian Johnson case, where a British company was prosecuted for a string of corrupt acts in various countries. During the trial, various public officials and government ministers were actually cited by name during the trial and the amount of payments they received. I know that in at least one of these countries no action was ever taken against these officials, in fact some of them remained in public office. In a situation like that then there is no real incentive for third parties and other countries to comply with a company's compliance standards. And this bring me back to what I was saying earlier on about the need for governments to work together, to engender similar initiatives in other countries not just African countries, in fact.... it could be other developing countries....and once those initiatives are put in place, once there is that will, then things will move on better.

Timothy Large:

Right time marches on, we've got about 20 or 30 minutes before we finish this session. Let's have some questions now. I think the best way to do this is to have questioners line up behind the microphones. I will try to peer through the very bright spotlight to identify you and we'll take them in groups of 3 or 4. And if you could please give your name, your affiliation, and try to stick to a question rather than a long statement, please. So let's begin with the lady down here in the grey suit.

1st Questioner:

Merci beaucoup, madame. Thank you very much Mrs. Guru. I'm advisor to the Minister of Justice in the Democratic Republic of Congo. I'm in charge of ethics, the fight against corruption and good governance. I would like to explain a concern in terms of whistle-blowing protection.*[Intervention concerning interpretation/correct channel]* So I want to express a concern in terms of protecting whistleblowers. ,Earlier on in the statements made, people talked about ensuring that whistleblowers remain anonymous. However, at a given point in time in the inquiry, this kind of protection may cease to be justified, i.e. the identity of the person has to be made public because that person may have to confront the person accused. And when this goes through court the whistleblower may have to become a witness. If one can no longer protect the whistleblower by keeping the name anonymous, what other protective measures can be taken? In a case where you tell on your immediate boss, how can the whistleblower be protected because his boss could abuse his power, or if it's not a boss it might be a military officer, someone in a superior position, and that person could try to take revenge even harm the whistleblower physically? So over and above that, whistleblower protection systems, what else can one do to protect these whistleblowers to ensure that such corrupt acts are indeed brought to justice.

Timothy Large:

This is a question about whistleblower anonymity and whistleblower protection: we'll come back to that in a second. But first let's take the gentleman over here.

2nd Questioner:

Thank you. I'm Kamal Hossain, from Bangladesh, founder of Transparency International...*[inaudible]* I'm very impressed by the panel, the way it has come from all of you that international coordinated action is indicated a need for that. And because the Global Coalition against Corruption has strengthened, as is evident from the presence of the panelists here, but the global coalition *for* corruption has also been gathering strength and experience. And what you do find is that the successes that we've had where there's been a change of regime, the new regime has come and been able to cooperate in exposing those who have preceded them. Change of ownership in a corporation has also been very salutary. Enron's collapse is what enabled the terrible project in India to be salvaged because those who became the beneficiary owners of Enron, were advised, without getting involved in lawyers' fees, to say, "Let's sit down and see what's wrong...what has the state government done to introduce into the project elements which could now be cleaned up?" I was happy to say that mediation of the former chief justice, those bits of things that were introduced through corrupt means were cleaned up and the project continued successfully. In Pakistan, similarly, the Hub River project, on the basis of telephone calls from the Prime Minister's Office, contractual terms had been improved in the favour of the company. When that successor regime came, the issues came for adjudication, it was suggested "Why don't you clean it up? All the issues.. Clean them up and then you can go ahead!"

Timothy Large:

And your question is?

2nd Questioner:

My question is, what from these experiences would we say would be the advice--with you at the Department of Justice, I'm very impressed....I think it was very insightful what you said—that internationally and nationally the kind of coordination that is needed. You get help internationally, and then when it's brought home, all kind of things get to work, basically to neutralise against the value of what you have obtained internationally. With UNCAC now, the convention against corruption which you've mentioned, there is a kind of framework for meaningful cooperation, effective cooperation. Now, what initiatives could we take from Bangkok, in the Declaration or maybe beyond the Declaration, to say the effective international cooperation would require just as you do in the case of crimes against humanity, international crimes, that big corruption is recognized as an international crime....you get support from the Department of Justice which gets support internationally. You must then come under an obligation to pursue the matter within your own country, because within the country these efforts can be undermined. Last point is the compulsion in domestic countries for the kind of democracy-building which requires huge amounts of money. That's the other arm of the strategy that in promoting democracy, we must (and that is also internationally done, I myself am an international observer in many places) can you not ensure that observation is not only seeing the lines outside the boot, where to go deep into forensic accounting where the big money is brought into the elections to spoil the election. *[Moderator cuts him off]*

Timothy Large:

Thank you, sir...A question about international cooperation and what we would like to see out of the Bangkok Declaration. I will ask you please to keep your questions as short as possible so we can get as many of you in as possible. We'll take one more before we answer these questions.....the gentleman over here with the blue jacket.

3rd Questioner:

I'm Hakeem from LebanonTransparency International, Lebanon. What I would like to ask, on the level of international cooperation for lawyer services, with the eminent lawyers that we have and attorneys that we have on the panel, don't you think that the price of lawyers' services, particularly in industrialized world is very expensive today? Isn't it some sort of corruption to have such an exorbitant price to pay for anybody who wants to bring a case against the government or a corporate, to have to pay and seek the services of important law firms and pay such a high price? In Lebanon we have a case, a very famous case today internationally, the assassination of the late President of Lebanon, Rafic Hariri. The cost of putting together the services of the court, a special court in Lebanon, where the Lebanese government has to pay 49% of the expenses, goes beyond 150 million dollars a year for something that has started five years ago. Imagine how much it will take to reach

the verdict and the end of such decision of the court and to find the culprits who assassinated the President. This is something I would like to ask the lawyers: Isn't it really something to be looking at, to see these costs.... they are really high for especially developing nations, and not only in the industrialized world. What do they say about that?

Timothy Large:

Thank you sir, that's a very interesting question. The sheer cost of bringing a case, is it too expensive? Why don't we begin with that one? We've got three lawyers on the panel, so who'd like to tackle the top question. Many of these lawyers have done a great deal of *pro bono* work in their time too. Homer would you like to answer this question?

Homer Moyer:

Sure, I think depending on the type of the issue, the kind of case you describe, it's very likely you could get *pro bono* assistance from a law firm in that kind of context. In some ways your question goes more to the cost to governments to prosecute and the resources available to prosecute those types of cases. And finally the cost of the special tribunal could be weighed against for example, the jurisdictional reach of the International Criminal Court or some pre-existing tribunal. But your question is a good one. It's an important issue that extends beyond just corruption cases. But it's a challenge that should have solutions.... Mark?

Mark Mendelsohn:

I agree with Homer's remarks and I was only going to add that I think it's an access to justice issues, but it is one that a number of international organizations including the International Bars Association, the American Bar Association, and hopefully many of your local bar associations have also taken. I don't pretend that there's a simple solution to the problem of equal access to justice, but I do think that there are resources out there that are available if one was looking to take on a cause like that, at something other than retail, legal rates

Timothy Large:

Mary, did you want to add anything? OK.... Alright....Thanks. One of the other questions was the whistleblower anonymity question. Idris, would you like to answer this?

Idris Jala:

That's a very good question that was raised before, and because we had only 5 minutes I didn't actually do justice and explain the confidentiality point. It's very important to make sure that the protection, the confidentiality is held intact. At any point along the process, at no point should the company disclose the identity of the whistleblower, unless the whistleblower has given a tacit, if you like, better, written permission for that to happen. At no point when the person put out the whistleblower....I'm a whistleblower....and at no point must the employer disclose the identity of that

person without explicit permission of the whistleblower. That, I think, is a very important point. Preferably it should be written permission...written permission which is granted....because if you don't do this, it really goes counter to the protection issues. Most of the time there is no need for a disclosure, as I said before, because there is enough evidence. In extreme cases, there are absolutely no witnesses other than the whistleblower, that's when you have to approach the whistleblower and say, "Look....we've done 5 weeks of investigation. We cannot find anyone that can come out and become a witness to this particular case, the only person is you. And so otherwise we can't move it forward." But if the person says, "I'm sorry....I do not want to disclose myself, my identity," then that's OK. You must not proceed to go and make the announcement and disclose the identity of the whistleblower. And that's critical. By the way, when you look at Whistleblower Protection Acts, there are many of them available in the world. Can take a look at how they do it in the US, the UK, many others countries. When we started to do ours, we took a look at all that's available...all the various protection is inside there. Really looking at the precise elements inside there to make sure that any countries that choose to go around these routes need to take a look at what's already available. All sorts of protection... punitive action and protection, civil immunity etc. etc.all available inside the protection acts.

Timothy Large:

Thank you. The third question, if I remember correctly, addressed international cooperation.... What we'd like to see come out of Bangkok here. Mark, would like to....

Mark Mendelsohn:

Yes, I'd be happy to. If I could restate the question: as I understood it I think the question is really how do we link up international efforts to combat corruption, including but not limited to prosecutions in the US, with domestic efforts to deal with the same corruption issues? And I think it's a great question: I mean, you've identified something that I've been thinking about throughout the course of this week.

There are efforts that...Maybe I should clarify: I am no longer with the Department of Justice and don't speak for them. I'm in a private practice of law now working in this field and also pleased to be a board member of TI US. But I can say that I'm well aware of efforts by US authorities, the Department of Justice and the SCC, who do the enforcement as well as our State Departments and Commerce Departments to try to build those bridges and connections that you've identified, but I'm confident there's much more that could be done.

I also think, quite frankly, that there's a role for you all in civil society....those of you in local TI Chapters...to try to encourage more of that interaction. For example, if there are steps you can take to encourage your local authorities to take up a matter that is the focus of an enforcement action in the US. and there are allegations of corruption by a local official that work maybe underway and you may not be aware of it, but it certainly does not hurt to make it be known that there's an expectation on your side that local authorities would investigate the matter properly, contact US authorities to make

sure that they receive whatever evidence might be available and see if there's a basis for a local prosecution. And so those are my comments.

Unidentified Male panelist:

Do I have time for a quick comment?

Timothy Large:

Please...yes..

Unidentified male panelist:

One other quick comment. The gentlemen from Bangladesh mentioned successor regimes and successor honors and corporations. In a perfect world, of course, you wouldn't need to wait for a successor, and that flags an issue that I don't know we have discussed perhaps as much as we should, and that is the important role that the media can play in indentifying and disclosing and bringing public attention to official corruption.

Timothy Large:

Right... let's take another batch here. We'll start with the gentleman on the far left there.

4th Questioner:

Yes my name is Ernest, I'm a chairman of Congolese League against Corruption in Kinshasa.... If I understand well Madame Mary told us that Tula Oil, they didn't bribe people in Africa. But in DRC, I can assure madam that in Tula Oil, they got a contract, a lucrative contract, and contract in Lat Albert, near Uganda. ...the DRC....And on this contract I have emails, I have the reports, I have contracts in English and in French. No one can get this contract without bribing officials in Kinshasa. This is the first thing. Secondly, don't trust the paper which they write down in the UK and in the US. Come to Kinshasa , if you ask all civil society groups in Kinshasa and in Turi, they will tell you that these companies, Tula Oil which is based in Kampala today, the Board of.....

Timothy Large:

Sir, could you please get to the question?

4th Questioner:

Yes, the Board of Administration in Tula Oil it's composed of, inside of the board..the high ranking of Uganda regime is inside. So if you use this high authority in Kampala, in this company it means that they must bribe officials in Congo to get these contracts. Thank you very much.

Timothy Large:

Not quite clear what the question is but thanks, sir. I guess we'll go to the next one, the lady down here.

5th Questioner:

Thank you very much. I'm Yassmin Ramand, an MP from Pakistan. And my question would be to Mr. Richard Boucher. I really agree to the idea of public-private partnership and the role of media, but I think we've missed out on a very important aspect of the role of parliament, a democratically elected parliament. The role of parliament, its basic role, is oversight on the public front with deals with the companies and whenever—and I'm speaking from Pakistan's perspective—whenever a dictatorship comes and overthrowing an elected government it is easier to deal, for the companies, with the dictator, one dictator, two men sitting on the top. And dictator comes with the support of the bigger powers. I think won't it be a better idea to support a democratically elected government, the public accounts committee of the parliaments, or the offices and the agreements of the companies to be discussed in the parliament, which is an elected house of more than 300 people, rather than the bigger countries, the superpowers, supporting the dictators who can do the deals without bringing it to the knowledge of the public? Thank you very much.

Timothy Large:

Thank you very much. And then over here...Yes.

6th Questioner:

Thank you... I'm Nalessa...I'm with the UNDP in Afghanistan working on the anti-corruption project. And I would like to put my question, basically in a country perspective. Afghanistan, as of now, doesn't have a whistleblower protection programme. Whistleblower protection is mentioned in the anti-corruption law and there was a commitment in a couple conferences for the whistleblower protection programme to be developed. In this context I have one question, maybe to Minister Idris, and maybe in general to the panel as well: What happens if there is a false complaint? And is there supposed to be any action to be taken against such complainants? And further to that, as the minister mentioned, if the whistleblower is not ready to testify ultimately, a case is supposed to be closed. But say, for example, in Afghanistan if there is a complainant who comes up with a complaint with respect to, suppose, an asset, an inappropriate asset, with a particular official or politician, and if there are not enough witnesses, is it not imperative on the investigative agencies or anti-corruption agencies, whosoever is the custodian of the whistleblower protection programme, to investigate and through other means establish that whether the complaint is actually correct or not? Thank you.

Timothy Large:

So that was to Idris. We'll take one more and then we'll do these, I think. Over here on the far right please.

7th Questioner:

Yes my name is [inaudible] from Ghana...and Ghana was one of the countries that were mentioned in the Meright Johnson case. At present 2 government officials resigned and four more are still in public office. But what is happening is the Ghana government is very silent about the compensation. Whether they articulate it or not, I don't know if Mary knows [inaudible] and if the government refuses to go for the payment, what can ordinary citizens do with the cooperation of the British authorities to get the money paid to the country?

Timothy Large

Thank you very much. Would you like to start, Idris? Perhaps you could address that second question.

Idris Jala:

Yes, the question about what happens if there is a false complaint and there is no evidence. It's very important to explain the case to the whistleblower, return to the whistle blower... explain exactly what we have found in our investigation. The second question is alluding to the first one. How do you that you've done a good job in the investigation? The crux of the matter here is that the investigation must be thorough, and I already mention as the member of the panel before. Corruption cases are tough and hard work...You must make sure that thorough investigation is done and this is very important to do.

And for what it's worth I will mention one particular company that I was the managing director in my 25 over years as a corporate leader. It was one particular individual that 102 of his staff whistle blew...they all collectively wrote a whistleblower complaining against the supervisor, the manager, and after we've done the investigation it took us two weeks to discover the evidence was overwhelming and we dismissed him. It was very important because the word was around within the whole company, they were testing us in the management team and because everyone knew that this has been going on like a racket for a long time, they were testing the resolve of the company and were we going to get down to taking action against this guy because it's been going on for long time.

And so it was very important that when we went and obtained the evidence, when we dismissed the person, you know, what has happened was the whistleblower policy became a *huge* deterrent. It's a little bit like the nuclear bomb.....God forbid we would not want to press that button. All that it does is that people then become worried about engaging in corrupt activities, because what if someone pressed the button on them? And this is, I think, very, very important. Thank you.

Timothy Large:

Thanks. Richard Boucher, would you like to address the question of democracy, dictatorships?

Richard Boucher:

Very interesting question. I don't know of any evidence one way or another that says that democracy is more corrupt than dictatorships or vice versa. I've known dictatorships that were quite clean, I've known dictatorships were extremely corrupt. I think we all know the problems with democracy sometimes. In the United States, we tend to nail about...I don't know....congressmen every year, or every two years maybe, I haven't gone down the averages, but it continues to happen. You all remember the guy who had 100,000 dollars in his refrigerator a couple years back. So, it's good, it's easy to find examples of both, but I think the role of oversight, certainly in democracy, is a lot stronger than the role of media, the role of civil society, and the role of parliament, even if there might be some corrupt people in parliament....parliaments do tend to have investigative committees....they do then to call people to account. And it's a combination of all these tools in a democracy that can help clean up the environment so I absolutely agree with you: parliaments are very important.

Timothy Large:

Well I must apologise, I neglected to call on the second line of microphones out there. So let's do that now Perhaps we can begin with the person raising their hand over there.

8th Questioner:

My name is Penny Bright. I'm a judicially recognized public watch dog on Auckland and regional government matters from New Zealand, and I believe there are a herd of elephants in the room. If the majority of corruption is associated with contracting and procurement, and the global market for procurement is currently 14 trillion dollars--which is 14 thousand billion dollars--I would like to know if any of the panel have evidence of any due diligence or cost benefit analysis that proves that the contracting out of public services is a more cost effective use of public money as opposed to in-house provision by local or central government. Is it not time to consider minimising corruption by minimising private procurement and cutting out the contractors?

Timothy Large:

Interesting. Before we take the next one, why don't we address that? The herd of elephants in the room....Would anybody like to? Can we minimise corruption by trying another way than these procurements

Richard Boucher:

First of all you can minimize corruption by having good public procurement. And at the OECD we have public procurement guidelines. It's also covered to some extent in the UN convention. There are a lot of ways to manage the public procurement process...to end bid-rigging, to use transparent mechanism for publishing procurements.... I heard last week from part of the Mexican government who said they have decreased their costs by about 10% by using a new electronic bidding process. So there are ways to make the government procurement a whole lot more efficient and a whole lot less prone to corruption. And I think many of us in these organizations are working hard, Transparency as well, to try to get corruption out of the public procurement process.

Public procurement in most countries is 15-20 % of the GDP. So it's an enormous contributor to the national output and if it's done efficiently it can be an enormous gain in national infrastructure and productivity and services. I'm not aware of too many studies that can say that contracting out versus public procurement or public in-house is more efficient, less efficient, more prone to corruption, less prone to corruption. The debate has been going on in many of our countries for a long time. I've seen statistics that people throw around at each other like sticks. But I don't think it's been scientifically proven one way or the other.

Timothy Large:

Right, let's go to the gentleman in the middle. I think we've got time for three more questions before we have to wrap it up.

9th Questioner:

Yes, Bill Batt with the Socrumbat Foundation in New York.

Timothy Large:

Could you please speak into the microphone?

9th Questioner:

Right... OK, I'll do my best. About 48 years ago I left graduate school in public administration to respond to Kennedy's call to join the Peace Corps. And I was sent to the very northern part of Thailand here, right up near the Burmese and Laotian border where I spent over two years. And it was such a disrupting experience for me that I spent the next 6 years reconciling my experience in Thailand here, in the rural areas with what I had learnt in graduate school heretofore in order to write my dissertation.

Now my concern is that it seems to me that a good part of this conference follows Western law and Western market models that are in many cases not really apt for much of the developing world and that this is my first IACC conference but it seems to me that this conference could do very well by having a few anthropologists involved, and other social scientists, as well as people who have more knowledge of local level indigenous populations.

Timothy Large:

Could you turn it into a question?

9th Questioner

My question is, have you any sense of where such, experience has been particularly helpful in this regard?

Timothy Large:

Thank you. OK, let's take the gentlemen over here

10th Questioner:

Good morning ladies and gentlemen. I am Olivier Weber, the French ambassador for the fight against organized crime and against human trafficking. Let me continue in French. [Speaking French]

[Interpreter]

We listened to what was said this morning and this is a product of what has been said at this conference since the beginning. And beyond corruption in all sectors that were mentioned, I want to mention organized crime that uses upstream corruption. Corruption is not only practised by a group or person or an institution but it's also programme planned upstream. It's very important because this prepares the groundwork for other types of trafficking. This is the case for public health care with the false drugs. Fake drugs. What can we do against fake drugs that are being consumed by consumers and people die of them? So I think we need to be aware of this special situation. I have been very.... I think we need to increase aid, financial aid, to civil society but especially in the south. And we need to find ways—and this would be states, international organizations—ways to target NGOs and social civil societies that work upstream and we need to help them financially. There w... [inaudible] So how can we help civil society, somebody asked the question. We should implement an indicator beyond corruption that could be potential GDP pro-inhabitant that would show the distortion between actual income per person in a state and then the loss to corruption.

Timothy Large:

Here on the left

11th Questioner:

Thank you very much, Jeremy Gavan, Transparency International. I'm not usually cool and patient. I have a single point to make. This panel is about supply-side corruption, it's about corporates and their involvement, and Mark Mendelsohn and others have cited as an example tightening the net against corrupt companies, the UK Bribery Act. Now we fought hard for that and the Act is now in very good form. But we need a reality check: this Act is not yet in force, the new government has delayed it coming into force until next April at the earliest, and it will be useless anyway unless there are resources behind enforcement. And there are indications, currently, that resources are being taken away from enforcement in a large way.

So my question is, in fact, a request to all members of the panel, particularly all members of the panel, but also to the several hundred people in this room that you waste no opportunity to tell the United Kingdom that it is not adequate not to follow through on this. The United Kingdom in the past has very successfully exported corruption all over the world, and it is time that we stop that. And this Act and its ready enforcement will do something to impede the flow of corruption out into the world and also the facilitation of the proceeds of corruption in our financial services. Thank you.

Timothy Large:

Right...Thank you. Thanks for that very eloquent statement in the form of a question. I think we've got time for each of the panel members now to just give their response as they like to these...Or should we do one more? Are we OK with the time? Such as public demand that we'll bow to that, and then we'll have final responses from all the panel. So yes let's take one more here.

12th Questioner:

I'll be very short and crisp. I'm from Pakistan, a member of the parliament from Pakistan and I've been a Member of Parliament 6 times. My question to the panel is when you talk of corruption, corruption you have two parties. There is the person receiving the money, the person giving the money. You have been finding organizations for giving money, but like individuals have been sentenced to prison by the hundreds. Has anybody from any organization or any individual been sentenced to jail terms and what is the percentage of people giving money compared to people who have received money? I feel it's hardly one percent of people giving money, and 99 percent of people receiving money. And my question to Minister Idris, he mentioned about names of shame....a list of 220 people. When you put their names on these internet, can they go to court to blame you for putting their names on the internet, or do you go through a certain process and after, that when that is confirmed, then you put their names on the internet? Have there been cases where they have gone from high court to supreme courts for putting their names on the internet? And you've done a wonderful job to bring practicality to your talks. Thank you.

Timothy Large:

OK...Thank you very much. I will take two more questions on the very strict condition that you could please keep it within 30 seconds, with a question mark at the end. Thanks. The lady here and then the gentleman.

13th Questioner:

I'm Alma Gomez. I'm a member of the European Parliament, I'd like to say about Africa, that the problem is often you're dealing with countries where indeed the justification for corruption is that you're Africanizing, therefore imposing a partner, and you are indeed doing what the West did accumulating wealth to be in business. This is very clear in Angola, a country where the companies of my own country, Portugal, not only, are heavily involved in bribery. My question is, well, linked to this, is how can we fight corruption if we don't legalize off shores, tax havens. What has the G20 done in this respect? Nothing. The OECD has some rules, but obviously they are not enough

Timothy Large:

OK... thank you ...tax havens, and the final question before we address them all.

14th Questioner:

Merci Mr. president [Interpretation] I would be direct, from the Democratic Republic of Congo. I have been doing research on corruption. So my question, first question would be this one. The concept in commercial transactions, paying for the right to have a business, is too high. And my second question isI'll stick to...we'll have a second question....now elections. You did not mention corruption during election time. A political election, you start the campaign, you authorise giving money to buy votes, and this is not called corruption, but you're opening the door to corruption because once the campaign is over, the idea remains that you can also, always get money from the politicians or from voters.

Timothy Large:

The final part of this session. So I'll ask each of the panelists, please, to respond as they will to the smorgasbord of issues that came up there, everything from tax heavens to all sorts of other things. Mary, would you like to begin?

Mary Boakye:

Sure, I'll respond to a couple of the questions. I think there was gentleman from Ghana who asked, and if I understood your question, was it to do with repatriation of fines levied on companies that have been found guilty? Well, I think, if I've understood the question then I think where in one jurisdiction a court fines a company for a criminal offence, you can't, whether that offence took place in that particular jurisdiction or in another country, or in this case, as you say, in Ghana, you can't require the court to have that fine repatriated to Ghana. There should, however, be a local law in Ghana or whatever other country, requiring the persons who were involved in the corrupt act, or who received the payments, to return those payments to a government fund or something. That would be my answer to that question.

The gentleman who talked about Western laws and regulations not being applicable to developing countries: to a certain extent, I certainly agree with you: a good example is there is one part of the UK Bribery Act that illegalizes facilitation payments and goes on to say that that is irrespective of cultural practices in a foreign country. My personal view is that that's actually a slightly flawed model and also a little arrogant, because without taking the steps to understand what goes on as cultural practices in certain developing countries, to just say that something is illegal because we say it is illegal is actually quite arrogant. And a good example is where, for example, you have XXX land in certain places, a company acquires land and feel they've earned it, but to be able to do anything with the land or to build across it, they have to make certain payments to chiefs. That would be described as facilitation payment. But it is a culture in certain countries that you have to do that. So to then define that as being illegal is not quite right and so I would agree with you that they need to work more closely with developing countries to ensure that the laws work for both sides of the coin.

Timothy Large:

Thank you very much Mary. Idris

Idris Jala:

OK, The gentleman who mentioned he's been in the peace corps for 48 years ago. I want to tell him that when I was a kid I really get a lot of interaction with peace corps when I was living the jungle...I was born and bred in the jungle of Borneo. When I was young it took me about two weeks to get to the nearest town. So in those days we get a lot of peace corps that were sent out and I'm a beneficiary of what you guys have done, so to that gentleman I say thank you.

I think the idea of bringing anthropologists into this is a good idea. I think it's probably a good idea, already we mentioned. There was a mention on the issues around value-based programme that you mentioned, Homer....value-based programmes, and then rule-based programmes. The value-based programmes....value-based programmes, where people, anthropologists, can bring something to play there. In the long house where I lived in the jungle, people live in the same house. There are no divisions in it, it's a long house where a lot of families live. A lot of corruption or criminal cases, what tends to happen in the village court is a public hearing. And the public hearing, it's a huge deterrent to anyone that think about doing something improper in the context of what happens in that village. And because it's a deterrent and so, if you like, a lot of people are really scared about doing something that is improper within the context of the village because the hearing is so public. So I think that is a good point. If you guys want to try something new, maybe the next time you do that, take the gentleman's idea, get some anthropologist,, maybe focus a little bit more on the value-based programme.

Let me talk on the naming and shaming question that was raised by the gentleman from Pakistan, the MP. He said what is our experience so far? We've started doing this thing called the naming and shaming, putting the names of the convicted corruption offenders on the website. We had long discussion about this with our Attorney General, the AG Chambers, we had long discussions about what are the implications of this in the legal arena. We've decided to go and do it. So far, no one has put up an appeal on this. By the way, all cases that are still under investigation you must not put them there. The rule was only when convicted of corruption cases do we put them onto the website. Now, so far there is no one that has made an appeal to the higher courts subsequently. The view that we have is if an appeal has been made and the person... the corruption cases is dropped...we will have to put a very lengthy description about the case being overturned and therefore taken off the list. But that's what we are doing in our country, because we believe that naming and shaming is part of the basic building block, to move forwards and get this going.

And so, organized crime, the gentleman, I think French, raised question on fake drugs and organized crime. One of the things we put in our programmes is to reduce crime in Malaysia. All the works we've done so far, in the last three years, crime has been raising in Malaysia. And since January up to September this year, we've managed to bring down overall crime by 16%. We've also brought down street crime by 38%. We mobilize the most number of police into the 50 hot spots in the country since independence. We've mobilized 14,222 police into these crime hot spots to cause these things to happen. And that includes places where, you know, night clubs are there, and a lot of fake drugs are

being put around. And so I think on the whole street crime rapidly went down. But I do agree that organized crime, when it comes to activities as you've described, in the upstream parts, it requires tremendous efforts to make sure that we fight against this. Thank you

Timothy Large:

Mark.

Mark Mendelsohn:

First to Mr. Carver's comment about the UK Bribery Act. Let me just say that I completely agree. A beautifully drafted anti-corruption law, like a beautifully drafted compliance programme, is utterly worthless if it sits on the books and is not enforced and not properly resourced. And so it is my hope and expectation that the OECD Working Group on Bribery as well as the larger civil society are going to hold the UK to its commitments and ensure that that law is actively enforced otherwise it will be an utter failure.

Number two, several questions went to the issue of bribe takers, and what's happening with respect to bribe takers and it's a great point. Our panel was focused principally on the supply side of corruption and I guess my comment here is that I think it would be a mistake to expect those countries that are focusing resources on the supply side of corruption, for that effort to do all the work here. That is only part of the puzzle and there needs to be a concerted effort also to address the demand side corruption, and that presents, obviously, enormous challenges in some countries. The UN Convention obviously addresses both sides of the equation, whereas the OECD Convention is focused on the supply side. But the UNCAC is in its infancy and its review process is just being developed, and so I think there's much work that needs to be done there.

And finally on this question about appreciating cultural norms in other countries, I certainly would agree with the point that one needs to understand local business practices and norms. But let me just inject a cautionary note here that, that notion of cultural norms can often be just a simple excuse for blatant corruption and so that needs to be policed very carefully. I'm not saying you don't need to understand what's happening locally and what the practices are but also I just think that could be a tremendous loophole if one isn't careful.

Timothy Large:

Thank you Mark, Final words from Richard please

Richard Boucher:

I think that I'd like to just follow on that and the answer to my fellow peace corps volunteer. Yes, we do need to understand local societies and practices, but the fact is the more we work on the international norms, the more we bring a variety of experience and people from different countries into this, the more we find that they can address people in different circumstances. We have 38 countries

now on the Working Group on Bribery...it goes beyond our membership, we work closely with South Africa, we work closely with Brazil, very active programmes now talking to China, I was in China two weeks ago, talking about foreign bribery law. Indonesia....any number of countries, part of our regional programmes in Africa. I think we're bringing in experience from a variety of circumstances to make sure that the basic principle that you don't steal from the poor, that that principle can be addressed, implemented and respected in a whole variety of circumstances. The connections to other things are becoming more and more useful and being brought out more and more. The tax work that we do, exchange of tax information now has 80 or 90 countries involved and that group is starting to look at once you've identify the illegal tax flows and the money that's not supposed to be in foreign accounts, you can start looking at how it got there, and they are looking at the next step is to what extent do you identify the proceeds of corruption and get those back to the countries where they are out of, you know...where they belong. And that brings up a connection to other crimes. Corruption is often the door through which illegal drugs flow, through which illegal medicines flow, through which people smuggling takes place, through which all kinds of transnational crime goes. And it's all made easier by having backdoors that are opened by corruption and that if we can stop the corruption, we can also stop a lot of that transnational crime. So I think that the point is that, you know, it's key to get at corruption, its key to get at that, and there is a lot of different tools that we can use, but there is also a lot of different ways that can benefit us. And that is what we're trying to do at the OECD is to bring as many of those pieces together as we can.

Timothy Large:

Thank you. And the final word goes to Homer

Homer Moyer:

Thank you Timothy. I'm struck listening to this very interesting discussion how, thanks to many of you who are here today, we've moved over 15 years from a point when governments subsidized official bribery by granting tax deductions for the payment of bribes to a point where more than 140 countries have now criminalized the payment of bribes. At the same time I'm struck by the challenges ahead. This is inherently a cross-cultural enterprise, with many cross-cultural challenges that must be transcended. It's also inter disciplinary...it's not just infrastructure projects that can be compromised, it can be health care, it can be degradation of the environment. Indeed, I think we've come to understand that that official corruption can be so broadly corrosive to the Rule of Law in countries that its importance on the international agenda as risen so sharply as it should. So I would close by congratulating TI and IACC for what they have done in highlighting this important issue, and provide a little encouragement for keeping up the good work.

Timothy Large:

Thanks very much. I would also like to thank all of the people in this hall for your patience, we've over run quite dramatically. I apologize for that. I will release you now for your lunch, long overdue... But

perhaps you could join with me one more time in thanking the panelists Mary Boakye, Idris Jala, Mark Mendelsohn, Richard Boucher, and Homer Moyer. Thank you very much

Voranai Vanijaka:

Thank you to all.... Thank you to all the panelists. Just a reminder we will reconvene here at 4 o'clock for the Final Plenary and the Closing Ceremony and also the Bangkok Declaration.

Emma Suwanarat:

And after the Closing the Ceremony and the Bangkok Declaration we will also have a Farewell Party and that will happen here at the Queen Sirikit Convention Centre beginning at 6:30.

One final reminder for you all: for those of you who have not had the opportunity to fill in the conference evaluation form yet, please do so at your earlier convenience and return the forms to the Secretariat Desk. This will be an opportunity to provide feedback on how the conference has been organized and run, so please do take an advantage of this. And we will see you back here at 4 o'clock for the Closing Plenary. Thank you.

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