GOOD GOVERNANCE: A MERE MOTTO OR A PRAGMATIC ENDEAVOUR FOR A REALISTIC STRATEGY? (THE FRENCH EXAMPLE OF AN ANTI-CORRUPTION AGENCY)

*Laurence Giovacchini**

I. INTRODUCTION

Increasing international awareness of the negative impact of corruption is fostering new devices and strategies with a view to protecting the rule of law, threatened by bribery. Appropriate criminalization, adequate offences, deterrent punishments and codes of ethics rank among the customary tools used to tackle the corruption problem. Nonetheless, the use of sentencing guidelines is not sufficient. Forward-looking methods are needed, from safeguards against the abuse of power to enhancing and promoting efficient decision-making. Preventive techniques against corruption favor the elaboration of good management tools, far from the various enumerations of misdemeanors to be avoided by public officials.

How can we, other than by the imposition of a code of behaviour, implement conditions conducive to the loyalty of public officials? Conditions which function positively when, for instance, problems related to conflicts of interest arise, when compartmentalized controls risk missing their target, when misinterpretations of complex data are likely to occur.

Excessive regulation and, inversely, lack of regulation both offer opportunities for manipulation and fraud. The latter cannot be prevented simply by norms and laws. The risk of corruption must be evaluated by an overall view of the situation, one which will facilitate the possible discovery of hidden connections, sham processes, forgery, etc. Fragmented information may, indeed, be as useless as no information at all, and can even be deceptive and lead to distorted analyses.

Consequently, monitoring mechanisms, training, risk detection techniques, supervisory accountability, whistleblowing, and so forth: all these tracks can be explored in order to improve the investigation and the prevention of cases of corruption. The "what-to-do" approach must open the way to the "how-to-achieve-the-goal" strategy. The promotion of "anti-corruption know-how" is crucial. It has three aims:

- to dissuade public officials from breaching their duties;
- to scrutinize the weak points and loopholes of administrative processes;
- to put an end to the mistrust of public service - whether justified or based on rumor - in the public opinion.

Corruption is a topic of high priority on the international agenda of many institutions. The OECD Convention (December 17, 1997) criminalizing the bribery of public officials in international business transactions is a breakthrough. The United Nations and the Council of Europe have also taken significant steps. This new context has triggered the

* Administration Civil, Service Central de Prevention de la Corruption, French Republic.

necessary review of the assets and hindrances of anti-corruption strategies. What makes them successful? What are the obstacles likely to stifle the efforts carried out according to the well-know "where there is a will there is a way"? A practical viewpoint is indispensable because a prescriptive approach is necessary, but insufficient. Workable solutions must be tested and their feasibility proved.

First of all, we have to dismiss the objection that corruption is tricky to deal with when public officials in charge of fighting bribery can be bribed themselves. Such an argument reduces to a stalemate whatever attempts are made at curbing fraud. Practical, workable solutions help avoid the obstacle by a subtle process of checks and balances, quite different from the endless process of "who will control the controller and so forth?". An unbiased public service requires loyalty and managerial skills, which, in the framework of the fight against corruption, can be defined as follows:

(i) loyalty: to refrain from acting against the law and keep potential bribe-givers at bay;
(ii) management: to implement laws by overcoming obstacles to their enforcement and to make corrupt schemes fail by detecting and disclosing shady deals, and by deciphering the moves shrouding them.

Since both aspects are complementary, neither should be overlooked. Individual loyalty is of crucial importance, because it is the core of resistance against attempts at corruption. An honest public official will obviously refuse a kick-back and the bribe-giver will not be able to succeed, being deprived of the bribe-taker counterpart. Nonetheless, individual integrity must be supported by ethical management in order to effectively cope with the risk of pervasive and widespread bribery. Otherwise, however adamant and honest public officials may be, they can feel isolated and threatened by crooks connected through fraudulent networks. When corruption is on the verge of taking the upper hand on administrative channels, its organisational grasp has to be equalled by the same organisational efficiency on behalf of ethics. Individual commitment must be strengthened by the group's involvement. This is not an unrealistic view and the remedy does not suppose that the patient has already recovered. A "leverage technique" can be put into practice, allowing a small group (trained in ethical management techniques) to defeat a larger one where the loopholes have been identified. Thus, the negative statement according to which "nothing can be done, because everything is rotten, due to bribery" is not valid. The anti-corruption fight should not be understood as a crusade (doomed to failure sooner or later), or as a daunting prospect which entails so many efforts that its costs become unbearable.

A leverage process enables its users to make the most of prevention techniques and of scattered sources of information. "An ounce of prevention is worth a pound of cure" and demands awareness of the existence of problems lurking beneath the surface. These problems are not solved by mere control-tightening, which, on the contrary, is liable to favor red tape. A roadblock can be put on corrupt paths by scrutinizing the way corruption operates through various networks. There is obviously no cure-all to eradicate it, but a professional team specialized in anti-corruption techniques (described below), has the means to step up action thanks to a pro-active strategy, characterized by two features:

(i) the ability to transform fragmented clues into intelligence of an overall problem and its intricacies;
(ii) the possibility to report right on cue about the very irregularity which, although it may seem petty, is highly relevant for kicking off a whole process of further examination.

II. AN INTERNATIONAL CONTEXT FAVORING THE ANTI-CORRUPTION FIGHT

A. End of the "Grease-the-Wheels" Argument

This argument is no longer valid, according to which bribery can be an efficient way of getting around burdensome regulations and ineffective legal systems. This rationale has not only inspired sophisticated academic models but has legitimized the behavior of private companies that are willing to pay bribes to get business. On closer examination, this argument is full of holes. First, it ignores the enormous degree of discretion that many politicians and bureaucrats can have, particularly in corrupt societies. They have discretion over the creation, proliferation, and interpretation of counterproductive regulations. Thus, instead of corruption being the grease for the squeaky wheels of a rigid administration, it becomes the fuel for excessive and discretionary regulations. This is one mechanism whereby corruption feeds on itself.

In addition to some academic writings, one school of "corruption apologists" argues that bribery can enhance efficiency by cutting the considerable time needed to process permits and paperwork. The problem with this "speed money" argument lies in the presumption that both sides will actually stick with the deal, and there will be no further demands for bribes. For example, one high-level civil servant who had been bribed could not process an approval any faster given the multiple bureaucrats involved in the process, yet he willingly offered his services to slow the approval process for rival companies".[1]

B. Promotion of the "Zero Tolerance" Argument

The damaging effects of corruption are emphasized in the main international fora, among them:

1. <u>The United Nations</u>

"(...) international organizations and many industrialized and developing countries have deplored the pernicious effects of corruption, whether international in scale or national. This is because corruption undermines the legitimacy of Governments and institutions, and compromises social and economic development".[2]

2. <u>Council of Europe</u>

"... aware that corruption represents a serious threat to the basic principles and values of the Council of Europe, undermines the confidence of citizens in democracy, erodes the rule of law, constitutes a denial of human rights and hinders social and economic development ..." (cf. 20 guiding principles for the fight against corruption, adopted by the Committee of Ministers 6 November 1997.)

3. <u>OECD</u>

"... The governments of OECD countries share the conviction that bribery and corruption undermine democratic institutions, distort international trade, investment relations and development co-operation. The OECD Public Management Committee (PUMA) has, since its inception, focused on ways to improve the

[1] In "Corruption: The Facts", article by Daniel Kaufmann, p. 114 of "Foreign Policy", Summer, 1997.

[2] In "Model Law on Corruption".

efficiency and effectiveness of public sector management. In particular, the Committee has addressed the issue of probity in public sector operations in its work on financial management, organisational performance and management of the civil service".[3]

4. European Union

"The Convention on the protection of the European Communities' financial interests was drawn up by the Council and signed by the Representatives of the Governments of the Member States on 26 July 1995. A First Protocol to the Convention was drawn up and signed on 27 September 1996. The Protocol is aimed primarily at acts of corruption that involve national and Community officials, and damage or are likely to damage the European Communities' financial interests."

The backbone of every draft or international recommendation is that corrupt practices should not be tolerated, whatever the circumstances.

C. Significant Steps in the Criminalization of Corrupt Behaviours

"Laws and customs differ from one country to another". This sort of statement is no longer a pretext for governments to neglect corruption in countries where it is rampant. Actually, no country is "corruption-proof". One can no longer justify corrupt behaviors by explaining that they are "normal, acceptable" in other countries. The maze and the haze of vague notions ("what can be regarded as corruption? where does it begin? " etc) are replaced by a judicial technical review designed to shape adequate offences, entailing predictable and dissuasive sanctions. Two complementary orientations can be pointed out:

(i) *Remedies for Loopholes*

Progress has been made in criminal law by agreeing on the definition of corruption as an offence, instead of relying on mere individual morality to refrain from committing wrongdoings. The very core of corruption is defined, which is not reducible to other frauds or misdeeds. There is, indeed, an agreement to regard corruption as *"requesting, offering, giving or accepting directly or indirectly a bribe or any other undue advantage or the prospect thereof, which distorts the proper performance of any duty or behaviour required of the recipient of the bribe."* This rough description involves two actors - the bribe-giver and the bribe-taker-and both are liable to sanctions. The bribe-giver cannot argue that s/he was "compelled" to corrupt a public official in order to gain markets and obtain authorizations. Nor should the bribe-taker explain that "it is routine, everybody is doing so", or that s/he had been deceived. Responsibilities are clearly defined by law; the bribe-giver and the bribe-taker are equally responsible, all the more so because the undue advantage can be non-material (a promise of promotion, for example. The fact that money has not been paid directly or immediately is no excuse, quite the contrary. The existence of the secret bond between the two protagonists, in order to gain an advantage by abuse of power, is sufficient to characterize corruption.

From a legal point of view, ways of escape are blocked. This does not mean that offenders are caught and prosecuted, but rather that, if and when they are prosecuted, they cannot use as a pretext their ignorance of law and of the criminal consequences of their misdeeds. The OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions (signed on December 17, 1997) goes a step forward:

[3] In "International Symposium on Corruption and Good Governance", Paris, 13-14 March 1995.

- not even bribery of domestic private officials is criminalized but also the complicity in - including incitement, aiding and abetting - or authorization of an act of bribery of a foreign public official shall be a criminal offence. Even the attempt to bribe a foreign public official is criminalized;
- accomplices and intermediaries are thus, also taken as responsible for the corrupt scheme;
- the liability of legal persons for the bribery of a foreign public official is also punishable. Such a provision regarding liability opens a large field for action and prosecution because companies, for example, are legal persons.

(ii) *Corruption Regarded as Victimization*

Contrary to other crimes, corruption is often regarded as "victimless" and a short-sighted viewpoint denies seriousness to a fraud entailing neither blood nor violence. Nonetheless, international recommendations aim at requiring each party to provide in its internal law effective remedies for persons who have suffered damage as a result of corruption, in order to enable them to defend their rights and interests, including the possibility of obtaining compensation for damage. There are, of course, prerequisites for a claim for damages. In order to obtain compensation, the plaintiff has to prove the occurrence of the damage, whether the defendant acted with intent or negligently, and the causal link between the corrupt behaviour and the damage. This provision does not give a right to compensation to any person who merely claims that any act of corruption has affected, in one way or another, their rights or interests, or might do so in the future. However, it is not inconceivable that persons having suffered damage as a result of an act of corruption should have the possibility to sue public officials, as well as the possibility to sue their public officials for the reimbursement of any loss for which they are judged responsible. Progressively, the stress is put on the necessity of enabling victims of acts of corruption by public officials to have effective procedures and reasonable time to seek compensation from the State.

Such a conceptual evolution deserves to be noticed because it entails a demanding concept of public service. The risk of being sued for corruption, in a civil trial, puts some kind of pressure on public officials, combined with deterrent criminal sanctions. Of course, such a scenario is a mere prospect, presently. The question is: to what extent and how long will it remain so? The extension of the process of "criminalization" (the characterization of misdeeds as wrongdoings, crimes, offences), coupled with the surge of the idea of "victimization", allows us to foresee the tightening up of the anti-corruption fight.

The fact that corruption can briefly be summarized as the misuse of public power for private profit should not lead us to overlook the sophistication of criminal notions, including other related offences such as in France, the trading in influence [a tripartite offence where the person who is actually bribed for exerting real or pretended influence] is different from the person who is influenced in the decision. Only public officials (elected politicians or civil servants) can be target persons and the "taking of illegal interest" (the offender takes or receives a personal interest in a company, for example, with which they are involved in the administration or surveillance task, or where they have the duty to carry out payments). Those significant steps in the criminalization of corrupt behaviour lead us to examine the critical position of public officials: targets or shields in respect to the issue of corruption?

D. Attempt at Defining Internationally the Notion of "Public Officials"

The above-mentioned OECD Convention provides that: "foreign public official" means any person holding a legislative, administrative or judicial office of a foreign country, whether appointed or elected." The Council of Europe emphasizes that: "public administrations play an essential role in democratic societies and that they must have at their disposal suitable personnel to carry out properly the tasks which are assigned to them. Public officials are the key element of the public administration, they have specific duties and obligations, and they should have the necessary qualifications and an appropriate legal and material environment in order to carry out their tasks appropriately".

This recommendation offers a compendium of the rights and duties of public officials. It sheds light on the issue of corruption because bribery intends to alter this very core of rights and duties: "*the purpose of this Code is to specify the standards of integrity and conduct to be observed by public officials, to help them meet those standards and to inform the public of the conduct it is entitled to expect of public officials*". Standards of integrity do exist, can be listed and explained; corruption manipulates those standards all the more easily when they are only implicit. Their specifications in a written code, approved by several countries, help the public to be more aware of the risk of abuse of power by public officials. Information makes corruption recede. Whimsical, arbitrary, odd, self-oriented interpretation of regulations are no longer valid and are replaced by "duties in accordance with the law" and neutrality. As a result, the offenders are deprived of any means of justification. They can no longer take advantage of the alleged inaccuracy of the rules and of the supposed pressure of circumstances. The very articulation of a model code of conduct for public officials does not suppress, of course, the possibilities of fraud, but it makes them more risky and less profitable. This Code highlights key-notions:

- arbitrary behavior;
- conflict of interest;
- declaration of interests;
- advantages;
- reaction to improper offers;
- reporting;
- susceptibility to influence by others;
- misuse of official position;
- making decisions;
- official information;
- public and official resources;
- incompatible outside interests;
- political or public activity;
- records;
- integrity checking;
- supervisory accountability;
- leaving the public service;
- dealing with former public officials;
- observance of the code and sanctions.

The above-listed items set up safeguards which protect public officials from undue suspicion, by avoiding their being placed in ambiguous positions (conflict of interest, revolving door, political interference). The Code also promotes responsible management (integrity checking, supervisory accountability, transparent decision-making and reporting), which provides a clear picture of the adequate manner of carrying out public duties. The Code offers, in a concise text, a review of sensitive problems. These two criteria (accuracy and concision) contrast with the blurring *modus operandi* of corruption, which thrives on the accumulation and successive stratification of texts eventually leading to opacity and arbitrary interpretations.

A framework with solid judicial grounds is, thus, ready to make corrupt pretexts and schemes groundless. The credibility of the international recommendations is enhanced by monitoring provisions.

E. Follow-up Measures are the Heart of the Matter

"Monitoring" and "evaluation" have become key-words. Monitoring aims at making loopholes less numerous. There can be many kinds of loopholes, such as:

- the lack of criminal penalties (but the international texts we have referred to are a first step to remedy the situation);
- the alleged "national economic interest" (but article 4 of the above-mentioned OECD Convention is explicit: *"Investigation and prosecution of the bribery of a foreign public official shall be subject to the applicable rules and principles of each Party. They shall not be influenced by considerations of national economic interest, the potential effect upon relations with another State or the identity of the natural persons or legal entities involved"*).

This monitoring is coupled with evaluation processes, because the Convention sets up a Working Group on Bribery to monitor national implementation. This Group is specifically directed to work on a system of "mutual evaluation" of the effort of each OECD country. The Council of Europe has established the "Group of States Against Corruption - GRECO" (5 May 1998), *"which aims at improving the capacity of its members to fight corruption by following up compliance with their undertaking in this field"*.

The stress put on the necessity of evaluation enhances what could be labelled as a "culture of audit", the Council of Europe, for example, urging to *"ensure that appropriate auditing procedures apply to the activities of public administration and the public sector"* and to *"endorse the role that audit procedures can play in preventing and detecting corruption outside public administrations"* (cf. "20 Guiding Principles for the Fight against Corruption"). Not only is an anti-corruption doctrine taking shape, but also practical tools of implementation are being come up with and assessed:

- How to comply with the law?
- How to resist the temptation of corruption?
- How to detect corrupt practices?

Those three questions may receive some beginning of an answer thanks to the "toolbox" described below.

III. THE "TOOLBOX" ASPECT CONNECTED WITH A SYSTEMATIC APPROACH TO THE ISSUE OF CORRUPTION

A. The "Toolbox" as an Expertise

"An understanding of management principles is required to recognize and evaluate the materiality and significance of deviations from good business practice. An understanding means the ability to apply broad knowledge to situations likely to be encountered, to recognize significant deviations, and to be able to carry out the research necessary to arrive at reasonable solutions".[4] In this definition, many terms can be emphasized, among them:

- recognize,
- evaluate,

[4] "Normes pour la pratique professionnelle de l'audit interne" by The Institute of Internal Auditors, p.40.

- broad knowledge,
- research,
- reasonable.

All the ingredients of a diagnosis are, thus, mentioned: recognize (because corruption is the art of camouflage), evaluate (because problems have to be classified with due consideration of their potential impact and the risks they entail), broad knowledge (because a multidisciplinary expertise is required to ensure that adequate coverage exists for the organisation as a whole, with a minimum amount of duplication), research (to transform partial data into accurate and reliable information) and reasonable (because radical proposals, by their very exaggerated connotations, may be the smokescreen hiding the escape from one's responsibilities: they are so unrealistic that they will not be implemented and corruption will continue to thrive). The term "reasonable" deserves to be stressed:

- It is used in the definition of accountability supervisory (Code of Conduct for Public Officials - Council of Europe - above-mentioned): *"The public official who is responsible for controlling or directing other public officials has duties as a supervisor. He should be required to account for the wrongful acts or omissions of his staff if they are so serious, repeated or widespread that he should have been aware of them if he had exercised the reasonable level of leadership, management and supervision required of a person in his position"*.
- The notion of "supervisory accountability" for public officials is matched by the notion of "due professional care" for private auditors: *"Due professional care calls for the application of the care and skills expected of a reasonably prudent and competent internal auditor in the same or similar circumstances. Professional care should, therefore, be appropriate to the complexities of the audit being performed."*[5]
- The aim is "to promote effective control at a reasonable cost"[6], and to *"include sufficiency of information obtained to afford a reasonable basis for the conclusions reached"*[7]. So as *"reasonable assurance is provided when cost-effective actions are taken to restrict deviations to a tolerable level"*.[8]

We refer to this kind of expertise with the figurative term of "toolbox" because it supposes: fine tuning, monitoring, and directions for use of warning indicators.

(i) *Fine Tuning*

Controls should not be stifling by overtightness, nor so delayed and unproductive that the situation gets out of hand when the potential loss associated with any exposure or risk is outweighed by the cost to control it. Controls should be carried out in order to prevent and detect irregularities, not to hinder action. Consequently, they should be seen as instruments of management, ranging from preliminary assessments to detailed tests. *"Establishing standards for the operation to be controlled, measuring performance against the standards, examining and analysing deviations, taking corrective action, reappraising the standards based on experience"*[9]: this process, which is described in the private sphere, is also valid for public administration, especially regarding the issue of corruption, which

[5] Op. cit. ibidem.

[6] CIA REVIEW - Certified Internal Auditor - GLEIM, p.86.

[7] Ibidem p. 95.

[8] Ibidem p. 116.

[9] Op. cit. p. 188.

must be put under constant scrutiny.

(ii) *Monitoring*

"*Monitoring encompasses supervising, observing, and testing activities and appropriately reporting to responsible individuals. Monitoring provides an ongoing verification of progress toward achievement of objectives and goals*".[10] It means that factors of risk have to be identified. Check-lists help to do so. We can briefly summarize three examples of check-lists, aiming at:

1. <u>The Transparency of Procedures of Tendering in Public Procurements</u>

   - Threats must be identified (especially the attempt to exert undue influence in the bid process and collusion with other suppliers to form a cartel);

   - The counter-measures can consist of solemnly affirming that illegal arrangements are not tolerated: such a statement can be a deterrent if the prospect of black-listing looms large. Obvious irregularities should be recognized right away, when, for example, suppliers are constantly successful in winning contracts. One company has suggested "*visiting unsuccessful bidders to provide them with an opportunity to air any grievances*".

2. <u>The Prevention of Ethical Risks</u>

It goes without saying that "*staff assignments should be made so that potential and actual conflicts of interest and bias are avoided. The director should periodically obtain from the audit staff information concerning potential conflicts of interest and bias*"[11]. But how is this information gathered? Sensitive sectors, such as city planning and zoning regulations, have to be carefully examined. There is conflict of interest when, for example, a public official belongs to a commission in charge of allotting funds to renovate housing - "home improvement loan" - in the very place where s/he owns, real estate. Conflict of interest also looms when this public official participates in the activity of a non-trading real estate investment company, which happens to be involved in operations planned by the general assembly (of a local entity or community), where this public official notes or reports. Building permits, generally speaking, can be the target of direct corruption (a bribe is given to obtain the authorization) or of indirect manoeuvres, by influencing the future decision of constructibility regarding zones which have not yet been classified. Obviously, when a public official finds themself in a situation of potential conflict of interest (because his spouse, for example, owns some piece of land in this area), s/he becomes a weak link in a chain of responsibility which is, thus, likely to be moulded by corrupt practices.

It is not so difficult to list the risks of conflicts of interest in various key-sectors. Public officials can be encouraged to report on them for fear of getting sanctioned in case of actual deviation. In this acceptation, the "toolbox" consists in the inventory of risks and of potential irregularities. In the third example of aforementioned check-lists, the stress is put on:

3. <u>The Detection of Fraud</u>

"Indicators of treachery" are elaborated, such as: "Danger Signs Pointing toward the Possibility of Embezzlement" (Sawyer and Dittenhofer, Sawyer's Internal Auditing, p. 1189):

- Borrowing small amounts from fellow employees.

[10] Op. cit.116.

[11] Op. cit. p. 61.

- Placing personal cheques in change funds - undated, post-dated, - or requesting others to "hold" cheques.
- Personal cheques cashed and returned for irregular reasons.
- Placing unauthorized IOUs in change funds, or prevailing on others in authority to accept IOUs for small, short-term loans.
- Inclination toward covering up inefficiencies by "plugging" figures.
- Pronounced criticism of others, so as to divert suspicion.
- Replying to questions with unreasonable explanations.
- Gambling in any form beyond ability to stand the loss.
- Buying or otherwise acquiring through "business" channels expensive automobiles and extravagant household furnishings.
- Explaining a higher standard of living as money left from an estate.
- Getting annoyed at reasonable questioning.
- Refusing to leave custody of records during the day; working overtime regularly.
- Refusing to take vacations and shunning promotions for fear of detection.
- Constant association with, and entertainment by, a member of a supplier's staff.
- Carrying an unusually large bank balance, or heavy buying of securities.
- Rewriting records under the guise of neatness in presentation.

Those indicators quoted from Sawyer should not be used in a simplistic way which might lead to absurd conclusions: a conscientious employee "working overtime regularly" is not necessarily guilty of embezzlement !. Only the convergence of various factors of suspicion can be regarded as a warning indicator. A "toolbox" is not a mere aggregate of instruments chosen and used at random. Directions for use are indispensable, especially insofar as corruption is concerned.

(iii) *Directions for Use*

The need for efficiency of the anti-corruption fight should not lead us to overlook the protection of public and individual liberty. Some "warning indicators" to detect fraud may turn out to be intrusive if used without judicial background and safeguards. For example, the disclosure by public officials of assets and liabilities, coupled with the reversal of the burden of proof in corruption cases, may be damaging to the fundamental rights of the accused. This is why an independent judiciary is indispensable to protect those rights from infringements. With such guarantees, efficient methods to fight corruption can be tested, especially when individuals or entities under investigation appear to have in their possession or availability, directly or indirectly, goods and means clearly beyond their normal financial standards.

The "toolbox" represents an attempt at a systematic approach, which is not reducible to a collection of devices. This systematic approach is intended to match the "systemic" nature of corruption.

B. The Systematic Approach to the Issue of Corruption

1. What "Systemic" Corruption Means

Corruption is not a transient fraud, because it aims at setting up durable networks substituting their own regulation for the legal one. Thus, it cannot be tackled as a temporary aberration. This pervasive, undermining nature of corruption may cause reluctance on the part of public authorities, who fear that the remedy may be so demanding as to be unaffordable and worse than the evil itself. The problem is to determine how to initiate the process of recovery when the whole administrative

and political body seems to be seriously ill. When the roots of corruption are so deep and entangled, how is it possible to eradicate them without turning everything upside down?

2. A Systematic Strategy Based on a "Leverage Technique"

A modest, even down-to-earth, clue can be usefully exploited when it is analysed thoroughly, thanks to a multidisciplinary technique based on accounting, administrative law, commercial and business law, rules banning unfair competition, and tax laws. A systematic approach to the issue of corruption goes beyond criminal law. For example, administrative provisions, such as what we call in France "*le statut général de la fonction publique*" ("Civil servant status" as a body of rules encompassing the whole career of a civil servant) offers guidelines about remuneration which can be combined with tax law regarding the control of the statement of income. Another example may be quoted from the French "*contrôle de légalité*" (control of compliance with law) for which the "*Préfet*" (a high-ranking civil servant representing all the ministries in a district or territorial subdivision) is responsible. This kind of administrative control makes it possible to detect cases of favouritism in tendering, for example, by shedding light on irregularities such as a secret, preliminary agreement between an elected public official and a company which obtains the market without the legal authorization of the collegial body. Another example concerns the implantation of supermarkets, which needs the approval of a commission. Generally speaking, collegiality and the codification of terms and conditions ("*cahier des charges*", in France) contribute to limiting arbitrary gratifications.

We have mentioned basic rules on purpose because the review of these fundamental principles proves that the anti-corruption fight does not begin *ex nihilo*. Actually, the presence of irregularities does not necessarily mean that a corrupt scheme is underway on a large scale. However, those very irregularities can be the visible part of a corrupt iceberg. Thus, the anti-corruption fight should not be regarded as a breaker, but as a patient and subtle review of the elementary procedures for checking irregularities. Of course, this is only a step to trigger the process off, but it is the first step which is often the most difficult. The basic and obvious devices that we have alluded to can be used in a sophisticated and innovative manner, in order to track corrupt practices. The audit method that we mentioned above is likely to enhance the impact and the relevance of those basic rules, which protect the public interest and individual liberty. Basic administrative procedures become quickly routine, and those who use them, unless made aware of the fact, are perhaps blind to their capacity to reveal corrupt practices. Once the detection of corruption is defined as a goal, irregularities immediately become relevant. The question is then: what kind of organisation and management will facilitate this awareness by casting new light on the risk of corruption?

IV. "COMMAND-AND-CONTROL PARADIGM" VERSUS THE "LEARNING ORGANISATION MODEL"?

"Command-and-control management" is on the way out. Its replacement, the "learning organisation model", contradicts all the assumptions about work espoused in the command-and-control paradigm and represents a radical transformation of the organisation of work"[12].

[12] "Internal Auditor" review, June 1999, p.29.

Such an analysis contrasts the object of control (which is compliance) and the object of shared vision (which is commitment). The former supposes a top-down, hierarchical structure, whereas the latter encourages reflection and inquiry among all members of the organisation, the group of people functioning as a whole. This second model suggests that a group of individuals can achieve a level of intelligence higher than any one individual in the group. It favors value-added, win-win, synergistic solutions, rather than the hollow win-lose decisions. *"The apparent reactive solution is often no solution at all, but rather a short-term fix that serves only to postpone and exacerbate the root problem. When things go wrong it is more likely that the business process has a fundamental disconnect rather than somebody failed a specific task. In today's businesses, formal controls, such as policies, procedures, written authorizations, organizational charts, and "chain of command" practices, are less valuable and effective than informal controls, which include intangible attributes such as ethics and values, corporate culture, trust, teamwork, open communications, and professionalism".*[13] What are the consequences, for the anti-corruption fight, of this contrasted vision of management?

A. Hierarchy is the Back-Bone of Reporting and of Responsibility

Supervisory accountability explicitly refers to the kind of leadership implied in the very notion of supervisor. Disciplinary sanctions should be taken by the supervisor, in case of a breach of duty by a public official placed under their authority. Nonetheless, public administration is composed of various agencies and departments which may turn out to be reluctant to point their finger at "black sheep" inside their staff, for fear of being stigmatised as a corrupt department as a whole. Keeping silent about misdeeds, getting rid of the guilty public official by promoting him/her to another department prevent the very issue of corruption from getting to the forefront. Disciplinary responsibility should be exercised for transparency's sake. This administrative aspect of sanction should not be overlooked, especially when penal prosecution is time-barred, which happens very often in cases of corruption. Nevertheless, hierarchical disciplinary power does not solve the problem if the supervisors themselves are manipulated and even involved in corrupt schemes.

B. The "Command and Control Paradigm" and the "Learning Organisation Model" are Complementary

The "learning organisation model" can be useful to highlight potential risks of wrongdoings. It reverses the well-known pretext, *"why should I make a fool of myself by refusing a bribe when everybody accepts it? "*, by *"why should I keep aloof when mutual control and assessment allow me to know what really takes place in the whole organisation? "*. This is what *"a work culture of reflection and inquiry among all members of the organisation"* suggests, enhancing *"each participant's understanding of the total process under review"*.[14]

This overall view favors transparency: seniority is no longer a protection from inquiry and, vice versa, supervisors can rely upon a self-assessed staff. Corrupt schemes are not necessarily disclosed, but the contradictions favoring them are revealed when, for example, pressures to improve short-run performance promote unethical behavior, or when *"emphasis on strict adherence to chain-of-command*

[13] Ibidem p. 30.

[14] Ibidem p. 31.

authority may provide excuses for ignoring ethics when following orders."

In the "learning organisation model", the emphasis placed upon the issue of corruption is not regarded as shameful for the image of the whole organisation. Quite the contrary, it reflects a means of achieving greater perspicacity and of improving performance. True "anti-corruption engineering" takes shape as risks of corruption are openly analysed and discussed through cases studies. This is not an idyllic conception of training because it requires greater supervisory accountability and due professional care. The "*I did not know that corrupt practices were occurring because I could not know the intricacies and far-reaching consequences of the activity I am responsible for, because I am not ubiquitous*", - such an argument tends to be less and less valid. Does this mean that every employee, every public official can be a potential whistleblower?

V. THE EVOLUTION OF THE "WHISTLEBLOWING" FUNCTION

"'Whistleblowing' is a new label generated by our increased awareness of the ethical conflicts encountered at work. Whistleblowers sound an alarm from within the very organization in which they work, aiming to spotlight neglect or abuses that threaten the public interest".[15] Whistleblowing is the ideal way to alert those concerned about corrupt practices before they take hold. Nonetheless:

A. The Whistleblower Can Feel Ill at Ease and Manipulated

"Moral conflicts on several levels confront anyone who is wondering whether to speak out about abuses or risks or serious neglect. In the first place, he must try to decide whether, other things being equal, speaking out is in fact in the public interest. This choice is often made more complicated by factual uncertainties: who is responsible for the abuse or neglect? How great is the threat? How likely is it that speaking out will precipitate changes for the better? In the second place, a would-be whistleblower must weigh his responsibility to serve the public interest against the responsibility he owes to his colleagues and the institution in which he works. A third conflict for would-be whistleblowers is personal in nature and cut across the first two: even in cases where they have concluded that the facts warrant speaking out, and that their duty to do so overrides loyalties to colleagues and institutions, they often have reason to fear the results of carrying out such a duty. However strong this duty may seem in theory, they know that, in practice, retaliation is likely".

The prospect of professional suicide is not particularly attractive. But, from another point of view, the prospect of being accused of complicity by not reporting suspicions of corruption is not seductive, either. The second possibility is not theoretical, since there is a growing demand, from public opinion, for more effective prosecution of cases of corruption. One may be accused for not having blown the whistle. The remedy can be found when:

B. An Institution Plays the Role of Whistleblower

Instead of worrying about one's personal career, instead of risking manipulation (hints of false information that, even in good faith, the whistleblower takes for granted and reports), instead of feeling isolated when the pros and cons are weighed, the would-be whistleblower could take advantage in reporting their suspicion to an independent institution which will take the responsibility itself of referring it

[15] p. 292 "Ethical Theory and Business" by Tom L. Beauchamp and Norman E. Bowie - Prentice Hall.

or not to the judge or any other public authority appointed by law. In France, such an independent institution exists. It is called the *"Service Central de Prévention de la Corruption"* (SCPC).

VI. THE NEED FOR SPECIFIC AUTHORITIES FOR THE PREVENTION AND REPRESSION OF CORRUPTION: THE FRENCH EXPERIENCE

A. The Genesis of the French Service Central de Prévention de la Corruption

It is not taken for granted that such a need exists. Thus, before emphasizing what the "specific authorities" are or what they should be, I would like to shed some light on the target they must hit, on the process which triggers our analysis. How can such a need be assessed? If I can put it in this way. It may be a controversial issue when the so-called "need" is regarded as a groundless fancy. Therefore, in order to make the most of those specific authorities, we have to answer thought-provoking objections regarding their relevance. One could consider that traditional agencies already provide adequate tools. What is the point in creating new ones? Are they likely to improve efficiency in the absence of any process of trial and error? Won't they be inclined to focus on mere trifles instead of tackling important issues and cases involving "big fish"? And so on and so on: this list of objections is not exhaustive, obviously.

The fact that corruption is a specific problem deserving specific treatment has inspired the creation of the French *Service Central de Prévention de la Corruption*, in charge of coping with:

(i) *The Difficulty of Giving Evidence of Corruption*

Corruption involves secret dealings and it is not easy to point to a clear link between illicit trafficking, for example, and the subsequent profit in money or other benefits. It is difficult to establish a cause-effect relationship. It may be hard to prove the connection between a mere promise and the improvement of "life style" in return for a favor. Corruption has no "victims", in the literal sense of the word, and for this reason, it is rare that an act of corruption will be reported to the competent authorities by a participant in a corruption scheme.

Since the real impact of corruption is to a great extent unclear, there is a dangerous shortcut: in the absence of diagnosis, corrupt practices are either over - or under - estimated, which entails the same inefficiency: nothing can be done, either because the illness does not exist or because the patient does not exist any longer (s/he is dead). We do not share such fatalism.

(ii) *The Complexity and Sophistication of Corrupt Practices*

The more technologically proficient the society, the more the means of control are simultaneously strengthened and weakened. Criminals are skilled in the modern technologies of computers, information systems, databases and financial networks. "White-collar corruption" is highly sophisticated. In addition, there are sensitive sectors, such as international business transactions. In this field, corruption proliferates by manipulating complex rules and regulations, as well as commercial and financial circuits featuring a combination of traditional operators, new companies looking for foreign markets and criminal organizations. Financial circuits and bank networks are put to use by the operators of international trade equally for legal

operations and for operations which are either illegal or carried out by illegal means, among which the payments of various types of commissions and kickbacks.

This example highlights the fact that corruption takes advantage of the intricacy of regulations in order to make illegal processes appear to be legal ones. The involvement of an increasing number of operators and intermediary companies complicates the issue. Corruption goes beyond individual crimes by setting up real networks which plan even the minor details. Nothing is done at random; corruption tends to work as a system. Far from being a mere aggregate of cunning and deceitful people, it operates through channels which cannot be called precarious, quite the contrary.

(iii) *Corruption as an "Upstream" Phenomenon*

With this image, I mean to convey the fact that corruption is not one fraud among others but the privileged instrument, the lever of other frauds. As we have seen previously, it helps structure networks, which can be activated for various fraudulent purposes. It is for this reason that corruption can be so pervasive and, without contradiction, perfectly adequate to the specific aim pursued by dishonest individuals and groups. Corruption in public procurements, for example, or that linked with public health policies (for instance the purchasing of expensive new equipment such as scanners, the introduction on the market of pharmaceutical products) have their own specificities.

Corruption is closely linked with "slush funds" and this vicious circle operates as follows: money used to corrupt generates benefits which can be invested once again in corrupt practices, which, by facilitating the fraud, makes it more profitable and so forth.

These three characteristics make it paramount to go beyond traditional strategies to reduce corruption. The specificity of corruption demands the specificity of authorities in charge of anti-corruption. What are the requirements they must meet?

B. Objectives and Requirements

(i) *The Centralisation of Information*

By nature, the crime of corruption is difficult to establish. Sources of information are scattered and there is not necessarily any communication between the various authorities in possession of such information. Furthermore, in certain cases, there may be difficulty getting access to information. Thus, a system of coordination should be set up between the various services, administrations and other institutions working under the Public Authority, to ensure that all information sources work together to expose criminal acts.

(ii) *A Global Approach Combining Prevention and Repression*

A case by case repressive approach would only favour new and more sophisticated techniques of corruption, with every chance of escaping the vigilance of the Public Authorities, if there is no will to take the problem firmly in hand with priority given to the detection of mechanisms favorable to the proliferation of corruption.

On the other hand, prevention without repression would be neither reliable nor credible. Dissuasive mechanisms or deterrence is the goal to reach in order to make corrupt practices less and less profitable. For example, the ability to decipher the corrupt practices (they are real "codes") and describe them in a public

report is one aspect of deterrence because criminals will have to invent new procedures. It will complicate their "task": they will lose time and meanwhile the mission of inspectors, generally speaking, will be facilitated by knowing what to check and the approach to be taken.

(iii) *Rapidity and Flexibility*

We have to keep up with the evolution and diversification of corrupting phenomena. Few cases are dealt with in the courts, and corruption techniques are always a step ahead of what is known and has been detected. New professions have appeared which modify our schemes. Here I am thinking of lobbying which may be conducive to trading in influence. Resilience and responsiveness should not be the privilege of tricky organizations. A question arises as to whether these aforementioned objectives cannot be met by strengthening traditional departments instead of setting up additional agencies. I think specialization (such as training in supposed "abstruse" financial matters) is an important step but not a sufficient one: independence and a long-range policy are necessary. By independence, I mean that the anti-corruption agency should be at the disposal of other authorities but also able to check into possible irregularities. Autonomy is indispensable to aid in the carrying out of legal action and of administrative missions, the combination of both aspects being indispensable. In the event of any threat of corruption, the organism can alert Public Authorities and point to loopholes in various regulations.

By a long-term policy, I mean the ability to identify vulnerable sectors and to anticipate trends rather than deal only with cases. The "anti-corruption fight" is a "full time job" requiring a staff devoted to this specific mission. Being adamant by not tolerating corruption is not sufficient if we do not go beyond rhetoric. Watchdog committees created to answer a particular problem cannot cope with the complex issue of corruption, which is closely connected with other crimes: for example, in France, what we call *"abus de biens sociaux"* (misappropriation of corporate funds). A long-range policy involves a "template" (what are our aims and how are they to be achieved?), tactic combining legal approaches and deep insights into economical mechanisms and, lastly, a kind of "participative management" to make all feel committed.

There are many biases which can hinder an anti-corruption strategy: a corporation, for example, is willing to use any means, no matter how devious, to secure a contract. Such a "goal-oriented" attitude, in contrast with a "moral principle-oriented" philosophy, has its ethical justification: the corporation will indeed explain that the contract is vital for its future otherwise the threat of unemployment looms large-cheating becomes a virtue.

So, we have to take such "twisted statements" into account in order to demonstrate that they undermine the whole economy. A specific authority can avoid the risk of oversimplification by pointing to the social cost of corruption which jeopardizes equality among citizens. Thus, awareness of the problem must be increased. "Specific authorities" are not operational if they cannot persuade everybody to cooperate, not only public officials, but also corporations, foreign partners and, above all, citizens. Cooperation means the monitoring and disclosure of devious procedures and deeds. It has nothing to do with "denunciation" intended as slander and in which few are willing to participate.

The *Service Central de Prévention de la Corruption* strives to meet the above-listed requirements. It is an inter-ministerial

administrative agency, created by Law No. 93-122 of the 29th of January, 1993, concerning the prevention of corruption and transparency in economic affairs and public procedures. Its overall mission is defined in Article I, Paragraph I of the law in these terms: *"the centralisation of all information necessary for the detection and prevention of active and passive acts of corruption, for any abuse of influence by persons exercising an official function or by individuals, the misappropriation of public funds, illegal meddling or disrespect of regulations aimed at protecting the freedom and equality of candidates for public procurements"*.

The creation of such an agency was suggested by a Commission for the Prevention of Corruption presided over by a former Attorney General, in a report to the Prime Minister in December, 1992. Set up by the Minister of Justice on March 9th, 1993, the Agency began to function in October, 1993. Headed by a high-ranking magistrate, a former Attorney General, the *Service Central de Prévention de la Corruption* is run by civil servants (one magistrate from the *ordre administratif*, a member of the *corps préfectoral*, a chief of police, a chief customs inspector, a tax inspector, a head of the *Service départemental de la D.G.C.C.R.F.*, and a head of the administrative service at the Ministry of Public Works and a representative of the Ministry of Defence.

This type of organisation is evidence of the inter-ministerial nature of the agency which guarantees its efficiency. Its simple and straightforward structure reflects the desire to create a team of highly specialised experts. As explained in the preamble to the Law of January 29, 1993, the *Service Central de Prévention de la Corruption*, was created to ensure more efficient detection of acts of corruption by means of a systematic processing of centralized information, towards the aim of greater efficiency in the prevention and repression of corruption.

How is a problem brought to our attention? We may focus on highly sensitive sectors (public procurements, international business transactions, public health policy, zoning regulations, financing of sects, merchandising, professional education and training). We can be requested to check the vulnerability of an activity or an institution. We can also examine mere suspicions of corruption and then, if the issue goes beyond suspicion, we refer the case to the tribunal. Ours is a preventive agency, which we could refer to as having a "whistleblowing" function. We work before the case may or may not get to the judge and our aim is to be ahead of the game, and to point out loopholes to the responsible authorities so that they can act before illegal actions are committed.

C. Our Method and Main Achievements

1. A Multidisciplinary Method Combining Audit Techniques and a Legal Approach

"Turning raw information and data into actionable intelligence is fast becoming the most critical management tool".[16] Raw information about suspicion of corruption is almost useless: it has to be analyzed and filtered to be "eye-opening". Raw information is a juxtaposition of unrelated opinions with no contextual link. It has no signalling value and cannot be used as a warning indicator. The *Service Central de Prévention de la Corruption* does not boast a large amount of raw information because it is not a mere "information collector", so to speak. This agency strives to promote the gathering of relevant and accurate information. For example, falsifying inventories to cover thefts or delinquencies,

[16] "Competitive Intelligence" by Larry Kahaner, Simon and Schuster edition, p.15.

or altering dates on deposit slips to cover stealing and, generally speaking, petty falsifications and tampering, when discovered by investigative authorities, should sometimes be related to an overall context of slush funds intended for the purpose of bribing public officials. Instead of condemning a "bunch of crooks", a few corrupt individuals, a network could be disclosed, involving public officials, either appointed or elected. Since corruption is the art of camouflage, one should not be satisfied when pointing at various frauds without revealing the corrupt link existing between them. Relevant information reveals unsuspected connections.

This expertise regarding the standards of the information needed, the sources of that information and the ways to obtain it has enabled us to carry out a time-and-cost saving activity of assistance:

(i) *Assistance in Detecting Cases of Corruption*

By giving investigators auditing documents that we have elaborated on various sectors (public procurements, for example), we help them to keep up with the pace of "speedy money" or, at least, retrace it.

(ii) *Assistance in Anticipating the Risks of Corruption*

At its peak, corruption may be defined by four criteria:

1. A mixture of public and private financing, favoring the opacity of the transactions and the abuse of discretionary power;
2. Dissemination of controls because the activity involves so many regulations in various disciplines and areas that it is almost impossible to encompass the whole process;
3. The alleged respectability of the sector, prohibiting scrutiny of its methods. Whatever attempt at shedding light on them is stigmatised as an unacceptable interference;
4. Tacit complicity, or at least unquestionable agreement, of all the actors involved (in order to avoid the disclosure of irregularities), because they are sources of profit and of protracting advantages.

Those four features remind us that strict legislation is of no use when it is weakly implemented. This problem of enforcement and implementation is brought to our attention because we have various interlocutors, thanks to:

2. <u>The Broad Accessibility which Characterizes our Agency</u>

Public and private entities, mayors, public authorities and administrations, private persons, auditing bodies, investigative bodies, etc, can request advice, expertise on suspicion of corruption, assessment on codes of ethics, spotlighting of weaknesses conducive to slush funds, and so forth. Fundamental debates about the financing of political parties or the tightening limitation of prosecution of cases of corruption due to time-bar: our agency has been invited to articulate its analysis. For example, the offence of "misappropriation of corporate funds" is often used, as we mentioned above, in place of "corruption" to indirectly prosecute corrupt behaviours. This situation is not satisfactory because the blame is put mainly on the bribe-giver, whereas the bribe-taker is no less responsible. The SCPC does not, obviously, favour red tape but insists on the necessary optimization of controls.

It is difficult to measure a hidden phenomenon such as corruption; it is all the more difficult to assess the impact of prevention. Nonetheless, the relevant question is not "how many cases of

corruption have been deterred? ", but "to what extent are detection and deterrence facilitated?". The SCPC is not an overseer but a facilitator. It makes a point by showing that preventive methods work, that they do not necessitate either large budgets or excessive administrative effort. The fact that the SCPC is in charge of prevention makes would-be whistleblowers more willing to report; the repressive function of an agency bearing a connotation of threat for the reporter, for fear of getting involved to a certain extent.

The creation of specific authorities for the prevention and repression of corruption is advocated by international institutions. The Council of Europe, for instance, recommends "*to promote the specialisation of persons or bodies in charge of fighting corruption and to provide them with appropriate means and training to perform their tasks*".[17]

The SCPC takes part in the international negotiations about corruption issues.

VII. THE EXPERT GROUP MEETING ON CORRUPTION AND ITS FINANCIAL CHANNELS (PARIS, 30 MARCH TO 1 APRIL 1999)

A. The Context of This Meeting

This meeting was held in Paris, inspired by a French proposal presented at the 7th session of the United Nations Crime Prevention and Criminal Justice Division, followed by a resolution of the Economic and Social Council (July 28, 1998). The aim of these United Nations initiatives is to "*urge States to develop and implement anti-corruption measures, to increase their capacity to prevent and adequately control corrupt practices, and to improve international cooperation in this field. The Council also requested the Secretary-General, inter alia, to review and expand the manual on practical measures against corruption; to coordinate and cooperate with other United Nations entities and relevant international organizations in anti-corruption efforts; and to keep the issue of action against corruption under regular review.*"

Key-terms can be emphasized: "implement", "to increase their capacity", "prevent and adequately control", "manual on practical measures", "to coordinate and cooperate", "under regular review". There is, actually, a will to achieve feasibility and practical impact and to elaborate a compendium of anti-corruption provisions enabling the authorities to:

- review the adequacy of their [the Member States] criminal laws, including procedural legislation, in order to respond to all forms of corruption and related actions designed to assist or to facilitate corrupt activities, and should have recourse to sanctions that will ensure adequate deterrence;
- devise administrative and regulatory mechanisms for the prevention of corrupt practices or the abuse of power;
- adopt procedures for the detection, investigation and conviction of corrupt officials;
- create legal provisions for the forfeiture of funds and property from corrupt practices;
- adopt economic sanctions against enterprises involved in corruption.[18]

This idea of a compendium stems from concern for coherence and consistency,

[17] In 20 Guiding Principles For The Fight Against Corruption.

[18] The items are quoted from the introduction of the Manual on Practical Measures against Corruption.

required by a systematic approach to the issue of corruption. The purpose of the Manual is to review the most common problems encountered by policy makers and practitioners in their efforts to deal with corruption. The adaptability of this Manual to each domestic context and legislation is a priority. Thus, the process of review is coupled with a process of revision of the Manual itself, in order to take into account the evolution of the international instruments devised in the various *fora*.

In order to distinguish between what has been done and what remains to be done, a sustained effort is required, aiming at coordination and cooperation ("*the phenomenon of corruption has become transnational in nature as a result of increasing globalization and liberalization of trade. It is no longer possible to deal with it effectively only through national action. The international community is in urgent need of a common basis for cooperation that would promote the values of good governance and would insure that development and growth are not impeded by corrupt practices.*").

B. "A Common Basis for Cooperation" and a Significant Step Forward

Since corruption is an abuse of power to gain undue advantages (on the behalf of the bribe-giver) and to achieve personal enrichment (on the behalf of the bribe-taker), the core of the matter is the crucial role played by financial channels. Let us imagine an absurd scenario depriving the bribe-taker of the possibility to profit from their pecuniary advantages. Bribery would become much less attractive. This picture is not unrealistic thanks to the tracks explored by the Expert Group Meeting on Corruption and its Financial Channels, with a view to strengthening, or at least, favoring:

(i) provisions against money - laundering, so that they cover bribes and the proceeds of corruption: if the proceeds of corruption were seized ("forfeiture of the assets of corruption"), there would be less of a guarantee of personal enrichment...;
(ii) vigilance and monitoring of financial transactions: banks could play the role of "whistleblowers" when faced with suspicious transactions;
(iii) ways to convince underregulated financial centres to adopt rules enabling them to trace and take action against the proceeds of organized crime.

The off-shore places can be characterized mainly thanks to the following criteria:

- prevailing banking secrecy;
- lack of regulations and control;
- large possibilities of setting up shell-companies which conceal the identity of the real beneficiary of the transactions;
- restrictive rules of international cooperation in the administrative and judicial areas.

The impact of such places cannot be ignored; they play a prominent role. Experts consider that almost half of the amount of the international money volume uses the channels they offer. They are very often the indispensable instrument of corrupt agreements. This is why the problem of corruption has to be tackled from at least three angles:

- the supply side (the OECD Convention, for example, illustrates this approach);
- the demand side (the ethical code for public officials aims at preventing misdeeds);
- the financial channels (whose role must be highlighted and scrutinized).

The detection of criminal financial transactions, the improvement of the procedures to retrace the proceeds of corruption suppose that the problem of financial channels receive due consideration by underlining the necessity of:

1. Cooperation
   - 42 countries and 12 international organisations were represented in Paris at the Expert Group Meeting;
   - The initiatives of the United Nations, OECD, European Union, Council of Europe, and the commitment of G8, International Monetary Fund, World Bank...give impetus to an irreversible synergy which makes, by contrast, the position of the off-shore places groundless (if I can put it in this way with no pun intended);
   - Since the problem of financial channels is identified as a priority, the urge for transnational cooperation is emphasized. If money crosses domestic boundaries, the international response to the problem has to be coordinated;
   - The strengthening of cooperation requires that the same coordination be a reality when involving various domestic administrative departments such as the police, justice and tax offices.

2. Responsibility
   - A sustained commitment can no longer be delayed because political authorities are aware of the threat represented by corrupt money, using those financial channels which are likely to endanger the whole financial system;
   - The need for a clear position is all the more important because, for example, Pablo ESCOBAR placed, a few years ago, a very large amount of money in a single non-nominative bank account in a country belonging to the European Union;
   - The commitment of the United States was made clear on the occasion of an international conference organised by the Department of State (from 24 to 26 February 1999);
   - The awareness that corruption fosters insecurity at all levels and that monitoring and procedures of declarations of suspicion - if they fail to be put into practice - will entail the necessity of devising protective systems.

An "international economic order" is taking shape, which allows us to contemplate the possibility of forbidding (partially or totally) financial transactions when it is obvious that too many loopholes exist. The struggle against transnational organised crime and the fight against corruption bolster each other by a global strategy of deterrence. Such a strategy can be effective thanks to:

(i) *Cross-Fertilization*
The exchange of best practices between various countries and various administrative departments to expand the scope of deterrence by showing that those procedures work.

(ii) *Training and Assistance*
"*Multidisciplinary training and educational programmes can be developed at the international, regional or sub-regional levels, in order to pool expertise and resources that are often inadequate at the national level.*" Since the anti-corruption commitment has become a landmark for judicial security, endangered by corrupt practices, technical and financial assistance can be provided according to this criteria (taking into account the effectiveness of the effort and initiatives

undertaken).

The path becomes more and more obvious, pursuing "*the ongoing development of a comprehensive international convention against transnational organized crime*". It is highly relevant that the UN Commission on Crime Prevention and Criminal Justice "*takes note with appreciation of and subscribes to the conclusions and recommendations of the Expert Group Meeting on Corruption and its Financial Channels, held in Paris from 30 March to 1 April 1999, which are contained in the report of the Expert Group Meeting*". This official reference enhances the impact of the conclusions of the Experts Group Meeting, and allows a specialized corpus of coherent rules to achieve completion and coherence.

VIII. CONCLUSION

Corruption has been identified by the international community as a serious issue deserving full attention. This is an important step which should not be interpreted naïvely. "Naïvely" would consist of welcoming a "new era" where corrupt behaviors would be progressively banned. This utopian conception is contrasted by the sarcastic comments according to which corruption has been brought to the international agenda, simply because it has reached such proportions that nobody can afford any longer to spend a huge amount of money. Anyhow, whatever the motivations, one cannot deny that the interest in the issue is momentous, and is far from being transient. It is difficult to imagine that the body of rules taking shape presently might be wiped out in the future. Its implementation is at stake, supposing macro-economic initiatives (at a global and international level) and micro-economic vigilance, monitoring and whistleblowing.