

Unclassified

PAC/AFF/LMP(2006)5

Organisation de Coopération et de Développement Economiques
Organisation for Economic Co-operation and Development

26-Jul-2006

English - Or. English

**PUBLIC AFFAIRS AND COMMUNICATIONS DIRECTORATE
PUBLIC AFFAIRS DIVISION**

Cancels & replaces the same document of 25 July 2006

Labour/Management Programme

IMPLEMENTING THE OECD ANTI-BRIBERY CONVENTION: THE ROLE OF TRADE UNIONS

**Final report on a meeting of trade union experts held under the OECD Labour/Management Programme
(Paris, 23 January 2006)**

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JT03212291

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Report on a meeting of trade union experts
held under the OECD Labour/Management Programme

(Paris, 23 January 2006)

Formal relations between the OECD and representatives of trade unions and of business and industry in member countries are conducted through two organisations officially recognised by the OECD Council. These are the Trade Union Advisory Committee to the OECD (TUAC) and the Business and Industry Advisory Committee to the OECD (BIAC). In addition to various forms of policy discussion throughout the year, arrangements provide for meetings at the technical level, which do not engage the responsibility of the organisations. Such meetings are held either in the form of *ad hoc* discussions with the Secretariat, or under the Labour/Management Programme.

After meetings held under the Labour/Management Programme, a rapporteur draws up a report of the discussion for distribution to the social partners and to the relevant OECD Committees.

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FOREWORD

Under the OECD Labour/Management Programme for 2006, a meeting of trade union experts on "Implementing the OECD Anti-Bribery Convention: The Role of Trade Unions" was held in Paris on 23 January 2006. The meeting was prepared by the OECD Secretariat in collaboration with the Trade Union Advisory Committee to the OECD (TUAC).

Representatives of TUAC, the Secretariat to the OECD Working Group on Bribery in International Business Transactions ("the Working Group") and delegates from the Working Group took part in this meeting on the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions ("the OECD anti-Bribery Convention).

Below, you will find the Agenda of this meeting, along with the overall report of the discussions of the meeting of experts, which was prepared by Ms. Sue Kendall-Bilicki, designated as General Rapporteur for this activity.

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AGENDA

Introduction

- Introductory remarks

Session I: Anti-corruption Instruments

- Presentation of OECD work on corruption in the perspective of broader international efforts to prevent and combat corruption (including the OECD Guidelines for MNEs)
- Discussion

Session II: The OECD Anti-Bribery Convention

- The OECD Anti-Bribery Convention and the Revised Recommendation
- Discussion

Session III: Monitoring enforcement of the OECD Anti-Bribery Convention

- Phase 2 Reviews: Follow-up and the role of trade unions
- Discussion

Session IV: Trade Unions Combating Corruption

- Presentations by trades union representatives and by the chair of the OECD Working Group on Bribery
- Discussion

Session V: Where to go from here?

- Current and future work of Working Group and broader perspective
- Building a trade union anti-corruption agenda: where are the opportunities?
- Discussion
- Summing up: outcome of the discussions

FINAL REPORT

by
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Principal Administrator
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BACKGROUND AND INTRODUCTION

This one-day meeting on “Implementing the OECD Anti-Bribery Convention: the Role of Trade Unions” was agreed as part of the OECD Labour/Management Programme for 2006.

It was designed as an exchange of information and ideas between trade union representatives, the OECD Secretariat and delegates from the OECD Working Group on Bribery in International Business Transactions, (the Working Group) the body entrusted with monitoring the implementation and enforcement of the OECD *Convention on Combating Bribery of Foreign Public Officials in International Business Transactions* (the OECD anti-Bribery Convention).

The OECD anti-Bribery Convention is a legally binding treaty which gives the 36 countries that have ratified it a central obligation to establish bribery of a foreign public official as a crime in domestic law. Governments then have to ensure the law is applied, regardless of political considerations or the power or influence of the people involved – this requires careful monitoring, which is carried out in the Working Group under the terms of the Convention.

Monitoring has been carried out in two phases: Phase 1 Reviews consisted of a written assessment of individual signatory countries’ conformity with the OECD anti-Bribery Convention. Phase 2 Reviews assess the effectiveness of individual signatory countries’ foreign bribery laws, followed by a report with recommendations for action. The Phase 2 Reviews are due for completion in 2007. The OECD anti-Bribery Convention provides for continued monitoring, but the future mechanism after Phase 2 has yet to be determined.

This meeting aimed to examine the role of trade unions in implementing the Convention. This included increasing awareness of bribery and corruption and its implications for trade unions, as well as improving awareness of the OECD Anti-Bribery Convention and other anti-corruption instruments and their relevance to trade unions.

The meeting also sought to improve understanding of the trade union role in supporting the Convention and other anti-corruption activities and to identify trade union priorities and resource needs in this area.

The meeting was organised in four sessions: Anti-corruption instruments; the OECD Anti-Bribery Convention; Monitoring Enforcement of the OECD Anti-Bribery Convention; Trade Unions Combating Corruption; and Where to go from Here.

Participants generally agreed that corruption is important for all stakeholders, and that trade unions could become more involved in implementing the OECD anti-Bribery Convention. But they noted that unions often lack resources to devote to issues beyond their core role of organising and protecting their members, so the challenge is to show that corruption is relevant to this mission. When trade unions are keen to be involved to support the OECD anti-Bribery Convention, they find that opportunities to do so differ widely depending on the country.

There was considerable discussion on the mechanisms for reporting corruption, and on whistleblowing and whistleblower protection. Several participants pointed out that corruption and opposing it was literally a life or death matter in many developing countries so reporting and protection issues are important.

Among the suggestions to come out of the meeting were to ensure trade unions were aware of the OECD anti-Bribery Convention and how it operates, as well as to further explore links between the Convention and other instruments such as the OECD Guidelines for Multinational Enterprises. There is also room to explore the possibility of a greater trade union role in future monitoring of the OECD anti-Bribery Convention, and other OECD instruments.

SESSION I: ANTI-CORRUPTION INSTRUMENTS

OECD anti-corruption instruments

Corruption is a major problem worldwide and one that is an increasingly high-profile issue for OECD members. Corruption hampers development, distorts allocation of resources, disadvantages the poor and weak and undermines the credibility of governments and social systems. The question is how to minimise corruption and its effects.

The OECD is doing a great deal of anti-corruption work, including an anti-corruption network in Asia with the Asian Development Bank (ADB) and work in southeast Europe, and hopes to have a similar initiative with Africa via the New Partnership for African Development (NEPAD).

The OECD Anti-Bribery Convention is at the heart of these efforts. The Convention is “hard law”-- a legal treaty under which countries vow to prosecute violators, but this is easier said than done. It is important for labour, for business, for the media and for NGOs to dig out information about corruption and follow it up diligently.

The OECD started work on anti-corruption in the late 1980s through an experts’ group, and in 1994 produced a non-binding policy Recommendation on combating bribery in international business transactions. This Recommendation was revised extensively in 1997 and contained many of the aspects included in the Convention adopted that year. The Convention covers not only all 30 OECD members, but six non-members – Argentina, Brazil, Bulgaria, Chile, Estonia and Slovenia.

Implementation of the Convention is monitored by its signatories, but the Convention is not the only way that the OECD is working in the anti-corruption area; there are also various preventive instruments and actions to reduce bribery both on the supply and the demand side.

Preventive instruments on the supply side include the OECD Guidelines for Multinational Enterprises, which were revised in 2001 to include a chapter on corruption. The Guidelines are non-binding recommendations from governments to MNEs, but if an enterprise violates them, trade unions and others can ask National Contact Points in OECD countries to intervene. The Guidelines operate worldwide, wherever OECD-based enterprises operate. So if there is an alleged violation in a non-adhering country, trade unions should contact the national contact point in the MNE’s home country.

There is also an OECD action statement on export credits and corruption, and a Recommendation on anti-corruption action by aid donors.

On the demand side, the OECD has produced Guidelines on Conflict of Interest in the public service, and is also working with non-member countries in this area, notably through an Asia-Pacific action plan drawn up with the ADB.

The OECD has also produced a document on a risk management tool for weak governance zones which has been posted for public comment and received a lot of response, including from trade unions. The OECD is also working on a Policy Framework for Investment (a draft text has been issued for public consultation) which includes several references to corruption and the Anti-Bribery Convention.

Other international anti-corruption efforts

There are a number of international efforts to curb corruption in addition to the OECD Anti-Bribery Convention, including the UN Convention against Corruption, the UN Global Compact and the Council of Europe's Group of States against Corruption (GRECO).

The Asian Development Bank (ADB)-OECD anti-corruption instrument for the Asia-Pacific region has seen almost all members make significant improvement in practices and has noted that non-government actors can play an important role in fighting corruption. The Organization of American States (OAS) has also reiterated its commitment to fighting corruption.

Working together to combat corruption

Trade unions need to help combat corruption because in a corrupt system, decision-making is private, not public, it misallocates resources, undermines the system and impedes development. Corruption also has negative impacts on freedom of association, trade union rights, public sector rights and protection of whistleblowers.

Trade unions can play a role in fighting bribery because they are representative, globally connected, and financially independent of governments and business. They can offer support in two ways: formal engagement in the process of monitoring the Convention and informally through awareness-raising, as well as deterring and detecting corruption.

Some participants argued that corruption is particularly an issue for developing countries as it is a major impediment to development. Hundreds of billions of dollars are lost to corruption every year, according to UN figures.

Participants hoped trade unions would actively contribute to initiatives to fight corruption, and that this meeting would help move this forward.

Trade union participants stressed that the UN Global Compact is already witness to the contribution of trade unions, which were instrumental in ensuring the inclusion of the 10th principle, on anti-corruption, in the Compact in 2004.

In response to questions about how far the OECD worked with the UN and the World Bank to exchange information, ensure compatibility of investigations or procedures and co-operate generally, the OECD Secretariat noted that the OECD co-operates as much as possible with other organisations. There is a real concern that the fight against corruption is globalising, so governments need to exchange information and views. The UN secretariat is an observer to the OECD Working Group on Bribery in International Business Transactions and comes to all its meetings, and the OECD secretariat regularly attends Global Compact meetings.

As for a formal relationship between the UN and OECD Conventions, the OECD has had informal consultations to help ensure that the UN does not duplicate what is already being done by the OECD and others. The Working Group also had a whole session in December on the Oil for Food Programme, how to share the results of the investigation and how to proceed. It has done the same kind of thing with the World Bank. The OECD is open to co-operation with anyone who wishes to co-operate with it. The OECD/ADB programme for example has been very successful, and in Latin America there was a recent event between the UN, Argentina, OECD and the InterAmerican Development Bank (IADB).

One participant said it was very useful to have the OECD, UN and World Bank working together, especially for non-OECD countries.

SESSION II: THE OECD ANTI-BRIBERY CONVENTION

Key elements of the Convention

The OECD anti-Bribery Convention is the core document in this area and one of the most successful international treaties in recent years. Much of this success comes from monitoring, but also from the high quality of the Convention itself. It has limited but focused objectives which are clearly exposed to allow for international differences and equal treatment for all.

The OECD anti-Bribery Convention is legally binding to the 36 countries that have ratified it. It gives states a central obligation to establish bribery of a foreign public official as a crime in domestic law. The Convention is limited to the person doing the bribing. Foreign public officials are carefully defined as anyone performing a public function. Sanctions must be “effective, proportional and substantive” and apply to individuals and companies. The offence must be defined in a way that renders inadmissible stock defences such as “everybody does it”, or “the official said we would not get the contract without a bribe” or “we would have won the contract anyway”. There are also related offences and obligations, such as eliminating the tax deductibility of bribes.

The fact that the Convention is binding implies a strong national legal enforcement system. But governments then also have to ensure the law is applied, and that cases are pursued regardless of their effect on their national economy, political considerations or the power or influence of the people involved. These are stringent obligations that require careful monitoring, which is carried out in the OECD Working Group on Bribery in International Business Transactions (the Working Group) under the terms of the Convention. Monitoring leads to the necessity for better rules and there have been several successful cases, as well as an increasing number of cases under investigation.

Current union work in support of the Convention

Participants noted that one challenge for trade unions is that in order to convince them of the importance of getting involved in anti-corruption efforts, you need to show how bribery prevents trade unions from carrying out their core activity of organising and protecting their members. But there is one striking fact that might help: if you rank International Labour Organization (ILO) countries on freedom of association, the list is nearly identical to the list of the worst countries for bribery compiled by the global anti-corruption coalition Transparency International (www.transparency.org).

There is a global unions’ anti-corruption network, UNICORN (www.againstcorruption.org) which supports TUAC affiliates in Phase 2 reviews under the OECD Anti-Bribery Convention. It collates information on multinational bribery allegations around the world, using international union networks and the Press; carries out policy research on ways to introduce disincentives to bribe, including issues such as corporate liability and the protection of whistleblowers (the UK is a good model); and represents trade unions in the international anti-corruption community.

But a key issue for workers and citizens resident in a country where bribes are being paid is knowing *who* to report an offence to – how do you even know where the offending company comes from? You could report the offence in the bribe-receiving country, but not if it is a case of high-level political corruption. The US system is exemplary, but why do all countries not have a simple, well-flagged path to make it easy to report bribery?

The Secretariat noted that since the Convention sets a clear obligation to create a national criminal offence, it should be reported to the police or prosecution service in the same way as domestic fraud or corruption.

This could be done in more than one country in the case of MNEs or consortiums – in any case, the Convention obliges co-operation between signatory governments.

Whistleblowing

The subject of whistleblowing and whistleblower protection was raised by several participants during the discussions. It was also noted that this had been the subject of a previous meeting under the Labour Management Programme in December 1999 (see Summary report: [http://www.oalis.oecd.org/olis/2000doc.nsf/4f7adc214b91a685c12569fa005d0ee7/c125685b0057c558c12568a90042e682/\\$FILE/00074501.PDF](http://www.oalis.oecd.org/olis/2000doc.nsf/4f7adc214b91a685c12569fa005d0ee7/c125685b0057c558c12568a90042e682/$FILE/00074501.PDF)).

The OECD Secretariat noted that although whistleblowing is not mentioned in the OECD Anti-Bribery Convention itself, there is a general provision in the Revised Recommendation whereby countries commit to take measures to deter or prevent bribery and which encourages countries to think about whistleblowing protection. There is, however, a degree of doubt in individual countries about whistleblowing, which comes across in the monitoring reports. The press may be useful in publicising cases, for example, but successful criminal investigation often requires secrecy in the initial stages.

Whistleblowing is mentioned in the OECD Policy Framework for Investment as a key element of good governance, and is also raised in almost every Phase 2 review of countries' implementation of the Anti-Bribery Convention. But, the Secretariat asked, how could one balance the need to respect privacy, which is important to trade unions, with the need for effective whistleblowing mechanisms. In the past year, the Secretariat noted, trade unions had challenged two company codes of conduct, in France and Germany, on the grounds that they violated national privacy laws.

TUAC said that the section on whistleblowing in the Revised Recommendation needs to be updated as it is weaker than the text on this issue in the MNE Guidelines. In general on whistleblowing, more attention needs to be paid to how to protect workers. The French and German cases mentioned by the Secretariat involved non-union companies that were seeking to make it an offence for employees not to report misconduct.

TUAC participants noted that there is no legal protection of whistleblowers in Germany. It has been difficult to get a whistleblower protection law as employees have a special duty to be loyal to the employer. It is an unfortunate situation as it is in everyone's interest for information about corruption to be made known. The German trade union federation has drawn up a proposed code of responsible conduct: at least listed companies should have a system for managing whistleblowers and tip-offs, offering confidentiality and feedback, but it has not yet been adopted.

In the case of the code of conduct cited by the Secretariat, a US-based multinational was forbidden to release its employee guidelines in Germany because by law such guidelines have to be negotiated through the Works Council, and because the guidelines related to the private lives of workers, which is forbidden under German law.

In the French case, the problem arose from the fact that in general US-based codes of conduct with whistleblower protection pose a problem because of negative connotations in France of anonymous denunciation dating back to World War II. The problem is not about protecting whistleblowers as such, but about the idea of allowing an anonymous complaint.

Several participants agreed that whistleblowing is a critical source of information and that it is important to have strong protection for whistleblowers. Whistleblower protection is a life and death matter for unions in countries such as the Philippines, where journalists, trade unionists and others have been killed for revealing corruption. One delegate drew attention to the US Sarbanes Oxley act which significantly

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strengthened whistleblower protection in publicly listed companies and said he hoped other countries would continue to strengthen that protection.

SESSION III: MONITORING ENFORCEMENT OF THE OECD ANTI-BRIBERY CONVENTION

The monitoring mechanism

The Secretariat explained the monitoring mechanism of the OECD anti-Bribery Convention. The Working Group holds a *tour de table* discussion five times a year on how the Convention is being applied. It discusses alleged cases of foreign bribery, including cases reported in the press, although not all allegations turn out to be founded. There is no other international organisation where bribery of public foreign officials is discussed in this way.

Phase 1 reviews of individual signatory countries consisted of a written comprehensive assessment of a country's conformity with the Convention. Phase 2 reviews involve one week of intensive meetings in the country being examined to assess the effectiveness of foreign bribery laws, including ministries, law enforcement agencies, business, unions and civil society. The reports, which include recommendations for action, are published on the OECD Web site (www.oecd.org/bribery). The reports are powerful tools for change; several countries have amended their laws on recommendations from the Working Group. The reports are adopted on the consensus minus one principle, so the reviewed country cannot prevent adoption.

The process works for several reasons: there is a strong consensus on the need for such a mechanism; peer pressure and review are part of the OECD house culture; human and financial resources are available to make the reviews work; transparency and accountability are the basic rules of the game; it is a learning process for all involved; there is a clear and strong follow-up. One year after a report is released, the country concerned makes an oral report to the Working Group on what it has done; after two years it makes a written response, which is published. If the Working Group finds that a country has not made an adequate response to a Phase 2 Review, the country is examined again.

Trade unions are involved in the on-site visits in Phase 2, as are business and civil society representatives. These visits focus on issues such as awareness of the offence of foreign bribery, internal compliance programmes, reporting mechanisms and protection of whistleblowers.

Phase 2 reports for 22 countries have been finished, and all 36 signatories to the OECD Anti-Bribery Convention are to do be completed before the end of 2007. The Convention requires monitoring to continue, but the future mechanism has not been decided. This will be discussed in the Working Group, but it should respond to three basic criteria: credibility, sustainability and cost effectiveness.

The importance of enforcement mechanisms

One delegate emphasised the importance of efficient enforcement of anti-bribery instruments and said the OECD Convention has a very powerful enforcement mechanism. But if we are going to fight corruption successfully at the global level other Conventions such as the UN Bribery Convention need stronger enforcement mechanisms. At the same time we all realise that the heavy mechanism which is basic to the OECD Convention could not work at the UN. It is a difficult challenge to help define an effective follow-up mechanism for the UN convention, but trade unions and other stakeholders could be very helpful to that end.

The Working Group is now carrying out a mid-term review to ensure consistency and to identify possibilities for improving the process.

The role of trade unions in monitoring and enforcement

Delegates said more active trade union involvement in this area would be very welcome. One noted that during the Phase 2 review of Sweden, there was a meeting with the Swedish National Contact Point (NCP) at an early stage to raise awareness about the process and to encourage active involvement, but acknowledged that there was less diligence in the follow up. Unions would, however, be involved in a full discussion ahead of the one-year-after oral report by Sweden to the Working Group in October 2006. The NCPs have a role in the context of Phase 2 Reviews and thereafter, and are very useful to raise awareness and encourage active participation but they are not appropriate for treating individual cases.

TUAC felt that the trade union role in enforcement is very limited. In Phase 1 reviews there were very few specific contributions from trade unions. Phase 2 only provides for consultations with trade unions, and this is not really sufficient to ensure a significant role for trade unions in implementation. Perhaps more should be done to involve trade unions in Phase 2 reviews, especially trade unions in sectors more involved in international transactions such as defence and construction. Trade unions could suggest which companies should meet with the Working Group because they are involved with business in developing countries. Trade unions have no formal involvement in the follow-up to Phase 2 reports. They can bring up cases, campaign for transparency, monitor implementation but they could do much more to enforce the Convention, such as helping to evaluate codes of conduct, dealing with whistleblowers and in corporate governance. For many companies, bribery is a way of defending economic interests; trade unions and governments can do more to combat this approach.

Some TUAC participants felt that trade unions should play a much bigger role in combating corruption in general. Trade unions have a social dialogue role which could help them become more involved, particularly at the national and workplace level. In European Works Councils, for example, transparency of information brings things to public notice and makes corruption harder. Worker directors also help transparency.

It is the trade unions' role to ensure the highest level of transparency and publicity; they must spell out the economic consequences of corruption, which leads to awareness-raising. It was helpful to have trade union representatives involved in Phase 2 as they reported back to unions on how the system worked. There is no special training for trade unions on the Convention, but it should be mentioned during training on the MNE Guidelines when the corruption chapter comes up.

As for what trade unions are already doing to combat corruption, the ICFTU and other global federations are bringing information and case studies to unions in many countries, such as transition countries in Europe, and these questions are discussed. But they should become more involved in the future. Credibility is the key; if trade unions are involved and are seen to be involved in the fight against corruption, their point of view will gain credibility.

SESSION IV: TRADE UNIONS COMBATING CORRUPTION

Trade union involvement in the Phase 2 process

Participants agreed that the Phase 2 process is crucial to the credibility of the OECD Anti-Bribery Convention. Trade unions are part of the civil society checks and balances that lead to such credibility. UNICORN tries to ensure that its affiliates are as involved as they can be and informed of the process. The OECD contacts TUAC, TUAC contacts its affiliates and UNICORN, and UNICORN carries out briefings, undertakes research for affiliates, and provides information to the OECD and to civil society in the reviewed countries.

In the UK, UNICORN held a pre-Phase 2 review briefing meeting, held discussions, made presentations, and gathered information, including information from southern organisations about concerning the behaviour of UK-based businesses in their countries. As a result, there was wider representation at the review, which formed the beginnings of a network of organisations -- whistleblower support organisations, development NGOs, trade unions and anti-corruption NGOS – working on this issue on a North-South basis.

The positive aspects of Phase 2 from a union point of view are that trade unions are consulted and are invited to give written and oral evidence. But the process is opaque, too short notice is given or unions are not notified at all (as was the case in Australia), and access to the government response to the questionnaires is discretionary, when it should be automatic. There is no opportunity for feedback from trade unions (or any non-governmental party) once the report is written, and there is no formal way to involve the South, which is the main constituency of the Convention. The Phase 2 Reviews are able to provide a springboard for future activities and greater trade union involvement. Involving the South is also vital.

In response to suggestions that trade unions are engaging in a narrow band of issues, TUAC said unions are willing to do more. The key message in Phase 2 reviews is that trade unions are not aware of the Convention, not because of lack of interest by unions but because of lack of push by government and business. Only one Phase 2 review, for the UK, mentions trade unions as a vehicle for awareness-raising, deterrence or implementation. Trade unions are doing anti-corruption work which may or may not feed into the Convention but could perhaps be useful in non-OECD countries.

Combating corruption in developing countries

TUAC said stopping corruption is particularly vital in a developing country because the resources being diverted are badly needed for development. Bribery has been a major issue in the Philippines, where an estimated 200 billion pesos a year are lost to corruption according to official figures. Bribery and corruption add 20%-50% to the cost of a project. What is more, the public see civil servants as a lazy, corrupt bunch incapable of delivering basic services, when the real problem is that the money has been diverted to corruption. Corruption also creates dissatisfaction which makes it easier for extremist groups to recruit. All this undermines democracy and leads people to question the legitimacy of government, so it is very costly all round.

It is a moral, social and political imperative for trade unions to help combat corruption. But in fighting corruption in the Philippines you risk your life, your job is on the line, you face harassment and political pressure. If other parties fail to face corruption and trade unions say they will try, they are under great pressure to deliver, but the process can be protracted and this in itself leads some people to just give up. But the situation also provides opportunities – a real commitment to fight corruption does win support, and if you win cases it strengthens your resolve.

The Philippines Public Services Labour Independent Confederation (PSLINK) work against corruption includes transparency to ensure credibility, capacity building, developing a model collective agreement including an anti-corruption clause, giving its members paralegal training, engaging in a strategic alliance with Danish unions and local authorities to combat corruption, developing tools and campaign materials, and creating alliances with lawyers, church and community groups as well as giving evidence to senate and congressional public hearings and input into drafting of legislation.

But fighting corruption is an uphill battle. In the Philippine International Air Terminals Corp. (PIATCO) case involving a contract for a new terminal at Manila airport, alleged bribery was reported at an early stage but by the time the Supreme Court declared the contract null and void, the terminal had in fact been completed.

TUAC said that the OECD Anti-Bribery Convention may not be well-known in Africa, but corruption is; indeed it is endemic and a cause of underdevelopment of the continent. Unions in Sierra Leone are trying to eradicate or at least minimise corruption locally. They reacted when democracy came under attack and they can do the same when it comes to corruption. Sierra Leone has just emerged from war and multinational enterprises are starting to come in, so Sierra Leone unions will use knowledge of the OECD Anti-Bribery Convention to monitor their behaviour. His group is also involved in collaborative work with NEPAD and the south of Africa on how to ensure respect of the Convention and to limit corruption in multinational enterprises.

One delegate said that the role of trade unions, particularly in the North, has been frequently underestimated in this area, but by the end of the day he felt everyone would be seeing the vital role of trade unions. He wanted to address why bribery should be a concern of the trade unions, what their role could be, and how relationships with non-OECD countries could work.

Every citizen should be concerned by corruption, especially in the South, because if the health sector or the education sector for instance are drained of money by corruption that is catastrophic. But petty corruption on a grand scale is also catastrophic. In Mexico, for example, the average family pays about 25% of their budget in "irregular taxes" just to get through everyday life. In the North, the workers should probably have the same concern as their bosses -- that bribery is driving people out of business and costing jobs.

Intergovernmental instruments such as the OECD anti-Bribery Convention and the UN Convention against Corruption and the national laws and monitoring that follow are only one part of the anti-corruption story. These efforts cannot work without a private sector initiative to fight corruption. That is where all the corporate codes and compliance systems in individual companies come in.

The anti-corruption system and the private sector

When it comes to the private sector, the anti-corruption system has three levels.

At a very abstract level, the UN Global Compact says you should not bribe. There is no enforcement but 2000 companies have signed up.

Then there is the mid-abstract level of non-sectoral instruments: Transparency International's Business Principles, the International Chamber of Commerce instrument, the World Economic Forum's Partnering against Corruption Initiative (PACI). All have advantages and disadvantages. PACI requires people to sign up, but does not like trade unions, as US companies only come in if trade unions are out. Neither the ICC nor the TI business principles require the commitment of signatures.

The third, and probably most interesting, level is that of sector-related, issue-related, or even contract-specific instruments. Imagine a major international contract that only three companies worldwide are

capable of taking on, and for each one of whom winning this bid would guarantee the company's future. Would all three companies agree to commit to doing everything to win the job except bribe – and face a multimillion dollar penalty if they were found to have breached the agreement? This kind of initiative is not just an issue for the bosses and the shareholders, but also for the workers.

But whatever their type, all private sector initiatives require a monitoring mechanism because otherwise self-regulation does not work. Here the trade unions would have a much stronger role to play. For instance, the World Economic Forum is trying to develop a third-party monitoring mechanism, and the question of the role of trade unions comes in there.

How unions can use the OECD anti-Bribery Convention

OECD union participation in monitoring the OECD Convention is crucial, participants said. One delegate said he would encourage unions to be more critical and to be as tough as they thought necessary in the monitoring process. The Working Group values their views and know-how and has a regular exchange of views with them. Groups such as UNICORN should not wait to be invited, they should go ahead and critique the Working Group's findings. Reports are not much use if nobody reads them or comments on the findings. The reports themselves are more critical than perhaps was to be expected in the beginning, but outside critique is also needed, so unions should challenge the OECD on this.

One delegate said that the question of what would happen if unions brought a case under the Convention is a very interesting issue that needs to be addressed. If unions put a case of alleged bribery before the OECD Working Group there is at present no formal procedure for the OECD to pick it up. So the Working Group would have to decide what to do. The same question probably arises in the case of non-OECD countries. Law enforcement agencies in the North, the source of the bribery, would be responsible for these cases. But legal processes are frequently very slow, the cases are highly political domestically if high-profile companies are involved, whereas the country in the South is very far away. It is often also true that people have been pressurised to bribe, but the country in the South cannot pick up the case, because the people being accused are still in power.

So civil society is often the only force able to bring a case out in the open, and to be effective civil society needs to work together. You frequently need an NGO to reach out to the media and then make it known that there is a case, for example. And the focus of cases can change. The PIATCO case started out as a domestic case, but it could be argued that it is a case for the Working Group because an OECD company was an investor. But the company has now complained to the World Bank that its investment was stolen because the Philippine government has seized the Manila airport terminal. This is a really awkward situation, and one that is difficult to resolve since there is a clash between bribery rules and investment ones. But there is a lot more that could be done in the relationship between North and South, and especially by trade unions.

Another problem is that often national courts are not really the masters of such business cases because many contracts are under arbitration rules. This is a tricky issue, but national courts can refrain from applying arbitration rulings if they are reached without acknowledgement of corruption, and this is the emergency brake in the system for the moment.

TUAC said corruption was rife during the privatisation process in Romania, and the unions worked with TI to fight corruption. Unions have conducted several anti-bribery projects and have submitted to parliament a draft law making it obligatory to publish contracts to help limit corruption, but there is very little knowledge of the OECD Anti-Bribery Convention in Eastern Europe in general. It needs to be made better known, not just to trade unions but also to officials in these countries. International tools are vital and

people should be aware of them. But trade unions are excluded from the Romanian National contact point for the MNE Guidelines, and need to be more involved in work on the OECD Anti-Bribery Convention.

Participants said there is a role in such cases for global union federations who can be supportive.

TUAC said that in Italy unions have had problems. They were involved in the Phase 1 and 2 Reviews under the OECD Anti-Bribery Convention and the penal code was reformed to make companies responsible for corruption, not just individuals, but sanctions are under the administrative code, which is less severe than the penal code. Italy also granted a one-year tax amnesty to encourage offshore capital to return – but then it was rolled over year after year, so capital, much of it from bribes, came in, was “laundered” and went straight back out again. Sharing such cases and scandalising people from other countries can help fight corruption.

TUAC stressed the link between the OECD Anti-Bribery Convention and the MNE Guidelines. Unions see the Guidelines as a complement to the Convention, but the OECD has not made the most of this link. She also drew attention to differences between National Contact Points, welcoming the fact that Sweden is using its NCP to combat corruption, but noting that Romania’s NCP is excluding unions. Making NCPs tripartite could be one way of ensuring that the Convention and Guidelines work together. Maybe the Working Group on bribery and the one that deals with the Guidelines could look at linkages together.

In response to a question on what more could be done by UNICORN to help unions fight corruption in countries such as the Philippines and Romania, TUAC said that training on the OECD Anti-Bribery Convention would help. The degree of corruption in Romania is so high it is difficult to know where to start, but the main problem is lack of legislation, which means there are no tools available to tackle corruption. Elsewhere, publicising the OECD Anti-Bribery Convention through Public Services International, and then down through national level, would be helpful.

UNICORN also came back to the question of where to report bribery cases. There are no clear procedures on how to report bribery; would the person who wanted to report a case have to find out which country the MNE came from and then report there, or could they go straight to the OECD Working Group? She said she was delighted to know that unions can criticise the reports and emphasised that UNICORN is using them, working through them item by item. But she said it would be helpful if contributors were shown the draft before the report was published.

One delegate said that it was clearly governments’ responsibility to develop clear chains for notification of cases, whether on a national or international level. But he would expect the union side not only to react when they believe bribery has taken place but also to be more proactive, for instance by asking a company to develop significant training measures on preventing bribery. Signatories to the OECD Anti-Bribery Convention have to define who is responsible for implementation. So far, there has been no formal reporting chain, but informally the Working Group has been informed of cases, and has always made sure that the country or countries concerned was informed and responded. And of course if a case reaches the media, it will come to the Working Group *tour de table*.

SESSION V: WHERE TO GO FROM HERE

Next steps for the OECD anti-Bribery Convention

On what happens next with the OECD anti-Bribery Convention, not everything is set in stone. The Working Group is working on three tracks in parallel. One is to continue to work on monitoring – Phase 2 is due to end at the end of 2007, but there will be oral reports and a written report one and two years after that. The big outstanding question is what happens after Phase 2. The Working Group has been lobbied quite hard to continue, and there is a certain logic to doing so, but no decision has yet been made. This might be an issue for unions as well -- is this the end of monitoring or does monitoring continue?

The second track is work on substantive issues. The first Recommendation was written in 1994 and revised in 1997, as the Group worked on the OECD anti-Bribery Convention, and since then we have had nearly 10 years of quiet on substance because the Working Group has been busy with monitoring. The Working Group has a mandate to review the Recommendation, which is the “mother document” of the Convention. The Working Group is now more than halfway through an analysis of the Phase 2 evaluations to see if it is changing its standards continuously. On the basis of that review, the Working Group will identify issues for possible review, a process which might lead to new language on specific issues. This can be done in a number of ways – you can use conventional law, or soft law, and it depends very much on political discretion what is done.

The third line of action is accession and outreach. There are 36 adherents to the convention at the moment, but there are some very potent other candidates such as Russia, India, China. South Africa is currently in accession discussions, and the Working Group has held discussions with other Asian countries.

Possibilities for future trade union involvement

On all these issues, the question will come up as to the role of trade unions. The Working Group would welcome ideas on how the recommendations could be extended as well as input on how the monitoring procedure should continue. The Working Group’s difficulty has been that it has so far not accepted outside members at the table in discussions during the actual monitoring work. There is a logic in that, because this is a members’ group, not a tribunal.

One delegate drew unions’ attention to an ongoing debate in the OECD Export Credit Group on whether to update its 2000 Action statement on bribery in export credits to reflect best practices. What changes will be made is still very much an open question, so unions might be interested in following this issue closely.

One delegate also followed up on comments raised about National Contact Points. He noted countries make submissions on the steps they have taken to implement the OECD anti-Bribery Convention, which are publicly available on the Internet, and that some, including the US, the UK and Switzerland, include points of contact that would be useful to anyone wanting to report allegations of bribery.

TUAC saw 10 key points for follow-up as a result of this meeting. The first four would maintain the four key areas of work that UNICORN is already pursuing:

1. Supporting unions and providing advice in the Phase 2 review process before the discussion regarding a country. The OECD could help by providing better information concerning when a country is due for review.
2. Working to collect information on corruption from trade unions and using trade union networks to improve awareness of corruption.

3. Carrying out research on various aspects of corporate liability, as well as different national models on whistleblowing. UNICORN could examine these models and see how they could be used in other national contexts.
4. Helping unions implement the Convention, especially by helping to identify whom and where to present the information to in cases of corruption.

The others were:

5. The ICFTU, a worldwide body with affiliates in 145 countries, could improve dissemination of information about the Convention, to overcome the information gap, especially in the non-signatory countries. It could also discuss a union guide to the Convention, indicating what it is, how it can be useful for unions, and what to do in cases of corruption.
6. To explore what unions can do in the face of corruption which directly affects them – for instance vote-rigging in employee ballots to win union recognition – and how they could use the Convention in such cases.
7. To explore how unions can do more to introduce elements of anti-corruption work in their interventions in the OECD and other institutions such as the UN, APEC, ASEAN, the World Bank and other international bodies.
8. More could be done on follow-up of country reviews under the Convention and to involve unions more in consultations and meetings of the Working Group, particularly when it comes to revising the Convention and improving procedures and implementation.
9. To explore whether there is a particular role for sectoral input for global union federations, and whether they can help in monitoring codes set up by multinationals. Also to explore integrating anti-corruption elements in framework agreements.
10. There is clearly a lot of enthusiasm on the union side for work in this area, but it is very resource-intensive. Is there scope, for OECD governments, and perhaps the OECD itself, to provide assistance so that unions can unlock that enthusiasm for anti-corruption work and to maintain the level of involvement that they would like.

Focus on concrete possibilities for action

TUAC said that the opportunity cost of trade union involvement in anti-corruption work is very high, and members' concern is focused on issues such as jobs, restructuring, health and safety. But unions should have an action checklist as a result of this meeting to take home with them which can act as a springboard to get things done.

TUAC also asked participants to reflect realistically on how to ensure that some of the points raised in the meeting could get transformed into action on the ground in the next year or two, precisely because of the resource issue. Realistically, at a time of budget constraints, it is not possible to argue to the TUAC executive that bribery is the priority issue for extra resources. So the question is: how do you make anti-bribery activities relevant to unions' core activities? And this meeting has suggested some answers.

The first arises from the presentations from trade unions from developing countries which made it clear that corruption and bribery is a life and death question for unions in the South.

The second is that unions have put a lot of resources into anti-corruption activities and UNICORN, but now that needs to be broadened out into other alliances around other issues, making it clear that corruption is a negotiating issue, and global federations could get directly involved in this.

A third point is the value of the Convention as not only a legally binding instrument but one with a monitoring process – Phase 2 has been used actively by UNICORN as a focus of discussion, and it is very important not to let that monitoring aspect slip. Unions have not done enough to follow up on the reviews, and need to raise their act on that, but we need to look at whether there are better ways of having consultation.

A fourth point is how to link the anti-corruption work with unions' work on the MNE Guidelines. There was a lot of talk today about the link between the Guidelines and the Convention. When Guidelines cases are raised in OECD Committees or to National Contact Points, the response often is, bring us evidence and we will prosecute, or do not complain. But the Guidelines can be used as a problem-solving mechanism, and may provide some sort of escape for getting a problem solved when perhaps a corruption case could not be brought before the courts.

Unions will certainly look at the whole whistleblowing issue again. The problems cited during the meeting involved basically anti-union companies with unilateral codes applying the US Sarbanes Oxley Act. A process where companies negotiate with unions and deal with whistleblower protection would produce a far different union response than when a code is imposed from the top, by management saying it is now your job to report on your boss or your co-workers.

TUAC's sixth point concerned resources. TUAC could probably get some of its partners to help in setting up regional seminars, for instance in Asia, sub-Saharan Africa and perhaps the transition economies on these issues over the next 18 months. Trade unions have already produced a guide on using the MNE Guidelines, and perhaps the OECD could produce a Policy Brief on the Convention. Unions are having to scrape money together just to keep UNICORN's work going. Some countries such as the UK do have programmes trying to raise awareness of the Convention to business groups and others. Perhaps some countries' development programmes may have resources available, which would enable work to be done on the North-South aspect.

ANNEX I -- LIST OF PARTICIPANTS

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ANNEX II – LIST OF DOCUMENTS

- **BACKGROUND REPORT** by Kirstine Drew, Co-ordinator, Global Unions Anti-Corruption Network (UNICORN)
<http://www.oecd.org/dataoecd/45/17/36858239.pdf>
- **MONITORING THE ENFORCEMENT OF THE OECD ANTI-BRIBERY CONVENTION**
Presentation by Patrick Moulette, Head, Anti-Corruption Division, OECD
<http://www.oecd.org/dataoecd/2/3/36260790.ppt>
- **UNICORN – A GLOBAL UNIONS ANTI-CORRUPTION NETWORK UNITED AGAINST CORRUPTION - INTRODUCTION AND PHASE 2 REVIEWS**
Presentation by Kirstine Drew, Co-ordinator, Global Unions Anti-Corruption Network (UNICORN)
<http://www.oecd.org/dataoecd/2/47/36257194.ppt>