Corruption, integrity and law enforcement

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CHAPTER 1

Corruption, Integrity and Law Enforcement

Cyrille Fijnaut and Leo Huberts

1. Introduction

Corruption, ethics and integrity have become more important issues in the practice and theory of politics, public administration, law, economics and society. As a consequence, corruption and integrity nowadays are significant topics for law enforcement organisations. Two aspects can be distinguished. First, the role law enforcement organisations play in the struggle against corruption in society; and secondly, the corruption and integrity problem in police, public prosecution and judicial organisations themselves. Both aspects of "corruption, integrity and law enforcement" are discussed in this volume.

This introductory chapter puts the different contributions in context.

First, we will briefly discuss the meaning of concepts such as corruption, ethics and integrity (§ 2), the extent of the problem (§ 3), the causes and levels of corruption in different nations, and the solutions proposed to curb corruption and to safeguard integrity (§ 4). The description illustrates the broadness of the problem and it presents a framework in which law enforcement efforts have to be seen.

Secondly, we focus on the law enforcement sector which is relevant for the struggle against corruption (§ 5). Integrity of the law enforcement system appears to be a crucial element in anti-corruption strategies in developing countries as well as developed countries.

Thirdly, we point at the results of the Second Global Forum against Corruption and Safeguarding Integrity, held in The Hague in May 2001 (§ 6). The outcome of various workshop sessions on corruption and law enforcement were summarised in a specific report. Its definitive text is published in full in this introduction. This report offers a sketch of the main issues signalled at that Conference.

Finally, § 7 of this chapter introduces the rest of the book. Each part of the book consists of papers from academics and practitioners and its content can be seen as a state of the art on the different subjects. Part II presents brief descriptions of the

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corruption problem in three countries, which is followed by chapters in which special attention is being paid to available corruption and integrity in the law enforcement system (Part III), chapters about the legal instruments and institutions (Part IV) and more specifically the independent institutions and commissions (Part V) that are operating in several countries. Reflections on anti-corruption strategies can be found in Part VI. Part VII focuses on the international organisations and institutions involved in the struggle against corruption. Finally, Part VIII looks at some of the global initiatives taken to combat corruption.

2. Corruption, ethics and integrity

Clarity about concepts like corruption, ethics and integrity is important, certainly when it concerns public debate, policy-making and theory development on an international level. At the same time it is clear that we are discussing phenomena whose content will always be contested. Let us summarise a number of aspects.

Public corruption is often defined as involving behaviour on the part of officials in the public sector, whether politicians or civil servants, in which they improperly and unlawfully enrich themselves, or those associated with them, by the misuse of the public power entrusted to them. A briefer definition is the abuse of public office for private gain. In this more narrow definition, corruption is a specific type of violation against the moral norms and values for political and administrative behaviour. Broader interpretations focus on corruption as synonym for all violations of the moral norms and values. Then it is identical to the concept of "integrity", a concept which has become more prominent in the discussion in many (developed) countries.

Public integrity denotes the quality of acting in accordance with the moral values, norms and rules accepted by the body politic and the public. A number of integrity violations or forms of public misconduct can be distinguished: corruption including bribery, nepotism, cronyism, patronage; fraud and theft; conflict of interest through assets, jobs, gifts; manipulation of information; discrimination and sexual harassment; improper methods for noble causes (using immoral means to achieve moral ends); the waste and abuse of resources; and private time misconduct.

It is important to realise that both conceptions of corruption are present in the international discussion: corruption as the umbrella concept, covering all or most types of integrity violation or unethical behaviour and corruption as a type of integrity violation (misuse of public power for private benefit). In both interpretations, a point for debate is what are relevant "morals" or "ethics"?

Public ethics might be defined as the collection of values and norms in the public sector, functioning as standards or yardsticks for assessing the integrity of one's conduct. The *moral* nature of these principles refers to what is judged as right, just, or good conduct. *Values* are principles or standards of behaviour that should have a certain weight in choice of action (what is good to do, or bad to refrain from doing). *Norms* state what is morally correct behaviour in a certain situation. Values and norms guide the choice of action and provide a moral basis for justifying or evaluating what we do.

In the international community there are clear differences of opinion about the content of public ethics. Although organisations like Transparency International argue that cultural relativism concerning corruption should be out of the question, it is undeniable that cultures, religions and ideologies differ in their appreciation of values and norms. It will be inevitable and necessary to continue the discussion about the "Standards in Public Life" with values as selflessness, integrity, objectivity, accountability, openness and transparency, honesty and leadership.[1] This public life is national as well as international, and the development of international anti-bribery conventions and laws shows a development in the direction of common standards. These are criticised by some as morally imperialistic and dangerous intrusions into the affairs of other nations, but this contradicts the dominant perspective on corruption: "Anti-bribery laws are legally and ethically unremarkable, and no evidence supports a claim they are considered intrusive or generate hostility" (Nichols, 2000, p. 655).

3. Extent of the problem

Empirical research by social scientists on the extent of public corruption and fraud is by definition complicated. Corruption is crime without a (recognisable) victim and the corruptor and the corrupted both benefit from secrecy. Most empirical data therefore concern:

a. Rough estimations of the damage caused by corruption (each year many billions of US dollars);

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[1] Part of the well-known ethical framework for public officials that was developed in the United Kingdom by the Committee on Standards in Public Life chaired by Lord Nolan. The Nolan Committee sketched out Seven Principles of Public Life, based on the mentioned values. See e.g. Sampford and Preston, 1998; Huberts, 2002.

b. Statistics on criminal cases involving corruption: what has been discovered, investigated, prosecuted and convicted can most easily be counted;

c. Results of opinion surveys on the extent, causes and solutions among different populations (the general public, politicians, civil servants, business people, experts in the field).

The most famous research has been done by Göttingen University and Transparency International. Since 1995 a Corruption Perceptions Index (CPI) has been published, based on the perceptions of the degree of corruption as seen by business people, risk analysts and the general public. Some countries have the reputation of being very corrupt and, as might be expected, most of these are developing countries like Nigeria and Indonesia or transitional (Eastern European) states like the Ukraine. Northern European countries are perceived as being among the less corrupt. The image of countries appears to be rather stable. Once a reputation for corruptness is established, it takes time and effort to change.

Expert panel research additionally showed that corruption experts in higher income countries differ from their colleagues in poorer countries concerning the prominence of corruption in the public and private sector. Respondents from the lower income countries think corruption is much more prominent in the public sector, while experts from higher income countries find the opposite to be the case (Huberts, 2000).

Table 1: ***Corruption Perceptions Index, Transparency International 2001***

(10 highly clean – 0 highly corrupt)

Least corrupt countries

Country	*2001 CPI score*
Finland	9.9
Denmark	9.5
New Zealand	9.4
Iceland	9.2
Singapore	9.2
Sweden	9.4
Canada	8.9
Netherlands	8.8
Luxembourg	8.7
Norway	8.6

Most corrupt countries

Country	*2001 CPI score*
Bangladesh	0.4*
Nigeria	1.0
Uganda	1.9
Indonesia	1.9
Kenya	2.0
Cameroon	2.0
Bolivia	2.0
Azerbaijan	2.0
Ukraine	2.1
Tanzania	2.2

Other countries

Country	*2001 CPI score*
United Kingdom	8.3
United States	7.6
Japan	7.1
South Africa	4.8
Brazil	4.0
China	3.5
India	2.7

(* TI adds that the Bangladesh data should be viewed with extra caution)

Source: Transparency International and Göttingen University, http://www.gwdg.de/~uwvw (August 2001); also: http://www.transparency.org/documents/cpi/2001 (June 2001)

Another index is worth mentioning. The Transparency International Bribe Payers Survey concerns the willingness of companies from leading exporting states to pay bribes to public officials to win or retain business. It shows that companies from countries like China, South Korea, Taiwan, Italy and Malaysia are most likely to pay bribes. Additionally, the survey shows that the scores for countries like the United Kingdom, the United States and Japan are lower than the corruption scores for the countries themselves. Bribing a foreign official seems more acceptable than bribing an official in the country itself.

Indexes, we explicitly add, are of only limited importance to get an idea of the extent of the corruption phenomenon and the damage it causes. They do indicate

however that the corruption problem is omnipresent and they illustrate the importance of continued efforts to investigate the phenomenon with a variety of research methods in order to get a clearer and more precise picture.

Among these efforts are country studies that offer a more comprehensive description of corruption. Several transitional states in Eastern Europe have been investigated, using population surveys and other research methods (The World Bank, 2000), case studies of developing and developed countries offer more in-depth insight in the extent and the forms of corruption in every day life as well as in government and administration.[2]

4. Causes and solutions

4.1. Causes

Research shows that a conglomerate of social, economic, political, organisational and individual causal factors are important to explain cases of public corruption and fraud in a country (Heidenheimer, Johnston & Levine, 1989; Heywood, 1997; Klitgaard, 1988; Cooper, 2001).

Among the more important political causes are the values and norms of politicians and civil servants and their commitment to public integrity, the organisational quality of the public sector (working conditions, control and auditing), the relationship between the state and the business sector and a number of social factors (e.g. the presence of organised crime and the content of social norms and values).

These factors are important in explaining the corruption in higher and lower income countries but a full explanation also has to take into account the differences between these countries. A number of factors which are related to developmental problems are of crucial importance to lower income countries (UNDP, 1998). Economic failure and poverty, poor conditions for human development (schooling, health) and corruption are interrelated. For example, it is clear that low salaries and bad working conditions in the public sector can be disastrous for the possibility and the willingness to behave ethically.

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[2] See in this book, for example, the work of Queloz on Switzerland (for Germany, see the report by Vahlenkamp and Knauss in 1995). The chapters by Doig and Moran on independent institutions and by Langseth and Stolpe on the United Nations' initiatives against corruption contain many references to country studies on corruption.

For countries going through a process of privatisation, liberalisation and democratisation, the period of transition offers extra possibilities for corruption (Heywood, 1997; UNDP, 1998; The World Bank, 2000). It takes time to establish a more stable political and economic system which is able to curb corruption.

4.2. Solutions

It is always necessary to relate anti-corruption strategies to characteristics of the actors involved (and the environment they operate in).[3] There is no single concept and program of good governance for all countries and organisations, there is no "one right way" (Pope, 2000; Transparency International, 2001; Huberts, 2000). There are many initiatives and most are tailored to specific contexts; societies and organisations will have to seek their own solutions.

Concepts and programs like National Integrity Systems (Transparency International), The Ethics Infrastructure (OECD) and A Framework for Integrity (World Bank) offer numerous methods and institutions to curb corruption and promote integrity (Transparency International, 2001; Pope, 2000; OECD, 2000; Pieth & Eigen, 1999). The main elements are summarised here.

The overall *goals* should include development strategies which yield benefits to the nation as a whole, including its poorest and most vulnerable members, and not just to well-placed elites. Additionally it is important that public services are both efficient and effective and that government is functioning under law, with citizens protected from arbitrariness (including abuses of human rights).

Many *institutions and activities* are important in the struggle against corruption.

Leadership counts – the research is unanimous on this. Embodying the political will to fight corruption, leaders set the tone through their policies and the example they present. In the political system, parliament as representative of the people and watchdog of political power is at the centre of the struggle to attain and sustain

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[3] The internet is a rich source for information about anti-corruption initiatives: Council of Europe (http://www.coe.int) and its Group of States against Corruption (http://greco.coe.int), Independent Commission against Corruption of Hong Kong (http://www.icac.org.hk) and New South Wales, Australia (http://www.icac.nsw.gov.au), Organisation of American States (http://www.oas.org), Organisation for Economic Co-operation and Development (http://www.oecd.org), Transparency International (http://www.transparency.org), Programme for Accountability and Transparency of the United Nations Development Programme (http://www.unpan.org) and The World Bank's public sector program (http://www1.worldbank.org/publicsector/anticorrupt).

good governance and to fight corruption. An independent, impartial and informed judiciary holds a central place in the realisation of just, honest, open and accountable government. The public service is important for its services as well as for the protection of the public decision-making process (including the system of public procurement, often vulnerable because of its opportunities for corruption). Integrity is a crucial element of professionalism. People should be given a feeling of pride in their work and that deviance undermines the core of the profession.

A powerful anti-corruption device is also simply the establishment of sound financial management practices, including a timely and efficient accounting system combined with punctual, professional review by internal and independent auditors. Important institutions include an effective auditor-general as a watchdog over financial integrity and the credibility of reported information, an ombudsman who can recommend improvements to procedures and practices and act as an incentive for public officials to keep their files in order, and independent anti-corruption agencies to raise awareness among the public, to stimulate prevention and to detect and investigate corruption cases. The availability of resources, their independence from management and the availability of mechanisms of transparency and accountability are important factors for the success of these institutions.

Of importance is a judicious balance between positive and negative social control. An extreme accent on control can be highly counter-productive. An anti-corruption campaign in New York City fostered its own pathology of excessive rules and procedures, paralysis of decision-making, and the undermining of quality (Anechiarico & Jacobs, 1996). To safeguard integrity presupposes that attention is being paid to group and organisational culture (norms, values and perceptions), including training and education in ethical dilemmas and the development of codes of conduct.

Additionally, it is important that the media and civil society play a role. Information and public awareness, (the "right to know") are linked inextricably to accountability, the central goal of any democratic system of government. The principal vehicle for taking information to the public is an independent and free media. The role for civil society must be to claim and defend its own values, and not leave this integral function to those in power.

4.3. Doubt

The involvement of many international and national organisations in the struggle against corruption might suggest more consensus than actually exists. Two types of critique should be borne in mind.

First, there is the criticism already mentioned – although it is often stated that there is no "one right way", the multitude of comparable initiatives leaves little room for other strategies than those favoured by institutions like the World Bank and the OECD.

Secondly, fundamental questions have been raised about the driving forces behind the anti-corruption policies. It is argued that the concern is not attributable to any substantive increase in corrupt practices, but rather to the "re-framing of corruption in light of broad shifts and transformations within the global economy" (Williams & Beare, 1999, p. 115). Is it moral to ultimately favour the poor and powerless, or is the self-interest of companies and Western states the driving force, because of their interest in greater market penetration and transparency (Windsor & Getz, 2000)?

5. Law enforcement and anti-corruption strategies

The sketch of the general framework of institutions to fight corruption shows that law enforcement and law enforcement organisations play an important role, but that the role must not be overestimated. The National Integrity System (NIS) approach illustrates this. An NIS contains a number of crucial institutions, sectors or activities – the pillars. Among them, there are several institutions that belong to the law enforcement system (Transparency International, 2001):

- an auditor-general, acting as a watchdog over financial integrity and the credibility of reported information;
- the attorney-general as chief law officer of the state, "guardian of the public interest";
- the public service, erecting a system designed to protect the public decision-making process;
- the rule of law, to adjudicate whether or not a particular action taken by, or on behalf of, the state is in accordance with the law;
- the judiciary which should be independent, impartial and informed; it holds "a central place in the realisation of just, honest, open and accountable government";
- an ombudsman, who "acts to prevent corruption and maladministration; it can recommend improvements to procedures and practices and act as an incentive for public officials to keep their files in order";

- independent anti-corruption agencies, "as the corrupt grow more sophisticated, conventional law enforcement agencies are becoming less able to detect and prosecute complex corruption cases".

5.1. Law enforcement system

The National Integrity System has been described and analysed by 19 countries (Transparency International, 2001). The studies present examples of the importance as well as the vulnerability of the law enforcement system. This is also well understood by the public itself. The Ghana report states:

> "Are there any cases of corruption within the prosecuting agencies?
>
> Yes. 67% of household respondents to the Ghana Governance and Corruption Survey ranked the regular police (who prosecute most crimes) among the institutions perceived to be most corrupt. Though its personnel are hardly ever arrested, it is common public knowledge that the criminal justice system is corrupt. Court staff and prosecutors have sometimes tampered with or stolen exhibits. Judges are also widely perceived to be corrupt.
>
> How many cases of prosecution have been undertaken in the past years? How many have been successful?
>
> No cases of corruption have been prosecuted in the past 10 years through the criminal justice mechanism. The Commission on Human Rights and Administrative Justice and the Serious Fraud Office have handled such matters more than the traditional police" (Ghana country report, p. 14).

Elements of the law enforcement system are more often identified as the pillar most susceptible to corruption. As is noted for Brazil:

> "The judiciary is probably the weakest link in the control chain, since it is unable to convey to society the message that crimes of corruption are actually punished. The individual institutions charged with mounting cases – police, public prosecutors and courts – don't work in an integrated fashion. The police suffers from political interference and is vulnerable to organised crime take-over; furthermore, is ill-prepared to conduct investigations. Public prosecutors, whose powers were significantly enhanced under the 1988 Constitution, are yet finding their new identity and run the risk of becoming entangled in political considerations. The latter comes from what is perceived by some as a hyper-militant attitude from

> some young prosecutors. The courts are affected by opacity and slowness and can't adequately respond to the growing number of cases that reaches the Judiciary. Reforms of the penal process and in administrative procedures could change the image that, in Brazil, corruption crimes remain unpunished" (Brazil country report, p. 23).

More often, a lack of enforcement capabilities is mentioned as a primary concern. The Fiji country report states (p. 6):

> "The public sector has not carried out sufficient necessary institutional strengthening programs to enhance their enforcement roles. The shortage of qualified people in the enforcement arm of the government has been an ongoing concern. The Director of Public Prosecution's (DPP) office for instance is staffed with some of the most junior legal practitioners in the country but is expected to deliver tasks and responsibilities of high standards."

One of the reasons argued for such incapability in the office is the low salary level in the civil service.

On the other hand, where there appears to be appropriate capacity, it may be limited by the lack of transparency in the selection of judges, the dependence of the judiciary on the Executive and the political and economic pressures obstructing investigations. The anti-corruption agency (BAC) in Bangladesh exemplifies the issues:

> The BAC is controlled and administered by the executive organ of the government, the officers of the higher grade such as the director general or the director are transferable in an ordinary manner. Its activities are not at all transparent nor is it accountable to the representatives of the people. It is mandatory to obtain prior clearance ... for deciding the course of action to be followed after investigations are complete since initiation of anti-corruption cases against government servants from mid to the highest level and against political office holders needs prior permission of the Prime Minister there is no instance of filing any corruption case against a political office holder belonging to or supporting the party in power" (Bangladesh country report, pp. 7-8).

For all countries, it is clear that the integrity of the law enforcement system is a crucial element in all anti-corruption strategies. This is true for developing countries,

as mentioned in the previous examples, as well as for developed countries (Fijnaut, 2000).

5.2. One side of the shield

Although the importance of a law enforcement system characterised by effectiveness and integrity can hardly be overstated, it must also be stressed that investigation and prosecution are just one side of the shield. A broad, "holistic" approach is necessary. We should not focus on the controllable components of compliance with agencies, procedures and laws. As Jacobs and Anechiarico argued: "in searching for solutions to the corruption problem, we must look beyond the traditional strategies of monitoring, control and punishment laws, rules, and threats will never result in a public administration to be proud of; to the contrary, the danger is that such an approach will create a self-fulfilling prophecy: having been placed continuously under suspicion, treated like quasi-criminals or probationers, public employees will behave accordingly" (Anechiarico & Jacobs, 1996, p. 207).

Both repression and prevention, both changes in structure and in culture are necessary. As Pope and Transparency International stated:

> "Monitoring corruption cannot be left only to public prosecutors and to the forces of law and order. Action cannot depend solely on detection and criminal prosecution. Rather, action must also include a combination of interlocking arrangements. In part, this approach includes improving the transparency of relationships, and to the extent possible, preventing the development of relationships which can lead to corruption. It includes transparency in the financial affairs of key players and the prospect of reviews being conducted by independent institutions which are likely to be outside any particular network. Although corruption can never be completely monitored, it can be controlled through a combination of ethical codes, decisive legal prosecutions against offenders, organisational change, and institutional reform" (Pope, 1997, p. 19).

6. Results of Global Forum II

6.1. Final declaration

At the Second Global Forum on Fighting Corruption and Safeguarding Integrity in May 2001 in The Hague, representatives from many countries talked about preventing and combating corruption and promoting integrity in government and in society.[4] Representatives reaffirmed their determination to prevent and combat corruption, "a virus capable of crippling government, discrediting public institutions and private corporations and having a devastating impact on the human rights of populations, and thus undermining society and its development, affecting in particular the poor". Workshops on "integrity and governance", on "law enforcement", on "customs", on "corruption, transition and development" and on "government and the business sector" were held.

The workshop sessions on "law enforcement" contributed to the incorporation of recommendations on law enforcement in the final declaration of the Global Forum. The text shows what kind of recommendations were politically acceptable for the broad range of nations presents at the conference:

- Participants stress the need for including in national criminal law clear definitions of conduct that is to be considered to constitute corruption offence, as well as a precise description of a public official. They expect the comprehensive report of the Secretary General of the United Nations on "Existing international legal instruments, recommendations and other documents addressing corruption" (E/CN.15/2001/3) to be an inspiration for national legislators and others.
- Furthermore, participants deem it essential to provide for a broad scope of corruption offence in national legislation, including, as necessary, foreign and international corruption.
- Participants recognise the need for governments to make available adequate resources for investigation and prosecution of corruption offence as well as for international co-operation in corruption cases.
- Participants consider improvement of law enforcement co-operation and mutual legal assistance necessary. Possible avenues are intensifying existing

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4 See http://www.gfcorruption.org for the final declaration and the reports of the workshop sessions.

exchange of operational information and rendering technical and other types of assistance, identifying lacunae and developing new methods and techniques. Where necessary, creating an adequate legal basis for new activities should be considered. Consideration could be given also to ways and means to facilitate the matching of requests for and offers of expertise.

- They are deeply conscious of the need to improve co-operation relating to the returning of funds derived from acts of corruption. They welcome the relevant recommendations forwarded by the United Nations Commission on Crime Prevention and Criminal Justice.

Additionally, a brief report of the workshop sessions was added to the final declaration. This report summarises the reflections and recommendations that were expressed by the participants in these workshop sessions. The following paragraph contains the definitive text of this report.

6.2. Results of the workshop on law enforcement

6.2.1. Introductory remarks

Any anti-corruption strategy depends on the willingness of the political leadership to take corruption problems seriously, to make anti-corruption policy a priority and to assign sufficient resources to the relevant institutions.

The relationship between corruption and law enforcement is a challenging one. On the one hand, law enforcement institutions are crucial for the struggle against corruption; on the other hand, the integrity and perceived integrity of these institutions is essential for the credibility of that struggle.

6.2.2. International co-operation

International instruments are important for bridging the gaps between various national legal systems. They create the conditions for improving co-operation between national law enforcement institutions. Their importance is nowadays increasing because of the internationalisation of corruption problems. This development stimulates the integration of police co-operation and mutual legal assistance.

A new United Nations Convention against Corruption could become a useful instrument for the struggle against corruption if it succeeds in complementing existing instruments like the United Nations Convention against Transnational Organised Crime, if it takes into account the difficulties experienced with investigations in the past (e.g. bank secrecy should no longer be a ground for refusal to

reply to requests for mutual assistance and provisions on the return of the proceeds of corruption should be included), and if it urges the requesting and requested parties to play an active role in investigations.

An important issue with respect to a new convention is the support for countries in order to enact legislation and build up the institutions and the expertise needed for its implementation and enforcement.

In conjunction with existing and new instruments, there is a need for leadership in organising the use of these instruments at an international level in specific cases. Interpol and regional institutions like Europol could function as linking organisations in international investigations. To further international co-operation, the exchange of investigators among anti-corruption entities could be stimulated.

A next step could be the establishment of multinational investigative anti-corruption units at a regional level. Along with other innovative measures, such an initiative must be embedded in regional agreements. There is a need for active promotion of speedy exchange of information between states concerning their anti-corruption efforts.

6.2.3. National integrity systems

The international and national struggle against corruption is dependent on the quality of the national integrity system of countries (the rules, laws, organisations to curb corruption and safeguard integrity). The system should contain institutions for information, for prevention and advice and for investigation and prosecution.

There is no system that is applicable in all countries because its effectiveness is related to the societal (political, economic, cultural and social) circumstances within which it has to function. Multinational institutions should have an open eye for these circumstances when giving advice to governments on the containment of corruption.

The success of any anti-corruption system depends upon the availability of sufficient resources. This condition covers budget and personnel as well as legal powers and public support. In conjunction with this, the publication of cases of corruption might be very helpful.

An anti-corruption system should be capable of handling "big" cases but should also deal with the corruption problems with which ordinary citizens are confronted. The establishment of independent institutions can contribute to curbing corruption. It will depend on the circumstances which type of institution is most suitable.

Protecting integrity in society is also the responsibility of the private sector. Undertakings should enhance corporate governance and install compliance systems. External accountants should be obliged to report cases of corruption to public

authorities. The notion of civil society certainly is of great importance in this context. It is however necessary to define and to clarify this concept in order to make the relationship between governmental bodies and social institutions more effective from an operational point of view.

6.2.4. Law and law enforcement

Police forces, prosecution services and courts are mutually dependent in realising an effective anti-corruption strategy. At the same time they should co-operate with regulatory bodies, administrative authorities, Customs etc. Corruption problems are often too complicated to be solved by the law enforcement system alone.

The criminalisation of corruption in the public and private domain at the national level should be as much as possible consistent with the developing international standards. The same should apply to the powers of investigation. In addition to credible penal sanctions, disciplinary, administrative and civil law sanctions might equally be very effective.

Among the powers of investigation to be considered in serious cases are electronic surveillance and undercover operations. It is important to be aware of the risks of corruption in connection with the use of such intrusive powers, however.

Whistle-blowing can be of great help when it is part of a comprehensive strategy against corruption. The protection of the whistle-blower needs to be carefully designed.

In order to investigate serious cases of corruption special police units are usually required. The success of these units depends not only upon their powers and resources but also on their capability to define targets and priorities within the framework of a governmental anti-corruption policy. A close working relationship between such units and the prosecution service is a *conditio sine qua non.*

An independent judiciary is an absolute requirement for any effective and legitimate anti-corruption strategy. Its independence should be enshrined in the Constitution as well as safeguarded in the working conditions of the judges. The judiciary has the responsibility to create an internal control system that guarantees its integrity.

In order to prevent investigations into corruption from being abused as an instrument of power politics, measures should be taken to avoid any political interference in the handling of individual cases.

To raise awareness on the risks of corruption, the issue of integrity should be included in the training for public officers. Selective integrity testing can be an effective instrument to check rumours and indications of a serious corruption problem.

6.2.5. Assessment of anti-corruption policies

More research on the effectiveness of anti-corruption strategies and instruments at the national level is needed. This presupposes research on the nature, the extent and the impact of corruption.

International comparative research can increase our knowledge of the role significant elements of national integrity systems play in the containment of corruption problems in widely diverging societal circumstances.

Monitoring systems are necessary to evaluate the extent to which the law enforcement systems of countries meet their obligations under international law.

7. The structure and content of this book

This volume presents the papers that contributed to discussions in the workshops at the Second Global Forum. Each part of the book addresses a subject of the broad area of law enforcement, corruption and integrity.

Although corruption is an international phenomenon, which makes it hard to distinguish between the national and international aspects of the problem and the strategies to fight it, we start with the papers that focus on the national level. Part II presents a description of corruption in three countries, offering information about the content of corruption and about anti-corruption strategies used in Switzerland, Germany and Indonesia. Part III then deals with "Corruption and Integrity in the Law Enforcement System" itself. Part IV sketches the legal instruments and institutions that are available in the fight against corruption. Of course, this portrait is embedded in a description of corruption and corruption cases. An exhaustive and detailed description and analysis of the independent institutions against corruption can be found in Part V, "Independent Institutions". Part VI offers reflections on these institutions and more in general on the possibilities of a law enforcement strategy to contain corruption and to protect integrity.

The last two parts of the book reflect the truly international character of the *Global* Forum. Participants from many countries paid special attention to international initiatives against corruption. Several organisations and institutions are involved in that struggle. Part VII illustrates this, with chapters on initiatives by the United Nations, the Organisation for Economic Co-Operation and Development (OECD), the Council of Europe, the European Union (EU) and the Organisation of American States (OAS). In Part VIII, attention is paid to the problem of the repatriation of corruption money or embezzled state funds. All chapters in this part are on probably the most difficult aspect of the fight against corruption: the necessity

to increase international co-operation in law enforcement in order to make the international and national battles against corruption more effective.

7.1. Corruption and its containment: three case studies

Nicolas Queloz, in "Processes of Corruption in Switzerland: Where is the Problem?", analyses the attention being paid to corruption in that country. The subject did not cause much concern before the 1990s. The first alarm bells went off in 1991 with the arrest of a government official in charge of authorisations to open cafes, restaurants, pubs, night-clubs, etc. Since then, much more attention has been paid to the problem. Queloz reports on an extensive research project on corruption (corruption being *an abuse (misuse) of a representative power*, whether the interests represented are private or public). The project contains an analysis of statistical data and the contents of criminal and disciplinary files relating to actual events of corruption; interviews with "privileged informers" (politicians, judges, policemen, businessmen, journalists); a study of procurement contracts in the construction sector; and cases studies on the "grey areas" of corruption processes, namely trading in influence, clientelism, and cronyism. The research showed that between 6 (in 1990) and 20 (in 1997) people are condemned each year and 8 out of 10 of the people convicted are private actors (private individuals and businessmen found guilty of so-called "active" corruption). However, these data show merely the tip of the iceberg of corruption. Other research shows that many companies suffer losses because of corruption. In particular the building industry seems to be affected. This includes understandings on prices reached between awarders and bidders; cartel agreements between entrepreneurs; favouring of firms that are local and close to the majority political party; cheating on the definition, estimate and final award of services; inflated invoices, etc. The recommendations resulting from the project included policies with regard to companies, aimed at organisations, professional practices and the legal framework.

Manfred Nötzel, the head of the Anti-Corruption Department of the Public Prosecutor's Office in Munich, Germany, shows in "Investigation Strategies and Tactics in the Prosecution of Corruption Offences: Experiences from Germany" that the field of "corruption in economic life" was not seen as a problem in Germany until the beginning of the 1990s. Then, examples of fraudulent price-fixing arrangements and bribery attracted an extraordinary amount of public attention. A lot of cases were discovered in Frankfurt (airport) and – briefly afterwards – also in Munich. These experiences, and the realisation that it did not concern isolated cases by any means but that – in any event in some areas – orders by the public authority could

over years exclusively be obtained by bribery payments, fraudulent price fixing arrangements and cartels, led to the deep concern and indignation of the public. As a reaction to this, the political forces decided that the fight against this type of criminality should receive increased priority. One of the first measures in Bavaria was the establishment of the Special Department of the Public Prosecutor's Office, Munich. Nötzel describes the experiences of this department, its successes and problems. For intensive and effective investigations, it appears to be very important to have open and early co-operation with and between the other authorities such as the police and revenue offices. A key question is how to break open the "cartel of silence" of everybody involved in the corruption (investigations nearly always rely on the confession statements of the perpetrator, which never is "for free"). New laws open new possibilities in this respect. For the future, this is important, but this is even truer for the intensified international co-operation.

Adi Andojo Soetjipto, former Chairman of the Joint Investigation Team for Fighting Corruption in Indonesia, presents in "The Battle against Corruption in the Context of a Developing Country: the Case of Indonesia" an impressive map of corruption in that country. In all fields, especially in bureaucracy, from the lowest level to the highest level, people practice corruption whenever there is a chance to do so. It is not wrong to say that corruption has become a common practice in Indonesia – he states that it is part of every day life in Indonesia. There is also mega-corruption, with the money kept overseas (estimated funds: US$ 200 to 300 billion). The development of corruption in Indonesia cannot be separated from the social form which in the beginning was based on paternalism, the obligation to provide "*upeti*" (gift) to please the boss and the influence of feudalistic authoritarian lifestyle under Soeharto's 32-year nepotic and autocratic administration. Efforts to combat corruption all ended in failure. In the end, it comes down to the government's will to seriously combat corruption (with the declaration of the state of emergency against corruption, for example). If the combat of corruption is only used as political commodity, as is happening in Indonesia, the problem of corruption will remain serious, if not worsen.

7.2. Corruption and integrity in the law enforcement system

Robert Mischkowitz reports on his research in "Corruption in Law Enforcement Agencies – Views from within the Criminal Justice System: Results of a German Corruption Study". This important study was conducted by the Bundeskriminalamt (Federal Criminal Police Office) in the latter half of the 1990s on corruption among the police, the judiciary and customs officials. Several methods were used in the

study: questionnaires, interviews and case analyses. One key feature of the study is that people were asked about corruption within their own institution and also within the other institutions – with surprising results. The results also constitute an important source of critical considerations about the picture of corruption that emerges in official criminal statistics. Another important aspect is that the interviewees were asked what they thought were the causes of corruption and about their views on the best ways to combat corruption. On this latter point, the study revealed that many interviewees attached a great deal of importance to heightening officials' awareness of the problem (for example during their training period), improving administrative and professional supervision and strengthening the role behaviour of managers and trainers.

Willy Bruggeman sees "Corruption from a Police Perspective". Corruption is a broad term that subsumes many different forms of wrongdoing, he states, although common elements can be distinguished: the conduct is prohibited by law, it involves the misuse of position and it involves personal gain for the officer. Aspects of police work such as discretion, low visibility and peer group secrecy make corruption more likely than in other sectors of society. Variable factors include leadership integrity, a reduction in regimented work group solidarity and a code of conduct. Among the corruption control strategies, Bruggeman mentions investigations by external, specialised, highly professional police units, a proactive internal affairs unit (monitoring and analysing data) and the use of vigorous media. Studies reveal a cyclic pattern of corruption which makes it necessary to protect successful methods of investigation for continued use.

Michael Taylor's chapter on "Combating Corruption within the Metropolitan Police Service" outlines how the police force in London views the problems of corruption in police circles. The phenomenon is a kind of "durable and flexible" virus that constantly adapts to changing circumstances and hence also to the methods used to combat it. He then describes the major campaigns waged in the past few years to combat corruption in the Metropolitan Police in London and the strategies and methods that have been and are being adopted. He concludes by summarising the lessons that the Metropolitan Police have learned from real-life corruption cases in recent years.

Jan d'Oliveira focuses on the "Corruption within the Judicial System: Some Remarks on Law and Practice in South Africa". He confronts us not so much with the problem of corruption in South Africa's judiciary, but rather with the measures that have been implemented in the past few years to both prevent and combat this problem, ranging from provisions in the Constitution right through to regulations

relating to the legal status of judges. In the second part of the chapter he explores the shortcomings of current anti-corruption legislation, particularly in the light of international developments. He concludes by pointing out some recent amendments of the law, which go some way towards meeting the wishes of the public prosecution service.

7.3. Legal instruments and institutions

Barbara Huber discusses the "Sanctions against Bribery Offences in Criminal Law". She analyses sanctions in supranational instruments – devised within the OECD, the Council of Europe and the European Union – as well as sanctions in several countries such as the United States, China, Turkey, Germany, the United Kingdom, Belgium and The Netherlands. The study on which this comparative survey is based was carried out by the Max Planck Institute for Foreign and International Criminal Law in Freiburg im Breisgau in Germany. The purpose of this research was to find out whether a more integrated approach to the issue of criminal sanctions might be possible. She comes to the conclusion that there are still significant differences between the sanctions used in response to the various different forms of corruption and that harmonisation in this area will not be possible in the short term. However, she makes no secret of her doubts about the benefit of prosecuting corruption offences, raising the question of whether other means besides criminal law are not more effective.

Keonjee Lee from the Korean Ministry of Justice raises the same question as Barbara Huber to some extent, albeit in relation to the powers and instruments needed to be able to adequately deal with problems of corruption by legal means: "Criminal Procedure: What Powers, Instruments and Safeguards are Necessary for Adequate Law Enforcement?" He bases this question primarily on the fact that in international instruments little or no attention is generally paid to the ways in which corruption can or should be prosecuted. In contrast, in his view, this issue is attracting more and more attention at regional and national level. By way of an example he talks about the powers of the police and the public prosecution service in Korea, including the power to arrest suspects and conduct a search of premises, gain access to financial information and intercept electronic communications. Over the next few years there are plans to extend money-laundering legislation, to introduce witness protection schemes and to tighten up control of financial transactions. He concludes by calling for more discussion in regional and international fora on prosecution issues in the fight against corruption.

Benoît Dejemeppe examines "Corruption Cases and their Consequences for Legislation and Judiciary". He examines several cases of corruption that have come to light in recent years in Belgium and also looks at the measures successively taken to combat corruption more effectively. In particular he discusses the Law of 10 February 1999, in which the entire spectrum of anti-corruption legislation was reviewed in a few key areas. In his view Belgium leads the way in Europe in this respect. He also discusses the initiatives that have been taken in the past few years not only to ensure that this legislation can be enforced more effectively, but also to prevent corruption as much as possible. He concludes with a long list of recommendations to help organise international co-operation in the fight against corruption more effectively and efficiently.

Peter Alldridge's chapter on "The Sentencing of Corruption" addresses two issues that are of key importance in the global community: first, the determination of the scale of corruption in relation to the appropriateness of sanctions under a rational punishment model and, secondly, the link between the conviction for corruption and the seizure of the assets derived from this practice. On the basis of legislation and real-life cases in the United Kingdom, he clearly explains the problems associated with establishing the seriousness of corruption and hence determining an appropriate punishment and seizing the proceeds. His analysis culminates in a number of proposals for a possible response, both internationally and nationally, to cases of corruption in terms of criminal prosecution. For instance, the scale of the corruption within government circles should be irrelevant when it comes to sentencing. He also feels that when confiscating the proceeds of corruption the costs incurred and the tax already deducted must be taken into account. In his view, British legislation is not exactly an example for the rest of the world.

7.4. Independent institutions

Grant Poulton discusses in "Independence in Investigation and Prevention: The Role of the New South Wales Government's Independent Commission against Corruption" the role and work of this commission in order to assess the value of independence in undertaking anti-corruption work. The ICAC is an example of an anti-corruption institution that is independent and combines investigative, preventative and educative functions. He outlines the history of the ICAC, specifically how and why it was set up. The way in which the Commission is independent, particularly in its investigation functions, is then described. The chapter then examines the ways in which the Commission's independence is tempered by accountability mechanisms and describes some of the costs and benefits of combining investigation

and corruption prevention functions within one organisation. The chapter is positive about ICAC's successes. It has shown that for New South Wales there is an on-going need for the prevention and investigation of corruption, and the ICAC serves the public interest by this work. This does not mean that the ICAC is a suitable model for export. This will depend on the political and legal institutions and the corruption problems being faced by the importer.

Amy Comstock, in "Maintaining Government Integrity: The Perspective of the United States Office of Government Ethics", stresses the importance of ethics programs and ethics institutions for the creation of a democratic culture, the avoidance of cynicism and public confidence in government. Institutions are needed that ensure that public officials are held accountable and that government operations are open to public scrutiny. The ethics program in the United States is only one model, she stresses, for achieving the challenging task of integrating accountability with democratic governance. It is designed to provide alternatives to relying strictly on law enforcement efforts to address wrongdoing by emphasising prevention approaches that both complement and enhance law enforcement efforts. It has proven effective in accounting for the size, extent, and diversity of the executive branch, while implementing systems of prevention, such as a code of conduct and – most important in this respect – financial disclosure. These elements are important pieces of the larger mission to prevent conflicts of interest and provide the public with the access and information it needs to hold government accountable to the highest standards of integrity and honesty.

Alan Doig and *Jon Moran* are sceptical in "Anti-Corruption Agencies: The Importance of Independence for the Effectiveness of National Integrity Systems" about the simplicity with which both individual countries and donors continue their enthusiasm for independent anti-corruption agencies (ACA) as the lead institution to combat corruption. Such agencies are also often seen as the lynchpin of the development of a country's National Integrity System (NIS). Much attention is given to the need to allow both ACAs and the NIS the freedom and independence of relevant agencies to work unimpeded, individually and collectively. The chapter suggests that the issue of independence both for ACAs and the NIS are neither certain nor embedded, despite the rhetoric of reform, because of operational, resourcing and political issues. Effective ACAs are based a complex set of structural and organisational factors which condition their establishment and operation. Overall, Doig and Moran conclude, ACAs can be effective but they need an effective application for proven business planning techniques. Without that, they might add another layer of (ineffective) bureaucracy to the law enforcement sector, divert resources from existing organisations involved in anti-corruption work, function

inefficiently if they are unable to target high level corruption cases and function as a "shield" to satisfy donors and governments not wholly committed to reform. Ineffective or weak, ACAs not only damage their own role, they undermine the overall impact and success of the National Integrity System.

Michael Johnston stresses in "Independent Anti-Corruption Commissions: Success Stories and Cautionary Tales" that there is no single "ICAC strategy". What differs is the jurisdiction (the public or private sector), its prevention capabilities (including training) versus investigation and prosecution, the power to reverse burdens of proof and access to private as well as public financial records, and the strength of the research capabilities. The essentials of an ICAC strategy are nevertheless clear: most obvious – and most critical – is real independence. But independence in turn requires permanence, coherence, and credibility. Even when all are in place, they do not guarantee success: other factors, ranging from international and regional dynamics, through the skill and dedication of managers and agents, to pure good luck are also in the mix. Additionally there are dangers and risks stemming from lack of civil support and accountability, isolation from other normative institutions and the neglect of the necessity of an adaption of strategies and institutions to social, political and economic settings.

7.5. Reflections on law enforcement strategies

Because we tend to think favourably about everything that is done to curb corruption, we tend to underestimate possible disadvantages of anti-corruption policies. Three papers offer a critical evaluation of some of law enforcement strategies.

Tom vander Beken advocates "A Multidisciplinary Approach for Detection and Investigation". His plea is mainly based on academic research that he and a few colleagues conducted into corruption in the meat industry for the Belgian Ministry of Justice. The results of their study revealed the complexity of this form of corruption and lead to proposals being formulated for an integrated policy to combat these corrupt practices more effectively. The Belgian government subsequently commissioned them to translate these proposals into concrete strategies to tackle corruption. Vander Beken stresses the advantages of a multidisciplinary approach. Such an approach is preferable to a repressive and hence reactive approach to corruption problems.

James Jacobs is critical about the present state of the art of our knowledge of corruption control. There has, for example, been hardly any evaluation of the United States anti-corruption project. It makes it difficult to reach confident conclusions

about what works and what does not. Doubts are nevertheless justified, he argues in "Dilemmas of Corruption Control". Since the Watergate scandal, corruption became a more salient political issue in the United States. The normative expectations for official conduct increased dramatically and perhaps unrealistically. It included the use of an ever-expanding definition of corruption (including private, even sexual, behaviour). The implications for American democracy of the much more scandal-sensitive politics are not clear. Another consequence is that government has become less effective and less efficient because many anti-corruption controls tend to reinforce the pathologies of bureaucracy. Corruption controls entail costs, and, in some cases, these costs outweigh any benefits as measured by reduced corruption. The challenge, of course, is to find the optimal type and amount of corruption control (and, odd as it may at first sound, an *optimal amount of corruption*). The goal must be to identify: 1) the most costly types of corruption (such as judicial corruption, election fraud); and 2) the most cost-effective anti-corruption strategies. Practically all corruption controls involve costs and trade-offs. Therefore, they should carry the label "use with caution".

Frank Anechiarico's arguments are in line with Jacobs chapter (as might be expected since they published *The Pursuit of Absolute Integrity* together). Nevertheless, Anechiarico is optimistic about the possibility to control corruption without further burdening public administration. In "Law Enforcement or a Community Oriented Strategy Toward Corruption Control" it is argued that lessons learned by the civil society movement can be applied to the prevention of corruption. Scepticism is justified concerning the law enforcement paradigm. When no attention is paid to democracy and to (civic and administrative) culture, strategies such as the Independent Commission Model might bring the worst of both worlds: administrative inefficiency and no appreciable reduction in corruption in the most problematic agencies. Those concerned with the procedures by which ethical government is maintained should also be concerned with the manner in which administrative culture and civic culture interrelate, as an aspect of democratic development. If bureaucracy develops without citizen involvement, even with the best of intentions regarding the reduction of temptation, administrative culture will remain isolated and pathologies will become more evident. If civic culture is not engaged in governance, it will atrophy and encourage either counter-agendas or cynicism.

7.6. International organisations and corruption

Nowadays, a lot of attention is being paid to corruption and ethics in international fora. Anti-corruption congresses and conferences with thousands of participants

are unexceptional, as the Global Forum in The Hague and the 10th Anti-Corruption Conference in Prague proved. Conventions and treaties have been prepared, signed and implemented, and in international relations conditions of good governance have become an important topic. In Part VII, the efforts of international organisations to create a framework for fighting corruption are discussed, and the last section, Part VIII, deals with a number of international initiatives to curb corruption (Interpol's work, regional co-operation in Southern Africa, the repatriation of corruption funds and the involvement of private policing).

Peter Langseth and *Oliver Stolpe* describe "United Nations' Approach to Help Countries Strengthen Judicial Integrity". A case study form Nigeria illustrates what can be done. The United Nations Office for Drug Control and Crime Prevention established a Global Programme against Corruption in March 1999. The Programme employs a process of "action learning" intended to identify best practices and lessons learned through pilot country projects, programme execution and monitoring, periodic country assessments and by conducting a global study on corruption trends. Within the Programme, attention is also given to institution building, prevention, raising awareness, education, enforcement, anti-corruption legislation, judicial integrity, repatriation of foreign assets derived from corruption, as well as the monitoring and evaluation of these things. It also includes initiatives as for example a *United Nations Manual for Anti-Corruption Policy* and a *United Nations Anti-Corruption Tool Kit* and co-operation with the United Nations Program against Money Laundering, conferences and workshops and a Judicial Leadership Group to strengthen the judiciary against corruption and to effect judicial reform across legal systems. An integrated approach seems to yield positive results. Extra attention for judicial integrity is crucial, Langseth and Stolpe stress. Any effort to eradicate corruption within a society is useless if the very institutions that are designed and expected to protect the individual's rights and to ensure adequate sanctioning of the perpetrators of these rights are either too corrupt and/or inefficient to carry out their institutional mandates. Among the criminal justice institutions it is the judiciary that needs to be addressed first.

Manfred Möhrenschlager's chapter is about substantive criminal law issues in the anti-corruption convention of the Organisation for Economic Co-Operation and Development (OECD). The OECD with 29 member states representing the industrialised world, has made anti-corruption initiatives and ethics and integrity policies an important aspect of its work. The OECD convention – a form taken in preference to a mere recommendation – was adopted at the end of 1997 and entered into force on 15 February 1999. Underlying this was the conviction that only a co-ordinated approach on the basis of a binding international agreement can guarantee

effective suppression of corruption at international level. The negotiations in the Working Group and, ultimately, at an international diplomatic conference, included not only the 29 OECD members but also five non-members from South America and Central and Eastern Europe. The new convention has become a great success. Over thirty of the advanced industrialised countries have bound themselves to criminalise and prosecute foreign and international bribery through a new anti-bribery convention. It made the OECD an important actor in the battle against international bribery. Full implementation is not an easy task as, for example, the introduction of the liability of legal persons reveals. Nevertheless a Working Group has noted that there was overall compliance with the convention's obligations in the great majority of countries. Active monitoring has been important to achieve results.

Gemma Aiolfi and *Mark Pieth* show optimism about OECD initiatives as their chapter's title illustrates: "How to Make a Convention Work: The OECD Recommendation and Convention on Bribery as an Example of a New Horizon in International Law". They argue that the recent fight against the deleterious effects of corruption have taken on a dynamism hardly credible a decade ago. This accomplishment is particularly apparent in the OECD initiative against bribery in international business transactions which culminated in the Recommendation and Convention of 1997. The path leading to these instruments became something of a high-speed process during its evolution with several interesting – and unique – features en route to the final instruments. The first part of this chapter describes the journey to instrument and examines how this convention has developed bite. The second part outlines the latest developments that complement international law with a review of recent initiatives taken by key industries in their efforts to take a proactive stance on the issue of bribery and corruption within their particular spheres of influence. The focal point here, Aiolfi and Pieth argue, must be on companies. Whilst the convention criminalises bribery when committed by a natural person it leaves the issue of criminal liability as it pertains to companies open and only requires that monetary sanctions be "effective, proportionate and dissuasive". Whether the profits of a company can be forfeited is an unresolved question. Nevertheless, it seems apparent that change is possible and entrenched behaviour in this area can be altered, political and economic factors as well as risks to reputation all combine to create a climate of change.

Guy de Vel and *Peter Csonka* of the Council of Europe summarise the activities of the Council against corruption, carried out on the basis of a Programme of Action adopted by the Committee of Ministers in 1996. It has become a priority for the organisation and its 43 member states. This chapter presents overview of the specific

results obtained in the implementation of a Programme of Action against Corruption. A framework was adopted with 20 Guiding Principles for the fight against corruption, followed by the establishment of the Group of States against Corruption (GRECO). It aims at improving the capacity of its members to fight corruption by following up, through a process of mutual evaluation and peer pressure, compliance with in particular the Guiding Principles and the implementation of the Criminal Law Convention (adopted in 1998). This convention concerns active and passive bribery of domestic and foreign public officials, bribery in the private sector and officials in international organisations as well as money laundering of proceeds form corruption offences and "trading in influence". Attention has also been paid to the use of civil law remedies. A last initiative to be mentioned is the Octopus Programme against organised crime and corruption in countries in transition (of the European Commission and the Council of Europe, launched in 1996).

Michael Grotz describes what the European Union has done since the European Parliament adopted a Resolution on Combating Corruption in Europe in December 1995. The picture is an ambivalent one. On the one hand many Resolutions, Conventions, Protocols, Joint Actions and Inspections are mentioned. On the other hand there are the serious doubts concerning the instruments: a multitude of legal instruments, hardly ratified by member states and therefore not entered into force. This is very much the case when practical application contains provisions for judicial co-operation in penal matters. International co-operation in penal matters is cumbersome, time-consuming and complicated and often leads to the decision not to request mutual assistance in criminal matters, hoping to solve a case without any help from outside.

Jorge Garcia-González of the Organisation of American States (OAS) presents the main developments that the Countries of the Americas have made for consolidating co-operation among them for combating corruption. The OAS consists of 35 member states, constituting the only regional setting in which all the countries of the Americas (with the exception of Cuba) can come together and debate issues of common interest and reach an accord on them. Many of these conclude in legal instruments like Conventions or Resolutions agreed upon by the OAS General Assembly. The Inter-American Convention against Corruption has been the most important step that has been taken on a hemispherical level in combating this phenomenon. Two major purposes of the convention are: to promote and strengthen the development by each of the states of the mechanisms needed to prevent, detect, punish and eradicate corruption; and to promote, facilitate and regulate co-operation among the states to ensure the effectiveness of anti-corruption measures and actions. It constitutes the most important inter-American legal instrument for extraditing

those who commit crimes of corruption; in co-operation and assistance among the states in obtaining evidence and facilitating necessary procedural acts regarding the investigation or trials of corruption; and for the identification, search, immobilisation, confiscation, and seizure of goods obtained or derived from the commission of the crime of corruption.

7.7 International initiatives to combat corruption

Willy Deridder, the Executive Director of the International Criminal Police Organisation, better known as Interpol, stresses the importance of the corruption issue for the law enforcement community. As he emphasises in "Interpol's Approach to Combating Corruption" it can diminish and even destroy the ability of law enforcement to accomplish its mission. Interpol, the only truly global police organisation with a current membership of 178 countries, therefore is very involved in the fight against corruption. Its main objective is to facilitate the flow and exchange of information between these members, and Interpol has also accepted the responsibility for setting international standards and sharing best practices in priority, serious transnational crime areas. For corruption in 1998 a Group of Experts was created with a mission statement, code of conduct, best practices guide and early warning system. The group will also develop a set of standards or norms for the investigation and management of corruption investigations.

Peter Gastrow's chapter is called "Combating Corruption in South Africa: Towards more Effective Regional and International Law Enforcement Co-operation". It describes the attempt being made in Southern Africa to improve co-operation between 14 countries in their efforts to combat corruption. Not only has a separate agreement been entered into; this agreement has also been incorporated into a framework agreement for mutual co-operation on crime prevention in general. Now it is a question of putting these positive policy developments into practice. Two things that must be borne in mind here are support – and that includes financial assistance – for the governments concerned in implementing the policy, and the need to reinforce the operational capability of the police to actively track down corruption in this region. In the long term, however, co-operation between the states concerned could be expanded and intensified, for example by organising training, exchanging experts and equipment and setting up a permanent liaison system.

Hairat Balogun's chapter "The Repatriation of Embezzled State Funds" concerns one of the most sensitive issues in contemporary international co-operation in the

fight against corruption. It is discussed using the example of Nigeria. Mrs. Balogun first briefly talks about the history of anti-corruption legislation in relation to the development of actual corruption problems. She then explains why the problem of the "repatriation" of corruption funds is so important in practice and mentions the limited scope that international treaties have in this area. Yet the situation is by no means completely hopeless, as negotiations with Switzerland, Brazil and Liechtenstein have shown. Nevertheless, there is a need for international legislation that makes it very unattractive for countries to provide a safe haven for the financial proceeds of corruption perpetrated in other countries.

Pascal Gossin offers another perspective on the same problem in "Restitution of Assets and Corruption". He addresses the issue of international co-operation in tracking down and returning funds derived from corruption from the point of view of Switzerland. He first examines current Swiss legislation in this area and then considers a number of cases in terms of the amount of money seized and in how many cases funds have been returned to the country of origin. He devotes particular attention to the problems that arise when politically sensitive issues are involved.

Michael Levi is concerned with "Private Policing and Corruption". What is, and what will be the role of the public police and of private sector involvement? He sketches the considerable area of private policing in the economic and white-collar crime area (forensic services arms of accountancy firms, specialist security firms). International companies use private trouble-shooters and investigators in fraud and corruption cases because of their expertise and because companies want the to stay in control over the investigation and want to avoid bad publicity. This development has been accompanied by – and is partly the cause as well as the result of – a decline in public policing of fraud (public police having other priorities, the drain on skilled public police personnel). Levi concludes the public police will have to improve their motivation, their skills and confidence substantially before they are able to re-appropriate this arena of crime control.

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