



United Nations Global Compact

3rd Meeting of the Working Group on the 10th Principle
5-6 June, 2008
Vienna, Austria
Vienna International Center, Conference Room III

Background Materials

Note: Please kindly print all these materials for your review. These documents will be discussed throughout the working group meeting.

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<The Overview of the GC 10th Principle and Working Group>

Global Compact 10th Principle

Principle 10: "Businesses should work against corruption in all its forms, including extortion and bribery."

I) Origin of the 10th principle: On 24 June 2004, during the United Nations (UN) Global Compact Leaders Summit it was announced that the UN Global Compact henceforth includes a tenth principle against corruption. This was adopted after extensive consultations and all participants yielded overwhelming expressions of support, sending a strong worldwide signal that the private sector shares responsibility for the challenges of eliminating corruption. It also demonstrated a new willingness in the business community to play its part in the fight against corruption.

II) Objectives of the 10th principle: The adoption of the tenth principle commits UN Global Compact participants not only to avoid bribery, extortion and other forms of corruption, but also to develop policies and concrete programs to address corruption. Companies are challenged to join governments, UN agencies and civil society to realize a more transparent global economy.

III) Practical steps to fight corruption: The UN Global Compact suggests to participants to consider the following three elements when fighting corruption and implementing the 10th principle.

- **Internal:** As a first and basic step, introduce anti-corruption policies and programs within their organizations and their business operations;
- **External:** Report on the work against corruption in the annual Communication on Progress; and share experiences and best practices through the submission of examples and case stories;
- **Collective:** Join forces with industry peers and with other stakeholders

Working Group on the 10th Principle

I) Members of Working Group

- GC business participants (companies and Small and Medium Enterprises (SMEs) from different industry areas
- Business Associations engaged in the fight against corruption
- Labor representatives
- Civil society organizations active in the fight against corruption
- Representatives from international organizations

II) Main Objectives

- Global Compact participants discuss in a multi-stakeholder setting the needs for the business community in implementing the 10th principle and provide guidance for the work plan of the Global Compact Office on the 10th principle.

- It is aimed to avoid duplication of work with respect to already existing initiatives, but to support alignment of the different initiatives and cooperation of all actors in the implementation of standards and programs.

III) Specific Objectives of the working group:

- (i) General advice:
 - Discuss overall approach to implement 10th principle
 - Provide guidance for work plan of the Global Compact Office on the 10th principle
- (ii) Tools:
 - provide guidance on recommendation of tools
 - define potential research gaps
 - define potential training gaps
 - support in collection of good practices
- (iii) Meetings:
 - proposal of national, regional or global meetings to share experience or to explore specific knowledge gaps
- (iv) Collective Action:
 - exchange of industry specific ideas and experiences in order to evaluate potential scalability of projects
- (v) Local action and project:
 - define pilot projects for particular dilemmas on a country/regional or industry specific level
 - support of local meetings with Global Compact (GC) local networks¹ and evaluate if results should be showcased or translated to a global level

IV) Update on the Past Working Group Meetings and Outcomes

The working group on the 10th principle was inaugurated in 2005 and has held two meetings since its existence.

The first working group (WG) meeting took place in January 2005 in New York. At this meeting, WG members came up with a set of work plans that the Global Compact Office should pursue to assist business participants to better implement the 10th principle. The work plan is as follows

WG members recommend that the Global Compact Office (GCO) should focus on:

- Providing as well as recommending tools and background on the fight against corruption;

¹ Local networks are clusters of participants who come together to advance the Global Compact and its principles within a particular geographic context. They perform increasingly important roles in rooting the Global Compact within different national, cultural and language contexts, and also in helping to manage the organisational consequences of the Compact's rapid expansion. Their role is to facilitate the progress of companies (both local firms and subsidiaries of foreign corporations) engaged in the Compact with respect to implementation of the ten principles, while also creating opportunities for multi-stakeholder engagement and collective action. Furthermore, networks deepen the learning experience of all participants through their own activities and events and promote action in support of broader UN goals.

- Collecting and disseminating good practices of company policies and specific dilemma situations as basis for learning;
- Harmonizing efforts and cooperation with existing initiatives and partners;
- Raising awareness, but promote concrete local and industry specific actions by establishing working groups on the local level; and
- Establishing links to public policy through cooperation with the United Nations Office on Drugs and Crime (UNODC).

The second working group meeting took place in September 2005 in Copenhagen. The meeting produced a series of action points to guide the Global Compact and other stakeholders in the implementation of the 10th principle.

The action points that came out of the September working group meeting are as follows:

- **Working Group Proceedings:**
 - GCO to work on extending the number of companies in the working group
 - GCO to invite GC local network focal points to the working group meetings
 - GCO to focus activities on the national level and discuss dissolution of working group when activities have been rooted locally
- **Linking to Local Level:**
 - GCO to clearly define how to strengthen the link between the GC office and the local networks working groups, and which activities to undertake to engage on the local level
 - GCO to inform the working group about national initiatives so that relevant subsidiaries could be encouraged to engage in these activities
- **Various Standards:**
 - The World Economic Forum - Partnering against Corruption Initiative (PACI), the International Chamber of Commerce (IICC) and Transparency International (TI), to distribute further information on the World Economic Forum-PACI, ICC and TI Business Principles (BP) to working group members
 - As an on-going effort, World Economic Forum-PACI, ICC, TI and GCO to coordinate activities between the four initiatives (i.e. meetings, collection of examples, tools, etc.)
- **Collection of Examples/Dilemmas**
 - World Economic Forum-PACI, ICC, TI and GCO to prepare a list defining the areas and scope of the dilemmas that should be collected for a joint (web-based) database
 - GCO to address working group members to contribute dilemmas to the database
 - GCO to present proposal on further distribution and training based on database
- **SME Tools**
 - UNODC and United Nations Industrial Development Organization (UNIDO) to present a more detailed proposal on SME and corruption project if engagement of working group members is required

- Respect Europe to present a revised proposal on DANIDA/Respect Europe SME project with more details so that GC companies can judge the extent of their involvement
- **Reporting on the 10th Principle**
 - GC and TI to prepare a list of suggested questions on reporting on the 10th principle going beyond the current suggested minimum requirement for further discussion
- **UN Convention against Corruption**
 - UNODC to detail and clarify the role of companies at UNODC meetings on the UN Convention against corruption (expected outcomes and the proceedings)
 - UNODC to define the role of business in cooperation with UNODC on the implementation of the UN Convention against Corruption by next meeting
- **Next Meeting**
 - UNODC and GC to define date for next meeting at UNODC Vienna, Austria

UN Global Compact Board

I) Overview: the Global Compact Board, appointed and chaired by the United Nations Secretary-General, is designed as a multi-stakeholder body, providing ongoing strategic and policy advice for the initiative as a whole and making recommendations to the Global Compact Office, participants and other stakeholders. It comprises four constituency groups - business, civil society, labour and the United Nations.

Board members are champions willing and able to advance the UN Global Compact's mission, acting in a personal, honorary and unpaid capacity. Drawing in particular on the expertise and recommendations of its business members, the Board is also expected to play a role in the implementation of the Global Compact's integrity measures. In addition to their overall Board responsibilities, the civil society and labour constituency groups are expected to provide close liaison to their communities and share insights into the most recent trends and best practices of corporate citizenship in their respective domains.

II) UNGC Board Members and the 10th principle

Three board members volunteered to work with the WG on the 10th principle and have formed a Board working group (BWG). The BWG will give input to the work of the GCO and the WG on the 10th principle.

The three Board members are:

- Dr. Huguette LABELLE, Chair, Transparency International
- Ms. Ntombifuthi MTOBA, Chair of the Board, Deloitte, South Africa
- Mr. Guillermo CAREY, Senior Partner, Carey & Allende Abogados, Chile

<UPDATE ON GLOBAL COMPACT 10TH PRINCIPLE>

I) The Working Group: On 5-6 June 2008, in partnership with UNODC, the Global Compact Office will convene the 3rd Working Group Meeting on the 10th principle in Vienna. The overarching goal of the meeting will be the identification of priority issues that will form the basis of a two-year work plan for the 10th Principle. The company participants are from Africa, Europe and North America and engaged in a wide variety of industry sectors that range from finance & insurance, software & IT, food & drink, oil & gas, aerospace & aviation, technology hardware & electrical equipment and telecommunications. In addition, the meeting will bring together civil society representatives business associations, labour, and International Organizations. This interactive meeting will surely bring momentum to the efforts of the WG to fight corruption.

II) Tools & Resources: The Global Compact, in partnership with the ICC, TI, World Economic Forum-PACI, has been developing a tool named *Resisting Extortion and Solicitation in International Sales and Transactions (RESIST)*. **RESIST** is in its final developmental stages and is aimed at helping private sector compliance managers and employees in the field to effectively respond to corruption and more specifically to solicitation for bribes through scenario-based simulations.

The Global Compact, in collaboration with the World Bank Institute, Centre for International Private Enterprise (CIPE), Global Advice Network, Grand Thornton and Siemens together with supporting partners, are working on a **Guide and Web-portal on Collective Action**. The aim is to use the *Guide* to support the global business community in fighting the risk of corruption through collective action. As a practical toolkit, the *Guide* provides guidance to companies when and how to implement a collective action and offer pragmatic checklists, internet links, best practices and useful contact information.

The *Web Portal on Collective Action* will include the *Guide on Collective Action*, business cases for collective action, case studies on collective action, additional resources, and news/update information. The *Web Portal* will maximize the effectiveness of the *Guide* and facilitate companies' access to various anti-corruption collective action resources.

The Guide and Web Portal will be launched in June 2008 in Washington DC, USA and in London, UK.

III) Business Case against Corruption: The Global Compact, in collaboration with TI, ICC and World Economic Forum-PACI, has been working on a publication titled *Clean Business is good Business: The Business Case against Corruption*. This document will be publicly available in June 2008.

IV) Forthcoming projects: The Global Compact and Transparency International will seek the WG's guidance on the feasibility of jointly-developing indicators for reporting on the 10th principle. These indicators will help GC participants to produce credible reporting on the 10th principle. The issue of anti-corruption reporting indicators will be discussed at the 3rd Working Group Meeting in Vienna.



UNITED NATIONS
Office on Drugs and Crime

**3rd Meeting of the Working Group of the
UN Global Compact's 10th Principle**

Input Paper

***Why is the UN Convention against Corruption
relevant to business?***

**United Nations *Office on Drugs and Crime*
Vienna
5-6 June 2008**

I. Objective of this paper

This input paper foreshadows the goals of the meeting, outlines the key questions to be addressed and discussed and highlights the relevance of the United Nations Convention against Corruption to business. It also provides definitions of important terms, background information on the United Nations *Office on Drugs and Crime* and on the dynamic of the intergovernmental process to promote the implementation of the Convention.

II. The United Nations Convention against Corruption, what does it mean to the private sector?

While an overview of the Convention is contained in Annex I (A), it is important to stress what this global treaty means to the private sector. As a contract is legally binding on those who sign it, an international treaty is equally binding on those who ratify or accede to it. However, the fact that only States have the ability to ratify and be bound by an international treaty does not imply that there is no bearing on the private sector. The UN anti-corruption Convention contains a number of provisions that, while addressed to States, have a direct impact on the corporate community. The overall goal of such provisions is to avert market distortions and combat unfair competition. This is particularly true in relation to the following areas:

➤ Public procurement: this is one of the areas most vulnerable to corruption, as public procurement officials may solicit (passive bribery) or be offered (active bribery) unlawful advantages to award contracts, thus contravening the fundamental principle of cost-effectiveness in the management of public resources. Therefore, the Convention (art. 9) makes it obligatory for States parties to adopt systems of public procurement that are based on transparency, competition and objective criteria. In particular, States are obliged to make invitations to tender well known to the public; to establish in advance conditions for participation, tendering rules and award criteria; to establish systems of review and appeal against public procurement decisions; and to exercise particular diligence in selecting and training public procurement personnel.

➤ Amongst its measures to prevent corruption, the Convention devotes an entire article to the private sector (art. 12, see Annex II). In particular, States are: (a) obliged to strengthen accounting and auditing standards in the private sector adopting, as appropriate, civil, administrative or criminal sanctions in case of companies' wrongdoings; (b) encouraged to promote the use of good commercial practice and the adoption of codes of conduct for the correct, honourable and proper performance of business; (c) asked to identify legal or natural persons involved in the management of corporate entities; (d) urged to prevent conflicts of interest by imposing restrictions, for a reasonable period of time, on the employment of public officials by the private sector when such employment is directly related to the functions held by the public official during his/her tenure. In addition, States are obliged to adopt measures that prevent companies operating under their jurisdictions from:

- (a) Establishing off-the-books accounts;
- (b) Making of off-the-books or inadequately identified transactions;
- (c) Recording non-existent expenditure;
- (d) Entering liabilities with incorrect identification of their objects;
- (e) Using of false documents; and
- (f) Destroying intentionally bookkeeping documents earlier than foreseen by the law.

➤ Money-laundering: corruption generates illicit gains, which are often monetary in nature. The Convention prescribes specific measures to prevent money-laundering (art. 14) which

impact on the private sector. In order to deter and detect all forms of money-laundering, States parties to the Convention are obliged to establish regulatory and supervisory regimes for banks and non-banking financial institutions, including natural or legal persons that provide formal or informal services for the transmission of money.

➤ Criminalization of offences of corruption: the Convention does not provide a legal definition of corruption. The approach adopted is to prescribe the criminalization of traditional and new manifestations of corruption, while leaving States parties free to adopt measures more severe than those contained in the treaty (art. 65). While some of the offences introduced by the Convention relate exclusively to the public sector (e.g. embezzlement by a public official, art. 17), others may see the private sector acting either as the victim (to be protected) or the perpetrator (to be punished) of the crime. This is true in relation to the following offences of corruption: bribery of national and foreign public officials (art. 15 and 16); trading in influence (art. 18); abuse of functions (art. 19); laundering of proceeds of crime (art. 23), and obstruction of justice (art. 25). In addition, the Convention introduces two offences that relate exclusively to the private sector. These are bribery in the private sector (art. 21) and embezzlement of property in the private sector (art. 22). In essence, the Convention recognizes, and makes it a criminal offence, that giving or accepting an undue advantage for an individual to act or refrain from acting in breach of his/her duties can be confined to economic, financial or commercial activities that do not involve a public administration. Likewise, the Convention recognizes, and makes it a criminal offence, that private funds can be embezzled by private sector's operators. Consistent with this approach, the Convention makes it obligatory for States parties to establish criminal, civil or administrative liability of legal persons and to make such liability independent of the criminal liability of the natural persons who have committed an offence of corruption (art. 26).

➤ Consequences of acts of corruption: in addition to the establishment of adequate liability, and to ensure that ill-gotten gains are not retained, the Convention urges States parties to consider corruption a factor to annul or rescind contracts and withdraw concessions (art. 34).

➤ Cooperation between national authorities and the private sector: recognizing that a non-corrupt environment is beneficial to private and public actors alike, the Convention calls for cooperation between companies and investigating or prosecuting authorities, encouraging the former to report, on their own initiative, the commission of corruption offences (art. 39).

➤ International cooperation: one of the distinctive features of the Convention is the promotion of cooperation among States to combat corruption. In this context, the Convention makes it obligatory for States parties to render to one another the widest measure of mutual assistance also in relation to cross-border investigations and prosecutions involving the liability of legal persons. To this end, States are obliged to provide, upon request, bank, financial, corporate and business records (art. 46). Bank secrecy is no longer an impediment to such cooperation according to the Convention (art. 40).

III. The role of the private sector in implementing the Convention – the importance of self-regulation

As described above, the fact that only States parties assume a legal obligation to implement the measures of the Convention does not imply that the private sector has no role to play in this endeavour. To the contrary, the private sector has a vested interest in stepping up its integrity policies and measures and its systems of checks and balances, in other words, in engaging more vigorously in self-regulation. Failure to voluntarily establish adequate regulatory regimes may result in States parties to the Convention regulating markets independently in order to comply with the treaty. Such efforts and measures, if undertaken without the benefit of a deeper

understanding of the needs of market entities, may hinder the flexibility necessary for profitability. A significant step towards responsive and responsible self-regulation is reflected in the Declaration adopted by representatives of the private sector in the context of the 2nd Conference of the States Parties to the Convention. While a detailed analysis of the Declaration and its implications is contained in section paragraph V of this paper, the Working Group may wish to take into account that the commitments of the Declaration represent a concrete operational extension of the 10th Principle of the UN Global Compact. Business has a vested interest in fighting corruption in all its forms and manifestations and the Bali Business Declaration spells out how this should be done.

IV. What can be done to assist companies in fulfilling their role? Corporate social responsibility for integrity

At the Second UN Global Compact's Leaders Summit, held in Geneva from 5 to 6 July 2007, UNODC presented a proposal to assist companies in fulfilling their role. This proposal consists in four dimensions: internal, external, collective and public-private (shared responsibility).

➤ The internal dimension: companies' anti-corruption policies and measures need to be consistent with universally recognized integrity standards. Now States have such a single, state-of-the-art set of standards, the UN Convention against Corruption. Private entities rely on a variety of global or regional business principles developed over the years by a number of international entities which bring together the private sector. The Working Group may wish to consider that the first step to assist companies in adopting effective anti-corruption policies is the alignment of the existing sets of business principles in order to build on their common elements while addressing any discrepancies. An effort to align the existing sets of principles is underway and the Working Group may wish to take stock of progress made in this endeavour. The Working Group may also wish to discuss the opportunity for the realignment exercise to draw on the universal principles of the Convention, which, having been adopted by the General Assembly, contains anti-corruption measures that enjoy the broadest possible global consensus.

➤ The external dimension: following the alignment of business principles and any subsequent adjustment of companies' internal rules and regulations, the next logical step would be the review of companies' compliance with their own rules and regulations. In this context, the UN Global Compact has already launched the Communications on Progress (COP) mechanism, whose potential is yet to be fully realized. While the COP reporting mechanism intends to gather information on companies' performance on the implementation of all the 10 Principles of the UN Global Compact, the Working Group may wish to explore innovative solutions to promote more consistent reporting on the 10th Principle. To this end, building on existing tools, the Working Group may wish to recommend the further development of realistic and verifiable performance indicators, accompanied by user-friendly reporting guidelines. Following the improvement of the reporting mechanism, meant to gather information on companies' implementation of the 10th Principle, the subsequent question the Working Group may wish to answer is how to underpin the information so provided. To this end, the Working Group may wish to recommend that the introduction of a review mechanism to assess companies' compliance with realigned integrity standards capitalize on the Notable Communication on Progress programme introduced by the UN Global Compact. The Notable programme was launched to highlight and recognize outstanding Communications on Progress. COPs featured in the Notable programme are selected because of their adherence to the COP policy and because they represent illustrative and inspirational examples of communicating progress. The use of "Notables on the 10th Principle" could be further expanded by engaging outstanding performing companies in a peer-review exercise in order to learn from each other, display good implementing practices for the

benefit of other companies while multiplying exponentially the credibility of the whole reporting architecture.

➤ The collective dimension – forging private-to-private partnerships: large companies possess the resources necessary to adopt, implement and monitor anti-corruption policies and measures, including means to protect whistleblowers. They have resources to appoint compliance officers and train employees on integrity standards. Above all, they have the necessary financial and reputational leverage to resist internal and external pressures which may induce business to resort to corrupt practices to increase profits, save costs or simply win a contract. In contrast, the vast majority of small and medium enterprises (SMEs) do not possess equal capacity and resources. The essence of the collective dimension, to be discussed by the Working Group, is to explore possibilities for large companies to extend support to SMEs, particularly those in their supply chain and with relationships with their subsidiaries, agents and subcontractors. Various commendable initiatives have been launched over the years to support SMEs in their quest for responsible corporate behaviour. The effectiveness of such initiatives would be strengthened by a broader engagement of large companies committed to a zero-tolerance policy in respect to any of their partners.

➤ Strengthening public-private partnerships: the business community is one of the major victims of public corruption, but it can also be a powerful actor for change. A culture of public integrity is fostered by the combination of adequate economic opportunities in the public sector and education on the importance of performing public functions with propriety, integrity and transparency. The Working Group may wish to discuss how companies can join forces with public institutions of the countries where they do business and “invest” in public anti-corruption infrastructure as a way of safeguarding their assets. To this end, the following areas could be considered:

- ❖ Establishment of legal frameworks necessary to prevent and combat corruption and institutions to give those frameworks teeth (e.g. anti-corruption agencies, financial intelligence units).
- ❖ Integrity training for law enforcement, public procurement personnel and the judiciary – sectors particularly vulnerable to corruption.
- ❖ Assistance to countries to develop legal expertise needed to recover public funds looted by corrupt leaders, hence breaking the vicious circle “poverty, that generates vulnerability to corruption, that saps business, perpetuating poverty”.

V. The Bali Business Declaration and its follow-up

At the 2nd Conference of the States Parties to the UN Convention against Corruption, held in Indonesia from 28 January to 1 February 2008, a number of representatives of the business community came together in a forum jointly organized by UNODC, the UN Global Compact, the Organization for Economic Co-operation and Development, the International Chamber of Commerce, the World Economic Forum/Partnering Against Corruption Initiative and Transparency International. The forum adopted the Bali Business Declaration as follows:

*WE, the participants of the Special Event entitled **Business Coalition: the United Nations Convention against Corruption as a New Market Force**, held at the Second Conference of the States Parties to the United Nations Convention against Corruption,*

ACKNOWLEDGING that working against corruption makes good business sense and creates an environment conducive to business,

CONVINCED that fighting corruption is a shared responsibility that involves all stakeholders,

RECOGNIZING that business, including non-listed companies and small and medium enterprises, together with other institutional and non-institutional actors, has a key role to play in curbing corruption in domestic and international transactions,

REAFFIRMING our support for the 10th Principle of the United Nations Global Compact, which states that the private sector should work against corruption in any form and manifestation, including bribery and extortion,

RECALLING the numerous global and regional initiatives to establish business anti-corruption principles,

REAFFIRMING that such principles are voluntary, but that failure to implement them puts companies at serious risk,

CALL UPON governments that have not yet done so to ratify and implement the United Nations Convention against Corruption, thus further promoting a culture of integrity and transparency,

URGE the Conference of the States Parties to the United Nations Convention against Corruption to establish an effective mechanism to review its implementation as a matter of great importance and urgency, and to include participation of business in such a mechanism,

COMMIT to work towards the alignment of business principles with the fundamental values enshrined in the United Nations Convention against Corruption and to report on such efforts at the third session of the Conference of the States Parties,

COMMIT to ensuring that anti-corruption policies and strategies include effective whistleblower protection, due diligence in the selection of agents, intermediaries and address “facilitation payments”,

COMMIT to work towards developing mechanisms to review companies’ compliance with realigned business principles and to report on the outcome of this exercise at the third session of the Conference,

AFFIRM our commitment to support small and medium enterprises in the establishment and implementation of appropriate internal anti-corruption policies and procedures,

COMMIT to strengthening private-public partnerships for combating corruption in business.

The last five paragraphs of the Declaration clearly reflect concrete commitments in consonance with the four dimensions of corporate responsibility for integrity outlined under section IV above. The present meeting of Working Group constitutes an immediate follow-up to the call for action made by the Declaration. To keep momentum, the Working Group may wish to conclude its 3rd meeting by adopting an action plan for the implementation of the Declaration and recommend that, to monitor progress, at least two more meetings be held prior to the 3rd Conference of the States Parties to the UN Convention against Corruption.

VI. The role of the private sector at the 3rd Conference of the States Parties to the UN Convention against Corruption

The 3rd session of the Conference of the States Parties to the Convention, to be held in Qatar in late 2009, is expected to be a landmark. It is most likely that the Conference will adopt the mechanism to review countries’ implementation of the Convention. The business community,

along with the other segments of civil society engaged at the 2nd session (the media, parliamentarians and the world of art), will have a unique opportunity to parallel this major accomplishment and reiterate its role as an integral part of the movement spurred by the Convention. The “Business Coalition” that met in Indonesia early this year will gather again in Qatar to take stock of progress made towards the implementation of the Bali Business Declaration. The importance of matching the results that States are likely to achieve in Qatar, thus showing equal commitment to fighting corruption and urging political leaders to do more cannot be overemphasized.

VII. Bringing more companies onboard

The number of forums for the private sector to gather and discuss issues falling under the broad notion of corporate social responsibility is large, while the time to engage in all of them is scarce. This, coupled with the perception that meetings of politicians frequently result in little accomplishment, has so far held back the business community from actively participating in the anti-corruption dialogue. While there is no doubt that the political dimension of such dialogue has its own pace, a greater involvement of the corporate community can only accelerate such pace while bringing to the forefront issues, concerns and solutions that may otherwise remain unexplored. While mandated to facilitate the intergovernmental process, UNODC has launched a number of parallel drives motivated by the need to recognize that fighting corruption is a shared, society-wide responsibility. With this in mind, at the 2nd Conference of the States Parties, UNODC gave all stakeholders a stage to discuss issues of common interest. The advantage of fostering a broad dialogue in the framework of the Conference of States Parties to the Convention is represented by the unique opportunity that such a framework offers for anti-corruption politicians, policy-makers, practitioners and civil society to come together. This is also true for the private sector, which has the opportunity to make its voice heard while global anti-corruption policies are forged. The Working Group may wish to discuss ways and means for more companies to be made aware of these aspects and join the “Business Coalition” that met in Bali. UN and non-UN entities interacting with the private sector may wish to sensitize their constituencies on the importance of being an active part of this process. UNODC stands ready to make the dynamics and objectives of the anti-corruption intergovernmental process known in any setting that the private sector would deem appropriate.

Annex I

A. The United Nations Convention against Corruption at a glance

“Corruption hurts the poor disproportionately by diverting funds intended for development, undermining a government’s ability to provide basic services, feeding inequality and injustice, and discouraging foreign investment and aid”.

Kofi Annan

The United Nations Convention against Corruption was adopted by the General Assembly in October 2003 and opened for signature in Merida, Mexico, in December 2003. It entered into force on 14 December 2005 and to-date (16 May 2008), it has been signed by 140 countries and ratified by 116. The Convention is the first legally binding, global anti-corruption instrument which provides a unique opportunity to mount a comprehensive response to a multi-faceted threat. It introduces groundbreaking measures in four areas: prevention, criminalization, international cooperation and asset recovery.

Prevention

Corruption can be prosecuted after the fact, but first and foremost, it requires prevention. An entire chapter of the Convention is dedicated to prevention, with measures directed at both the public and private sectors. These include model preventive policies, such as the establishment of anticorruption bodies and enhanced transparency in the financing of election campaigns and political parties. States must endeavour to ensure that their public services are subject to safeguards that promote efficiency, transparency and recruitment based on merit. Once recruited, public servants should be subject to codes of conduct, requirements for financial and other disclosures, and appropriate disciplinary measures. Transparency and accountability in matters of public finance must also be promoted, and specific requirements are established for the prevention of corruption, in the particularly critical areas of the public sector, such as the judiciary and public procurement. Preventing public corruption also requires an effort from all members of society at large. For this reason, the Convention calls on countries to promote actively the involvement of non-governmental and community-based organizations, as well as other elements of civil society, and to raise public awareness of corruption and what can be done about it. Article 5 of the Convention enjoins each State Party to establish and promote effective practices aimed at the prevention of corruption.

Criminalization

The Convention requires countries to establish criminal and other offences to cover a wide range of acts of corruption, if these are not already crimes under domestic law. In some cases, States are legally obliged to establish offences; in other cases, in order to take into account differences in domestic law, they are required to consider doing so. The Convention goes beyond previous instruments of this kind, criminalizing not only basic forms of corruption such as bribery and the embezzlement of public funds, but also trading in influence and the concealment and laundering of the proceeds of corruption. Offences committed in support of corruption, including money-laundering and obstructing justice, are also dealt with. Convention offences also deal with the problematic areas of private-sector corruption.

International cooperation

Countries agreed to cooperate with one another in every aspect of the fight against corruption, including prevention, investigation, and the prosecution of offenders. Countries are bound by the Convention to render specific forms of mutual legal assistance in gathering and transferring evidence for use in court, to extradite offenders. Countries are also required to undertake measures which will support the tracing, freezing, seizure and confiscation of the proceeds of corruption.

Asset recovery

In a major breakthrough, countries agreed on asset recovery, which is stated explicitly as a fundamental principle of the Convention. This is a particularly important issue for many developing countries where high-level corruption has plundered the national wealth, and where resources are badly needed for reconstruction and the rehabilitation of societies under new governments. Reaching agreement on this chapter has involved intensive negotiations, as the needs of countries seeking the illicit assets had to be reconciled with the legal and procedural safeguards of the countries whose assistance is sought. Several provisions specify how cooperation and assistance will be rendered. In particular, in the case of embezzlement of public funds, the confiscated property would be returned to the state requesting it; in the case of proceeds of any other offence covered by the Convention, the property would be returned providing the proof of ownership or recognition of the damage caused to a requesting state; in all other cases, priority consideration would be given to the return of confiscated property to the requesting state, to the return of such property to the prior legitimate owners or to compensation of the victims. Effective asset recovery provisions will support the efforts of countries to redress the worst effects of corruption while sending at the same time a message to corrupt officials that there will be no place to hide their illicit assets.

B. The Conference of the States Parties to the United Nations Convention against Corruption

The Conference of the States Parties was established by the Convention (art. 63) to improve the capacity of States parties to achieve the objectives of the Convention and to review its implementation. Another key function of the Conference is to facilitate the exchange of information among States parties on patterns and trends in corruption and on successful practices for preventing and combating it. For the Conference to discharge its functions, States parties have to submit to it information on their programmes, plans and practices, as well as on legislative and administrative measures adopted to implement the Convention. The Conference held its 1st session in Jordan in December 2006 and its 2nd session in Indonesia in January-February 2008. After the 2nd session, the Conference will enter a biennial cycle and its 3rd session is scheduled to take place in Qatar in late 2009.

C. The United Nations Office on Drugs and Crime (UNODC)

UNODC is the Office of the United Nations Secretariat with the exclusive mandate to counter drugs, crime and terrorism worldwide, three of the greatest threats to the peace, security and well-being of humanity. The work carried out by UNODC is characterized by a three-pronged approach, which is based on *research* that ensures that policy is evidence-based, a *strong legal framework* that helps States fight drugs, crime and terrorism according to the rule of law and an *operational response* that is made possible by the political ownership of the States concerned, technical assistance from UNODC headquarters and the involvement of the Office's worldwide network of field offices. Under the second pillar, the establishment of a strong legal framework, UNODC is custodian and promoter of three drug control conventions, five crime-related treaties – including the UN Convention against Corruption – and sixteen universal legal instruments against terrorism. In this context, UNODC provides legal assistance to Member States for the ratification and subsequent implementation (operational response, third pillar) of all such treaties. The Office, headquartered in Vienna, can rely on a network of twenty-one Field Offices and two Liaison Offices in New York and Brussels. Approximately 500 staff is based in Vienna and 2,000 in the field. UNODC has an operational budget of approximately US\$ 150 million per year, 90% of which consists of voluntary contributions provided by Member States.

Annex II

Article 12 of the United Nations Convention against Corruption Private Sector

1. Each State Party shall take measures, in accordance with the fundamental principles of its domestic law, to prevent corruption involving the private sector, enhance accounting and auditing standards in the private sector and, where appropriate, provide effective, proportionate and dissuasive civil, administrative or criminal penalties for failure to comply with such measures.

2. Measures to achieve these ends may include, inter alia:

- (a) Promoting cooperation between law enforcement agencies and relevant private entities;
- (b) Promoting the development of standards and procedures designed to safeguard the integrity of relevant private entities, including codes of conduct for the correct, honourable and proper performance of the activities of business and all relevant professions and the prevention of conflicts of interest, and for the promotion of the use of good commercial practices among businesses and in the contractual relations of businesses with the State;
- (c) Promoting transparency among private entities, including, where appropriate, measures regarding the identity of legal and natural persons involved in the establishment and management of corporate entities;
- (d) Preventing the misuse of procedures regulating private entities, including procedures regarding subsidies and licences granted by public authorities for commercial activities;
- (e) Preventing conflicts of interest by imposing restrictions, as appropriate and for a reasonable period of time, on the professional activities of former public officials or on the employment of public officials by the private sector after their resignation or retirement, where such activities or employment relate directly to the functions held or supervised by those public officials during their tenure;
- (f) Ensuring that private enterprises, taking into account their structure and size, have sufficient internal auditing controls to assist in preventing and detecting acts of corruption and that the accounts and required financial statements of such private enterprises are subject to appropriate auditing and certification procedures.

3. In order to prevent corruption, each State Party shall take such measures as may be necessary, in accordance with its domestic laws and regulations regarding the maintenance of books and records, financial statement disclosures and accounting and auditing standards, to prohibit the following acts carried out for the purpose of committing any of the offences established in accordance with this Convention:

- (a) The establishment of off-the-books accounts;
- (b) The making of off-the-books or inadequately identified transactions;
- (c) The recording of non-existent expenditure;
- (d) The entry of liabilities with incorrect identification of their objects;
- (e) The use of false documents; and
- (f) The intentional destruction of bookkeeping documents earlier than foreseen by the law.

4. Each State Party shall disallow the tax deductibility of expenses that constitute bribes, the latter being one of the constituent elements of the offences established in accordance with articles 15 and 16 of this Convention and, where appropriate, other expenses incurred in furtherance of corrupt conduct.



<United Nations Global Compact's Communication on Progress (COP)>

Given that the United Nations Global Compact is a voluntary initiative with no rigid compliance mechanism, the Communication on Progress (COP) requirement was introduced in 2004. The COP policy requires participating companies to annually communicate with their stakeholders about progress in (1) implementing the ten UN Global Compact principles and (2) undertaking partnership projects in support of broad UN goals.

COP is an explicit requirement and an important demonstration of a participant's commitment to the UN Global Compact and its principles, and as such failure to prepare and post a COP report will result in a non-communicating or inactive status for a participant – a necessary measure to protect the integrity of the initiative. COP is also a tool to exercise leadership, facilitate learning, stimulate dialogue and promote action.

1. Preparing a Communication on Progress (COP)

While there is no specific format for COPs, a COP must include the following three basic elements:

- a. **Statement of continued support** for the UN Global Compact in the opening letter, statement or message from the Chief Executive Officer, Chairman or other senior executive.
- b. **Description of practical actions** that participants have taken since joining the initiative or since the company's most recent COP to: (1) implement the UN Global Compact principles and (2) undertake partnership projects in support of broad UN goals.
- c. **Measurement of outcomes** or expected outcomes using, as much as possible, indicators or metrics such as the Global Reporting Initiative (GRI) Guidelines.

The UN Global Compact encourages continual improvement and the expectation is that, over time, all companies will implement and report on all ten principles. In the event that a company does not believe that all principles are relevant for their organization or industry sector, the company is also expected to communicate which principles they are not implementing and how they determined that the principle(s) is(are) not material for their business or the communities in which they operate.

2. Sharing the COP

COPs should be integrated in a participant's existing communications with stakeholders, such as annual, sustainability or other standard reports. In the event that a participant does not publish such reports, a COP can be created as a stand alone report. All COPs should be disseminated through the company's communication channels – for example, a website – and in a way that allows employees, shareholders, customers and other stakeholders to read about the company's commitment to the UN Global Compact.

3. Posting the COP

Participants are expected to post an electronic version of their COP report (PDF, Word or PowerPoint file) and, if available, a URL link pointing to the COP on their corporate website, on the UN Global Compact.

For any questions on the COP Policy please do not hesitate to contact Oliver Johner, COP Analyst at the UN Global Compact Office, at johner@un.org.

<Input Paper II: PUTTING 10TH PRINCIPLE INTO PRACTICE THROUGH REPORTING>

I. INTRODUCTION

After extensive consultation with UN Global Compact participants and stakeholders, the 10th principle was introduced on 24 June 2004 during the UN Global Compact Leaders Summit. The addition of the 10th principle complements the United Nations Convention against Corruption (2003), the first worldwide legal instrument of its kind which addresses both the demand and supply side of corruption. The integration of anti-corruption into the corporate citizenship agenda is an important development as it sends a strong worldwide signal that the private sector shares responsibility for the challenges of eliminating corruption.

In the last five years, a number of tools and resources have been developed to assist companies in implementing anti-corruption efforts throughout their business operations. Nonetheless, many businesses struggle with defining how to embrace anti-corruption measures and putting these into business practices. A case in point is well illustrated in the “2008 Global Compact Annual Implementation Survey”. An estimated 46 % of respondents indicate that the 10th principle is the most challenging issue area to implement despite their efforts to internalize anti-corruption policies into their business operation (compared to environment (29%); human rights (17%); and labor (8%)).

The struggle the business community experiences in incorporating anti-corruption measures into business practices is also reflected in reporting practices. For example, a KPMG 2005 Survey² indicated that a majority of the annual sustainability reports included a section on corporate governance, but only one in five reports (18%) included a section on anti-corruption, and few elaborated on how such commitments are put into practice. Similarly, fewer companies report their work on the 10th principle in the Global Compact Communication on Progress (COP), compared to the other Global Compact principles.

In the recent years, there has been an increasing demand for companies reporting on non-financial matters from a wide range of stakeholders and users ranging from regulators to civil society. Yet, corruption has not been prominent in corporate responsibility agenda due to practical difficulties. By its very nature, corruption is secret, hidden and viewed as sensitive by companies. The topic is complex and its scope is wide as it includes a variety range of areas such as bribery, conflict of interest and money laundering.

Nonetheless, reporting has the potential to support deeper integration of anti-corruption into business operations both by establishing an external accountability mechanism as well as stimulating companies to improve their internal management systems as part of the process of developing reports. Quality reporting is beneficial to companies as it enables them as well as their stakeholders to understand and assess their contribution and impacts to society.

Based upon Mr. Peter Wilkinson’s article “Reporting on Countering Corruption (2006)³” written for *Business against Corruption: Case Stories and Examples*, and “Global Compact Communication on Progress Guideline (2008)⁴,” this input paper provides a list of existing

² University of Amsterdam and KPMG Global Sustainability Services. 2005. “KPMG International Survey of Corporate Responsibility Reporting 2005. Amsterdam: KPMG Global Sustainability Services, p.19.

³ Wilkinson, Peter. 2006. “Reporting on Countering Corruption” in *Business against Corruption: Case Stories and Examples*, edited by Birgit Errath, p. 96-107, New York: United Nations Global Compact Office. The article is available at http://www.unglobalcompact.org/docs/issues_doc/7.7/BACbookFINAL.pdf.

⁴ “The Practical Guide to the United Nations Global Compact Communication on Progress (COP): Creating, Sharing

reporting international reporting initiatives. After reviewing the information provided in the paper, companies will be asked to share the challenges on reporting anti-corruption matters and identify the ways in which to overcome these difficulties through better reporting mechanisms (i.e. help developing a project that aims at improving reporting on anti-corruption).

II. REPORTING FRAMEWORKS AND INITIATIVES

In the past few years, a number of initiatives have developed indicators for reporting on anti-corruption in an effort to deepen the integration of the 10th Principle into business practices by establishing an external accountability mechanism as well as stimulating companies to improve their internal management systems as part of the process of developing reports.

o United Nations Global Compact Communication on Progress

The UNGC requires its participating companies to submit an annual Communication on Progress (COP). A COP is a communication to stakeholders on the progress the company has made in implementing the ten Global Compact principles and, where appropriate, supporting UN goals through partnerships. The COP policy is based on the concepts of public accountability, transparency, and continuous improvement.

In “The Practical Guide to the United Nations Global Compact (2008)” the Global Compact provides a reporting guide that includes indicators of the type of information that can be provided under the headings of commitment, systems, actions and performance. For commitment, companies are advised to state their specific corporate commitment such as commitment to eliminating corruption using words from their policies, or a reference to international standards (i.e. UN Convention against Corruption, OECD Convention on Combating Bribery).

Second, regarding the systems section, companies are recommended to briefly describe specific policies, programs and management systems including: a) anti-corruption policy and implementation of a program tailored to the risk profile of the company; b) human resources management systems supporting the ethical behavior of employees; c) monitoring and sanctions system and whistleblower schemes; d) reporting procedures and continuous improvement processes; and e) functions of compliance officers.

Third, for the activities section, the Guide suggests companies should describe practical activities such as training of employees, dealing with agents and business partners, dealing with incidents, participation in collective activities and stakeholder engagement, and cooperation with authorities investigating and prosecuting cases of corruption. Finally, companies are asked to describe impact of systems, outcomes of actions and progress achieved in the 10th Principle by providing the number of cases investigated and sanctions imposed, number of follow-up investigations, and number of employees that took online business ethics training.

o Transparency International Corporate Anti-Bribery Scoring Model

Transparency International (TI) aims to encourage corporate anti-corruption practices by working with the private sector; TI has created tools to help companies develop effective anti-

and Posting a COP.” 2008. New York: United Nations Global Compact Office. The guide is available at http://www.unglobalcompact.org/docs/communication_on_progress/Tools_and_Publications/Practical_Guide_2008.pdf.

bribery programs. Foremost among these tools is the Business Principles for Countering Bribery, a generic anti-bribery code developed by TI with a group of leading multinationals and non-corporate stakeholders.

TI has developed a range of implementation tools to support the Business Principles including a TI Self-evaluation Tool that uses a range of indicators based on the Business Principles. TI suggests that companies should consider reporting anti-corruption measures under eight headings: policies, risk assessment, organization, planning and implementation, performance, monitoring and improvement and verification.

- **Transparency International survey of corporate transparency of reporting**

TI will be publishing shortly the results of a global survey of corporate reporting of anti-bribery policies and management systems. The survey will identify examples of good practices for countering bribery as reported by companies.

- **Dow Jones Sustainability Indexes**

The Dow Jones Sustainability (DJSI) Indexes are the first global index series tracking the financial performance of the leading sustainability-driven companies worldwide. Companies' anti-corruption efforts are assessed by four major questions located in the economic section which specifically focus on "codes of conduct, compliance, and corruption/bribery." These questions reflect anti-corruption reporting requirements based on the Business Principle for Countering Bribery (2002).

- **FTSE4Good Index Series**

The FTSE4Good Index Series identifies companies that meet globally recognized corporate responsibility standards in environmental sustainability, relationships with stakeholders, and universal human rights. Criteria for Countering Bribery were added in 2006 based on the Business Principles for Countering Bribery to set a standard for companies that is challenging but achievable. These criteria first apply only to companies that have been identified as having the highest levels of exposure to risk of engaging in bribery. Three filters are used to identify company as high risk: sector, country, Public contracts. The objectives of the Criteria are to encourage high-impact companies which have not yet achieved best practice standards in the management of bribery and corruption to take action and put into place quality management systems to address these issues. It sets criteria indicators within a best practice framework of policy, management systems and reporting of disclosure

FTSE defines a policy as a statement of intent and includes the following indicators: Prohibits giving and receiving bribes; Commits to obeying all relevant laws; Policy is publicly available. FTSE sees an effective policy as one that is implemented via management system. To identify elements of a management system to address bribery, FTSE includes the following indicators: Communication of policy to employees; Train relevant employees; Compliance mechanisms; Communication channels for employees; Procedures to remedy non-compliance.

- **Global Reporting Initiative (GRI)**

The Global Reporting Initiative (GRI) has pioneered the development of the world's most widely used sustainability reporting framework and is committed to its continuous improvement and application worldwide. This framework sets out the principles and indicators that organizations

can use to measure and report their economic, environmental, and social performance. The goal of the GRI is to encourage sustainable development by “assisting reporting organizations and their stakeholders in articulating and understanding contributions of the reporting organizations to sustainable development.”

The GRI published a new version G3 of its Reporting Guidelines in fall 2006. There are five GRI performance indicators pertinent to anti-corruption measures. The relevant GRI indicators include: a) percentage and total number of business units analyzed for risks related to corruption; b) percentage of employees trained in organization’s anti-corruption policies and procedures; c) actions taken in response to incidents of corruption; d) public policy positions and participation in public policy development and lobbying; and e) total value of financial and in-kind contributions to political parties, politicians and related institutions by country.

III. POTENTIAL PROJECT PROPOSAL

To better mainstream anti-corruption into management systems and to improve disclosure, there is a strong need to increase the quantity and quality of the existing reporting practices on the assumption that these represent actual practice. In this working group session, the participants will review the following proposal which calls for identifying minimum global indicators in anti-corruption reporting.

- **Project objectives:** 1) Convergence of existing frameworks: Combine the existing anti-corruption reporting frameworks and initiatives in order to provide a more consistent and coherent reporting framework for large businesses and SMEs; 2) Extension of the reporting framework: Develop further and define generic anti-corruption indicators that companies can use in their non-financial reports (differentiate essential / minimum, expected, and desirable reporting requirements).
- **Methodological approaches:** Two different approaches can be taken to meet the project objectives.
 - A) The first approach is a broad multi-stakeholder dialogue process which would involve the convening of regional workshops and regular meetings of an expert working group. This multi-stakeholder dialogue process would likely produce the indicators which would be supported by broad audiences. We estimate that this project could cost up to 200,000 euros due to travel expenses for project staff and meeting participants in addition to usual project management, editing for publications, communications and consultant support.
 - B) The second approach is an expert-led process which would concentrate on the development of appropriate indicators before consulting a wide variety of stakeholders. While this expert-led process would produce indicators in shorter time with less budget (approximately 30,000 euros – project management, publications, communication, consultant support, and outreach); the implementing partners will be required to spend additional efforts in disseminating the indicators to mainstream them in CSR reporting standards.
- **Potential project partners** can include: United Nations Global Compact, Transparency International, Global Compact Business Participants (among GC Working Group members), World Economic Forum – Partnering against Corruption Initiative (PACI), and the Global Reporting Initiative (GRI). However, if the project is to be built around a multi-stakeholder

Under dialogue process, the list of potential project partners can be extended.

IV. QUESTIONS FOR FURTHER DISCUSSIONS

During the 3rd Working Group Meeting, companies will be asked to share the challenges on reporting anti-corruption matters and identify the ways in which overcome these difficulties through better reporting mechanisms. Potential questions to be raised at the session are as follows:

- Why do companies have difficulty implementing the 10th Principle and reporting their progress on anti-corruption activities? From companies' perspectives, what are the practical challenges to utilize the aforementioned anti-corruption reporting indicators?
- What should be the focus of anti-corruption reporting? Should anti-corruption reporting be limited to bribery and extortion? Or should this concept be extended to the scope of UNCAC and include other relevant corruption issues such as money laundering?
- Is there a need to bring together and extend existing reporting frameworks? Are members of the working group willing to support and/or participate in a project that aims at improving reporting on anti-corruption?
- How can credibility of reporting be achieved? There remains much skepticism among stakeholders about corporate reporting. Is the development of an external assurance approach going to be helpful / necessary?

V. CONCLUSION

Reporting which focuses on the presence of adequate systems and key indicators that will measure the effectiveness of the policies and management systems in countering corruption has the potential to support deeper integration of 10th Principle. At present, despite a number of the existing reporting frameworks, only few companies report substantially on countering corruption.

As a first step to overcome this challenge, working group participants can contemplate the potential project which develops a set of indicators that companies can use as their minimum reporting requirements. This project can begin with a small group of experts or be built upon a multi-stakeholder dialogue process. The GCO hopes that this will change in the near future through the commitment of GC participants who are willing to participate in this process.