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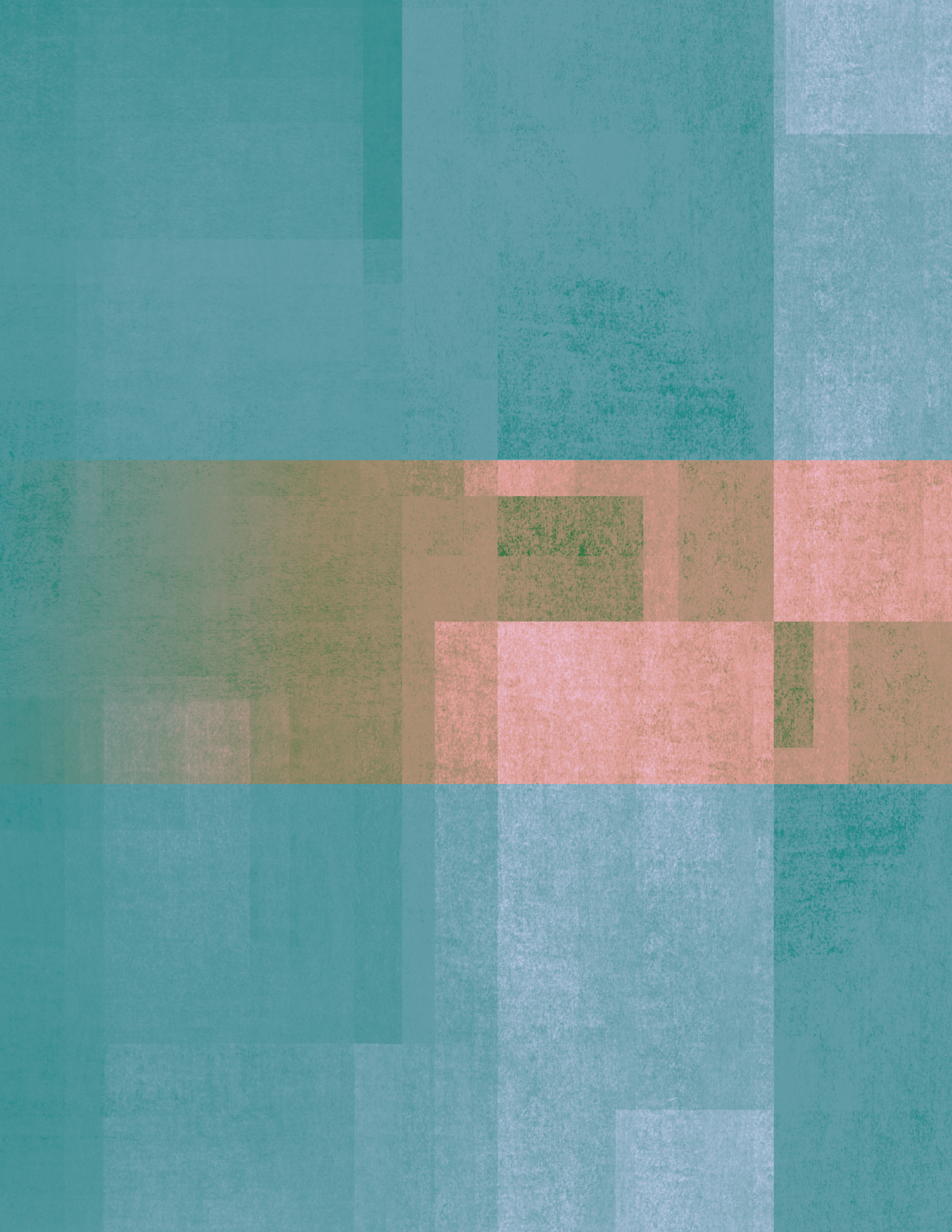
APRIL 28-29, 2022
VIENNA, AUSTRIA

Symposium on **SUPRANATIONAL RESPONSES TO CORRUPTION**

KNOWLEDGE REPORT

 Federal Ministry
Republic of Austria
European and International
Affairs





Contents

Background	iii
SESSION 1: Supranational Responses to Corruption (Introductory panel)	1
SESSION 2: Lessons Learned from Regional Anti-Corruption Initiatives	5
SESSION 3: International Anti-Corruption Investigations	13
SESSION 4: Transnational Legal Responses to Grand Corruption	19
SESSION 5: Corruption and International Investment Arbitration	29
SESSION 6: The Non-Government Sector's Role in Supranational Anti-Corruption Efforts	37
Lessons Learned and Way Forward	47

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Background

The Symposium on Supranational Responses to Corruption was co-organized by the World Bank's Office of Suspension and Debarment, the Anti-Corruption Law Interest Group of the American Society for International Law, and the Organization for Economic Cooperation and Development's Anti-Corruption Division. The partner organizations were the World Economic Forum—Partnering Against Corruption Initiative, the International Anti-Corruption Academy, and the Austrian Federal Ministry for European and International Affairs. The event was hosted at the Organization of Petroleum Exporting Countries Fund for International Development in Vienna, on April 28–29, 2022.

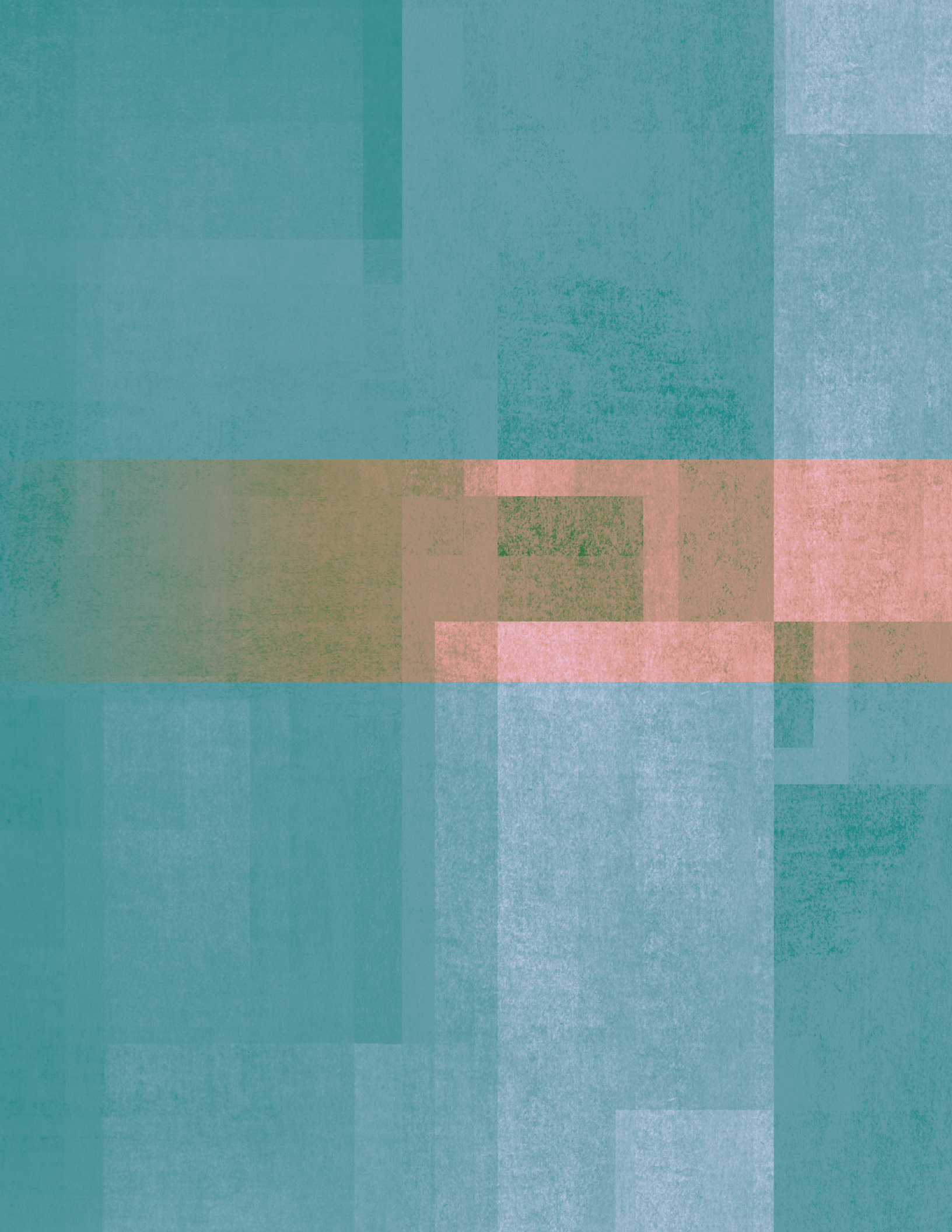
The main objective of the Symposium was to reflect on current and prospective anti-corruption efforts that transcend national boundaries or governments. While states play a fundamental role in shaping and enforcing anti-corruption frameworks, the international community has stepped in to develop anti-corruption mechanisms, including, supranational ones. These supranational initiatives, however, have grown separately in an uncoordinated fashion. The organizations that have embarked on such efforts are not fully aware of each other's specific objectives, capabilities, or information sets, which reduces the potential multiplier effect that joint learning, coordination, or collaboration can achieve in the fight against

corruption. The Symposium took stock of the current supranational anti-corruption mechanisms and standards, assessed how to facilitate a multilateral understanding of these efforts, and discussed whether, to what extent, and how supranational anti-corruption responses can work toward creating a regional and/or transnational anti-corruption ecosystem.

The co-organizers issued a [call for papers](#) in April 2021, inviting papers and essays addressing three general themes:

1. Efforts that can transcend national boundaries or governments structures when it comes to generating and operationalizing anti-corruption policies and measures.
2. Efforts to establish regional/global investigative, prosecutorial, and adjudicatory institutions.
3. Initiatives to enhance collaboration and coordination among actors undertaking anti-corruption efforts.

The co-organizers invited contributions from scholars, private sector professionals, international organizations professionals, policymakers, public officials, civil society organizations, and the broader international anti-corruption community. In response, 108 proposals were received. The selected papers and essays formed the basis for the Symposium's agenda, organized around six sessions.





SESSION 1

Supranational Responses to Corruption

(Introductory panel)

- **Amb. Helmut Tichy**—Director General for Legal Affairs, Austrian Federal Ministry for European and International Affairs
- **Violet Onyemenam**—General Counsel, OPEC Fund for International Development (OPEC Fund)
- **Jamieson Smith**—Chief Suspension and Debarment Officer, World Bank
- **Patrick Moulette**—Head, Anti-Corruption Division, Organization for Economic Co-Operation Development (OECD)
- **Alina Dumitrascu**—Head, Legal and Corporate Affairs, Enel Romania
- **Thomas Seltzer**—Dean, International Anti-Corruption Academy (IACA)
- **Chair: Alexandra Manea**—Counsel, Office of Suspension and Debarment, World Bank

Addressing the Symposium's theme, **Ms. Manea** reflected that over the past decades, in response to evidence of some states' inability to effectively counter cross-border corruption, the international community has stepped in to develop anti-corruption mechanisms, including, "supranational" ones. A few examples include the sanctions systems of certain multilateral development banks, which protect their funds by blacklisting corrupt contractors; the European Public Prosecutor Office, which prosecutes corruption offenses affecting European Union (EU) funds; the exclusion mechanism of Norway's sovereign wealth fund, the largest sovereign fund in the world, which may divest from companies that engaged in corruption. Turning to the private sector, examples include multinational corporations that have implemented robust integrity compliance programs across their affiliates at national levels. Ms. Manea emphasized that a distinctive feature of these mechanisms is that they are able to act against corruption in contexts or situations where a state is unable, or unwilling to actively counter corruption. In other words, their effectiveness does not depend on the immediate actions or inactions of a specific state, therefore they may be

seen as "supranational." An additional advantage of supranational anti-corruption mechanisms may be that they tend to be disconnected from the local entrenched corrupt interests which often are the main obstacle to effective anti-corruption reform at the national levels. Ms. Manea invited the participants to take stock of such supranational mechanisms, to facilitate a multilateral understanding of these effort, and to think together about new opportunities for supranational remedies against corruption.

Ambassador Tichy reflected on Austria's anti-corruption efforts and its role in the global context. Highlighting the negative consequences of corruption, he noted that the money stolen through corruption every year is enough to feed the world's hungry 80 times over.¹ Underscoring the international efforts on corruption and linkages to Austria, he highlighted the United Nations General Assembly Special Session on Corruption from June 2021 that affirmed and strengthened the role of the UNODC and the UN Convention Against Corruption's Implementation Review Mechanism. The second cycle of this Review Mechanism, which involves a virtual country

visit, underlies the usefulness of an in-depth analysis of the Convention's implementation in Austria. Amb. Tichy also underscored that prevention is better than a cure. As such, efforts relating to building a culture of integrity and teaching ethical decision-making is vital. To facilitate such culture in Austria, Austria teamed up with other partners to establish the International Anti-Corruption Academy (IACA). This has evolved to become one of the major institutions worldwide to provide anti-corruption training and education. Nonetheless, Amb. Tichy acknowledged that there is still more to be done. As corruption knows no borders, international cooperation is essential. He emphasized two examples of multilateral efforts, (i) The [Global Operational Network of Anti-Corruption Law Enforcement Authorities](#) under UNODC and (ii) the use of targeted sanctions. The use of targeted sanctions particularly can be expected to be more frequently used to combat corruption. Within the EU, at the supranational level, this issue has been extensively discussed and it is now expected that restrictive measures will be implemented against individuals involved in certain cases of corruption.

Turning to the role of multilateral development banks (MDBs), **Ms. Onyemenam** underscored the necessity of combatting corruption for such institutions. Corruption has a disproportionate impact on the poorest and most vulnerable populations worldwide, increasing costs and reducing access to essential services including health, education, and social programs. As such, it directly hinders the MDBs' joint development goals and undoes the expected benefits of development projects. She highlighted the unique role MDBs have in combating corruption in three ways: as policy enablers, as government standard setters, and as private sector drivers.

Firstly, MDBs support institution and capacity building through grants and knowledge sharing events. Secondly, MDBs can leverage their role as financiers of development projects to mandate the highest anti-corruption standards for loan recip-

A distinctive feature of supranational anti-corruption mechanisms is that they are able to act against corruption in contexts or situations where a state is unable, including unwilling, to actively counter corruption.

ients to serve as benchmarks for national procurement regulations or government procurement infrastructure. Thirdly, MDBs can mandate private sector actors to build their own corporate anti-corruption programs, applying to operations even beyond the development sector. For example, the MDBs Cross-Debarment Agreement² serves as an incentive with a clear multiplier effect. As a development finance institution, the [OPEC Fund](#) is intent about preventing corruption across its operations. With strong policy frameworks, it sets a zero-tolerance policy throughout project implementation and plays an active role in strengthening the capacity of all project-executing agencies to act with integrity.

Further on the role of MDBs, **Mr. Smith** spoke about the World Bank Group's (WBG) pioneering anti-corruption efforts, highlighting that the WBG has one of the oldest supranational mechanisms designed to combat corruption. In 1995, WBG President James Wolfensohn recognized corruption as a serious obstacle to the WBG's ability to ensure its development projects were successful, thus triggering further research and actions to combat corruption as a socio-economic problem. Two years later, the WBG formally approved an institutional anti-corruption strategy that included two mandates: (1) the prevention of corruption in WBG-financed projects and (2) the active support for international anti-corruption efforts. To prevent corruption in WBG projects, the institution immediately established the Anti-corruption and Fraud Investigation Unit, which, over time, developed into what is now a robust anti-corruption [sanctions system](#). The sanctions system works to protect the WBG's funds by ensuring that allegations of fraud and corruption arising from projects are thoroughly investigated, fairly reviewed and effectively resolved. When evidence of misconduct is found, the WBG acts decisively to sanction the offending parties, generally by removing them from the pool of eligible contractors. Moreover, the system also promotes the rehabilitation of these sanctioned companies by supporting them to adopt integrity compliance programs.

Significantly, the sanctions system has several important features, such as its independence and transparency, but an outstanding one is its supranational character: this means that the WBG can investigate and sanction a company or individual that engaged in corruption anywhere in its 189 member countries, regardless of the company's/individual's nationality or the jurisdiction where the misconduct occurred and, importantly, irrespective of a national authority's support or lack thereof. For example, in 2021, WBG investigators received about 4,300 complaints, opened 350 preliminary investigations, and started 40 new investigations. The WBG's decision-making bodies sanctioned over 57 entities, mostly by debarring them and requiring them to complete robust

integrity compliance programs as they work their way off the debarment list.

Importantly, the sanctions system is more than a process specific to the WBG. By 2010, other key development finance institutions—the Asian Development Bank, the European Bank for Reconstruction and Development, the Inter-American Development Bank and the African Development Bank—had also established similar mechanisms and agreed to debar any entity on a fellow MDB's list. This process of 'cross-debarment'³ was a breakthrough, increasing the impact of the MDBs' sanctions and contributed significantly to lowering the integrity risks in projects funded by these five MDBs across the world. Moreover, other MDBs are now voluntarily recognizing and using the cross-debarment list. The cross-debarment agreement remains a valuable example of the tools we can create and deploy when learning from, and collaborating with, other stakeholders.

As a knowledge institution, the WBG recognizes the value and benefits of producing and sharing knowledge. So, in parallel with activities in the area of sanctions, the WBG also seeks to actively support international anti-corruption efforts. Those efforts include events like this symposium, where the WBG invites leading practitioners and academics in the field to come together and think about how to catalyze progress in the fight against corruption. Through events such as this, the WBG hopes to encourage the establishment of improved or new supranational initiatives that consider the evolving nature and scope of international law and institutions.

Broadening the perspective to the role of public international organizations (IOs), **Mr. Moulette** outlined the role of IOs in anti-corruption efforts. Mr. Moulette discussed the role played by the **OECD** in combatting corruption by highlighting the **OECD's Convention Against Bribery**,⁴ which was adopted in 1997 and entered into force in 1999. He then explored the origins of IOs' efforts on anti-corruption. Thus, he illustrated the development in the mid-1990s, marked by anti-corruption conventions led by major IOs including the OECD, UN, Council of Europe, and more. He touched upon a crucial element of corruption: its changing nature. As such, the trends and evolutions of corruption must be monitored, and lessons drawn

upon. To keep the standards relevant, the OECD implemented a robust mechanism to examine the implementation of the Convention Against Bribery, called the OECD Working Group on Bribery.⁵ Mr. Moulette emphasized that this mechanism was instituted in order to encourage progress of the parties to the Convention. He further acknowledged that elements of the convention could now stand to be updated. Mr. Moulette concluded that other IOs should also be involved in this process, alongside external practitioners and academics and that the Symposium may be a good opportunity to advance discussions on this front.

Ms. Dumitrascu brought the perspective of the private sector in combatting corruption. Firstly, Ms. Dumitrascu highlighted how Enel itself has a supranational character: it is present in 40 countries and is one of the largest renewable energy private players. As such, being connected to millions of users and clients, a mechanism was necessary to fight corruption. Enel has developed an internal control and risk management system, underpinned by a dynamic system of rules that adhere to the best practices. Ms. Dumitrascu explained that the system goes beyond a mere compliance system, but also focuses deeply on education. Enel engages not only in anti-corruption courses and awareness programmes for internal workers, but also for external staff outside of Enel's borders. For example, all suppliers must complete Enel's training courses and adhere to integrity and compliance clauses. Regarding those companies that partner with Enel, there are other safeguards in place, such as a security hub platform within all 40 countries where partners may be checked before any kind of engagement.

Building on previous remarks, **Mr. Seltzer** spoke about how integrity education is vital in combatting corruption. He highlighted that the G20 recently mainstreamed the important role of technical assistance for education. Mr. Seltzer explained **IACA's** role in enhancing anti-corruption efforts, facilitating anti-corruption research, and implementing of teaching and learning programs. He underscored the importance of fostering a culture of integrity within societies. Mr. Seltzer called for more investment in anti-corruption education to build a fit-for-purpose workforce, as this serves as an important element of integrity frameworks.

NOTES

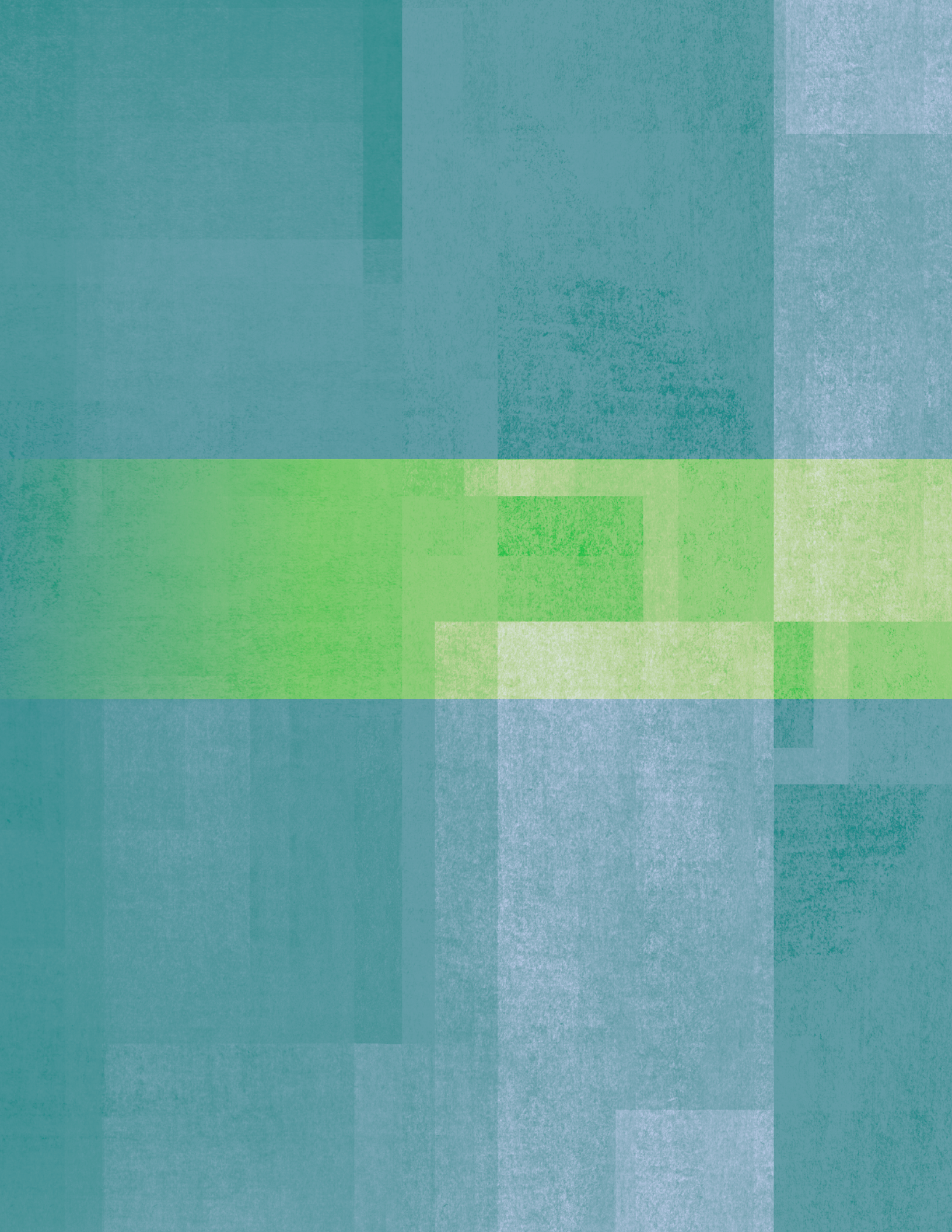
1. Navi Pillay was the UN High Commissioner for Human Rights from 2008–2014. See here the full statement.

2. The **Agreement on Mutual Enforcement of Debarment Decisions (the "Cross-Debarment Agreement")** is an agreement among the African Development Bank Group, Asian Development Bank, European Bank for Reconstruction and Development, Inter-American Development Bank, and the World Bank Group in 2010. The agreement stipulates that entities debarred by one MDB for longer than one year will be sanctioned for the same conduct by the other signatories.

3. See footnote 2.

4. OECD, **Convention on Combating Bribery of Foreign Public Officials in International Business Transactions**, Dec. 18, 1997.

5. See the **OECD Working Group on Bribery in International Business Transactions**.





SESSION 2

Lessons Learned from Regional Anti-Corruption Initiatives

- **Dr. Andi Hoxhaj**, University of Warwick, School of Law. *The History of the EU Anti-Corruption Law and Policy (paper)*
- **Danielle Goudriaan**, European Prosecutor, European Public Prosecutor Office (EPPO) & Chair of the OECD Working Group on Bribery (presentation)
- **Dr. José Ignacio Hernández**, Professor, Catholic University Andrés Bello, Venezuela. *Balances and Challenges of the Inter-American Convention Against Corruption (paper)*
- **Gillian Dell**, Head of the Conventions Unit, Transparency. *International Efforts to Establish Regional/Global Investigative, Prosecutorial, and Adjudicatory Anti-Corruption Institutions (paper)*
- **Discussant: Shervin Majlessi**, Chief of Section, Corruption and Economic Crime Branch, United Nations Office for Drugs and Crime (UNODC)

Opening the floor, Mr. Majlessi noted that it was timely to think about supranational responses to corruption in a more systemic matter. Despite some perspectives that characterize this topic as a new one, steps have been made on this issue for several decades. Previous examples included the UN's Oil-for-Food investigation that resulted in hundreds of domestic investigations across the globe in different countries, and the Afghanistan Independent Joint Anti-Corruption Monitoring and Evaluation Committee—each of these can be considered supranational responses.

Gillian Dell: Efforts to establish regional/global investigative, prosecutorial, and adjudicatory anti-corruption institutions (paper)

Ms. Dell underscored that currently there is no common legal definition of grand corruption across jurisdictions. She advo-

cated for states to agree on a legal definition of grand corruption, which would serve as a jurisdictional basis for special national measures and as a basis for supranational bodies that could handle or assist in handling cases of grand corruption. She further underscored several obstacles to addressing impunity for those who engage in grand corruption. These range from weaknesses in legal frameworks to operational hindrances including lack of resources, capacity, and independence. It also includes barriers against cross-barrier cooperation such as poor mutual legal assistance frameworks. Another crucial challenge is the lack of political will, which contributes to the other existing issues. In the 2021 UN General Assembly Special Session (UNGASS) Against Corruption, Transparency International advocated for the following special procedures to help combat grand corruption:

- special national features, including extraterritorial or universal jurisdiction,

- unlimited statute of limitation,
- minimal immunities for perpetrators,
- assuring standing for victims, and
- special arrangements for stolen assets.

Ms. Dell noted that by implementing supranational approaches, anti-corruption investigations and their outcomes can be improved. This helps the relevant anti-corruption bodies from being reliant on national systems, where cross-border corruption sometimes falls through the cracks as influential actors affect outcomes. Supranational responses can help establish multi-country agreements, provide resources and expertise, and provide assistance in ensuring justice. Several models have been proposed, including joint investigations, which enable exchange of information and can help overcome resource and other operational challenges as well challenges relating to divergent legal frameworks and institutions. The UNODC has identified three categories of joint investigations: joint parallel investigations, joint investigation teams, and joint investigation bodies.⁶ Ms. Dell brought attention to some of the lesser-known provisions within UNCAC, provided for under both UNCAC Article 49 and the United Nations Treaty against Organized Crime (UNTOC) Article 19, which call on parties to consider concluding bilateral and multilateral agreements to establish joint investigative bodies for matters that are the subject of investigations or judicial proceedings in more than one state. UNCAC requires states to consider not only multilateral agreements but also joint investigative bodies. These would be more permanent than joint investigation teams and more suitable for certain types of crime, including corruption offenses.

Further, Ms. Dell highlighted five categories of examples of supranational structures for investigation and prosecution:

1. Permanent supranational bodies. Ms. Dell noted that the greatest advances in supranational investigation and prosecution structures can be found in Europe, where there is momentum from institutions promoting common enforcement objectives. Examples include the [EU Agency for Criminal Justice Cooperation](#) (Eurojust) and the [International Anti-Corruption Coordination Centre](#) established in 2017. They both play coordination roles with respect to the investigation and prosecution of transnational crime. Moreover, [INTERPOL](#) has indicated with recent activity that it is increasing activity within its financial crimes unit.⁷ Ms. Dell noted the possibility of this being mimicked in other regions. In fact, West African countries have taken a step in that direction. In October 2005, the Economic Community of West African States (ECOWAS) Heads of State and Government adopted a Protocol establishing a

An additional advantage of supranational anti-corruption mechanisms may be that they tend to be disconnected from the local entrenched corrupt interests which often are the main obstacle to effective anti-corruption reform at the national levels.

Criminal Intelligence and Investigations Bureau; however, it has not been ratified by the requisite number of states and there is little public information available about it.

- 2. Permanent authorities to pass investigations to national authorities.** Examples include the [European Anti-Fraud Office](#) (or OLAF), which investigates fraud against the EU budget, as well as corruption and serious misconduct within European institutions, and develops anti-fraud policy for the European Commission. These types of bodies are especially useful when states are willing and able to follow up. However, as political will remains a large issue in many states, this is simply not suitable in all instances.
- 3. Permanent bodies that prosecute in national courts.** The most prominent example is the [European Public Prosecutor Office](#) (EPPO). The EPPO is relatively unique with a specific narrow remit, permanent staff, and delegated staff from participating countries. It is responsible for investigating, prosecuting, and bringing to judgment crimes against the financial interests of the EU, including fraud, money laundering, and corruption. At the operational level, it consists of a Permanent Chambers of three European prosecutors, and European delegated prosecutors from the 22 participating member states. The European prosecutors supervise and direct investigations and prosecutions and the delegated prosecutors are responsible for the actual investigation and prosecution of cases in the relevant national courts.
- 4. Temporary supranational bodies to conduct investigations and possibly exercise universal jurisdiction.** These engage with investigative work, supporting domestic institutions including public prosecutors. In grand corruption cases, universal jurisdiction should be an option in line with UNCAC Article 42(6), which allows for such jurisdiction, particularly in serious cases where jurisdictional gaps would lead to impunity. In particularly egregious

cases, there could be provision for establishing international courts within national court systems, such as in the Extraordinary African Chambers in the Senegal court system regarding former Chadian dictator Hissene Habre and the Extraordinary Chambers in the Courts of Cambodia. In Cambodia, the chambers was created with the support of the UN to prosecute human rights crimes. In Senegal it was created to bring Habre to justice. Notably, these chambers were financed by international donors and did not have a statute of limitations.

5. Specialized internal courts and hybrid courts. As an example, Ms. Dell mentioned the International Criminal Court and the proposal of regional or subregional courts in ECOWAS and Caribbean, or the Extraordinary Chambers in the Courts of Cambodia. Moreover, Ms. Dell mentioned the proposal for an International Anti-Corruption Court.

Dr. José Ignacio Hernández: Balances and challenges of the Inter-American Convention Against Corruption (paper)

Dr. Hernández's paper and presentation focused on supranational anti-corruption policies in Latin America. Dr. Hernández illustrated not only the need for policies on the supranational level, but the need for symbiosis between policies on the national and corporate levels. He pinpointed one of the main problems in any supranational initiative is the lack of political will. However, he noted an additional problem in Latin America: the defense of non-intervention. As such, up until the 1990's corruption was widely felt to be a matter of the exclusive responsibility of the sovereign. The *Belm Do Par Declaration* in 1994 marked a turning point in Latin America: it highlighted that corruption must be met with international responses. It marked the first time Latin American countries acknowledged that corruption could not merely be addressed within domestic institutions. The following Inter-American Convention Against Corruption (IACAC) was the first treaty to address corruption. The IACAC was not developed exclusively to tackle transnational corruption but also to promote the convergence of the domestic legal framework to fight national corruption. The initial experience with the IACAC demonstrated one of the limitations of transnational anti-corruption systems: the lack of international enforcement mechanisms. For that purpose, in 2001 the member states created the follow-up Mechanism for the Implementation of the Inter-American Convention against Corruption (MESICIC). The MESICIC promotes the cooperation, coordination, and convergence of anti-corruption policies. It was designed as a network in which the party states cooperate and collaborate to advance the implementation of the IACAC and favors convergence of

domestic anti-corruption frameworks. The MESICIC expert committee, state-party committee, and experts participate in a technical analysis of the standard, which constitutes a peer-review mechanism. Since its creation in 2001, the MESICIC's committee experts have reviewed the fulfillment of the IACAC based on a consensual collaboration, proposing model laws and guidelines, and favoring the systematization of the best anti-corruption practices in the region. Despite its consultative nature, the follow-up mechanism has strengthened anti-corruption efforts by helping promote good practice and cooperation in anti-corruption policies.

However, in fragile states, trying to tackle corruption exclusively through legal and regulatory reforms is insufficient because the leading cause of corruption is not flawed rules but the state's weak capability and social norms. This creates a limitation because the MESICIC was designed to work on the formal scope, promoting legislative changes and other reforms to fulfill via the IACAC. However, in weak states, the best rules inspired in the IACAC will not be applicable, and corruption would emerge in the areas of limited statehood. Dr. Hernández examined Honduras's experience as a fragile state with an innovative mechanism to build anti-corruption capacities; specifically, with the Mission to Support the Fight against Corruption and Impunity in Honduras (MACCIH). The MACCIH was a hybrid mechanism that promoted international follow-up mechanism but worked closely with institutions to build anti-corruption capacities. Its objectives were centered on supporting the domestic institutions responsible for preventing, investigating, and punishing corruption actors, including the judiciary. The MACCIH proposed legislative and institutional reforms to strengthen the accountability mechanisms from civil society. Crucially, the MACCIH also included recommendations to improve enforcement capabilities. The creation of the MACCIH demonstrated that anti-corruption policies in fragile states could not be limited to legislative or institutional reforms because, in the absence of capable law enforcement bodies, corruption would arise regardless of the content of the domestic framework. For that purpose, a board was created to evaluate the MACCIH's effectiveness from a multidisciplinary perspective. However, the MACCIH also showed the tensions between international anti-corruption policies and the principle of non-intervention when the Honduran government terminated the MACCIH in 2020. In the Honduras example, the main objective was to build anti-corruption capacities through international cooperation and domestic development in both the public and private sectors. It serves as a great lesson for anti-corruption initiatives in South America. Fighting corruption at a transnational level cannot be limited to international cooperation and collaboration to fulfill the IACAC mandates because corruption is

also caused by state capability gaps that cannot be covered through institutional reform.

In conclusion, Dr. Hernández noted that, firstly, transnational corruption requires global laws and innovative mechanisms. To expand, he noted that corruption is a global phenomenon and as such, it requires a global framework. Hence, global anti-corruption law can be defined as the international framework that regulates anti-corruption policies in the global space. The rules in the global law cannot be enforced in the global space, but that does not mean that the laws are non-binding. On the contrary, it forms binding rules within the global space. An essential attribute of the global binding effect is coordination among governmental bodies—organized through networks—to facilitate the implementation of common policies. Lastly, he emphasized that fragile states require more than rules or institutions. Anti-corruption capacities need to be built in the public and private spheres, as was attempted in the Honduras example.

Dr. Andi Hoxhaj: The History of the EU Anti-Corruption Law and Policy (paper)

Dr. Hoxhaj highlighted the steps the EU has taken to develop an anti-corruption policy. His presentation discussed whether corruption is a priority for the EU and what the challenges are in facilitating anti-corruption policies. The EU and other international organizations such as the UN, the World Bank, and the IMF started to address the issue of corruption as a policy concern during the mid-1990's by promoting good governance. In 1997, the EU Commission's published its first Communication on EU policy on fighting corruption. This provided the first definition of corruption, understood by the EU as "any abuse of power or impropriety in the decision-making process brought about by some undue inducement or benefit."⁸ The Communication also underlined three objectives in its anti-corruption policies:

1. To protect the EU's financial interests,
2. To protect officials of the EU and/or of the member states,
3. To protect the private sector.

The EU encouraged its member states to combat corruption, framing this necessity mostly by emphasizing the negative impact corruption has on EU funds and the internal market. Canvassing the second phase of the EU's anti-corruption policy, Dr. Hoxhaj noted that it may be mainly characterized by the internal problems facing the EU's institutions in 1999, particularly, the scandals involving the Santer Commission.⁹ Following these events, The EU reformed its anti-fraud unit, creating the

European Anti-Fraud Office (OLAF), whose main responsibility is to investigate corruption in EU institutions. The Commission also took other policy measures. It started the process of developing a broad good governance framework, in particular with a White Paper on European Governance published in 2001. Shortly after the collapse of the Santer Commission, the EU Commission also launched the European Transparency Initiative, designed to foster dialogue about areas where transparency at the EU level appeared to need further improvement.¹⁰ The EU Commission acknowledged at this time that transparency is an important element in preventing corruption and began publishing data about the beneficiaries of EU funds, regulating lobbying, strengthening ethics in EU institutions, and adjusting the regulation of access to documents at the EU level. At a broader European level, the Council of Europe developed an anti-corruption monitoring body known as the Group of States Against Corruption (GRECO) to monitor the performance of 20 guiding principles on anti-corruption policies. Nevertheless, most of the instruments were not ratified by the EU member states until 2014. This reflected the mainly non-binding nature of the EU anti-corruption frameworks and, in Mr. Hoxhaj's view, their inadequacy.

Nevertheless, by the third phase in the early 2000's, it was evident that the EU's view on corruption had shifted; it now viewed itself as a global player in anti-corruption. This is exemplified by the EU Commission's 2003 Communication, entitled "A Communication on a Comprehensive EU Policy against Corruption." The policy initiative encouraged all member states to adopt all multilateral conventions on corruption and good governance principles. The Commission's anti-corruption policy changed during the pre-accession stage, because of the perception of high-level corruption in some states which were about to join the EU in 2004. As a result, the Commission made fighting against corruption one of the key objectives of the European Neighborhood Policy. The Commission tried to reinforce anti-corruption instruments, support member states in joining GRECO, and the ratification of the UNTOC and the UNCAC). For candidate states, the Commission made the ratification of these anti-corruption instruments compulsory. However, the weakness of EU policy was that it ended on the day of accession of the CEE countries to the EU in May 2004. Further, this period was characterized by fragmentation and lack of a strategic vision to combat corruption. Acknowledging the need for improvement, the Commission adopted a decision, on the basis of Articles 37 and 38 of the Treaty of Accession, to establish the "Cooperation and Verification Mechanism" (CVM) for Bulgaria¹¹ and Romania.¹² This was the first time that such a monitoring mechanism and post-conditionality was used post-accession.

The establishment of the CVM opened up a second generation of conditionality and marked the beginning of the fourth phase of the EU's anti-corruption policy. The EU mainly used this practice during the pre-accession process, and it was linked to the EU's enlargement policy. However, the anti-corruption benchmarks were broad, i.e., subscribing to a set of good governance principles. It was not systematically implemented throughout the EU candidate states before 2007. The new monitoring mechanism gave the Commission some leverage to maintain pressure on Bulgaria and Romania in establishing effective anti-corruption reforms. At its core design, the monitoring instrument under the CVM (as a post-accession monitoring system) is very different from the pre-accession strategy. It involves meeting specific policy goals and targets for Bulgaria and Romania by setting up specific anti-corruption benchmarks, and periodically monitoring compliance with those benchmarks using independent sources of information and providing financial and technical assistance to support anti-corruption reforms. These steps indicated that the EU policy against corruption also became more systematic. The EU's developed clearer and more coherent anti-corruption guidelines and objectives. However, its effectiveness largely depends on the application of sanctions by the EU Commission, i.e., freezing EU funding assistance to Bulgaria and Romania. Moreover, it demonstrated that Bulgaria and Romania were not up to the EU's standard regarding anti-corruption: and still, more than 10 years later, it remains so.

The EU's anti-corruption policy developed further in 2010, with the establishment of the Stockholm Programme. The Programme set out key priorities for the EU in the areas of justice, freedom, and security for the period of 2010 to 2014. It aimed at addressing key challenges in the areas of justice, freedom, and security, and also included fighting against corruption. Part of this effort led to the Commission setting up an EU Anti-Corruption Report to evaluate and monitor all member states' efforts against corruption. The new Report announced that it would also evaluate the capacity of EU institutions to fight corruption. It was built on existing tools, in terms of evaluating anti-corruption policies, aiming to add innovative measures in addressing anti-corruption policy shortcomings. The evaluation and recommendations that the Report would produce would serve as a useful tool to understand the level of corruption and policy shortcomings throughout the EU. It was available to everyone including politicians, the public, the media, and practitioners. The Report was also designed to monitor and evaluate the member states in addressing corruption and to stimulate political commitment in pushing for anti-corruption reform. However, the Commission's view, since 2017, is that fighting corruption should be addressed through economic policy,

which led to the cancellation of the Report. This has marked a new phase in EU policy, including the introduction of the EPPO, which the next speaker discussed in detail.

Daniëlle Goudriaan: The role of the European Public Prosecutor's Office (EPPO) in international anti-corruption efforts (presentation)

Ms. Goudriaan illustrated the role of the EPPO in combatting corruption. The EPPO is the new independent public prosecution office of the EU, established in 2021. It is responsible for investigating, prosecuting, and bringing to judgment crimes against the financial interests of the EU. Ms. Goudriaan highlighted that crime is not a national phenomenon and that fraud occurs on both sides of the EU budget. As examples she named VAT import fraud, customs fraud, procurement fraud, subsidy fraud, and money-laundering. Ms. Goudriaan also noted that, it is evident that the perpetrators of such crimes anticipate and adapt to anti-corruption efforts. Often, the crimes and activities are international and large in scale. The profits accumulated improve perpetrators' absolute and general powers, infiltrating and distorting the economic sanctity of the EU. As such, a national approach is no longer sufficient to combat international financial crime, which stretches beyond borders. Here, the EPPO can help find and prosecute these perpetrators within the EU, aided in part by its unique and innovative structure. It acts as a single office with a decentralised structure. The EPPO's central level consists of: the European Chief Prosecutor; 22 European Prosecutors (one per participating EU country), two of whom function as Deputies for the European Chief Prosecutor; and the Administrative Director. The European Chief Prosecutor and the 22 European Prosecutors constitute the College of the EPPO.

The advantages of the EPPO include its speed; it acts as a single office within a decentralised structure. Before, collaborative responses to corruption were often characterised by mutual legal assistance through lengthy procedures. The EPPO, on the other hand, can respond directly. This merges investigations and prosecutions across borders without complex, lengthy, or bureaucratic procedures. Additionally, the EPPO has wide access to information, which helps further establish connections. It has access to the facilitators and the relevant databases including those of EUROJUST and INTERPOL, amongst others. Moreover, collaborations between EUROPOL, EUROJUST, and OLAF may be established at the start of an investigation. Whereas in a national situation, many connections and patterns of cross-border crime would not have been noticed, the EPPO's structure lends itself to this approach. This is bolstered



by the EPPO-zone prosecutor policy, which consolidated a unifying approach to investigations within the various member states. The investigations the EPPO conducts are possible because it has been given a genuine transfer of sovereignty. This means that those national authorities must pass information relating to crimes to the EPPO. It circumvents issues in jurisdiction and other key sticking points in supranational responses to corruption due to this transfer of sovereignty. As of June 1, 2021, the EPPO has processed more than 2000 criminal reports and launched more than 500 investigations. In short, there is no comparable institution. In combatting corruption, the tension between sovereignty and the supranational must be overcome. Ms. Goudriaan concluded that whilst the EPPO is not perfect, facing practical challenges such as the need for a more clearly defined set of tools and powers at the domestic level, it marks a step toward the future.

Discussions

The first comment pertained to the somewhat negative perspective shared on the EU's responses to corruption. One participant highlighted that in February 2022 the EU Parliament detailed recommendations on corruption and human

rights, demonstrating the front-runner role the EU has in anti-corruption.¹³ Moreover, he further questioned whether it really mattered for the EU to be a driver of anti-corruption. Dr. Hoxhaj responded by pointing out that the EU can coordinate efforts better at a supranational level and has a significant role in norm-setting. He acknowledged both the interesting nature and positive elements reflected in the proposal of an anti-slandering law as many journalists who investigate corruption are faced with defamation lawsuits.¹⁴ However, he stated that it has not been moving fast enough and anti-slandering is generally still seen to be an issue to be dealt with on the national level. He pointed to the whistle-blower directive falling short, which not all member states have enforced.¹⁵ Nonetheless, Dr. Hoxhaj acknowledged that within the implementation of the EPPO, change has been seen.

Another participant agreed on how much of an exciting development the EPPO is. He highlighted that through prosecuting institutions, ultimately a preventative measure is applied, even if the immediate effect is to punish. However, he considered one of the EPPO's flaws that the cases that the EPPO develops will have to be prosecuted in national courts which may corrupt themselves. Ms. Goudriaan noted that there may be

a flaw within the hybrid system. To this end, the fact that the EPPO prosecutors remain dependent on national authorities for the detection of corruption cases leave the system vulnerable. Nevertheless, the EPPO was received positively.

When asked for a model supranational body, Ms. Dell advocated for an EPPO-style model operating on a subsidiary basis to improve enforcement in corruption cases. However, she also acknowledged that the structure would be more complicated in a global body rather than an integrated regional body. Nevertheless, grand corruption needs an independent body on such a scale. She also noted that national courts may be a suitable forum for bringing those corruption cases, allowing for enforcement without a new court system. Ms. Dell particularly emphasized those courts willing to exercise universal jurisdiction. Advantages of using national courts include lower costs. Moreover, it could allow capacity building in other jurisdictions national capacities and building proceedings in or close to the jurisdiction the crime occurred. Ms. Dell noted that states could volunteer their court systems for such corruption enforcement. Lastly, she acknowledged that there would be more issues in adopting such an approach on a global scale as opposed to the EPPO's regional scale.

The audience brought up the link between sovereignty and effective anti-corruption, commenting that effective anti-corruption accountability in a country may sometimes be possible only against the sovereign boundaries of the government. A participant stated that there would be a possibility to overcome the apparent conflict between sovereignty and corruption by drawing more heavily on human rights. It was remarked that the 1993 World Conference on Human Rights emphasized that human rights are not an interference in internal affairs, furthering bolstering the lack of infringement on sovereignty.¹⁶ Ms. Dell noted that Trans-

parency International's definition of corruption relies on the link between corruption and human rights. Ms. Dell stated that due to the widespread harm that corruption inflicts on victims, the human rights aspect merits special attention. As such, she highlighted the need for more coordination between the international bodies in Geneva and Vienna to link the discussion between human rights and corruption due to the latter's impact on the former. Thus, she pointed to the initiative to create a special rapporteur on human rights and corruption, to overcome the tension between sovereignty and corruption. This seemed to come to a consensus with both Dr. Hernández and Dr. Hoxhaj agreeing that linking human rights and grand corruption may be a way forward. Dr. Hernández advocated for relying more heavily on global law, as outlined in his presentation, reiterating that global problems require global solutions.

Looking forward, Mr. Majlessi noted three points:

- The EU experience points to the fact that no state can fight corruption alone. The EU's level of development, infrastructure, and strong assurances on criminal justice have not made it immune to corruption issues. If a supranational anti-corruption body, the EPPO, is needed in this region, it needs to be in other parts of the world, too. Thus, a global response is very much needed.
- The issues on jurisdiction, including universal jurisdiction need to be developed further. The complexity of corruption cases often means that many jurisdictions may have a nexus with a case. For example, the US Kleptocracy Initiative warrants further dissection and the steps it has made in dealing with complex multi-jurisdiction cases.
- Lastly, the discussions evidenced a need to do a cataloguing of what supranational mechanisms exist and what lessons we could learn from them.

NOTES

6. UNODC, [The Use and Role of Joint Investigative Bodies in Combating Transnational Organized Crime \(2020\)](#)
7. See the [Center against Financial Crime and Corruption](#).
8. European Commission, 'Communication from the Commission to the Council and the European Parliament on a Union Policy Against Corruption' COM (97) 192 . <<https://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:1997:0192:FIN:EN:PDF>>
9. The Santer Commission was the EU Commission under President Jacques Santer between 1995–1999. On March 15 1999, the Santer Commission resigned collectively due to allegations of fraud and corruption and mismanagement of aid funds.
10. European Commission (2006), Green Paper on European Transparency Initiative, COM (2006) 194.
11. European Commission, 'Decision on Establishing a Mechanism for Cooperation and Verification of Progress in Bulgaria to Address Specific Benchmarks in the Areas of Judicial Reform and the Fight Against Corruption and Organised Crime' (2006/929/EC) OJ L 354/58 14 December 2006.
12. European Commission, 'Decision on Establishing a Mechanism for Cooperation and Verification of Progress in Romania to Address Specific Benchmarks in the Areas of Judicial Reform and the Fight Against Corruption and Organised Crime' (2006/928/EC) OJ L 354/56 14 December 2006.
13. See here https://www.europarl.europa.eu/doceo/document/TA-9-2022-0042_EN.html
14. See here the anti-SLAPP proposed directive https://ec.europa.eu/commission/presscorner/detail/en/ip_22_2652
15. See here report by Transparency international detailing how the Whistleblower directive is falling short. In March 2021, 2/3rds of member states had not yet started or made minimal progress in implementing the directive. <https://www.transparency.org/en/blog/eu-countries-failing-protect-whistleblowers>
16. <https://documents-dds-ny.un.org/doc/RESOLUTION/GEN/NRO/565/44/IMG/NRO56544.pdf?OpenElement>



SESSION 3

International Anti-Corruption Investigations

- **Dr. Radha Ivory**, Professor, University of Queensland, Australia. *Reforming the international Framework on Corporate Settlements in Foreign Bribery Cases (paper)*
- **Albert Lihalakha**, Deputy Head of Independent Integrity Unit, Green Climate Fund. *The Integrity Enforcement Regime at the Green Climate Fund (paper)*
- **Rositsa Zaharieva**, Coordinator, GlobE Network Secretariat, UNODC. *The Global Operational Network of Anti-Corruption Law Enforcement Authorities (presentation)*
- **Gianpiero Antonazzo**, Senior Investigator, Integrity Vice Presidency, World Bank Group (presentation)
- **Victoria Jacobson**, Case Controller, Serious Fraud Office, United Kingdom (presentation)
- **Discussant: Nicola Bonucci**, Partner, Paul Hastings LLP

Dr. Radha Ivory: Reforming the international framework on corporate settlements in foreign bribery cases (paper)¹⁷

Dr. Ivory explored the role of settlements in foreign bribery cases. Her paper focused on the approach of the OECD Working Group on Bribery (WGB) in International Business Transactions, which has been the principal *de facto* source for international standard-setting on settlements and has recently revised its Recommendation of the Council for Further Combating Bribery of Foreign Public Officials in International Business Transactions (OECD Recommendations 2021) to include provisions on non-trial resolution. Most soft-law international instruments do not contain such provisions dedicated to settlements. This has created a gap in the coverage of the treaties and the systems that are currently in place seem to be inadequate.

Anti-corruption conventions utilize systems of peer review to prevent countries from "cheating" on their international obligations. States evaluate each others' efforts to imple-

ment the convention's standards and publish the findings in reports. The reports promote peer learning but are also forums for "naming and shaming," and conversely, "praising." Whilst not legally binding, these reports contribute to treaty interpretation by indicating subsequent practice or shaping ongoing interpretations of the rules. This approach is defined by a diffuse non-comprehensive nature: there are numerous reports rather than one single location. Non-state actors have relatively limited opportunities to engage in the international reporting process. Furthermore, the resulting standards are obscure and have to be pieced together, diminishing their transparency. Moreover, Dr. Ivory also pointed to the fact that the reports raise some concerns with the fairness, preventive effect, and cost-effectiveness of settlements. Further, she emphasized that there is a similar pattern of engagement with the issues around the preventive effect of settlements and their cost-effectiveness for governments. Overall, states and international organizations fail to clearly articulate their expectations on settlements, are they calling for clear, effective, and predictable domestic settlement rules and practices.

The status quo of report-based regulation changed in 2021, at least among the member states of the OECD WGB. The adopted amendments to the 2009 OECD Recommendations that regulate “[n]on-trial resolutions,” which are defined as “mechanisms developed and used to resolve matters without a full court or administrative proceeding, based on a negotiated agreement with a natural or legal person and a prosecuting or other authority.”¹⁸ These embodied a great step forward: the recommendations are sensitive to several of the substantive concerns listed above. Nevertheless, they also identified areas in which they fell short. For example, there are no recommendations on the need for measures to ensure the cost effectiveness of settlements or, for the most part, to manage its impact on the rights of the defendants.¹⁹ The Recommendations also contain no mention of inequality. Thus, it does not address the risk that corporate settlements may appear to offer an easy way out to companies, whose offenses are often of a greater magnitude and level of sophistication than the individual criminal acts that comprise them. However, the OECD WGB has sought to ensure participation and transparency in this last review. In addition to the specific input from civil society groups,²⁰ the review process included a “public online consultation” that was pitched broadly to anti-corruption “partners” and “major stakeholders.”

Nonetheless, the OECD WGB has not been made public which groups had most input into the process or whose input had most weight, nor how much the procedure considered the scholarly research into settlements and their “pluses” and “minuses.” Thus, there may be concerns about the relative weight given to input from various stakeholder groups, especially those from the private sector. Dr. Ivory noted that there are reasons to be concerned about the willingness of states to place meaningful limits on their capacities to make deals with companies. Firstly, while prosecutors may resist the loss of freedom to enforce the regulations as they find efficient, others in governments may be hesitant to raise the standards on how they sanction exporters. These firms secure important contracts abroad while the harmful consequences of bribery materialize elsewhere. Secondly, there is substantial variation across states when it comes to the criteria for holding offenders liable. Thirdly, Dr. Ivory noted that as it currently stands very few signatories to the OECD Convention are considered “active enforcers” of their foreign bribery offenses. This is despite more than two decades of international expectations created by the convention and its recommendations in previous forms. Hence, it raises questions whether some countries will exploit the (necessary) flexibility in the new Recommendations to present their excess leniency as adequate enforcement.

The OECD’s engagement with settlements raises important questions about the prospects for reforming the global rules on illicit financial flows. The OECD is just one of several international organizations that are considering the rightfulness and the effectiveness of their standards. Those processes appear to observe norms around rational and democratic use of bureaucratic authority, which are familiar from domestic legal orders. However, Dr. Ivory concluded by wondering whether they will be sufficient to deal with the nature of the problems confronting these bodies and, in any case, how the effectiveness and the rightfulness of their law reform initiatives will be assessed.

Albert Lihalakha: The integrity enforcement regime at the Green Climate Fund²¹ (paper)

Mr. Lihalakha presented the mission and role of the Green Climate Fund (GCF), a relatively new organization. It serves as the financial mechanism of the Paris Convention of Climate Change. The GCF aims to mobilize US \$100 billion a year, making it the largest climate fund in the world. Due to the GCF’s complex financing model, and the country ownership of the funds, the opportunities for fraud and corruption are multiplied. To combat this phenomenon, the GCF established its Independent Integrity Unit (IIU). The IIU works with the GCF Secretariat and reports to the Ethics and Audit Committee and to the Board of Directors, investigating allegations of fraud and corruption and other prohibited practices (coercive and collusive practices, abuse, conflict of interest, and retaliation against whistle-blowers) in line with best international practices and in close coordination with relevant counterpart authorities. The IIU is tasked with both investigative and preventive mandates.

The IIU takes a proactive approach to deter occurrences of fraud and corruption in GCF-funded activities by establishing integrity policies, proactively assessing and mitigating integrity risks, and recommending further improvements to existing GCF policies and procedures. While the IIU investigates allegations of wrongdoing, the GCF’s administrative remedies and exclusion regime establishes a formal administrative process that is designed to protect the GCF from abuses, while offering respondents due process before deciding on an appropriate action. This policy is intended to protect the interests, resources, and reputation of the GCF while affirming the fiduciary duties of counterparties doing business with the GCF. It serves the dual objectives of:

1. Excluding actors (individuals or entities) engaged in prohibited practices from access to GCF financing for the

period to be decided by a Case Review Officer and/or Case Review Panel; and

2. Providing for reform opportunities by requiring the individuals or entities to adhere to the GCF's Integrity Compliance Guidelines before being reconsidered for GCF financing.

Such integrity compliance programmes will be monitored by the IIU to guarantee adherence to the highest integrity standards while ensuring that appropriate controls and mechanisms are in place to prevent future reoccurrence of integrity violations. With the GCF's business model, Accredited Entities (AEs) are entrusted with responsibility for handling any allegations of prohibited practices and to have their own governance processes for addressing integrity violations. However, this arrangement does not preclude the IIU of the GCF to conduct its own investigations. Whenever an investigation is carried out by the IIU and an allegation of prohibited practices is substantiated, the IIU will submit the statement of charges to the Case Review Officer and/or Case Review Panel for a decision to be made.

Rositsa Zaharieva: The Global Operational Network of Anti-Corruption Law Enforcement Authorities (GlobE) (presentation)

Ms. Zaharieva illustrated the innovative new role the **GlobE** network plays in facilitating cooperation between law enforcement agencies across jurisdictions. Whilst UNCAC provides for various ways to facilitate cooperation, this cooperation has been slowed or sometimes prohibited due to a number of issues. These issues range from difficulties in identifying counterparts on the national level, or that the counterpart position does not exist, to the lack of good will or capacity to engage in dialogue. As a solution to some of these issues, the GlobE network was launched. Within ten months, the GlobE network already has 96 member authorities from 56 countries, which shows for the general global need for a platform like GlobE. It was established with the idea for peers to exchange information—but also to facilitate cooperation in an informal way. The relevant anti-corruption authorities of the member states make up the membership of the GlobE network. It is run by a permanent secretariat the UNODC, with the great benefit of using the capacities and the experience of the UNODC. More than just a mechanical mixture of people brought together for an administrative nature, it also aims to facilitate knowledge sharing. As law enforcement individuals tend to embrace a private approach to their cases, the project was met with a degree of skepticism. Nonetheless, GlobE has created a network of likeminded authorities. Their coop-

eration is not just characterised between authorities of the same region. Instead, the GlobE network has seen an influx of law authorities sharing beyond regions. Thus, it facilitates partnerships that may never have been considered previously. The communication is facilitated through UNODC's structure. Considering the differing levels of knowledge and capacity around the world, the GlobE network aims to develop the capacities of the anti-corruption institutions. Ultimately it aims to push forward peer-to-peer communication and cooperation. The launch of the first knowledge sessions of the GlobE network had over 200 registered participants. Ms. Zaharieva concluded that this demonstrates there is much hunger to increase the growth in this area.

Gianpiero Antonazzo: The role and mission of the World Bank Group's anti-corruption sanctions system (presentation)

Mr. Antonazzo highlighted how the World Bank Group's Integrity Vice Presidency (INT) deals with corruption. INT's main purpose is to investigate how the World Bank funds are used and to ensure their use complies with their intended purpose. INT investigates fraud, collusion, corruption, coercion, and obstruction. These investigations may be launched after external and/or internal complaints. He noted that it is not possible to investigate all allegations of fraud and bribery, and as such, the number of allegations must be triaged. If an investigation is launched by INT, it is characterized by a far more flexible nature compared to national, or even international, procedures. For example, there is no need to ask for cooperation with other institutions. Investigators have the authority to go to whatever necessary location and investigate. These investigations are based on the relevant clauses within World Bank-financed contracts and conducted under specific guidelines. The processes included in investigations include interviews and analyses of the documentation provided by the entities on the ground. The corruption clauses within the contracts additionally contain specific audit procedures. These audit clauses are enforced in order to inspect records. Whilst audits are only a small part of the investigative tools available, these are one of the most powerful tools. In short, INT teams attempt to gather as much information as possible to verify whether the allegations are substantiated. This process of evidence gathering is similar to what the prosecution would do at the national level of economic crime. However, it must be noted that INT does not issue a decision on the allegations. However, if the allegation is found to be true it can lead to sanctions, such as debarment for a certain period of time, via an adjudicative two-tier process. Further, Mr. Antonazzo also highlighted the importance of preventative measures in fight-

ing grand corruption. Here, he underscored how INT's dedication to analyzing previous cases of sanctionable practices to carry the lessons forward to subsequent events. Furthermore, INT provides advice to WBG member countries to help ensure such activities no longer continue.

Lastly, Mr. Antonazzo also drew attention to the WBG's Integrity Compliance Office (ICO). If a company has been found guilty of a sanctionable offense, most will have to implement compliance measures. This process contains various checks and balances by the ICO along with the implementation of the compliance measures. Some sanctions require the implementation of the measures as a condition for the release. If not met, the sanctioned entities are not released from the debarment list. Mr. Antonazzo also underscored that where the World Bank has reason to believe that laws of a member country may have been violated, it may disclose information relevant to the alleged violation to local or national authorities for law enforcement purposes. This once again highlighted the importance of information-sharing and collaboration, including between or multilateral institutions and states, in combatting corruption.

Victoria Jacobson: The Role and Mission of the United Kingdom's Serious Fraud Office (presentation)

Ms. Jacobson explained the process of investigations within the Serious Fraud Office (SFO) of the United Kingdom. The SFO is a specialized independent government department under English criminal law. The SFO investigates crimes including bribery and other forms of corruption. Ms. Jacobson highlighted that whilst the SFO's caseload is comparatively small, the cases it tends to take involve large economic crimes. She named a few headline-grabbing cases, such as the Airbus, Rolls Royce, and Tesco investigations. Often, the SFO's investigations face unique challenges due to the transnational nature of economic crime. As such, it has been vital to expand partnerships with other states and multilateral organizations to combat corruption. On the domestic side, the UK Bribery Act 2010 changed the way bribery could be prosecuted by embodying an approach to cross jurisdictional boundaries to more accurately reflect how grand corruption is prevalent in a globalized world. As such, the Bribery Act extended the jurisdictional basis on bribery offenses by allowing for prosecution if the case is closely linked to the UK. Furthermore, it changed the way cases are prosecuted by implementing a strict liability offense of failing to prevent corruption. Whilst there is a defense available, this must be proved by having adequate procedures in place. The importance of having adequate compliance programs is a point that was readily underscored

throughout Ms. Jacobson's presentation. Thus, when the SFO considers whether to prosecute a corporate entity, it often examines whether the compliance program the corporation facilitates "has teeth." If prosecuted, the robust punishments against companies act as a deterrent. These include penalties with the multiplier of the profit obtained starting at 300%, confiscation of ill-gotten gains, and prison sentences. Resolutions and deferred prosecutions, on the other hand, offer a "carrot" approach. She highlighted that these decisions are supervised by a judge and thus have checks and balances in place.

Ms. Jacobson also highlighted that the detection of foreign bribery entails close cooperation with international partners. Thus, intelligence sharing and early engagement with mutual legal systems is crucial. Grand corruption investigations in particular are characterized by their complex and resource-heavy nature, meaning that investigations can take long periods of the time. They also tend to be data-intensive. As an example, the Rolls Royce case involved 30 million documents. An innovative "draconian" power given to the SFO to help bolster efforts is the power to compel companies or individuals to furnish the SFO with documents. A failure to do so attracts criminal liability. On the cross-jurisdictional cases, Ms. Jacobson highlighted once more the importance of working together with other authorities. This not only improves the speed and accuracy of evidence gathering, but the trust that is built within those partnerships aids in future investigations.

Discussions

Several elements were brought up in the discussion, touching upon the risks of corporate settlements to the focus on the "supply" side of corruption, as opposed to the "demand" side. Firstly, a question was raised about whether—particularly in the case of settlements—prosecutors are left too much room to engage or even collude with corporations. Here, Dr. Ivory made some reflections. She emphasized that the problems regarding corporate settlements or non-trial resolutions are amplified in states with weaker rule of law. This speaks to the fact that there is, generally, a lack of democratic authorization for these procedures. There is no clear legal basis in national law, as these resolutions often are part of the administrative power of prosecutors. This diverges from routes clearly stipulated in legislation that have gone through a democratically elected national legislature. More broadly, Dr. Ivory noted that in the United States a wealth of literature and research has been conducted on the effect of deferred prosecution. Here, she noted once more that these issues are amplified in a system where there is a lack of checks and balances. She

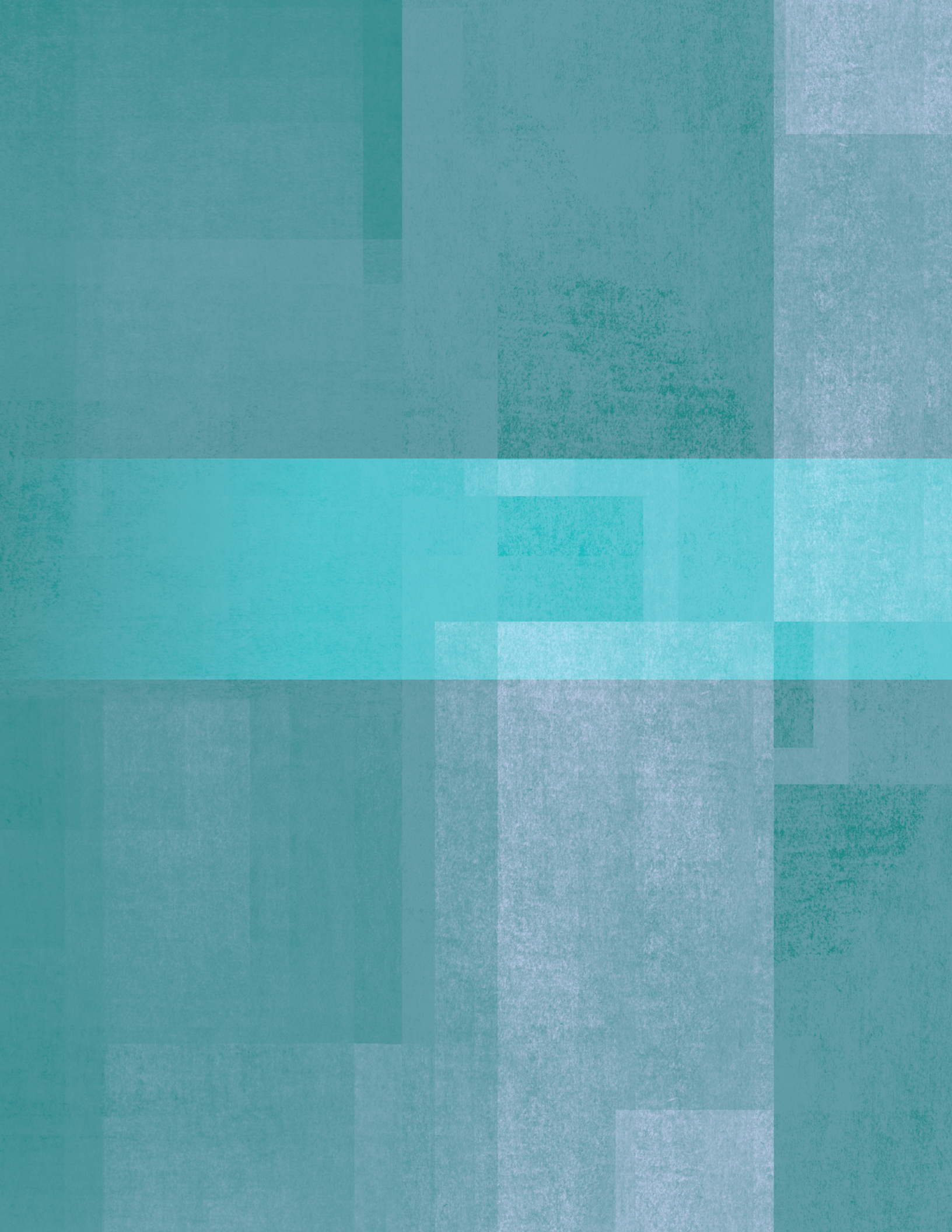
noted that avenues for further discussion and research ought to illustrate how cooperation can mitigate those challenges, and what form this cooperation can take, particularly on the supranational level. A further question from the audience that related to this topic was whether the cost-effectiveness of non-trial resolutions was leading to a danger of turning recourse to justice into a risk assessment. Here, Judge Mark Wolf agreed with the inference in question, stating that there is an inherent risk that it would “merely become a cost of doing business.” As such, he noted that an international anti-corruption court, as proposed by the Integrity Initiatives International, would be able to circumvent this problem.

Moreover, it was questioned whether too much focus is put on the corporations rather than individuals who actually commit the conduct. Ms. Jacobson agreed that it is vital to never lose

sight of the individuals that actually commit the misconduct. She highlighted that whenever the public interest requires it, the SFO may investigate and take action on individuals. Dealing with investigations with a UK nexus, but where the corruption occurred outside of the jurisdiction, Ms. Jacobson highlighted that the SFO must be careful and often have to invoke collaboration with specialist agencies in order to tread carefully. Mr. Antonazzo emphasized that the World Bank cannot sanction public officials but only individual contractors and companies. Nevertheless, it can refer information to relevant national authorities. He highlighted that there have been success stories in this arena where actions have been taken on the demand side, following information provided by the World Bank. Additionally, he noted that many World Bank member countries have a strong position that states ought to prosecute their own officials.

NOTES

17. Co-authored with Dr. Tina Søreide, Professor, NHH Norwegian School of Economics.
18. Recommendation of the Council for Further Combating Bribery of Foreign Public Officials in International Business Transactions (adopted on November 26, 2009, last amended November 26, 2021) OECD/LEGAL/0378, para. XVII.
19. Cf. Recommendation of the Council for Further Combating Bribery of Foreign Public Officials in International Business Transactions (adopted on November 26, 2009, last amended November 26, 2021) OECD/LEGAL/0378, para. XVIII(v).
20. Corruption Watch UK and others, “Letter to OECD Secretary General Angel Gurría: Global Standards for Corporate Settlements in Foreign Bribery Cases” (UNCAC Coalition, 2016); Transparency International and others, “Letter to OECD Secretary General Angel Gurría: Principles for the Use of Non-Trial Resolutions in Foreign Bribery Cases” (OECD 2018); The Recommendation 6 Network, “International Guidelines for Non-Trial Resolutions of Foreign Bribery Cases” (NHH 2018); OECD-WGB, Agenda: Plenary Meeting 5–7 March 2019 (2019) 3. Members of the Recommendation 6 Network are listed in the Transmittal Memorandum, available on the NHH website.
21. Co-authored with Dr. Sanjeev Narrainen, Integrity and Compliance Office, Green Climate Fund.





SESSION 4

Transnational Legal Responses to Grand Corruption

- **Judge Mark Wolf**, Chair of Integrity Initiatives International. *The International Anti-Corruption Court: A Transnational Response to Grand Corruption (paper)*
- **Dr. Noah Arshinoff**, Associate Professor, University of Ottawa. *A New OECD Dispute Settlement Mechanism to Fight Transnational Corruption (paper)*
- **Ádám Földes**, Legal Advisor, Transparency International. *Pathways to Accountability for Grand Corruption (paper)*
- **Dr. Anton Moiseienko**, Lecturer in Law, Australian National University. *Principles For Using Targeted Sanctions to Address Crime (paper)*
- **Discussant: Patrick Moulette**, Head, Anti-Corruption Division, OECD

Dr. Noah Arshinoff: A new OECD dispute settlement mechanism to fight transnational corruption²² (paper)

Dr. Arshinoff focused on an innovative proposal for the creation of an international administrative body that can be an arbiter of corruption cases. This would be an international dispute settlement mechanism focused on arbitration that can impose impactful sanctions and direct anti-corruption efforts to the places most in need. Anti-corruption efforts are currently heavily dependent on national authorities. This may be detrimental when corrupt actors have infiltrated these public institutions. In these cases, no international actors tend to have jurisdiction, leading to difficulties in adjudicating when the relevant national authorities cannot or will not do so. Examples include the Airbus case and the delayed UK investigation, and Semlex, involving a Belgian company and the Council of Europe's report that the Belgian authorities were in crisis.

Dr. Arshinoff looked toward two Free Trade Agreements (FTA), namely the USA-Peru Trade Promotion Agreement and NAFTA, which revealed creative recourse mechanisms. Specific audit requirements were implemented within the USA-Peru FTA allowing the USA to verify wood shipments. In NAFTA, a labor mechanism allowed the USA, for example, to go after a private factory in Mexico to ensure it was compliant to the treaty. Thus, inspired by these examples, it was proposed to create a new administrative mechanism under the OECD Convention that would focus on non-criminal resolution of corruption cases. It would provide an administrative framework to resolve allegations of corruption leveled at a company domiciled within an OECD Convention signatory country, or against the country itself. The benefits of an OECD dispute settlement mechanism include that allegations of corruption could be brought forward by any member country of the OECD Anti-Bribery Convention or any private entity domiciled in one of those countries. To make it reality, it was recommended that Articles 3, 4 and 5 of the OECD Convention be amended. Dr. Arshinoff noted it should be a requirement that signatories adopt model

provisions on anti-corruption in their international trade and investment agreements. Contravention of such requirements would provide a new OECD dispute settlement mechanism with jurisdiction under Article 4 to investigate allegations of corruption, hear and adjudicate complaints, and impose a variety of possible sanctions to correct the corrupt behavior and provide remedial options. Under Article 5, national authorities would have a duty to enforce a ruling by an OECD panel.

The process would be as follows:

- **STEP 1:** A complaint is received by the OECD dispute settlement mechanism (DSM) through a petition signed by a threshold of signatory countries to the OECD Convention, or through entities domiciled in signatory countries. Any member country or entity domiciled in any member country can launch a petition against any other country or entity.
- **STEP 2:** The OECD DSM makes a request to the respondent party to conduct an investigation or review the results of an internal investigation.
- **STEP 3:** The complaining party can then request the establishment of a panel of experts to verify the merits of the complaint and issue findings.
- **STEP 4:** Consultation between the parties. The respondent party can show what remediation measures have taken place. If accepted, the OECD panel releases the party from further investigations and findings.
- **STEP 5:** The OECD panel imposes remedies ranging from consultations and a remediation plan to being monitored by an OECD-appointed monitor, fines, cross-debarment through agreements with the multilateral development banks, and suspending a country's membership in the OECD Convention.
- **STEP 6:** Accept remediation or conclusion of remedies, or respondent party can appeal to a second panel of experts (non-permanent). Decisions at the appellate level would be final.

Much of the process of an OECD DSM would also be modeled on the World Bank's sanctions system. However, as the OECD is not a financial institution it cannot withhold funds from entities that engage in corruption. As such, a host of alternate remedies need to be available ranging from mild correction to severe penalties. These remedial tools would include economic sanctions, membership conditionality, naming-and-shaming, imposing and collecting fines, and subsequently directly funds where most required. If economic sanctions were implemented, agreements would need to be made with multilateral

development banks and other funds to ensure the sanctions effectiveness. In short, they would implement cross-debarment. Membership conditionality could be seen as a last resort that signatory countries would enforce, also through peer monitoring, or otherwise risk having the membership suspended. If it was found that investigations were routinely being blocked, the naming-and-shaming would be a huge blow to the states. In conclusion, Dr. Arshinoff noted that the proposed OECD mechanism is meant to enhance the role of international organizations in combatting anti-corruption rather than reinventing the wheel.

Adam Földes: International pathways to accountability for grand corruption²³ (paper)

Mr. Földes highlighted how civil society organizations may hold perpetrators accountable, particularly when national authorities are unable or unwilling to do so. The reasons for authorities' unwillingness and inability include a lack of resources, different criminal policy priorities, challenges of international cooperation, and even various forms of undue influence on authorities, including outright corruption or captured institutions that can block investigations and prosecutions. Transparency International provides support in concrete corruption cases. For example, investigative journalists may bring their work and Transparency International try to trigger recourse via legal pathways. This work has twofold advantages; it supports weaker investigative authorities and puts pressure on unwilling ones. There are a number of innovative proposals to help efforts against grand corruption, some of which have already been detailed in this knowledge report. Nevertheless, it may take years to see that these concepts for tackling grand corruption come to fruition. As such, Mr. Földes highlighted seven innovative pathways that can work in the system as it currently exists:

1. **Prosecution in the jurisdiction of the main victim of corruption:** In the case of any criminal offense, the most obvious jurisdictions for bringing a case include where the actual criminal conduct or harm occurred, the country of nationality of the victims, or that of the perpetrators. Herein, Mr. Földes used the term "main victim jurisdiction" for the country with which most victims/injured parties have a link, and through them the actual corruption case has a nexus to the jurisdiction. However, due to the diffuse group of victims corruption usually affects, deciding this may be difficult. Moreover, there may be positive or negative conflicts of jurisdiction. Positive conflict entails that multiple jurisdictions wish to prosecute, and negative conflict entails that no authorities are engaging with the case. Forum shopping is a crucial approach to address-

ing the issue of “negative” conflicts of jurisdiction. If an authority is unwilling or unable to carry out the investigation or prosecution, then no opportunism regarding forum shopping comes into question, but merely the right of access to justice. An alternate solution proposed was to pursue the recommendation of the Council of Europe, which stated, “Interested parties of recognized or identifiable status, in particular victims, should be able to challenge decisions of public prosecutors not to prosecute; such a challenge may be made, where appropriate after an hierarchical review, either by way of judicial review, or by authorizing parties to engage private prosecution.”²⁴

2. **Prosecution in an alternative jurisdiction:** As grand corruption cases tend to be defined by their cross-jurisdictional nature, there are almost always opportunities to find a nexus for an alternative jurisdiction. When victims or civil society organizations look for jurisdictions to bring a cross-border corruption case they can, in theory at least, rely on these international obligations. Here the main challenge is that such crime suppression conventions, while imposing obligations on state parties, are at the same time almost totally silent on the rights of individuals (victims) as the flipside of the same obligations. The right of access to justice and other victims’ rights are largely absent from these instruments, and where there is any mention, it is through the state obligations aspect and not through any actionable right.
3. **Targeted Sanctions:** While sanctions are long-used useful tools, they require political implementation and often require regular renewal. It is therefore a positive development that in recent years several countries have introduced global targeted sanctions regimes to hold corrupt actors and human rights abusers accountable. This is especially reflected with the Global Magnitsky Act in 2016,²⁵ which granted the United States government the power to sanction individuals and entities suspected of involvement in gross human rights abuses and corruption globally. This has been followed in multiple jurisdictions, but the evidentiary standard varies across borders. Nonetheless, Mr. Földes issued some words of caution. Sanctions are a political mechanism under the control of central governments rather than law enforcement. This uncertainty may make it hard for some civil society organizations to commit limited time and resources to this area of work. Secondly, while travel bans and asset freezes are valuable, they are not as effective as criminal convictions. Thirdly, unless there is a greater focus on multilateral designations made simultaneously, there will always be a risk that corrupt actors will find a way to evade sanctions.
4. **Asset freezes, confiscation, and illicit enrichment laws:** Usually, the freezing and seizure of assets are enforcement measures that are part of a criminal procedure. Following a final conviction, confiscation can be a sanction accessory to the primary punishment and can also serve for the recovery of proceeds of crime and compensation to victims (criminal forfeiture). Legal systems that offer non-conviction based opportunities to freeze, seize, and confiscate the proceeds of crime (or equivalent value) or “property, equipment or other instrumentalities used in or destined for use in [corruption] offences” (non-conviction based forfeiture).²⁶ These national laws build on several international and regional treaties and other instruments, including those of the United Nations and of the Council of Europe.²⁷ Comparable but different instruments are illicit enrichment laws that can also provide opportunities for triggering procedures that potentially result in penalties without a full criminal procedure.
5. **Civil litigation:** If the causality between the act of corruption and the harm caused can be demonstrated, it may be better for civil society, or the victims they represent, to pursue a civil complaint. However, there tends to be one issue—the doctrine of standing. The concept of “sufficient interest” is challenging and will vary in each jurisdiction. The doctrine can be interpreted broadly, such as in Spain, where a case may be brought by any citizen if it is determined that it is in the public interest.²⁸ In other jurisdictions, creativity and flexibility are essential for civil society to determine its legal accountability options. The victims of corruption can often be a diffuse group or their access to local justice institutions is limited. Civil society organizations (CSOs) with standing rights can play a key role in representing the group of victims in order to help them obtain adequate compensation. This is one of the key recommendations brought forward by the UNCAC Coalition’s Victims of Corruption Working Group at the recent 9th Session of the UNCAC Conference of State Parties.²⁹
6. **Procedures by regulators:** Regulators of certain sectors and professions have a responsibility for monitoring and sanctioning entities that may be involved in corrupt activity. Powerful regulators, such as the Securities and Exchange Commission (SEC) in the United States or the Financial Conduct Authority (FCA) in the United Kingdom, are able to investigate and bring criminal prosecutions for corrupt behavior. Often these institutions have broad powers based on their respective sectors. The broad remit of powers may not explicitly mention corrupt activity; however, they are broad enough to cover such behavior where it can be demonstrated that the entity or individual

has acted in bad faith. Civil society organizations can raise the conduct of such individuals with regulators to ensure that they are on the regulators' radar.

7. Debarment or other sanctions by a multilateral development bank, development agency, or export credit agency: A special category of victims are those (foreign) entities where the funds affected by corruption came in the form of credit, credit guarantee, subsidy, aid, or other financial instruments. These could be from multilateral development banks, national development agencies, or other comparable bodies. Many of them mainly rely on criminal justice bodies of countries that have jurisdiction over the corruption case, while others have either their own anti-fraud/anti-corruption unit and/or bring in specialized service providers to investigate. Civil society, or the victims they represent, can find allies among these entities in bringing cases to public authorities, or the investigative offices and sanctions bodies of these institutions can be targeted with requests to open a case. It is widely known that multilateral development banks can investigate and sanction grand corruption cases very effectively when they have a stake in a particular case.

Mr. Földes highlighted the importance of CSOs in anti-corruption efforts. While law enforcement has far greater powers of investigation, journalists and CSOs have a number of other advantages. Multiple CSOs and journalists working together can create an exponential network of information sharing, geographic contextual knowledge, and subject area focus that individual public bodies cannot easily repli-

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cate. If law enforcement fails to investigate these crimes in their jurisdictions, civil society is well placed to take on this role. Journalists and CSOs can be agile in reacting to cases that are brought to their attention. Where an opportunity arises to pursue a case of grand corruption, CSOs can mobilize resources to investigate as a priority in a way that law enforcement cannot, due to the obligations and time limits placed on them once an investigation has commenced. Moreover, investigative journalists and CSOs are generally politically neutral and have the freedom to pursue areas of investigation without the risk of being influenced. In countries where public authorities are unable or unwilling to investigate grand corruption, CSOs have the flexibility and independence to pursue investigations that law enforcement may not be able to pursue. CSOs can play a role in highlighting both corrupt activity and the negative consequences it can have on the environment, socio-economic rights, and equality in a country. Lastly, civil society can focus on pursuing corrupt actors who commit crimes related to grand corruption regardless of where the crime took place or where the entity or individual is from. This global view is even more impactful where journalists and CSOs from different countries are able to work together.

Judge Mark Wolf: The international anti-corruption court—a transnational response to grand corruption³⁰ (paper)

Judge Wolf advocated for the creation of an international anti-corruption court (IACC). Judge Wolf highlighted that grand corruption does not endure due to a lack of anti-corruption laws. 189 states are party to UNCAC, which requires the state to have laws criminalizing varying forms of corruption. However, this is not sufficient as many kleptocrats and other corrupt senior government officials have impunity in their own countries. This is because they control the systems that ought to convict them. There is no international institution that holds kleptocrats accountable for corruption when states fail in doing so. The IACC would, therefore, fill the crucial enforcement gap in the international framework.

Judge Wolf highlighted that the IACC had value:

1. as a fair and effective forum for the prosecution and punishment of kleptocrats and their collaborators;
2. as a deterrent to others tempted to emulate their example; and
3. as a way to recover, repatriate, and repurpose ill-gotten gains for the victims of grand corruption.

Creation of the IACC was first proposed in 2014.³¹ The IACC would have the authority to prosecute a head of state or government, anyone appointed by a head of state or government, and anyone who knowingly and intentionally assists one or more of them in the commission of a crime within the IACC's jurisdiction. By joining IACC a state would agree that such immunities do not protect its present and former officials. The IACC would have the authority to prosecute present or former officials of non-member states if they commit all or part of a crime within the IACC's jurisdiction in the territory of a member state. This follows precedent set by the ICC: principles of personal and functional immunity apply to the "horizontal" relationship between states "but no immunities under customary international law operate . . . to bar an international court in the exercise of its own jurisdiction."³²

The IACC would have the authority to enforce the laws required by the UNCAC, particularly those criminalizing bribery, embezzlement of public funds, misappropriation of public property, money laundering, and obstruction of justice. The legal framework and jurisdiction for accommodating this could be drawn from existing domestic law, with consent given by the state. Alternatively, or in conjunction, a uniform version may be included in the treaty. Notably, the IACC would not create new norms: it would simply embody those norms already contained within nearly all jurisdictions and provide a forum for those existing obligations. Therefore, for example, a kleptocrat who accepts a bribe in a state that is not a member of the IACC, and uses the banking system of a member state to transfer or hide the proceeds of that crime in violation of the member state's domestic laws, could be prosecuted for money laundering at the IACC if the member state were unable or unwilling to prosecute. This is important because kleptocrats routinely conspire with enablers to use international financial systems to launder the proceeds of their corrupt conduct and to relocate them as assets in attractive foreign destinations, while attempting to mask their beneficial ownership of those assets. Crimes such as conspiracy and money laundering are continuing offenses which may be committed in part in several jurisdictions.

The IACC would be a court of last resort. Operating on the principle of complementarity, the IACC would only investigate or prosecute if a member state were unwilling or unable to prosecute itself. Absent a referral from a member state, the IACC would decide whether to defer to the member state or exercise jurisdiction itself. In doing so, the IACC would be guided by principles in Article 17 of the Rome Statute that created the ICC and the substantial jurisprudence concerning complementarity developed, and continuing to develop, at

the ICC. Among other things, like the ICC, the IACC would consider:

1. whether the member state is already investigating or prosecuting the matter;
2. if so, whether it is a good faith effort or a pretext to protect a possible criminal from being held accountable; and,
3. in any event, whether the member state has the capacity to conduct the investigation or prosecution independently, impartially, and effectively.³³

Judge Wolf further underscored that a corruption court remains a realistic idea. There has now been a declaration signed by 203 world leaders stating the intention to create an anti-corruption court. Judge Wolf objected to those stating the IACC would be moot as kleptocrats will not allow their countries to join. Rather, he illustrated that kleptocrats do not usually keep their gains in their states. Instead, kleptocrats tend to hide their assets abroad. This means prosecutions could be possible in the major financial centres such as Switzerland, Singapore, and London. The court could prosecute private citizens and enablers, but the IACC would also be a forum to prosecute foreign state individuals. They would not have immunity, and this would be consistent to the approach at the ICC. He concluded that the IACC is a crucial response, which would complement, rather than conflict with, regional and national efforts to strengthen the enforcement of criminal laws against kleptocrats and other measures to combat grand corruption.

Dr. Anton Moiseienko: Principles for Using Targeted Sanctions to Address Crime (paper)

Dr. Moiseienko examined the use of targeted sanctions against foreign corruption. His presentation focused on when to resort to targeted sanctions as opposed to non-conviction-based asset confiscation or criminal conviction. He noted that there is a traditional approach of criminal prosecution and conviction based on the criminal standard of proof of "beyond reasonable doubt." Second, one rung below that is the mechanism, used in multiple countries, of non-conviction-based asset forfeiture, a notionally civil confiscation of supposed proceeds of crime that eschews the need for compliance with a suite of criminal trial safeguards. At the third level of this emergent hierarchy are crime-based sanctions, which vest the state with the greatest latitude in dealing with suspected criminals. That flexibility is due, in part, to the widespread view that targeted sanctions belong to the domain of foreign affairs, and therefore should not be treated on a par with (other) criminal justice measures. Sanctions have become an increasingly popular tool to com-

bat grand corruption, and this is mirrored within the increased use of non-prosecution-based sanctions in the form of asset freezes, travel bans, and targeted sanctions. Often, these are characterized by, and suffer from, both a non-transparent and a politicized nature. As such, extrajudicial sanctions often are imposed based on permissive evidential standards, such as that of "credible evidence" or "reasonable grounds to suspect," which are far lower than either the criminal or civil standard of proof. In order to shed more light on the practice of sanctions, Dr. Moiseienko analysed the practice of states and sanctions to see if principles could be derived. The traditional pattern of sanctions decision-making is to introduce "country" regimes that create a legal framework for designating malicious actors associated with that particular country. A more recent phenomenon, by contrast, is the emergence of thematic (also known as "horizontal") regimes that enable sanctions designations based on activity rather than country. Some thematic regimes are explicitly predicated on criminal activity, such as corruption, human rights abuse, or cybercrime, and can be rightfully described as "crime-based sanctions." This form was the basis for his presentation and paper.

A common notion is that criminal prosecutions, non-conviction-based asset confiscation, and targeted sanctions all attract different standards of proof. Dr. Moiseienko acknowledged that these ideas may not be necessarily wrong. However, he argued that this classification is a problem that masquerades as an answer. It does not provide any clarification as to how or when sanctions should be used. Another commonly accepted notion is that targeted sanctions are made to change behavior. If this rationale is taken in earnest, the use of sanctions in response to irreversible wrongdoing is misguided. It may be argued that crime-based sanctions aim to deter future perpetrators by making an example of the past ones, but this is also consistent with a punitive rationale. To expand, one of the preeminent justifications of punishment is precisely to inhibit would be wrongdoers. This view may also be considered problematic as corruption has already occurred and what is done cannot be undone. At most, it may change the behavior of the perpetrator if it's still engaged in corrupt acts. Further, strict adherence to the idea of behavioral change would result in the counterintuitive conclusion that sanctions should not be used against the most persistent and recalcitrant malicious actors that are least likely to modify their behavior. Nevertheless, this core idea of targeted sanctions being somehow preventative, administrative, or otherwise non-criminal has been upheld in case after case. It is almost inevitable that had this approach not been taken, targeted sanctions would have had to be struck down on account of incompatibility with the presumption of innocence.

Sanctions empower a government to respond to ostensible wrongdoing in a more forceful fashion than mere condemnation. Yet they can also be calibrated so as to avoid irreparable damage in relations with another state. Given the wide discretion that sanctions laws vest in the executive, there is a whole gamut of considerations that can result in the establishment of a sanctions regime. One of these considerations is impunity. Dr. Moiseienko defined impunity to mean the absence of an adequate criminal justice response to wrongdoing that significantly impairs its victims' fundamental rights. Thus, even though the sanctions' immediate preoccupation is with imposing costs on the perpetrator, the underlying value is the protection of victims' rights. The deliberation that led to the Magnitsky Act reflected that sanctions are used when a justice system is not capable of tackling the offense and is more or less framed as fighting impunity.³⁴ However, if redressing impunity were accepted as a *de facto* criterion for imposing crime-based sanctions, this would entail a simple but meaningful limitation, namely that governments' sanctions energy should not be squandered on those whose wrongdoing has already been dealt with in their home countries.³⁵ Such a targeting might be a convenient way of sidestepping diplomatic sensitivities attached to sanctioning a high-ranking foreign official but it contributes nothing to counteracting impunity, let alone any conception of behavioral change.

Impunity—and, by extension, the need for punishment—alone is not the only plausible reason for crime-based sanctions. In his paper, Dr. Moiseienko considered the example of the US designation of Evil Corp, a Russian-based ransomware group in December 2019. Its principal effect is not to punish the members of Evil Corp by freezing their US assets, of which there may be none, or barring their entry to the US, which those in their line of business are unlikely to seek, but to disrupt their criminal operations by precluding US persons from paying ransom to Evil Corp. In the absence of an overarching legal prohibition on the payment of ransom to cybercriminals, the designation represents one of the US government's most aggressive legal steps yet to undermine the commercial viability of Evil Corp's operations. The disruption rationale is of particular relevance insofar as organized crime groups are concerned. Whether the intended disruptive effect actually materializes may depend on many variables, including the economic power of the sanctioning state, the extent of the targeted person's connections with it, and the degree of international coordination with other states' sanctions programs. A constellation of these factors determines where particular designations fall on the spectrum between hard impact and symbolism.

Lastly, Dr. Moiseienko considered the different principles that should govern the imposition of targeted sanctions in response to crime:

1. **Impunity of the perpetrator.** The application of targeted sanctions is permissible—and arguably desirable—against alleged perpetrators who enjoy impunity in their home countries or other countries that would ordinarily have jurisdiction over the alleged offense. The more severe the violation, the greater normative force underlies a call for counteracting impunity.
2. **Seriousness of the crime.** The magnitude of the wrongdoing, for its part, is a criterion whose relevance is obvious. There is no shortage of people involved in serious corruption, human rights abuse, or cybercrime. As a result, the difficulty lies less in identifying those who fit the bill than in prioritizing the worst offenders. That goes to the heart of the consistency, integrity, and credibility of sanctions programs. In thinking through what makes a crime sufficiently serious, there are two issues to consider, namely the *types* of crime that typically merit a designation and the *magnitude* of the perpetrator's wrongdoing.
3. **Seniority of the perpetrator.** Serious crime, be that grand corruption or human rights abuse, can be carried out by extensive networked groups of people with different modes of involvement. Those at the top of these hierarchies *a priori* bear greater moral responsibility for the crime, are likely to have generated greater incomes through their wrongdoing, and, to the extent that sanctions serve deterrent purposes, are those whom it is most important to deter from further wrongdoing. There is, however, a certain ambivalence in how states approach senior state officials. The US has generally avoided targeting heads of states or government ministers. It suggests a certain reluctance to target the top brass and is arguably best explicable as a product of weighing diplomatic equities.
4. **Dependency on the state.** On the one hand, the stronger the link to a state the more effective sanction will be. Equally, however, the stronger the due process concern, the more powerful human rights concerns. The strongest, and most obvious, type of connection between the targeted person and the sanctioning state is citizenship or permanent residency. There is a virtual uniformity of state practice in not extending sanctions to a state's own citizens or permanent residents. In the US, sanctions cannot be directed at US citizens as a matter of law. The emerging consensus is only punctured by the practice of Ukraine, the sole country whose government has made a

habit of resorting to sanctions against its own citizens to bypass its corrupt and ineffectual courts. Other common links are the ownership of property, including but not limited to residential real estate, or familial connections in the sanctioning state. The former, in particular, may provide that state's authorities with the legal jurisdiction to launch non-conviction-based asset forfeiture proceedings and the practical ability to inquire into the circumstances of the property acquisition. The presence of family in the sanctioning state is less likely to supply such leverage but nonetheless raises the stakes for the targeted person if they lose the right to enter that state's territory or send or receive funds there. Depending on applicable law, the potential negative impact on the victim can be articulated in the language of human rights. It is arguable, though, that the presence of a tangible link between the sanctioning state and the targeted person should, as a matter of policy, lead to the application of more stringent due process guarantees than would otherwise be the case.

Dr. Moiseienko noted that due process is where the current experience of major sanctioning powers falls short. The US sanctions framework is notoriously unfriendly to challenges against sanctions. The standards of proof under the Magnitsky Act 2012 and the Global Magnitsky Act 2016 are "credible information" and "credible evidence," respectively, and any prospective claimant faces a steep hill to climb in demonstrating that the government's determination falls foul of the requirements in the Administrative Procedure Act of 1946, such as that its action not be "arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law." In the EU, the judicial review of sanctions by the Court of Justice of the European Union holds out greater prospects of success for those seeking relief but is based on ascertaining whether the European Council had complied with the vague abstract standard of "sufficiently solid factual basis." The virtual impossibility of articulating the precise meaning of the standard featured in the criticism of the UK House of Lords, with the UK subsequently opting for the "reasonable grounds to suspect" standard under the Sanctions and Anti-Money Laundering Act of 2018, whose provisions have not yet been tested in court. Here is a strong argument in favor of building a civil standard of proof into all crime-based sanctions, so as to ensure that their potential impact is matched by available due process guarantees. This would constitute yet another step towards normalizing them as a mainstream tool of criminal justice rather than a mysterious creature of the netherworld between diplomacy and economic coercion. This is not to deny the enduring relevance of some non-legal or, for lack of a better term, "political" considerations, in particular foreign

policy sensitivities and the need for international cooperation to augment the impact of sanctions. As such, sanctions need better due process guarantees. In short, it has become evident that sanctions are being used as a criminal justice tool. Nevertheless, governments should use clear outlines for how they use them.

Discussions

The discussion facilitated a debate between Dr. Arshinoff and Judge Wolf as they had proposed two very different adjudication systems—the OECD Dispute Settlement Mechanism and the IACC. Firstly, it was posed whether and how these adjudication systems would conflict with current existing enforcement mechanisms. Dr. Arshinoff highlighted that the OECD Mechanism was not about reinventing the wheel but rather utilising existing organizations. As such, enforcement would be left to the domestic courts. The Mechanism would rather provide oversight. Some states do not have resources or choose not to expend the energy to adequately monitor corruption. However, this Mechanism would force them to do so, as some of the sanctions would bring the state significant embarrassment. Additionally, the OECD's existing peer monitoring system would take further steps than what currently exists when OECD decisions are not adhered to. Judge Wolf stated that the IACC will not be inconsistent with current efforts. To date, 189 countries have criminalized core corrupt conduct. Nevertheless, he argued that the current fora, such as the UNCAC system, are weak in terms of enforcement. He further argued that UNCAC monitoring is weak by design. Thus, they are simply not effective. The IACC would ensure, on the other hand, that anti-corruption standards would be upheld. He also stated the more morally culpable criminals are those on the demand side, and prosecution of these individuals has generally been exposed to be very lacking, due to their status as kleptocrats. The IACC would not be an incursion on national sovereignty; it would be a place where states have chosen to share their sovereignty when they are unable or unwilling to otherwise prosecute corruption.

Secondly, it was asked how victims would be compensated or benefit from the new proposed systems. For Judge Wolf, an IACC conviction is not only an opportunity for penalization of the perpetrators, but for restitution to the victims. In anti-corruption outcomes it is very rare for victims or citizens to obtain justice. The IACC could have jurisdiction to hear civil cases, modelled after the US's False Claims Act. This allows whistle-blowers to obtain, for example, 25% the value of a settlement. The IACC would be a place where whistle-blowers and journalists could go to get redress,

where this would not be possible in the offending state itself. Regarding this, Dr. Arshinoff highlighted that the fines and levies he proposed within his OECD DSM model would go to a victims' compensation fund or a general anti-corruption fund.

Further, Mr. Földes was asked about his views on the two proposed models and the ability to improve the compensation of victims. He noted one criticism of the OECD DSM model in that only a small percentage of cases of foreign bribery are between the OECD countries. Most foreign bribery cases affect other jurisdictions. Therefore, this model would seemingly only touch on a niche of cases. He advocated for a greater expansion of the roles of CSOs in order to help victims achieve compensation. To this, Dr. Arshinoff replied that whilst jurisdiction has to include jurisdiction of a signatory of a member country, if there is a company incorporated in the relevant state as a domestic entity, despite the allegation of corruption being outside of the jurisdiction, the OECD DSM model could take action. Nevertheless, this once again tackles the supply side. Further, Dr. Arshinoff was asked whether this model could be replicated under an UNCAC model, which already includes a DSM. To this point, Dr. Arshinoff noted that a number of states have opted out of the UNCAC DSM, so, he did not believe that UNCAC would be a suitable place. He indicated that in later phases it may be possible to expand the DSM to UNCAC. Further, Mr. Moulette from OECD addressed whether the OECD DSM proposal was feasible, noting that currently there does not seem to be much appetite for such a model within the OECD membership. Nevertheless, he acknowledged that some ideas take time to come into fruition.

The participants also discussed crime-based sanctions. Dr. Moiseikeno was asked to highlight a case where sanctions were used effectively. Thus, whilst there are hundreds of people on the Magnitsky list it is unclear how many assets are affected. He noted that a comprehensive study on the effect of sanctions is missing, both positively negatively, and advocated for the creation of such. It was further asked whether sanctions could even be considered a valid response for grand corruption. Dr. Moiseikeno stated that in sanctions' current form as a foreign policy tool, they are sometimes used as a shield to negate appropriate due process concerns. This undermines their long-term credibility. Nevertheless, he did not believe this would mean they are unsuitable for corruption, but that governments ought to be more forthcoming with how and when they use sanctions to address due diligence concerns.

Mr. Földes was asked how investigative journalists could cooperate with law enforcement agencies. Mr. Földes noted

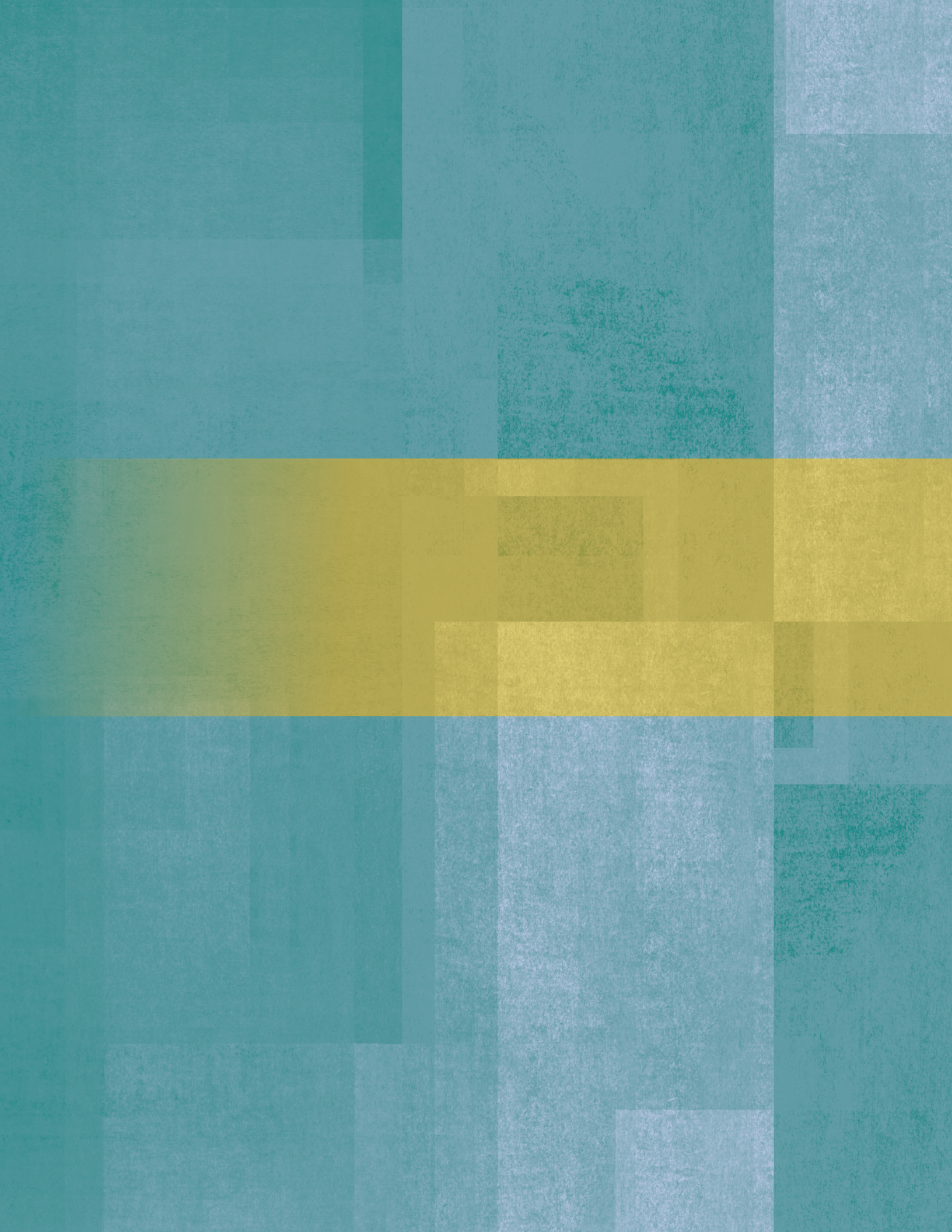
that was a sensitive issue but ultimately what CSOs can do is to get evidence from the journalists and help them turning it into a legal case for the authorities.

Looking forward, it was noted that the proposed OECD Mechanism, as presented by Dr. Arshinoff, might be better placed in the face of the increasing settlements of corruption than an IACC. Separately, the example of the Maritime

Anti-Corruption Network efforts, wherein information is collected anonymously, may be a source of valuable lessons about the use of data-driven initiatives in furthering transnational anti-corruption responses. Additionally, anti-corruption sanctions, as presented by Dr. Moiseienko, are seen as an area that deserves further attention and where an analysis of the effectiveness of such sanctions for grand corruption might be highly beneficial to the global anti-corruption efforts.

NOTES

22. Co-authored with Marc Tassé and Asma Bouali.
23. Co-authored with Kush Amin.
24. Paragraph 34 of the Council of Europe: Committee of Ministers, *Recommendation Rec(2000)19 of the Committee of Ministers to Member States on the Role of Public Prosecution in the Criminal Justice System*, 6 October 2000, Rec(2000)19, <https://rm.coe.int/16804be55a>
25. Human Rights First. (2013). Global Magnitsky Human Rights Accountability Act. 22 USC 2656. <https://www.humanrightsfirst.org/sites/default/files/GMA-Law.pdf>. The 2016 Act was expanded through Executive Order 13818 in 2017, Federal Register. (2017) Blocking the Property of Persons Involved in Serious Human Rights Abuse or Corruption. (<https://www.humanrightsfirst.org/sites/default/files/eo-13818-glomag.pdf>)
26. *Ibid.*
27. See summary of the history of the non-conviction based seizure and confiscation in Council of Europe, Economic Crime and Cooperation Division—Bright Line Law. (2020). *The Use of Non-Conviction Based Seizure and Confiscation*. Pp. 6–9. at www.coe.int/econcrime
28. Gobierno de España. (1998). Ley 29/1998, de 13 de julio, reguladora de la Jurisdicción Contencioso-administrativa. <https://www.boe.es/buscar/act.php?id=BOE-A-1998-16718>, Title II, Chapter II, Article 19.1 (h)
29. UNCAC Coalition Victims of Corruption Working Group. (2021). Recognizing Victims of Corruption. Available at: <https://uncaccoalition.org/wp-content/uploads/UNCAC-Coalition-%E2%80%93-CoSP9-submission-%E2%80%93-Recognizing-Victims-of-Corruptions.pdf>
30. Co-authored with Judge Richard Goldstone, Bethany Adam, Emil Bolongaita, and Robert Rotberg.
31. See Mark L. Wolf, 'The Case for an International Anti-Corruption Court' <<https://www.brookings.edu/research/the-case-for-an-international-anti-corruption-court/>>
32. *Situation in Darfur, Sudan in the Case of The Prosecutor v Omar Hassan Ahmad Al-Bashir* (The Appeals Chamber of the ICC, 6 May 2019) para. 114 <https://www.icc-cpi.int/CourtRecords/CR2019_02856.PDF> accessed 14 January 2022
33. The Rome Statute of the International Criminal Court, Article 17
34. The Global Magnitsky Act, 2016, <https://www.state.gov/global-magnitsky-act/>
35. See for example Gulnara Karimova, the daughter of the late president of Uzbekistan under the Global Magnitsky Act. Karimova had already been charged with multiple offences in her home country, where she fell out of favor with the new government and was placed under house arrest. She was therefore being processed by the justice system of Uzbekistan, but she was also plainly incapacitated and prevented from carrying out any further (alleged) criminal acts.





SESSION 5

Corruption and International Investment Arbitration

- **Dr. Rachel Brewster**, Professor, Duke University School of Law. *Adjudicating Corruption: An Analysis of the Comparative Effects of Enforcement on Investors and Governments in International Investment Arbitration (paper)*
- **Dr. Yarik Kryvoi**, Director, Investment Treaty Forum at the British Institute of International and Comparative Law & **Vladimir Kozin**, Anti-Corruption Advisor, UNODC. *Corruption in International Investment Agreements and Investor-State Dispute Settlement (paper)*
- **Andres Sellitto Ferrari**, University of Pittsburgh. *The New Maritime Silk Road: Chinese Foreign Investment in Latin America and the Need for Urgent Anti-Corruption Action in the Region (paper)*
- **Yueming Yan**, Singapore Management University. *Rethinking International Investment Law's Responses to Corruption: An Examination from The Global Governance Theory (paper)*
- **Discussant:** Nikolaus Pitkowitz, Partner, Pitkowitz & Partners

Mr. Pitkowitz reflected that arbitral awards have an impact at both the economic and political levels. There is a consensus that, whether in the field of commercial or investment arbitration, tribunals and arbitrators have a duty to address corruption claims. Nevertheless, they must remain within their powers, as a tribunal is not a criminal court and cannot act as one. As such, most tribunals have seen corruption as a bar to jurisdiction and when this is invoked by a claimant, it has been dubbed the "corruption defense." The origins of the corruption defense may be found in the arbitration case of *World Duty Free Company v. Republic of Kenya*, where dispositive corruption was discovered between the investor and the then-President of Kenya. The investor alleged expropriation but the respondent invoked a corruption defense, contending that the contract of investment was procured via corruption. As a result, endorsing the Kenyan allegation of corruption, the tribunal dismissed the investor's claims in their entirety. The justification for this approach—and whether it should be changed—was discussed in subsequent presentations.

Dr. Yarik Kryvoi & Vladimir Kozin: Corruption in International Investment Agreements and Investor-state dispute settlement (paper)

Dr. Kryvoi and Mr. Kozin presented their study on corruption in international investment agreements. The study included references to corruption in old and new generation investment treaties, practice of investor-state tribunals, trends in registration of corruption-related cases, and proving corruption in international investment arbitration (IIA). Further topics included analyses of trends in who alleged corruption, whether the tribunal considered the corruption allegations, the success rate in having corruption allegations examined, and the consequences of finding corruption. From the outset it was noted that a balance must be struck between the need to provide an effective and efficient investor-state dispute settlement (ISDS) mechanism and the obligation of states, tribunals, and investors to tackle corruption.

The scope of the study included 72 cases with available data. Of these, UNCAC was referenced in 15 cases. The second-most-referenced applicable legal instrument was the OECD Anti-Bribery convention with 5 cases. Other instruments include the Organization of American States Inter-American Convention Against Corruption, the Council of Europe Civil Law Convention on Corruption, the Council of Europe Criminal Law Convention Against Corruption, and the Southern African Development Community Protocol Against Corruption. This is notable: despite UNCAC having near-universal ratification, most cases did not refer to it, or in fact *any specific instruments on corruption*. To reiterate, *there was usually no specific analysis of specific anti-corruption measures, be it domestic or international law*. Moreover, Dr. Kryvoi and Mr. Kozin identified clear differences in how corruption is addressed in IIA's old generation and new generation treaties. As it currently stands, the majority of international investment agreements currently contain no references to corruption. Only 45 out of 2,575 international investment agreements mapped by IIA Navigator actually refer to corruption in their provisions (outside the preamble). However, there is now a changing trend. The majority of new generation treaties, meaning those concluded within the last decade and a half, now contain specific references to corruption instruments. This is in contrast to the broadly-formulated standards of the past.

Looking to how newer generation treaties reference corruption, three main categories were identified. Firstly, corruption may be referenced as a "legality requirement." This includes an explicit reference to corruption.³⁶ To expand, the treaty will explicitly bar investors bringing a claim to arbitration if the investment has been made via corruption. A second category was to incorporate anti-corruption provisions as a part of corporate social responsibility.³⁷ This is characterized by softer language, urging voluntary compliance to international standards. Thus, the treaty may encourage states to urge entities

There is a consensus that, whether in the field of commercial or investment arbitration, tribunals and arbitrators have a duty to address corruption claims.

subject to its jurisdiction to adopt internationally recognized standards of corporate social responsibility, including those on corruption. The third category identified were examples in treaties that reference specific anti-corruption treaties or refer to specific anti-corruption obligations (e.g., UNCAC).³⁸ These fall into the minority.

The study demonstrated that the number of corruption allegations in IIA have been increasing. Nevertheless, proving these corruption allegations is another feat. Corruption allegations require a high evidentiary standard for substantiation before a tribunal that is frequently ill-equipped to deal with such investigations. In short, investigations into the corruption allegations can be burdensome and outside of an arbitrator's competence and accentuate an arbitrator's lack of coercive powers. Dr. Kozin then highlighted figures relating to allegations of corruption in IIA. Statistically, in 67% of cases the state alleged the corruption offense. In 2 cases, the tribunal raised the corruption on its own. Subsequently, in 64% of cases, the tribunals considered the allegations. When the tribunal did not consider the allegations, it was not illustrated for what reasons. Moreover, of the tribunals that considered the allegations, only in 5 cases were the corruption allegations proved. If it was found that the corruption had occurred, the tribunals declined jurisdiction. This falls into the ambit of the "corruption defense." Nevertheless, there were other consequences. For example, in one such case, the perpetrator was ordered to pay all the costs incurred by the arbitration. Moreover, in an unusual case, the tribunal urged the state to make a contribution of US\$8 million to a UN anti-corruption fund.

The presentation ended on a few recommendations. Neither state nor private parties ought to benefit from corruption allegations. The most important recommendation was that there needs to be a proper system of referral of corruption allegations to the relevant national authorities. As such, where UNCAC is an applicable law, adjudicators should examine substantiated corruption allegations, and promptly report alleged corruption offences to relevant authorities in accordance with applicable law. There needs to be a better bridge between the private law and public law realms to improve communication. Additionally, where appropriate, tribunals ought to defer to domestic corruption investigations and await the conclusion of the investigations.

Yueming Yan: International Investment Law's responses to corruption—an examination from the global governance theory perspective (paper)

Ms. Yan proposed diverging from the "corruption defense," where if an investment has been tainted by a corrupt act, and this act is substantiated, the arbitration case is dismissed entirely. This is facing mounting criticism for two reasons:

1. It has caused imbalanced liability. Corruption is inherently bilateral. On the supply side, the investor loses both the bribe it paid and its investment. However, on the demand side, the host state not only keeps the bribe but typically keeps the investment.
2. This jurisprudence is likely to lead to host states ceasing to worry about legal consequences when taking regulatory measures explicitly prohibited by investment treaties.

Ms. Yan briefly explained the typical scenario of raising corruption during ISDS. The investment was allegedly secured by a corrupt act between the representative of the investor (e.g., the CEO) and the public official of the host state (e.g., the President). This bribe payment may be solicited by the demand side or may be initiated by the supply side. After the establishment of the investment, the host state takes certain measures (such as an illegal expropriation) over the investment, which are alleged by the investor to be a breach of the bilateral investment treaty (BIT) signed between the host state and the home state of the investor, such as an alleged illegal expropriation. The investor then raises its claims before an investment tribunal. The host state, in turn, attempts to use corruption as a defense against the investor's claims, contending that investments procured through corruption are outside the realm of protection or access to international dispute settlement. Under this approach, which Ms. Yan dubbed the binary approach, the tribunal will not examine whether or not the alleged regulatory measures (e.g., illegal expropriation) have violated the treaty or contract obligations by which the host state must abide. The binary approach to the corruption defense allows the host state to withdraw from the corrupt acts at no cost. Ms. Yan further argued that the current decisions on corruption may further incentivize host states to conduct corrupt acts or ignore the corrupt acts of its public officials, especially when an investor has nowhere to seek remedies when encountering solicitation from the demand side, ultimately generating a vicious circle. The tribunal will not examine whether or not the alleged regulatory measures (e.g., illegal expropriation) have violated the treaty or contract obligations by which the host state must abide. This is not satisfactory for numerous reasons, including the fact that it punishes the supply side of corruption without addressing

the demand side. When this behavior goes unpunished, it creates an unfavorable regulatory environment for anti-corruption measures and may even encourage states to ignore anti-corruption efforts entirely. As such, the use of this binary approach without consideration of the possibility of treaty violations (e.g., an illegal expropriation) of the host state further raises concerns over potential abuse of power.

Diverging from this binary approach would entail embracing the tenets of the global governance theory. Under the global governance theory, international arbitration goes beyond the fact-finding and lawmaking/law-ascertainment functions insofar as it accepts that judges and arbitrators, or some of them, can and do engage in autonomous normative action while still adhering to the rule of law. This governance function requires an investment tribunal to "consider the impact of their rulings on states, persons, or entities not directly represented in the case before them," especially when one sees a trend towards the constitutionalization of international law. The paramount role of arbitration in global governance is the exercise of this substantive discretion in the decision-making process. This includes the questions which push the boundaries of investment arbitration—including the questions surrounding allegations of corruption. Ms. Yan noted that it is wise to interpret legal rules in a flexible and adaptable manner so as to respond to the innumerable and evolving scenarios of misconduct in this realm. The starting point of impugning illegality is undoubtedly beyond reproach, but the use of this requirement in a specific dispute should not be rigid. In complex cases especially, the question of whether or not the investment contains an element of illegality is not the sole question for a tribunal to examine. Corruption, for instance, is inherently bilateral in that not only the supply side but also the demand side are subject to punishment.

Those tribunals that have subsequently examined corruption claims from a global governance perspective took the initiative to investigate them. Doing so advances the idea that an affirmative finding of corrupt acts between public officials and investors should not be the sole ground for dismissing investors' claims. By examining the two alleged wrongdoings—a violation of the treaty terms by the state such as expropriation—and the alleged corruption by the investor, the tribunal adopts a dual-track approach. As such, to examine both these claims in the merits phase and holding the host state responsible for both wrongdoings (if substantiated) is in conformity with international investment law and general international law. By adopting a dual-track approach, investigating also the investors, for example, for a claim of expropriation, the investor may still be partially compensated. If corruption is proven,

the bribe payment should be confiscated to use for anti-corruption initiatives and the host state should prosecute the involved individual officials or make compensation. The host state should make full reparation (like compensation) for any breach of the investment treaty. Only a portion of the compensation should go to the investor depending on the factual findings, which is aimed at penalizing the investor's participation in the corrupt act. As such, it tackles both the demand and supply side of corruption.

**Dr. Rachel Brewster: Adjudicating corruption—
an analysis of the comparative effects of
enforcements on investors and governments
in international investment arbitration (paper)**

Dr. Brewster supported the "corruption defense." Dr. Brewster illustrated the issue at hand: the dominant approach of investment panels has been to refuse to hear investors' claims when corruption allegations are credible. This approach works to the benefit of governments because only investors can sue governments in international investment arbitration (not vice versa). Consequently, in refusing to hear credible claims of corruption by investors, investment panels provide governments with a shield against investment claims. Critics of this "corruption defense" decry its asymmetric effect: penalizing investors and immunizing states. Here, Dr. Brewster noted that given that states can only be held liable in international investment arbitration, this approach would enable private investors to recover damages against the state even though the private investor violated the state's law.

Adopting a policy approach, Dr. Brewster noted that unlike corporations, governments are not entities that are driven by profits. Instead, governments are driven by political support. Damage awards from arbitration panels translate only modestly, if at all, into a loss of political support and, thus do not particularly motivate governments to adopt anticorruption reforms. In addition, governments are often decentralized, and even highly motivated governments may have difficulty controlling corruption. None of this is to say that a large damages award against a state would not affect government decision-making at the margins. While governments are not profit-maximizing, they are not immune to fiscal constraints either. It is simply a far more attenuated and indirect process than with corporations. By contrast, corporations are profit-maximizing entities and respond readily to financial incentives. Corporations are also generally hierarchical and have better tools (e.g., *financial compensation, hiring and firing, employee monitoring*) to enforce anti-corruption provisions. Moreover, the empirical evidence points to an embrace of

the corruption defense. No states have updated the terms of their model bilateral investment treaty (BIT) to disallow the corruption defense or explicitly give the arbitral panel the jurisdictional power to hear these claims and assess relative fault. To the contrary, states—both capital-exporting and capital-importing—have more explicitly excluded corrupt investment from their investment treaty's protections. The Canada-EU Comprehensive Economic and Trade Agreement (CETA), which entered into force in 2017, includes such a clause in its investment chapter. Specifically, it contains a legality clause that uses more explicit language than the "in accordance with local laws" formulation, and explicitly bars arbitrators from hearing cases that involve investments made through corruption. Similarly, the Netherlands' Model BIT and Norway's Model BIT now require that arbitration panels decline jurisdiction if the investment was made through corruption. The clear trend by states negotiating investment treaties has been relative support for the corruption defense. Some states have more overtly included this doctrine in their investment agreements and no state has disclaimed it.

Thus, whilst international investment law appears as an attractive area to penalize corruption, due to the jurisdiction on both investors and states, this does not hold up to scrutiny. Foreign direct investment is largely unregulated from the economic side. By ensuring multinational corporations do not succeed with claims that stemmed from corruption, it deters them from engaging in corruption. Corporations aim to make money and are motivated by the threat of economic losses. Moreover, investment law does not exist in a vacuum. When considering measures, adding measures that make it likely for the debt-burden for underdeveloped states to be exacerbated cannot be considered a favorable outcome. A corporation's primary focus on profits, along with its board's ability to replace any manager or employee, provides it with the ideal structure to respond to financial incentives. Fines, particularly large ones, directly decrease the firm's finances and profits. If the corporation has a program that credibly could lead to liability—say a US\$1 million fine for corrupt practices—the corporation will either establish (or improve) compliance programs to prevent further corrupt practices up to the expected value of the fine, or simply end the program, whichever is less expensive.

Given this analysis, Dr. Brewster questioned how the removal of the "corruption defense" would influence governments' actions to address corruption. The strong version of the anti-corruption defense argument—that investment awards will lead to a robust anti-corruption response as governments internalize the costs of corruption—is unlikely to be true. Unlike corporations, government support does not rise

and fall based on fiscal inflows and outflows, but on a much broader set of social and economic policies. In addition, the supporters of the government may not have to bear the costs of the judgment, unlike corporate shareholders.

Andres Sellitto Ferrari: The new Maritime Silk Road: Chinese foreign investment in Latin America and the need for urgent anti-corruption action in the region (paper)

Mr. Sellitto Ferrari provided a high-level overview of the state and risks of the Belt and Road Initiative (BRI) in Latin America. The BRI is an investment program that seeks to develop infrastructure such as railroad works and promote economic integration within partner countries, coupling resource-rich regions to emerging economies. It has allowed China to build its diplomatic relations and influence along the Silk Road route and beyond. China has deemed its expansion into the area as a natural extension of its now-evolving Maritime Silk Road. As the region is known for its poor anti-corruption frameworks, the large volume of investments poses significant risk. It is currently estimated that there are 13,000 development projects worth over US\$ 800 billion in the region. Moreover, it was found that within 35% of the BRI projects there was a risk of corruption. Notorious examples include the 1MDB scandal in Malaysia, involving a corruption and money laundering conspiracy in which the Malaysian sovereign wealth fund 1Malaysia Development Berhad (1MDB) was systematically embezzled, with assets diverted globally by the perpetrators of the scheme. Similar instances of corruption have been uncovered in both Pakistan and Sri Lanka. Latin American countries may be at a similar risk, given the weak frameworks Mr. Sellitto-Ferrari indicated earlier.

Before addressing the potential solutions to these, he briefly outlined investor-state dispute settlement mechanisms. These can be a way for host states to address corruption externally. China had signed three FTAs in the region with Chile, Peru, and Costa Rica for direct investments. None of these FTAs contain explicit reference to dispute settlement through a particular arbitral institution. These Latin American FTA allow the complainant to select the forum. Moreover, FTA-arbitration outside of NAFTA and Central America FTA is not widespread in the region, with barely over 200 arbitrations and none involving China. Nonetheless, of those arbitration cases the bulk were completed under the International Centre for Settlement of Investment Disputes (ICSID) rules. It is thus likely that if the parties involved in an FTA are members of ICSID, ICSID would be the preferred forum. If the situation evolves in the future, it will be easier to analyse.

Returning to potential solutions for anti-corruption efforts, Mr. Sellitto-Ferrari highlighted the importance of supranational organizations in the region. These organizations can coordinate with national governments and advise them how to deal with corruption issues. Moreover, they can conceive legal frameworks, especially on the issues of prevention and resolving disputes likely to arise from BRI-linked countries. There have been various efforts in both OECD and non-OECD states in the region, but these have had varying degrees of success. Political will and other domestic constraints remain a fundamental roadblock in combatting corruption in the region. Hence, it is crucial to have supranational organizations provide external pressure for reform. Another possible consideration could be to seek alternate influences on the region with strong anti-corruption backgrounds. Mr. Sellitto-Ferrari named the United States and its anti-corruption strategy—countering corruption with five mutually reinforcing pillars—as a possible option. This includes the role of multilateral anti-corruption architecture including that of the OECD. Nevertheless, he warned that the strategy has been perceived to be perfunctory and thus far has almost completely avoided Latin America. Moreover, he stated that the United States will have to face a steep climb to counter China's influence due to the widespread investment already present. In conclusion, foreign investment without proper regulatory environments has led to, or is in danger of leading to, recklessness and inefficiency in corruption efforts. There is a currently an urgent need to help combat this, and it will need to come from multilateral organizations and states with strong anti-corruption backgrounds.

Discussion

The discussion touched upon various topics. The discussant posed to all presenters whether addressing corruption forms a part of the inherent powers of a tribunal or whether the institutional rules of fora such as ICSID need to be changed to give room to address this. If neither, he asked alternatively whether it would be necessary to have a deferral mechanism where these issues can be referred to a forum which would be most suitable. To this, Ms. Yan stated there is no need to modify the ICSID or UNCITRAL rules, as tribunals already have a wide ambit of powers and discretion on addressing corruption matters. Be it corruption or labor or environment matters, tribunals have the powers to address such matters provided they are closely related to the investment claims at hand. To expand, she opined that a corruption allegation is based on the authorities—such as the legality requirement in the BIT. Therefore, the tribunals do not only have a power to

discern this but a duty to do so. In sum, investment externalities can be brought before the tribunal without the need to modify the rules and norms that exist, provided the issues are closely related to the investment. Dr. Brewster stated that international investment arbitration has a lot of problematic aspects; reforming investor-state dispute settlement (ISDS) is necessary generally, outside of this scope. She noted however the difference between new generation versus old generation treaties; newer generation treaties have more explicit requirements regarding corruption, but they bar more cases where corruption is alleged. It largely states that export capital investors should not get the benefit where corruption has been a factor. Therefore, she endorses the principle that there should be a bar to jurisdiction.

Moreover, the Mauritius Convention and the Basel Institute on Governance Toolkit were addressed.³⁹ Regarding the latter, it was questioned whether there ought to be an obligation to use the Basel Institute on Governance Toolkit, which denotes

what should constitute a "red-flag" for corruption, as this currently does not exist. It was agreed that there is much room for the arbitrator and the parties to decide whether or not to use the Toolkit, as it does not form part of the main institutional arbitration rules. However, it was noted that this was designed primarily for commercial arbitration. This raises a point whether it can be regarded as adequate for ISDS, or if the unique nature of ISDS requires a more specialised Toolkit. Additionally, a discussion point was raised on the Mauritius Convention, regarding why so few states have ratified the Convention.⁴⁰ It was the general consensus that not only investors prefer arbitration to be opaque, but states as well. Dr. Kryvoi stated that when examining allegations of corruption and ISDS, it ought to be ascertained that neither state nor investor benefit. Important methods to improve addressing corruption could include adopting due diligence mechanisms, used by both state and investor, to demonstrate corruption has been avoided inasmuch as possible. Moreover, linkages within domestic law and the jurisdiction where the corruption



has occurred need to be examined. As an example, he stated that if there is a law in domestic legislation that corruption should be reported to relevant authorities, then this should be abided by the tribunal. Moreover, Dr. Kozin explored the realm of corruption and legal mechanisms. He named certain mech-

anisms, such as serial confiscation, that could be used, that could have significant consequences for private parties. This is an area that needs to be researched and explored more, whilst acknowledging the risks involved in elevating tribunals to similar public official roles or tools.

NOTES

36. As an example, see the provision contained within 2016 Canada-Europe CETA art.8.18(3)

37. As an example, see the provision contained within the 2014 Canada—Côte d'Ivoire BIT art 15.2

38. As an example, see the provision contained within the 2013 Guatemala-Trinidad and Tobago (art 17)

39. https://baselgovernance.org/sites/default/files/2019-05/a_toolkit_for_arbitrators_29_05_2019_single_pages.pdf

40. United Nations Convention on Transparency in Treaty-based Investor State Arbitration (2014) (Mauritius Convention on Transparency)

SESSION 6

The Non-Government Sector's Role in Supranational Anti-Corruption Efforts



- **Simine Sheybani**, Attorney, Hayat Meier & Sandrine Giroud, Attorney, LALIVE. *Granting Legal Standing to NGOs In Corruption Proceedings (paper)*
- **Jasmine Elliott**, University of Gothenburg. *The Corporate Legal Profession's Role in Global Corruption: Obligations and Opportunities for Contributing to Collective Action (paper)*
- **Eui Hyun Yang**, Analog Devices, Inc. *Voluntary Good Faith Engagement of the Life Science Industry to Complement Anti-Corruption Efforts in the Healthcare Sector (paper)*
- **William Heaston**, Wharton School, University of Pennsylvania. *Clickbait Compliance and Transnational Corruption (paper)*
- **Dr. Hady Fink**, Advisor, Partnership for Transparency Europe. *CSO Engagement to Deliver the Agenda 2030 Anti-Corruption Targets: The Case for a Supranational Initiative (paper)*
- **Andrew Blasi**, Director, Crowell & Moring International. *Global Collective Action to Prevent Corruption Amidst the COVID-19 Pandemic: An Overview of the Business Ethics for APEC SME's Initiative (paper)*
- **Discussant: Marlen Heide**, Partnering Against Corruption Initiative, World Economic Forum

Jasmine Elliot: The corporate legal profession's role in global corruption: obligations and opportunities for contributing to collective action (paper)

Ms. Elliot's presentation explored why and how a corporate legal stakeholder should address corruption. She introduced the issue with a case study. In a Global Witness investigation in 2016, an NGO had an undercover person go to 13 law firms in the USA to represent a foreign government official looking to buy various properties and luxury goods in the United States. The representative asked these lawyers how to move the funds into the country without identifying the foreign government official. The representative intentionally used words in his discussion with the lawyers that should have provoked questions of corruption regarding the origin of the funds, like "grey money," "black money," and "facilita-

tion payments." Despite these red flags, most of the lawyers in their introductory meeting provided some initial advice to facilitate how the representative could get the money into the United States. During their initial meeting, only one lawyer told the representative that he would not help and did not provide any initial advice on what could be done to help the government official. Whilst this example is fake, the Panama papers, Pandora Papers, and 1MDB scandal in Malaysia demonstrate that lawyers facilitation of corruption is a potential systemic issue.⁴¹

A lawyer can engage in several actions that would be considered causally complicit corruption such as advising, facilitating funds, and conspiring in the corrupt act itself. Even with legal advice, lawyers tread a fine line; Ms. Elliot argued

that lawyers should be held to an exceptionally high standard of knowledge based on their experience and role in society, and this standard should be reinforced in their due diligence practices. The legal profession has been notably silent in acknowledging its systemic role in corruption and taking steps for self-reform. Ms. Elliott named examples of the legal profession trying to fight further regulations that may help mitigate their role in corruption and money laundering, such as the American Bar Association's discussion of "Gatekeeper Regulations on Attorneys." This concerned proposed bills promoting beneficial ownership and corporate transparency. To improve anti-corruption efforts within the profession, she argued that codes of conduct, regulations, and guidance could be made more explicit concerning corruption. Moreover, clearer instructions are needed for due diligence expectations. As such, it ought to be clearly noted what a lawyer should do with a client if red flags of corruption are identified. She also highlighted the World Economic Forum and the Stolen Asset Recovery Initiative, which has created a unifying framework highlighting several practices to reinforce the role of gatekeepers against illicit financial flows. This framework provides another pathway that gatekeepers can endorse.

Ms. Elliott was asked how she proposed lawyers would recognize the red flags to corruption, as not all lawyers are educated well on corruption. Ms. Elliott was further asked what she thought the major roadblocks would be. Ms. Elliott noted the intersection of legal ethics and professional ethics—lawyers are taught they are not accountable for actions taken for their clients. This may be one of the central tenets of the law, and is particularly valuable in justifying more serious criminal cases where lawyers act in defense of (sometimes) reprehensible clients. Nonetheless, she stated that it becomes a lot hazier regarding corruption efforts. Moreover, she urged going beyond mere education but ensuring a continual reflection for practicing lawyers. The professional requirements need to be squared off and justified with the moral expectations of a lawyer. Another question asked why corruption complicity in the legal profession needed to be tackled on the supranational level. Ms. Elliott recognized grand corruption as a supranational issue: a subset of lawyers plays a substantial role in facilitating this through the unique understanding many have of multiple regulations and jurisdictions. A collective standard setting of lawyers would tackle this on a wide scale, rather than isolating stronger anti-corruption jurisdictions from others. Moreover, she added that in the example she named, no lawyer had acted illegally but the behavior of the lawyers could be seen to be immoral and professionally inadequate.

Dr. Hady Fink: CSO engagement to deliver the Agenda 2030 anti-corruption targets: the case for a supranational initiative⁴² (paper)

Dr. Fink advocated for a supranational initiative for strategically expanding the engagement of grassroots CSOs to fight corruption in public service delivery. He pointed to the potential tremendous difference CSOs make in improving integrity, thus entailing higher practicable accountability work. His organization—Partnership for Transparency Europe—works with 162 CSOs to help improve the design of transparency projects. The Partnership for Transparency reviewed more than 30 research and evaluation studies on anti-corruption and social accountability to collect data demonstrating that CSO engagement can measurably reduce corruption, increase public participation to improve development effectiveness, and increase government transparency and accountability.

The proposed supranational initiative would expand the civil society-led demand side of anti-corruption and governance interventions. Increased civic engagement would accelerate progress towards Sustainable Development Goal's (SDG) 16—Peace, Justice and Strong Institutions—and improve the effectiveness of many ongoing anti-corruption initiatives.⁴³ Civil society, as a sector, has grown worldwide in size, skills, presence, and influence and is well poised to make a substantive contribution. However, it is constrained from doing so due to:

1. the lack of suitable resources and funding to enable it to hold states accountable and confront corruption; and
2. governments' ambivalence, if not opposition, to allowing civil society to hold states accountable.

Major funding concerns are especially present in countries where governments restrict foreign funding. Civil society in lower- and middle-income countries lack institutions and traditions of strong domestic funding for CSOs, especially for governance and transparency work. The success will be measured by: (a) the number of beneficiaries of the program; and (b) the percentage change in the proportion of persons who paid or were asked for a bribe by a public official after the intervention compared to the baseline in the covered area and service. The focus on public services is deliberate as this is one area where bribery remains commonplace, and a supra-national initiative could make a noticeable difference in the lives of hundreds of millions of people affected by this debilitating experience. The proposed initiative would work as follows:

1. The proposed initiative will supplement, rather than substitute, government and donor efforts to engage CSOs in governance and anti-corruption work. It will aim to serve

as a deterrent and catalytic force rather than to catch every instance of bribery. To this end, it will provide long-term funding of programs designed to strengthen local grassroots CSO capacities for demanding transparency and holding perpetrators accountable.

2. It will engage with international financial institutions to help improve implementation of their policies and programs for CSO engagement in projects and programs they support. It will advocate and monitor IFI guidelines, monitoring and evaluation systems, and data disclosure to ensure that they are effectively implemented and CSO engagement takes place on the ground.
3. Funding for the initiative should be raised from private philanthropy organizations, international NGOs (INGOs), and bilateral and multilateral official donors. There are many models for such partnerships that can help design this initiative.
4. Local CSOs in lower- and middle-income countries would be eligible for grants within the initiative, with a particular emphasis on those that have supportive contexts for CSO-led anti-corruption efforts, particularly at the local level. Where possible, conflict-affected and fragile contexts will be prioritized. Recipient CSOs may include international CSOs in their proposal for advisory and/or capacity building roles.
5. Constructive engagement with duty bearers will be required at all stages of the projects.
6. Programmatic funding will be provided for both operations and capacity building. This is needed to ensure core, ongoing, and sustained financial support for CSO engagement.
7. Eligible activities may include advocacy, community engagement, anti-corruption operational activities, and capacity building, among others.
8. CSOs would follow evidence-based approaches in designing and implementing their programs for maximum effectiveness.
9. The goal is to mobilize and support a large number of CSOs in participating countries to create momentum. This will require national or regional programs that would provide small grants to a large number of CSOs. Program/grant managers should preferably be local with the possibility of support from international managers with transition arrangements depending on country and program contexts. This approach will work to build country systems.
10. Participating CSOs will work in cooperation and collaboration with state institutions to ensure government accountability (e.g., supreme audit and anti-corruption institutions).

Dr. Fink also focused on petty corruption, which has mostly been unaddressed. He highlighted that CSOs can help supplement government efforts by influencing the design of projects and engaging in advocacy. Partnership for Transparency also uses evidence-based programming, including various indicators such as the number of beneficiaries and the number of people who paid a bribe to monitor commitments and increase transparency. Moreover, Partnership for Transparency uses convening agencies to get off the ground quickly to make a difference. He highlighted why this topic is still salient. A quarter of institutions worked with were still asked for a bribe to access services. The size of the problem is huge: governments cannot deal with the problem alone to achieve the 2030 Sustainable Development Goals. By expanding the role of CSOs' engagement, mainly by providing long-term funding, a more systematic approach in combatting petty corruption would be embraced. Currently there is a lack of civic space and actual ability to engage. The discussion asked whether such an initiative warranted a supranational approach. Dr. Fink noted several benefits of scaling up CSOs' efforts on the supranational level: it would provide the independent initiative to good partners on the ground, thereby tapping into existing efforts. It would further promote knowledge sharing between various CSOs, quality assurance, and common indicator frameworks.

Simine Sheybani & Sandrine Giroud: Granting legal standing to NGOs in corruption proceedings

Ms. Sheybani and Ms. Giroud highlighted the importance of giving NGOs legal standing in anti-corruption proceedings. Corruption can only be partly addressed by states. This is fundamental when the looted state rests on fragile institutional foundations or is governed by a kleptocratic regime. In such a context, civil society serves as a vital form of accountability. Hence, it was argued that states should acknowledge the importance of NGOs' activity in the fight against corruption and give them the procedural means to lead judicial actions in corruption cases.

The presentation drew heavily from the jurisdictions of Switzerland and France and involved an examination of case law. Additionally, Ms. Sheybani and Ms. Giroud highlighted potential roadblocks to victims getting compensation. Grand corruption often does not have direct victims, but rather affects entire communities or undetermined persons. These issues make recourse to justice more difficult. By allowing NGOs better standing in proceedings, three objectives would be tackled:

1. allowing the victims to be heard;
2. allowing for effective pursuit of criminal proceedings with competent actors in the field; and
3. allowing for judicial proceedings to restore funds.

Ms. Sheybani and Ms. Giroud traced through Swiss and French examples to analyze the effectiveness of granting NGO standing. Since 2013, French law allows any certified association that has been registered for at least five years on the date of filing a civil action, and whose statutes include the fight against corruption, to exercise the rights granted to a civil party in criminal proceedings with regard to the following offenses: a breach of the duty of probity; corruption and influence peddling; concealment; money laundering; and certain electoral offences. Approval is granted by the Minister of Justice; and to date, only three organizations have been approved. French law and Swiss law provide in principle for the inadmissibility of collective interest actions by associations. In other words, unless an exception is provided for by law, an association may not initiate or intervene in a legal action, since the interests it defends merge with the general interest already defended by the public prosecutor. The exception granted to certified associations is considered justified because the interest they defend is a portion of the general interest that has been assigned to them by the legislator and for which their members have joined together.

Swiss law has more limitations than French law. Switzerland enacted the Federal Act on the Freezing and the Restitution of Illicit Assets held by Foreign Politically Exposed Persons (Foreign Illicit Assets Act (FIAA)) in 2015. The FIAA governs the freezing, confiscation, and restitution of assets held by foreign politically exposed persons or their close associates, where there is reason to assume that those assets were acquired through acts of corruption, criminal mismanagement, or other felonies. While the FIAA allows for the temporary freezing of politically exposed persons' assets under certain conditions, it is subject to several conditions, including that such freezing would ensure the safeguarding of Switzerland's interests. This is a political condition that may or may not trigger the freezing of the considered assets. Moreover, the FIAA's application is conditioned on the existence of a mutual legal assistance request from the state from which the assets were looted. If no such request is made within a certain deadline the freezing will be lifted. As such, the FIAA does not address the case of so-called "failing states" which are unable or unwilling to send a mutual legal assistance request, situations which the FIAA is only able to address temporarily. Secondly, the application of the FIAA remains within the framework of an interstate relationship between Switzerland and the state of origin. Only

states and/or state-related entities have standing as plaintiffs in corruption cases and, as a consequence, can claim compensation for the damages arising from the corrupt acts, on the understanding that the damages are usually equivalent to the total amount of bribes that have been paid, *i.e.*, the direct damage suffered as a result of the offense. Persons suffering indirect harm do not have the status of injured parties and are therefore considered as third parties without access to the status of party to the proceedings. For instance, when a property offence is committed against a company, only the company shall be the holder of the interest/right protected; neither the shareholders, the beneficial owners, and the creditors will not be considered as plaintiffs, as they are not holders of the interest/right protected and will only be considered indirect victims of the offense committed against the company. The offenses punishing public bribery aim to protect the objectivity and impartiality of the state in its decision-making process. In this respect, and according to the existing case law, when it comes to public corruption, only the state and/or affected state-related entities have a protected interest. As a result, anticorruption NGOs cannot play a dominant role in the conduct of these criminal proceedings but may only have an active role as experts.

The presentation and paper then drew upon the so-called "biens mal acquis," or "ill-gotten gains," case. This refers to the proceedings initiated in 2007 on the basis of a criminal complaint by the associations Sherpa, Survie, and Fédération des Congolais de la diaspora to the Paris Public Prosecutor's Office for the handling of misappropriated public funds involving several African heads of state and members of their families. According to the complainants, these leaders and their entourages amassed considerable assets abroad, during or after the exercise of their functions, which their official salaries alone could never have financed, while their countries were plagued by widespread corruption. The French case of "biens mal acquis" regarding Equatorial Guinea's potentate stands in contrast with its Swiss twin case and illustrates how NGOs can play an important role in tracking down the assets of kleptocrats if authorized to do so. As Swiss law currently stands, however, NGOs will only have the rights relative to their status as whistle-blowers, limited to the possibility of inquiring about the follow-up given by the authorities to their denunciation. Among those directly targeted by this procedure is Teodorín Obiang, then-Minister of State for Agriculture and Forestry of Equatorial Guinea, who was accused of having engaged in corruption in the awarding of public contracts under his ministry and of having used Equatorial Guinean front companies to channel these illicit funds to Europe, where other companies, notably Swiss ones, reinvested them in the real economy. In

France, in October 2017, Teodorín Obiang was found guilty of money laundering, misappropriation of public funds, breach of trust, and corruption. In absentia, he was sentenced in the first instance to three years in prison and a EUR 30 million suspended fine, as well as the criminal confiscation of all his seized assets, with an estimated value of EUR 150 million. On February 10, 2020, the Paris Court of Appeal confirmed the three-year suspended prison sentence and the confiscation of all his assets in French territory. As for the suspended fine imposed in the first instance, the Court of Appeal confirmed the amount and declined to suspend it. On July 28, 2021, the Court of Cassation confirmed the sentence handed down on appeal. This decision was only possible because of the decisive action of civil society and the NGOs that initiated the proceedings and pushed them forward. In its judgment, the Paris Court of First Instance stressed "the driving role played by civil society." This illustrates how allowing NGOs to take civil action is essential in the fight against corruption and crimes against the community.

The Swiss justice system also took up the issue of Teodorín Obiang's assets, with the Geneva Public Prosecutor's Office opening proceedings on October 31, 2016 for money laundering and disloyal management of public interests. The Geneva proceedings were closed by order of February 7, 2019, following an agreement reached between Equatorial Guinea and the prosecuting authorities, in return for the payment by the African state of 1.3 million Swiss francs (CHF) to the State of Geneva as sequestration costs, in order to recover a yacht with an estimated value of over CHF 100 million. Equatorial Guinea also agreed that 25 vehicles sequestered in the proceedings, as well as a valuable watch, would be sold and that the proceeds from their sale would be allocated to a "program of a social nature in the territory of Equatorial Guinea" implemented in a transparent and efficient manner by an international entity with the necessary expertise to monitor the program, in accordance with an international agreement negotiated by the Swiss Federal Department of Foreign Affairs. The lack of cooperation from the Equatorial Guinean authorities and the cost of maintaining the property sequestered in Switzerland apparently dictated the Geneva authorities' decision to agree on such an outcome with the offender. However, the authors alluded to the gap between the results obtained on either side of the Franco-Swiss border, one in which NGO standing was much improved.

The speakers concluded by highlighting that the aforementioned examples clearly showed the driving role of civil society. As for the skepticism that this prospect will arouse in some, the French example shows that fears can easily be

allayed by the establishment of appropriate safeguards, such as conditions of approval. In the discussion it was posed how the law goes about the difficult process of obtaining restitution for victims of corruption, given the diffuse harm that corruption causes. It was further asked to what degree can legal frameworks provide obstacles to victims and CSOs. Ms. Giroud urged for those interested to examine a French survey that canvassed why certain jurisdictions have better legal standards. Moreover, she noted that it is of the utmost importance for anti-corruption activists to seize on the momentum created by other legal areas— such as climate change NGOs.

Eui Hyun Yang: Voluntary good faith engagement of the life science industry to complement anti-corruption effort in the healthcare sector (paper)

Mr. Yang highlighted the important steps that commercially driven private entities make in the digital healthcare business regarding anti-corruption efforts. He outlined firstly that governmental efforts to combat corruption within healthcare have been somewhat lacking. While government efforts to combat corruption persist across borders through prominent international conventions and leading bodies of national laws, public efforts often face serious limitations when it comes to addressing the corruption prevalent in the healthcare sector. To fill in the gaps, non-state actors in the relevant industry have voluntarily taken initiatives by means of private self-regulation and commercial standards. Such anti-corruption soft laws have clearly become a visible and effective form of regulation exerting a positive influence on the development and implementation of many state-based laws.

The first limitation of the governmental anti-corruption approach, as applied in the healthcare sector, is its excessive, if not exclusive, focus on public officials and public funds. In many of the prominent international and national laws combatting corruption such as the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions and the US Foreign Corrupt Practices Act ("FCPA"), public officials' involvement is a necessary element for a corrupt practice. While the UNCAC urges member states to address corruption in the private sector, its main focus is nevertheless on regulating corruption involving public actors. These laws are based on the assumption that the most serious risk of corruption arises whenever a public official has discretionary power over the distribution of a benefit or cost to the private sector. This explicit prerequisite of a "public element" is also present in healthcare sector-specific anti-corruption laws and regulations. For example, US federal laws including the Anti-Kickback Statute, the Physician Self-Referral

Law, and the False Claims Act all seek to specifically address corrupt practices in the healthcare sector such as kickbacks, conflicts of interest, and false claims, but they are triggered only when the public funds of federal healthcare programs are involved, *i.e.*, meeting the public element prerequisite. Moreover, when there are regulations in place, they often lack resources to ensure implementation.

Prominent industries have codes of conducts for health care professionals. Industry associations representing regional pharmaceutical and medical device industries regularly publish codes of conduct for their members' interactions with healthcare professionals. Sharing the same target group of healthcare professionals and organizations, members of the regional associations collectively contribute to the drafting and enforcement of codes of ethical conduct, while balancing their business interests and ethics through peer pressure and public relations. The codes with direct input from the companies actually engaged in the business, these codes more accurately and rapidly reflect the respective markets' demands for corporate social responsibility. They reflect the industry's current best practices and take into account many of the government-imposed changes in marketing processes that have evolved in the compliance environment. These codes are also the source of rules that life science firms turn to first for an overview and to spot red flags, as the laws and rules constantly change. Such voluntary codes of conduct published by life science industry associations address many forms of corruption manifest in the healthcare sector, filling in the void left open by the limitations that government-level efforts face. To address the dangerous blind spot created by public laws making a public-private distinction, none of the industry associations uses the traditional terms of "corruption" or "bribery" as those terms in many jurisdictions are limited to situations

involving public actors or public funds. The industry associations instead use phrases like "good ethical practice" and "permissible scope" with a goal of capturing the entire healthcare sector in terms of conflict of interest. This is a simple yet significant illustration of how life science industry associations voluntarily embrace the more expansive scope of duty, showing their strong conviction to combat corruption in the healthcare sector.

Mr. Yang acknowledged that the voluntary codes published by industry associations thus far have had limited practical influence on how private parties act when left to comply on a purely voluntary basis. While these codes serve as a good source of recommendations for healthcare institutions and life science firms' compliance programs, such self-governance requires some form of official authority to reach its full effectiveness. More tangible sanctions may be necessary for the voluntary corporate responsibility endeavours in the life science industry to steer its members in the right direction. In this regard, the government should step in as an intermediary to facilitate a level playing field for all players in the industry, including the handful who are not as willing to comply or participate. This role would not only encourage passive compliance but the active participation in drafting and enforcing the codes. Mr. Yang named several successful examples. US Attorney's Offices have often expressly incorporated the AdvaMed code in the compliance requirements under deferred prosecution agreements with medical device companies that have been subject to investigations for bribery and FCPA violations. The US courts have also respected the prosecutors' deference to the AdvaMed code as a widely accepted standard to evaluate a medical device firm's internal compliance program against possible fraud and corruption. This positive trend in government recognition of codes of conduct has been widely welcomed by the industry, and AdvaMed has responded in real time with further reinforcement of its voluntary anti-corruption efforts. AdvaMed thus far has included in its code many additional conditions imposed by these deferred prosecution agreements, such as requiring its members to submit certifications of compliance with the code and to furnish information on their compliance departments and hotline systems. These positive interactions between the industry and government continuously promote higher ethical standards in the US medical device industry. South Korea approved industry code as a nationwide guideline.. With trust and confidence built over the years, the government of South Korea went so far as to delegate public authority to KMDIA, the national industry association representing the medical device industry, in 2011. Not only was its code of conduct expressly approved as the

It is important to intensify the dialogue and collaboration between knowledge-producing actors and decision-makers in the format proposed by the Symposium. Such collaboration is essential to advance the anti-corruption agenda based on cutting edge research.

nationwide anti-corruption guideline in the medical device industry, but it further authorized review and adjudication of member companies' compliance.

In the discussion, Mr. Yang was asked how trade associations could do more and how could the non-member dilemma be addressed, as there are many actors who do not consider themselves in the union and are therefore not responsible for those codes. Mr. Yang highlighted the crucial nature of an effective partnership with the government. This would then trickle down. Additionally, it was asked about the motivation for the life sciences industry to draft these ambitious codes and aim for a culture of integrity. He denoted that life sciences firms are not only the perpetrators but also the victims of corruption. It is thus in their best interest to facilitate stronger compliance and a culture of integrity.

Andrew Blasi: Global collective action to prevent corruption amidst the COVID-10 pandemic— an overview of the Business Ethics for APEC SMEs Initiative⁴⁴ (paper)

Mr. Blasi presented the Asia-Pacific Economic Cooperation (APEC) small and medium-sized enterprises (SMEs) initiative and how collective action may strengthen ethical business conduct in the biopharmaceutical and medical technology sectors. To bolster ethical frameworks, the world's largest public-private partnership and collective action initiative, "the Business Ethics for APEC SMEs Initiative" was launched. Since 1989, APEC has served as the premier forum for facilitating economic growth, cooperation, trade, and investment across the Asia-Pacific region. The organization's 21-member economies spanning Asia, Oceania, and the Americas represent almost 60 percent of world GDP and 48 percent of world trade. In 2011, following a year of exploratory sessions, the public and private sectors of Malaysia, Mexico, the United States, and Vietnam proposed and secured APEC Ministerial recognition for the launch of the *Business Ethics for APEC SMEs Initiative* ("the initiative").⁴⁵ Overseen by the US Department of Commerce, the aim of this initiative is to drive a level playing field for all APEC SMEs through ethical business conduct in sectors of export interest across the region. This includes biopharmaceuticals and medical technology, where a majority of the researchers, manufacturers, wholesalers, distributors, and other third-party intermediaries that constitute these industries—irrespective of an economy's size or development—are SMEs, many with less than 10 employees. Utilizing numerous international and local references, such as the Codes of Conduct for the International Federation of Pharmaceutical Manufacturers and Associations (IFPMA) and the Advanced Medical Technology Association (AdvaMed), the APEC Principles established a common

foundation of ethical approaches for all relevant stakeholders across a range of areas essential to upholding patient trust and preventing corruption. This includes industry interactions with healthcare professionals and patients' organizations, safety of medicines, promotional information and activities, conduct and training of company representatives, public sector relationships and procurement, clinical trials, and donations, among others. The APEC Principles were modernized in 2021 to reflect even higher standards across these and other areas.⁴⁶

With APEC Economic Leaders "encouraging the implementation of high standard codes of ethics" and "promotion of the APEC Principles to aid" this effort, a multi-year capacity-building program was initiated.⁴⁷ From 2012 through 2021, the program convened over a dozen training events with over 1,000 public and private organizations from every APEC economy and many beyond. This included the adoption of the first industry-wide code across 10 APEC economies, including in China and other major economies. Several APEC economies undertook further steps to advance the APEC Principles, such as the Philippines.

While the APEC Principles championed a multi-stakeholder approach from their inception, it was in 2014 that the next milestone was achieved to elaborate the initiative's impact across health ecosystems. The Nanjing Declaration set forth an initiative roadmap, which included the objective of forming an APEC consensus framework for ethical collaboration modeled on the first Consensus Framework for Ethical Collaboration between Patients' Organizations, Healthcare Professionals and the Pharmaceutical Industry adopted by five leading international health parties, including the IFPMA.⁴⁸

In 2020, the initiative published a resource guide on this topic for member economies.⁴⁹ The guide showcases existent examples of diverse strategies from around the world where governments are already encouraging ethical conduct in six areas:

1. convening power—bringing stakeholders together;
2. procurement—leveraging the government's purchasing power;
3. regulatory practices—structuring and implementing government regulation;
4. enforcement recognitions and incentives—recognizing and incentivizing strong ethics and compliance before enforcement decisions are taken;
5. ethics training—offering government-sponsored training and SME capacity-building; and



6. trade agreements—leveraging international trade commitments.

Mr. Blasi concluded that the SME initiative confirmed not only improvements in fostering integrity and improving corruption efforts but had also been linked to economic growth. In short, those SMEs that had a higher ethics focus outperformed on a number of factors during the COVID Pandemic. He also drew several key learnings from the initiative:

1. Inclusion and open collaboration between all relevant stakeholders are crucial to achieving the trust necessary to drive an ethical ecosystem—no one stakeholder can achieve this environment alone.
2. Building a common ethical foundation in the form of shared principles or commitments can drive trust and collective progress, particularly in areas of such as health-care where there are many diverse stakeholders.
3. Once a best practice becomes internationally recognized, the formation and advancement of a diverse network of champion mentors or experts is key to local adoption and implementation.

4. There is a tremendous opportunity to elevate the recognition of ethical conduct that prevents corruption across the world's economies, including through government strategies to encourage ethical conduct as well as enhanced coordination between enterprises, investors, and Environmental and Social and Governance standard setters.

5. International organizations, such as APEC, provide an invaluable platform for multi-stakeholder engagement and learning across diverse economies in order to strengthen ethical business conduct.

In the discussion, Mr. Blasi was asked how this initiative would work regarding bigger companies. Here, he highlighted how there is an increasing connectedness between smaller companies and large companies. It is a given that a number of SMEs end up evolving into larger companies. Thus, the initiative trickles upward with time. Moreover, larger companies generally can provide experience, skills, and training for SMEs.

William Heaston: Clickbait compliance and transnational corruption (paper)

Mr. Heaston presented his paper about the International Organization for Standardization's (ISO) a powerful tool to combat bribery. ISO 37001 is a voluntary anti-bribery management system standard which outlines measures that any organization can implement to prevent, detect, and address bribery. Developed by a technical committee consisting of experts from 37 countries and 8 international organizations, ISO 37001 aims to represent a global consensus on anti-bribery good practices that will help organizations promote an ethical business culture. With the publication of this standard in 2016, ISO sought to codify disparate anti-bribery management guidelines and frameworks into one cohesive international standard. The overarching goals of this standard, much like any other compliance tool, are to bolster compliance with anti-corruption laws and promote ethical organizational cultures. Pursuant to these objectives, ISO 37001 offers an auditable framework of managerial processes that organizations can adopt to mitigate bribery risks. This framework requires organizations to implement the following:

1. an anti-bribery policy and procedures;
2. top management leadership, commitment, and responsibility;
3. oversight by a compliance manager or function;
4. anti-bribery training;
5. risk assessments and due diligence on projects and business associates;
6. financial, procurement, commercial, and contractual controls;
7. reporting, monitoring, investigation, and review; and
8. corrective action and continual improvement.

A notable feature of ISO 37001's provisions is their open-ended approach to compliance. For instance, the standard contains flexible provisions that allow organizations to "determine the boundaries and applicability of the[ir] anti-bribery management system[s]" and determine "what needs to be monitored and measured" when evaluating them. These open-ended provisions are unsurprising given the inherently flexible nature of management system standards, a flexibility that promises the many attendant benefits of self-regulation and private governance. On the other hand, there is a risk that organizations will take advantage of this open-endedness by implementing superficial or "paper" anti-bribery management systems. Although anti-bribery management is not "technical" in a scientific or engineering sense, ISO 37001 is the product of essen-

tially the same technocratic approach to standard-setting used by ISO in other areas. First, ISO/TC 309, the technical committee that developed ISO 37001, brought together anti-bribery experts from numerous national standard-setting bodies and external liaison organizations (e.g., Transparency International and the OECD). Second, these experts developed ISO 37001 by systematically working their way through ISO's multi-step standards development process. Third, the kind of anti-bribery standard that these experts ultimately passed provides a technical, systems-driven approach to managing bribery risk.

ISO 37001 is designed so that organizations can undergo a third-party audit certifying that their anti-bribery management systems comply with the requirements of the standard. Certification is part of a broader area of what ISO terms "conformity assessment," which encompasses a wide range of mechanisms designed to ensure that technical products, processes, management systems, and services conform with the specifications of pertinent ISO standards. It gives companies the option of undergoing a third-party audit by an accredited certification body and, upon passing the audit, marketing themselves as "ISO 37001-certified." Further, it gives organizations a step-by-step framework for managing bribery risks, as the standard provides a roadmap for implementing and updating anti-bribery compliance practices. This roadmap may give organizations, particularly those with underdeveloped compliance programs, a better sense of what they should focus on to improve their programs. In short, the standard should help organizations systematically revise, develop, and implement more robust anti-bribery compliance programs. Moreover, the ISO standard presents public-private opportunities. For example, many have proposed integrating ISO compliance standards with the law, asserting that ISO 37001 certification should entitle corporations to more lenient treatment or even an affirmative defense (if applicable) if they run afoul of transnational bribery law.

We should catalog prior and existing supranational mechanisms against corruption and other similar crimes, and identify lessons learned and practices that can guide the development of future supranational initiatives.

Moreover, prosecutors have used settlement agreements to require corporations— notably Odebrecht, a Brazilian company involved in one of the highest-profile corruption scandals in recent memory—to reform their compliance programs by obtaining ISO 37001 certification.

In theory, the standard should help organizations signal to external audiences that they possess a high-quality credible anti-bribery management system with features that were rigorous enough to pass an external certification audit. Nevertheless, there is a concern that this may amount to “clickbait compliance.” Thus, whilst on the surface it may seem attractive, a deeper inspection reveals there are a number of issues. One is that while the standard promises several theoretical functions, the formalistic approach may promote box-ticking and cut against the objective. Thus, it may seem like a means to obtain social legitimacy without the normative underpinnings that anti-corruption tools ought to deliver. “Legalizing” ISO compliance may lead organizations to rigidly focus on doing whatever is minimally required to “go by the book” instead of searching for ongoing improvements,” even though continuous improvement is meant to be a hallmark of ISO standard-setting.

Although the organizations that adopt ISO standards are crucial to ISO’s viability as a global institution, there is very little linking these organizations with each other or, for that matter, with most aspects of the ISO system. Decentralized, deferential governance is part and parcel of ISO’s structure. Such flexibility can be beneficial to the extent that it lets organizations craft their compliance management systems in a manner that accords with their particular needs, objectives, and constraints. However, this framework also means that ISO compliance is apt to have a myopic and one-dimensional focus on the preferences of the individual certified organization, one in which systematic assessments of the standards’

overall efficacy and evidence of what organizations elsewhere have found effective fall by the wayside. Nonetheless, there are opportunities to modify the standard and make it more collaborative and open. For this, information, evaluation, and feedback would be crucial to adapting the standard. Thus, to the degree we can foster multi-stakeholder collaboration and evaluation the standard can be improved beyond formalized box-ticking. The solution to the problem of non-evidence-based compliance siloes is twofold. First, there must be more frequent sharing of the right kind of information between actors throughout the ISO system. The “right kind of information” is that which would be amenable to empirical evaluation, namely data from organizations’ measurement and testing of their ISO-certified compliance management systems. Second, there must be opportunities for actors in the ISO system to harness their expertise to systematically which this information and provide feedback regarding which compliance measures work and do not work in particular contexts.

The discussion here revolved around whether it would be possible to make a compliance standard robust enough to make an ethical reflection that cannot be reflected in measurement. As ethical behavior cannot often be quantified, it may be perceived as a “missing gap” within the majority of compliance scholarship. As such, through the mere formalization of a system, Mr. Heaston noted, the cultural and behavioral considerations that are fundamental to shaping a culture of integrity and anti-corruption are often bypassed. He reiterated that while corporations’ heightened interest in anti-corruption compliance undoubtedly stems from a desire to limit their exposure to legal liability, any compliance program must go beyond the minimalistic focus on rules and legal dictates. Programs that fail to do so—by employing a rules-driven approach that effectively places form over substance—run the risk of devolving into an ineffectual amalgam of superficial box-ticking exercises.

NOTES

41. The Panama Papers was a 2016 leak of 11.5m files from the database of the world’s fourth-biggest offshore law firm, Mossack Fonseca. The documents show the myriad of ways in which the rich can exploit secretive offshore tax regimes. The Pandora Papers was a 2021 leak exposing the offshore accounts of more than 35 world leaders, as well as more than 100 other influential individuals.
42. Excerpts taken from “CSO Engagement to Deliver the Agenda 2030 Anti-Corruption Targets: The Case for a Supranational Initiative” coauthored by Dr. Vinay Bhargava and Dr. Hady Fink
43. The 2030 Sustainable Development Goals were adopted by all United Nations Member States in 2015. For more information see: <https://sdgs.un.org/goals>
44. Excerpts taken from submitted paper “Driving Global Collective Action to Prevent Corruption and Earn Patient Trust amidst the COVID-19 Pandemic: An Overview of the Business Ethics for APEC SMEs Initiative” coauthored by Andrew Blasi and Thomas Cueni.
45. 2011 APEC SME Ministerial Statement: https://www.apec.org/Meeting-Papers/Sectoral-Ministerial-Meetings/Small-and-Medium-Enterprise/2011_sme
46. Modernizing the APEC Mexico City Principles: <https://mcprinciples.apec.org/modernizing-the-mexico-city-principles/>
47. 2012 APEC Economic Leaders’ Declaration Annex E—Fighting Corruption and Ensuring Transparency: https://www.apec.org/meeting-papers/leaders-declarations/2012/2012_aelm/2012_aelm_annexe
48. Consensus Framework for Ethical Collaboration between Patients’ Organisations, Healthcare Professionals and the Pharmaceutical Industry (2014): <http://mcprinciples.apec.org/wp-content/uploads/2020/02/GlobalConsensusFramework.pdf>
49. Government Strategies to Encourage Ethical Business Conduct: A Resource Guide for Economies from the Business Ethics for APEC SMEs Initiative (August 2020): <https://www.apec.org/publications/2020/08/government-strategies-to-encourage-ethical-business-conduct>

Lessons Learned and Way Forward



The panels and discussions held at the Symposium, including informal exchanges, evidenced both the value and the need to expand research, knowledge, and coordination in support of advancing **supranational** remedies against corruption. Based on lessons learned, several actions are recommended to be prioritized as we continue to support the international anti-corruption efforts with knowledge initiatives, including further editions of the Symposium.

1. Catalog prior and existing supranational mechanisms against corruption and other similar crimes, and identify lessons learned and practices that can guide the development of future supranational initiatives.
2. Tailor anti-corruption efforts to address challenges in priority areas, such as, climate change interventions. This objective requires research specific to the selected sector based on which anti-corruption stakeholders can adapt existing anti-corruption remedies—or devise new mechanisms—to achieve more effective results.
3. Understand state-of-the-art technology tools and solutions, and devise suitable mechanisms to leverage artificial intelligence and machine learning to help make anti-corruption efforts more agile and focused on preventive action.
4. Intensify the dialogue and collaboration between knowledge-producing actors and decision-makers in the format proposed by the Symposium. Such collaboration is essen-

tial to advance the anti-corruption agenda based on cutting edge research. This collaboration is more effective if parties consider the following factors and format:

- a. Establish a guiding topic and launch a “call for papers” inviting contributions from both researchers and practitioners, including in a short essay format. The call for papers prompts research and the short essay format facilitates contributions from practitioners.
- b. Convene meetings of anti-corruption stakeholders with varying backgrounds, both in terms of expertise (economics, law, technology, sociology, etc.) and sectors (government, private sector, academia, non-profit, etc.). The interdisciplinary approach stimulates innovation, and the cross-sectorial approach ensures coherence in policy-making principles and objectives across stakeholders.
- c. Continue the dialogue between stakeholders periodically and under a stable framework. This approach will allow parties to expand relevant research and present it for feedback and further alignment with other relevant stakeholders over time. Continuity will increase mutual trust, which in turn facilitates candid discussions and productive questioning of the *status quo*, creative approaches, joint and coordinated evolution of anti-corruption practices, and establishment of long-term professional networks.

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SYMPOSIUM ON SUPRANATIONAL RESPONSES TO CORRUPTION

April 28–29, 2022

THURSDAY, APRIL 28

12:30 pm **Registration**

1–2 pm **Session I. Supranational Responses to Corruption**

- Amb. Helmut Tichy, Director General for Legal Affairs, Austrian Federal Ministry for European and International Affairs
- Violet Onyemenam, General Counsel, OPEC Fund for International Development
- Jamieson Smith, Chief Suspension and Debarment Officer, World Bank
- Patrick Moulette, Head, Anti-Corruption Division, Organisation for Economic Cooperation and Development
- Alina Dumitrascu, Head of Legal and Corporate Affairs, Enel Romania
- Thomas Stelzer, Dean, International Anti-Corruption Academy
- *Chair*: Alexandra Manea, Counsel, Office of Suspension and Debarment, World Bank

2–2:30 pm **Break**

2:30–4 pm **Session II. Lessons Learned from Regional Anti-corruption Initiatives**

- [The History of the EU Anti-Corruption Law and Policy](#). Andi Hoxhaj, University of Warwick, School of Law
- [The role of the European Public Prosecutor's Office \(EPPO\) in international anti-corruption efforts](#). Daniëlle Goudriaan, European Prosecutor, EPPO & Chair of the OECD Working Group on Bribery
- [Balances and challenges of the Inter-American Convention Against Corruption](#). Dr. José Ignacio Hernández, Professor, Catholic University Andrés Bello, Venezuela
- [Efforts to establish regional/global investigative, prosecutorial, and adjudicatory anti-corruption institutions](#). Gillian Dell, Head of Conventions Unit, Transparency International
- *Discussant*: Shervin Majlessi, Chief of Section, Corruption and Economic Crime Branch, United Nations Office on Drugs and Crime (UNODC)

4–4:30 pm **Break**

4:30–6 pm **Session III. International Anti-Corruption Investigations**

- [Reforming the international framework on corporate settlements in foreign bribery cases](#). Dr. Radha Ivory, Prof., University of Queensland, Australia
- [The Integrity Enforcement Regime at the Green Climate Fund](#). Albert Lihalakha, Deputy Head of Independent Integrity Unit, Green Climate Fund
- [The Global Operational Network of Anti-Corruption Law Enforcement Authorities](#). Rositsa Zaharieva, Coordinator, GlobE Network Secretariat, UNODC
- [The role and mission of the World Bank Group's anti-corruption sanctions system](#). Gianpiero Antonazzo, Senior Investigator, Integrity Vice Presidency, World Bank Group
- [The role and mission of the UK's Serious Fraud Office](#). Victoria Jacobson, Case Controller, Serious Fraud Office, United Kingdom
- *Discussant*: Nicola Bonucci, Partner, Paul Hastings LLP

6–8 pm **Dinner hosted by the Austrian Federal Ministry for European and International Affairs**

FRIDAY, APRIL 29

12:30–2 pm Session IV. Transnational Legal Responses to Grand Corruption

- [The International Anti-Corruption Court: A Transnational Response to Grand Corruption](#). Judge Mark Wolf, Chair of Integrity Initiatives International
- [A New OECD Dispute Settlement Mechanism to Fight Transnational Corruption](#). Noah Arshinoff, Professor, University of Ottawa
- [International pathways to accountability for grand corruption](#). Ádám Földes, Legal Advisor, Transparency International
- [Principles for Using Targeted Sanctions to Address Crime](#). Anton Moiseienko, Australian National University
- *Discussant*: Patrick Moulette, Head, Anti-Corruption Division, OECD

2–2:30 pm Break

2:30–4 pm Session V. Corruption and International Investment Arbitration

- [Adjudicating corruption: an analysis of the comparative effects of enforcement on investors and governments in international investment arbitration](#). Rachel Brewster, Professor, Duke University, School of Law
- [Corruption in international investment agreements and investor-state dispute settlement](#). Yarik Kryvoi, British Institute of International and Comparative Law; Vladimir Kozin, UNODC
- [The New Maritime Silk Road: Chinese Foreign Investment in Latin America and the Need for Urgent Anti-Corruption Action in the Region](#). Andres Sellitto Ferrari, University of Pittsburgh
- [Rethinking International Investment Law's Responses to Corruption: An Examination from the Global Governance Theory](#). Yueming Yan, Singapore Management University
- *Discussant*: Nikolaus Pitkowitz, Partner, Pitkowitz & Partners

4–4:30 pm Break

4:30–6 pm Session VI. The Non-Government Sector's Role in Supranational Anti-corruption Efforts

- [Granting legal standing to NGOs in corruption proceedings](#). Simine Sheybani, Attorney, Hayat & Meier
- [The corporate legal profession's role in global corruption: obligations and opportunities for contributing to collective action](#). Jasmine Elliott, University of Gothenburg
- [Voluntary Good Faith Engagement of the Life Science Industry to Complement Anti-Corruption Efforts in the Healthcare Sector](#). Eui Hyun Yang, Analog Devices, Inc
- [Clickbait Compliance and Transnational Corruption](#). William Heaston, Wharton School, University of Pennsylvania
- [CSO Engagement to Deliver the Agenda 2030 Anti-Corruption Targets: The Case for a Supranational Initiative](#). Dr. Hady Fink, Advisor, Partnership for Transparency Europe
- [Global Collective Action to Prevent Corruption amidst the COVID-19 Pandemic: An Overview of the Business Ethics for APEC SMEs Initiative](#). Andrew Blasi, Director, Crowell & Moring International
- *Discussant*: Marlen Heide, Partnering Against Corruption Initiative, World Economic Forum

6 pm Closing reception

