

Task Force on International Standards for Corrupt Practices: Developments in U.S. and International Efforts to Combat Transnational Commercial Bribery

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I. Introduction

Both in the United States and elsewhere, 2002 saw a significant increase in the enforcement of laws designed to curb transnational corruption and bribery in commercial transactions. The Organisation for Economic Co-operation and Development (OECD) continued issuing country reviews during 2002, which are designed to measure compliance with and implementation of the Convention on Combating Bribery of Foreign Public Officials in International Business Transactions (OECD Convention).¹ Likewise, the Council of Europe and the Group of States Against Corruption (GRECO) have continued evaluating the anti-corruption efforts of the States Parties to the Criminal Law Convention on Corruption.² Additional states have also signed the Civil Law Convention on Corruption.³ In addition, the Organization of American States has developed substantially and is now

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1. Organisation for Economic Co-operation and Development, *Country Reports*, available at <http://www.oecd.org/EN/document/0,,EN-document-0-nodirectorate-no-3-16889-0,00.html> (last visited Mar. 11, 2003) [hereinafter *Country Reports*].

2. Group of States Against Corruption, *Public Evaluation Reports*, available at <http://www.greco.coe.int/evaluations/cycle1/Eval1Reports.htm> (last visited Mar. 11, 2003).

3. Council of Europe, *Chart of signatures and ratifications of a treaty*, available at <http://conventions.coe.int/Treaty/EN/searchsig.asp?NT=174&CM=1&DF=06/09/02> (last visited Mar. 11, 2003) [hereinafter *Civil Law Convention*].

implementing a follow-up mechanism to its Inter-American Convention against Corruption (ICAC).⁴ Each of these developments will be discussed in turn.

I. U.S. Developments⁵

A. FCPA ENFORCEMENT ACTIONS

The U.S. Department of Justice (DOJ) and the Securities and Exchange Commission (SEC) were actively involved in enforcing the Foreign Corrupt Practices Act (FCPA) in 2002. The year's enforcement actions also featured several instances of international cooperation among U.S. enforcement authorities and their counterparts in OECD and non-OECD countries. These enforcement successes were tempered, however, by two court decisions (*U.S. v. Kay* and *SEC v. Mattson*) that restricted the scope of the FCPA. The two federal district courts, both located in Texas, held that the FCPA prohibition on payments "to obtain or retain business" did not apply to payments to reduce tax liabilities or custom duties. The government has appealed both decisions. Affirmation of the lower court decisions could lead to amendment of the FCPA to explicitly cover such payments in order for the United States to comply with the OECD Anti-Bribery Convention.

1. *United States v. Kay and Murphy*

In the early spring of 2002, Douglas Murphy and David Kay, the president and vice-president, respectively, of American Rice, Inc., a U.S. corporation and "issuer," were indicted in a criminal prosecution brought by the DOJ in federal district court in Texas. The DOJ charged Murphy and Kay with twelve counts of violating the FCPA, alleging that they had authorized payments to customs officials in Haiti to reduce customs duties and sales taxes owed by the company. On April 16, 2002, the court dismissed the indictment against Murphy and Kay on the grounds that it failed to state the elements of an offense under 15 U.S.C. §§ 78dd-1(a) and 78dd-2(a). The court reasoned that improper payments made to reduce customs duties and sales taxes were outside the scope of the FCPA because they were not made to "obtain or retain business." In so doing, the court rejected the Government's argument that the FCPA applies to all bribes made for the purpose of obtaining or retaining business, not just those payments made to secure new business or renew existing business. The court relied heavily on the legislative history of the FCPA, particularly what it cited as Congress' failure to amend the "obtain or retain business" language to cover payments made for "other improper advantage" as well.

The DOJ has appealed the court's decision. The outcome of the DOJ's appeal will be watched closely both domestically and internationally. Affirmation of the district court's holding would leave the U.S. non-compliant with the requirements of the OECD Convention, at least in the Fifth Circuit.

After the DOJ's prosecution was dismissed, the SEC filed a civil action against Murphy, Kay, and Lawrence Theriot, a company consultant, also in federal district court in Texas. The SEC complaint alleges that Kay authorized over \$500,000 in bribery payments to

4. Organization of American States, *Follow-up to the Inter-American Convention against Corruption*, available at <http://www.oas.org/juridico/english/followup.htm> (last visited Mar. 11, 2003).

5. This and the succeeding section were prepared by the FCPA Practice Group of Miller & Chevalier Chartered. © 2003 Miller & Chevalier Chartered. All rights reserved.

Haitian customs officials and directed that those payments be recorded as routine business expenditures. Mr. Theriot is alleged to have aided and abetted Kay's and Murphy's violations. The complaint further alleges that Mr. Murphy knew of the bribery scheme but took no action to stop it and is liable as a "control person" for Kay's actions. This may be the first time such a theory has been used in the FCPA context. The civil action against Murphy, Kay, and Theriot is pending.

2. *SEC v. Mattson and Harris*

As discussed in last year's *International Legal Developments in Review*, the SEC and DOJ in 2001 settled several matters involving Baker Hughes, a Texas oilfield services company, and alleged payments to an Indonesian tax official. In 2001, the SEC entered into settlement agreements with the Company, the Indonesian affiliate of a large accounting firm (KPMG), and an Indonesian national who is a partner in the affiliate accounting firm. Two corporate officers, Eric L. Mattson and James W. Harris, contested the charges against them.

The SEC civil complaint filed against Mattson, former Chief Financial Officer of Baker Hughes, and Harris, former Controller of Baker Hughes, alleged that they violated both the antibribery and accounting provisions of the FCPA in authorizing a payment to an Indonesian tax official in exchange for the reduction of a tax assessment owed by an Indonesian corporation controlled by Baker Hughes. The two were also charged with aiding and abetting Baker Hughes' accounting violations. In September of 2002, a federal district court in Texas ruled that the SEC had failed to state a claim under the antibribery provisions. The district court followed the reasoning in the *Kay* case that the payment at issue did not fall within the scope of the "obtain or retain" business prong of the FCPA. The government has appealed the dismissal of the bribery claim; the books and records claims against Mattson and Harris are pending.

3. *United States v. King; United States v. Halford; United States v. Reitz*

The *International Legal Developments in Review: 2001* also discussed indictments against three officers and one agent of Owl Securities & Investments, Ltd. (OSI) for alleged payments to Costa Rican officials, political parties, party officials, and candidates for public office to obtain a land concession to develop new port facilities in Costa Rica. The defendants attempted to acquire the land concession on behalf of OSI Proyectos, a Costa Rican affiliate of OSI.

Robert King, a U.S. citizen and stockholder in OSI (a "domestic concern"), was convicted on June 24, 2002 of one count of conspiracy and four counts of violating the FCPA. On November 13, 2002, he was sentenced to 30 months in prison and fined \$60,000.

On August 3, 2001, Richard Halford, former Chief Financial Officer of OSI, agreed to plead guilty to conspiracy to violate the FCPA and three counts of tax evasion for his participation in raising funds for the payment of the Costa Rican officials. Also on August 3, 2002, Albert Reitz, a former officer and director of OSI, agreed to plead guilty to conspiracy to violate the FCPA, mail fraud, making of a false statement, and filing a false tax return, for his participation in raising funds for the Costa Rican officials. Reitz and Halford were each sentenced on July 9, 2002, to five years probation and 1,000 hours of community service, which includes lecturing about corporate fraud.

Pablo Barquero Hernandez ("Barquero"), a Costa Rican national and "agent" of OSI, remains a fugitive; the United States has requested either his extradition or prosecution by Costa Rica.

4. *United States v. Sengupta*

Two 2002 cases reflect increasing cooperation between the World Bank and the Department of Justice, as well as the DOJ's increasing success in securing the cooperation of its counterparts in other countries. In June of 2002, Gautam Sengupta, a former Task Manager with the World Bank's offices in Washington, D.C., pled guilty to one count of wire fraud and one count of violating the FCPA in a prosecution by the DOJ in federal district court in Washington, D.C. The DOJ charged that Sengupta entered into an agreement with a Swedish consultant to direct World Bank-funded projects to that consultant in exchange for kickbacks. Sengupta received a request for a payment from a Kenyan government official in connection with a World Bank-funded project and agreed to pass the request on to the Swedish consultant, who later paid the official.

The DOJ asserted jurisdiction over Sengupta based on the new prohibition on foreign persons making corrupt payments while on U.S. territory. Sengupta has not yet been sentenced, however, his plea agreement requires him to pay \$127,000 in restitution.

5. *United States v. Basu*

In a case arising from facts very similar to those in *U.S. v. Sengupta*, Ramendra Basu, an Indian national and former Task Manager with the World Bank's office in Washington, D.C., pled guilty to one count of conspiracy to commit wire fraud and one count of violating the FCPA. In his plea, entered December 17, 2002, the defendant, who had been responsible for awarding funds for consulting contracts in connection with World Bank development projects, admitted to facilitating the payment of a \$50,000 bribe to a Kenyan government official via an American and a Swedish consultant. Jurisdiction was premised on a January 1999 e-mail sent by the defendant in Washington, D.C. to the Swedish consultant. The e-mail included the bank account number of a Kenyan company that was working with the American consultant on a World Bank urban transport project in Kenya. The defendant admitted that he sent the e-mail with the knowledge that the money would be funneled by the American consultant to the Swedish consultant and eventually to a Kenyan official. The defendant is required to pay \$127,000 in restitution and currently faces a possible maximum sentence of five years imprisonment and a \$100,000 fine.

In both *Sengupta* and *Basu*, we understand the Department of Justice received substantial cooperation from both the Swedish and Kenyan authorities.

6. *United States v. Syncor Taiwan, Inc.*

On December 3, 2002, Syncor Taiwan, Inc, a Taiwanese company indirectly wholly-owned by Syncor International Corp., a California provider of high technology health care services, pled guilty to one count of violating the FCPA and agreed to pay a \$2 million criminal fine—the maximum statutory penalty for a single violation.

The same day, Syncor International Corp., the issuer-parent, entered into a consent decree with the Securities and Exchange Commission related to Syncor Taiwan's conduct and agreed to pay a \$500,000 civil fine—the largest fine imposed to date in an FCPA civil enforcement action by the SEC.

Syncor International Corp. voluntarily disclosed in November 2002 that its planned merger partner, Cardinal Health Inc., had, in the course of its merger due diligence, discovered evidence of possible improper payments to state-owned healthcare facilities abroad. According to public papers in the case, Syncor Taiwan paid physicians employed by state-owned hospitals in Taiwan in order to secure sales of radiopharmaceuticals and to obtain referrals of patients to medical imaging centers owned and operated by the Company. The

improper payments, which totaled \$457,117, were made with the authorization of the chairman of the board of Syncor Taiwan. The payments were recorded as “promotional and advertising expenses.”

Syncor Taiwan, Inc. is the first case in which the Justice Department has criminally prosecuted a foreign subsidiary of a U.S. company under the 1998 amendments to section 78dd-3 of the FCPA, which extended the FCPA’s prohibitions on improper payments to foreign officials to cover any act in furtherance of such payments by “any person,” including foreign corporations, “while in the territory of the United States.” 15 U.S.C. § 78dd-3(a). The plea agreement states that on several occasions the Chairman of Syncor Taiwan sent e-mails from California to Taiwan approving budgets for Syncor Taiwan that incorporated amounts to be paid to officials of state-owned hospitals. The territorial nexus thus appears to be consistent with the plain language of section 78dd-3, in contrast to earlier civil settlements such as *Baker Hughes*, which seemed to be based on an aggressive “effects” standard.

B. DOJ FCPA OPINION PROCEDURE RELEASES

After issuing three opinions in 2001, the DOJ did not issue any opinions in 2002 under its Opinion Procedure, pursuant to which a requestor can obtain a binding opinion from DOJ as to its enforcement intentions with respect to a specific proposed transaction.

On January 15, 2003, however, the DOJ issued an opinion that appears to be based on the activities of Cardinal Health Inc. as discussed above in *U.S. v. Syncor*. (*Opinion Procedure Release 2003-01*). An unnamed U.S. issuer (“Issuer”) requested clarification of how the DOJ would view the purchase of the stock of an unnamed company (“Company”) where due diligence revealed that officers of a foreign subsidiary of the Company authorized and made payments to individuals employed by foreign state-owned entities to obtain and retain business. Both the Issuer and the Company disclosed results of investigations into the payment to the DOJ and the SEC. The Issuer expressed concern that by acquiring the company it would also acquire potential criminal and civil liability under the FCPA for the past acts of the Company.

The DOJ indicated that, based on the facts and circumstances as represented by the Issuer, the Department would take no enforcement action against the Issuer for the pre-acquisition conduct of its future subsidiary. Among the relevant facts cited in this release were the remedial actions taken by the Company, including disclosure to the public and suspension of senior officers and employees implicated in the payments pending the conclusion of Company’s investigation. The Issuer also represented that it would perform the following actions once the sale is completed: continued cooperation with the DOJ, SEC, and foreign law enforcement; appropriate discipline of employees found to have made the improper payments; disclosure of any additional pre-acquisition payments made by the Company; extension of Issuer’s compliance program to the Company; implementation of a system of internal controls; and maintenance of accurate books and records.

This opinion and *U.S. v. Syncor* illustrate the importance of conducting FCPA due diligence in mergers and acquisition. Both the enforcement actions and the release are noteworthy for the expeditious manner in which they were resolved by the DOJ—roughly a month elapsed between the disclosure and settlement. This quick action was presumably to allow the acquisition (which occurred on January 2, 2003) to be completed.

C. OTHER DEVELOPMENTS

Signed into law in July 2002, the Sarbanes-Oxley Act of 2002 (Pub. L. No. 107-204, 116 Stat. 745) was passed largely in response to the corporate scandals of the past two years. In addition to increasing penalties for corporate wrongdoers and avenues of redress for aggrieved shareholders, the legislation also shifts the enforcement focus to companies' internal controls and disclosure obligations. These new "disclosure controls" are broader than the FCPA's internal controls requirements. New certification requirements for companies and senior officers highlight the need for management to become aware of questionable payments and problems with internal controls that raise potential FCPA issues. Audit Committees are specifically empowered to hire outside investigators to review controls breakdowns and questionable payments. In a trend that will likely affect the FCPA area as well as others, the legislation appears to have made companies more inclined to make voluntary disclosures than in the past.

Most significant are a variety of new reporting and disclosure provisions. Sarbanes-Oxley requires the creation of an employee "hotline" to the Audit Committee. Outside auditors are required to report evidence of illegal acts to management and the Audit Committee. For the first time, the law requires attorneys (both in-house and outside) to report evidence of a material violation of the securities laws (including the FCPA) to management and then to the Audit Committee if management does not take appropriate remedial action. Implementation of this requirement is pending at this writing.

II. Other Anti-Bribery Enforcement Actions around the World

A. CANADA

In 2002, a court in Calgary indicted a Canadian firm and two of its executives, as well as of a U.S. Customs agent, in connection with an alleged bribe to favor the company and hamper its competitors with respect to entry into the United States. The prosecution charged that Robert Watts and Paulette Bakke, president and assistant manager of Hydro Kleen Systems Inc., a refinery cleaning company, bribed Hector Ramirez Garcia, a U.S. Customs agent, to facilitate the entry of its employees into the United States and to delay the entry of competitors' employees into the United States. In connection with this arrangement, Hydro Kleen paid Garcia's sole proprietorship between \$1,500 and \$2,000 a month to provide immigration consulting services. The three individuals were charged with violations of Canada's Corruption of Foreign Public Officials Act and of the Criminal Code of Canada. Mr. Garcia pleaded guilty and served a six-month jail sentence. Upon his release in February 2003, Mr. Garcia was deported to the United States where he faces prosecution by the DOJ. The trial of Mr. Watts and Ms. Bakke is scheduled to commence on February 26, 2003.

A related civil lawsuit was filed in Canada by another refinery cleaning company, Innovative Coke Expulsion Inc. ("ICE") on the grounds that Garcia accepted bribes to deny its employees entry into the United States. ICE also filed a civil RICO suit against Hydro Kleen, which has a U.S. subsidiary, in the United States. In May 2002, Hydro Kleen paid ICE \$300,000 in settlement.

B. LESOTHO

In September of 2002, a Canadian firm, Acres International Ltd., was convicted by the Lesotho High Court of bribing a former government official in connection with a World Bank-funded project. The Lesotho court found that Acres had made payments to its representative in Lesotho knowing that they would be used to bribe the government official responsible for the project and fined the company \$2.2 million. Acres has appealed the decision.

Acres is not alone in being accused of corruption in connection with the project in Lesotho. A number of other firms, including companies from France, Germany, Italy, South Africa, Switzerland, and the United Kingdom have been so accused, and additional verdicts are expected in 2003.

Earlier in the year, the Sanctions Committee of the World Bank determined that the evidence was not sufficient to justify the imposition of sanctions under the Bank's revised Consultants' Guidelines against Acres and two other accused firms whose contracts had been financed in part with Bank funds.

C. SLOVAKIA

In October of 2001, representatives of Germany's Siemens Business Services were charged with offering a payment to the head of the selection commission in connection with a tender for the provision of information services to the state treasury. The firm was subsequently excluded from the tender process, although in April of 2002, the Slovak Finance Ministry allowed the firm to participate. Most recently, in August 2002, a competing firm asked Transparency International to review the tender process.

D. JAPAN

In August 2002, the Tokyo District Public Prosecutor's office was reported to have opened an investigation into Mitsui & Co., Japan's second largest trading company, for alleged payments to a Mongolian official to secure orders for a project funded by the Mongolian government's official development assistance program. If successful, this would be the first prosecution under Japan's foreign anticorruption law, which was passed in 1998 pursuant to the OECD Convention. The status of this investigation is unclear at this writing.

III. International Anti-corruption Treaties**A. OECD CONVENTION****1. *Signatures, Ratifications, and Entries into Force of the Convention and Implementing Legislation***

As of October 10, 2002, all OECD member countries, except Ireland, had signed and ratified the OECD Convention, which has entered into force for these countries and for all non-member countries that have signed the treaty.⁶ During 2002, implementing

6. See OECD Convention, Dec. 17, 1997, 37 I.L.M. 1 (1998). The Convention entered into force February 15, 1999. The information discussed herein is available at <http://www.oecd.org/daf/nocorruption/>.

legislation enacted by Brazil, Chile, and the United Kingdom entered into force, leaving only Turkey without such legislation.⁷

2. Country Examinations

The OECD conducted a Phase I examination of Ireland in June of 2002 and issued a report.⁸ Phase II examinations of Finland and the United States were also conducted in 2002, and the OECD released reports of prior examinations.⁹ After a country visit and examination of Finland in 2001, the OECD released its report in May 2002.¹⁰ The OECD visited and examined the United States and released its report in December of 2002.¹¹ Also in 2002, the OECD visited and examined: Iceland, Germany, and Bulgaria.¹² No reports have been released yet for these countries.

3. Update on OECD Recommendation Regarding Tax Deductibility of Bribes

In October of 2002, the OECD made available an update to the implementation of the OECD Recommendation on the tax deductibility of bribes to foreign public officials in countries that are parties to the bribery convention.¹³ New Zealand adopted a law in 2002 making "bribes paid to foreign and domestic public officials in the conduct of business non-deductible."¹⁴ The United Kingdom's 2002 legislation provides that tax relief is not available with respect to any payment made outside the United Kingdom where a corresponding payment in the UK would constitute a criminal offense.¹⁵

B. COUNCIL OF EUROPE CONVENTIONS AND THE GRECO

1. Civil Law Convention on Corruption

During 2002, Lithuania added its signature to the Civil Law Convention.¹⁶ Bosnia and Herzegovina, Greece, Poland, Romania, and the former Yugoslav Republic of Macedonia ratified the Convention in 2002.¹⁷

2. Criminal Law Convention on Corruption

a. Signatures, Ratifications, and Entries into Force

The Criminal Law Convention on Corruption¹⁸ saw additional signatures and ratifications in 2002.¹⁹ Mexico added its signature *ad referendum*.²⁰ Bosnia and Herzegovina, Fin-

7. Ireland has implementing legislation in force. OECD, *Anti-Bribery Convention: National Implementing Legislation*, available at <http://www.oecd.org/pdf/M00017000/M00017037.pdf> (last visited Mar. 11, 2003).

8. *Country Reports*, *supra* note 1, at Ireland.

9. *Id.*

10. *Id.*

11. *Id.*

12. *Id.*

13. OECD, *Update on the Implementation of the OECD Recommendation on the Tax Deductibility of Bribes to Foreign Public Officials in Countries parties to the Bribery Convention*, available at <http://www.oecd.org/pdf/M00037000/M00037458.pdf> (last visited Mar. 11, 2003).

14. *Id.* at 5.

15. *Id.* at 6.

16. Civil Law Convention, *supra* note 3.

17. *Id.*

18. See Council of Europe Criminal Law Convention on Corruption, Jan. 27, 1999, 38 I.L.M. 505 (1999), available at <http://conventions.coe.int>. The Convention entered into force January 7, 2002.

19. Council of Europe, *Criminal Law Convention on Corruption*, available at <http://conventions.coe.int/Treaty/EN/searchsig.asp?NT=173&CM=1&DF=27/09/02> (last visited Mar. 11, 2003).

20. *Id.*

land, Lithuania, the Netherlands, Poland, Portugal, Romania, and Yugoslavia ratified the Convention.²¹ The Convention entered into force during 2002 for Albania, Bosnia and Herzegovina, Bulgaria, Croatia, Cyprus, the Czech Republic, Denmark, Estonia, Hungary, Latvia, Lithuania, the Netherlands, Portugal, Romania, Slovakia, Slovenia, and the former Yugoslav Republic of Macedonia.²²

b. GRECO Monitoring

During 2002, GRECO visited Albania, Bosnia and Herzegovina, the Czech Republic, Denmark, Malta, Moldova, the Netherlands, Norway, Portugal, the former Yugoslav Republic of Macedonia, and the United States, and completed the First Round of Evaluations.²³ GRECO adopted Reports for Poland, Romania, Germany, Lithuania, Greece, Bulgaria, Croatia, Latvia, Denmark, Norway, Albania, Malta, and the former Yugoslav Republic of Macedonia.²⁴

C. THE INTER-AMERICAN CONVENTION AGAINST CORRUPTION: 2002 DEVELOPMENTS²⁵

Unlike the OECD Convention or the COE Criminal Law Convention, the Inter-American Convention Against Corruption (ICAC)²⁶ initially contained no peer review or other evaluation mechanism. In 2001, the ICAC adopted a follow-up mechanism, which began functioning in 2002.²⁷

The mechanism was created by the adoption of the recommendations issued by the OAS Working Group on Probity and Public Ethics, pursuant to the Report of Buenos Aires signed by the Foreign Ministers of twenty States Parties, in San Jose, Costa Rica on June 4, 2001.²⁸ The Report sets forth the basic criteria, structure, and guidelines for the peer review mechanism.²⁹ The mechanism consists of two entities, the Conference of States

21. *Id.*

22. The following countries have signed the Convention, but with declarations or reservations. **Reservations:** Bulgaria, Cyprus, the Czech Republic, Denmark (the Faroe Islands and Greenland are presently excluded), Estonia, Hungary, Latvia, the Netherlands, Portugal, Slovenia, and Yugoslavia. **Declarations:** the Czech Republic, Estonia, Hungary, Latvia, Poland, and Portugal. *Id.*

23. Council of Europe, *First Evaluation Round*, available at <http://www.greco.coe.int/> (last visited Mar. 11, 2003).

24. *Id.*

25. All the documents cited or referred to in this Section, including the Convention and the Report of Buenos Aires can be found on the OAS Web site, available at www.oas.org/juridico/english.

26. See Inter-American Convention Against Corruption, 35 I.L.M. 724 (1996); Specialized Conference on the Draft Inter-American Convention Against Corruption, OEA/Ser.K/XXXIV.1 CICOR/doc.16/96 rev. 2, 9 Sept. 1996, at 6. The United States ratified the ICAC on September 15, 2000. The instrument of ratification also contains certain declarations and understandings.

27. In 2002, Brazil ratified the ICAC. As of February 1, 2003, twenty-eight members of the OAS had ratified and deposited their instruments of ratification, leaving only Haiti, which had reportedly ratified the treaty but never deposited, and the five English-speaking countries of the eastern Caribbean as non-ratifiers. All the ratifying countries have joined the follow-up mechanism except Belize.

28. Two more signed later in 2001 and five more States Parties adopted the mechanism in 2002, bringing the total to twenty-seven.

29. The Report states that the purposes of the mechanism are: “[t]o promote implementation of the Convention . . . to follow up on the commitments made by the States Parties to the Convention . . . and to facilitate technical cooperation activities; the exchange of information, experiences, and best practices; and the harmonization of the legislation of the States Parties.” Report of Buenos Aires, *supra* note 25, § 1. The Report noted the need to “take account of the principles of sovereignty, nonintervention and the juridical equality of the states, as well as the need to respect the Constitution and the fundamental principles of the legal system of each State.” *Id.* § 2.

Parties, that is, the Twenty-Seven States Parties to the Convention, and a Committee of Experts, consisting of a member designated by each State Party.

The Committee met for the first time in February 2002 in Washington, D.C. Because the topic of site visits was considered sensitive, the parties decided that no site visits would take place unless they were made part of all evaluations, but that any State Party could request one in connection with its own evaluation.³⁰ The Committee also decided that it would seek input from civil society only in accordance with established OAS procedures. Finally, the Committee decided that six sections of the Convention would be assessed in the first round, which was expected to last until 2004.³¹ Those sections are: standards of conduct and their enforcement, financial disclosure, anticorruption oversight bodies, participation of civil society relating to Article III; Article XIV, Assistance and Cooperation; and Article XVIII, Central Authorities, which coordinate assistance and international cooperation.

The Committee met a second time, also in Washington, in May 2002. The Committee developed questionnaires to be answered by the States Parties, which are used to conduct evaluations and make recommendations. The Committee also addressed the methodology for the review process, and discussed the country report outline for the first round.

The assessment process for the first four states, Argentina, Colombia, Nicaragua, and Paraguay, began in September.³² In early December, ten of the twenty-two States Parties who responded to a questionnaire issued by the OAS, including the first four to be assessed, permitted their responses to be posted on the OAS Web site.

30. There were no site visits in the evaluations of the first four countries.

31. During the summer of 2002, Brazil, Grenada, Guayana, St. Vincent, the Grenadines, and Suriname joined the Committee, which may prolong the evaluations.

32. Uruguay, Panama, Ecuador, and Chile are due to be reviewed in the second round.