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Good Morning. I am pleased to be here today to talk to you about the ongoing efforts of The World Bank to develop effective policies and procedures for combating fraud and corruption in projects financed with Bank funds.

As the largest contributor to the Bank, the United States has a critical stake in understanding how Bank funds are used and what type of commitment the Bank has made to preventing those funds from being wasted as the result of fraudulent or corrupt practices. As you are aware, the Bank's Articles of Association, to which the United States is a signatory, require that the Bank "make arrangements to ensure that the proceeds of any loan are used only for the purpose for which the loan was granted . . ." For an organization that has disbursed as much as approximately \$25 billion a year in countries having some of the least developed economic, political and legal systems in the world, this is not a simple undertaking.

Funds loaned by and activities undertaken by the Bank are vulnerable to fraud and corruption by Bank employees, contractors, and consultants utilized in the execution of its projects and by officials in governments to whom loans are made. An effective program to combat fraud and corruption is important not only to ensure that disbursed funds are utilized in the manner intended, but to maintain the Bank's reputation and to assure the continued willingness of member states to support its operations. Unfortunately, during most of the Bank's first fifty years, the culture within the Bank discouraged not only the taking of any action to address problems of fraud and corruption, but even the discussion of such action.

When James D. Wolfensohn became President of the Bank in 1995, he instilled a notable shift in attitude. In a speech to the Bank's Board of Governors in 1996, Mr. Wolfensohn became the first senior official within the Bank to acknowledge openly that fraud and corruption

constitute a major problem for the Bank and for the nations that the Bank was attempting to assist. Along with a new attitude, Mr. Wolfensohn brought institutional change as well.

In 1996 the Bank's Executive Directors approved, in concept, the establishment of a committee to assess evidence of fraud and corruption in Bank-financed projects and to temporarily or permanently preclude suppliers, contractors and consultants found to have engaged in such practices from participation on future Bank projects.

In 1996 and 1997, the Bank revised its procurement guidelines in order to make it manifest that fraud and corruption would not be tolerated.

In early 1998, the Bank began the process of regularizing the investigation of allegations of fraud and corruption by suppliers, contractors and consultants with the establishment of an Investigations Unit. At the outset, the Investigations Unit was composed of a very small number of newly-hired Bank employees, most of whom were former U.S. prosecutors. Since the number of in-house investigators was insufficient to respond to various allegations of fraud and corruption the Bank was receiving, the Bank contracted out the conduct of most of its investigations to outside law firms and auditors.

Also in 1998, the Bank established two committees of high-level officials to implement aspects of its anti-fraud and corruption program. One committee, the Oversight Committee on Fraud and Corruption, was given responsibility for the oversight and supervision of all investigations of fraud and corruption, whether involving Bank staff or Bank-financed projects. The other, the Sanctions Committee, was given responsibility for assessing evidence revealed by the investigations and for recommending to the President of the Bank the appropriate disposition of such cases.

It was at this stage in the evolution of the Bank's program to combat fraud and corruption, that the Bank engaged me, along with my colleagues Ronald Gainer and Cuyler Walker, to consult with the Bank on the adequacy and functioning of the program. During our engagement by the Bank, we have issued three reports. The first report, issued in January 2000, dealt principally with the Bank's procedures for investigating allegations of fraud and corruption. The second report, issued in August 2002, dealt principally with the Bank's procedures for sanctioning acts involving fraud and corruption. And the third report, issued in July 2003, dealt with a strategic plan that had been produced within the Bank for its investigative unit and our analysis of the steps the Bank had taken to develop its internal investigative capabilities.

I should point out that, in all cases, the nature of our assignment was to assist the Bank in developing policies, procedures and structures to enable it to protect its funds from fraudulent and corrupt practices. In preparing these reports, we were not asked to evaluate, quantify or assess the specific nature, scope or extent of the problem, nor were we asked to review or make recommendations relating to any particular case or set of circumstances in which Bank projects were affected by fraud or corruption.

Before addressing our findings and recommendations, it is worth taking a moment to note the uniqueness of the environment in which the Bank operates and how this necessarily has influenced the structures and procedures it has put in place to address fraud and corruption.

As an international organization, the Bank does not possess many of the tools that a national government may bring to bear on a situation in which it has been the victim of fraud or corruption. The Bank does not have traditional law enforcement powers such as subpoena power or the ability to otherwise compel the production of documents or witness testimony or to conduct searches or electronic surveillance. As a result, the Bank must rely almost exclusively

on informants and cooperating witnesses to build a case. Furthermore, since the Bank finances projects all over the world and often in some of the most remote parts of the world, the Bank's investigators are invariably viewed as outsiders with none of the advantages that come with knowing and being known by local citizens or authorities who are closest to the circumstances related to matters under investigation. In light of these factors, it is not realistic to expect the Bank's investigators to be as effective as police and prosecutors of a sovereign nation in establishing facts that support allegations or suspicions of fraud and corruption.

When it comes to seeking redress for wrong-doing involving Bank funds, the Bank is, however, no different than any other private party to a contract. If it desires to recover monetary damages, the Bank may initiate a civil action in a country in which the courts have jurisdiction over the matter. If it believes that a particular matter involves the violation of the law, the Bank may refer the matter for criminal prosecution in the country whose laws may have been broken. In either case, the Bank must be able to uncover the underlying facts giving rise to its suspicions, which requires a sophisticated investigative capability since perpetrators of acts of fraud and corruption will be careful to cover their tracks as best they can.

While the Bank does not possess traditional law enforcement powers, it does enjoy special legal status including certain privileges and immunities that private actors and even national governments do not have. Except under certain exceptional and narrow circumstances, the Bank is not subject to the jurisdiction of the courts of any nation. This gives the Bank tremendous discretion in dealing with suppliers, contractors and consultants, as well as national governments themselves and its own employees. At the same time, it also imposes a heightened obligation on the Bank to act responsibly since, while its actions may not be subject to challenge

in traditional ways, it will be subject to considerable scrutiny due to its governing charter and its high profile around the world.

Another important factor must be noted. Since the Bank would be within its rights to treat those engaged in fraud and corruption in Bank-financed projects simply as contracting parties in a commercial transaction, such miscreants are subject to being declared ineligible from participation in such contracts in the future on the mere suspicion of improper conduct. However, the Bank has determined that its status as a leading international organization that, among other things, promotes the rule of law and the independence of the judiciary in developing countries, requires it to apply elements of fundamental fairness (or what might be thought of “due process” in a judicial proceeding) when dealing with allegations of fraud and corruption in a Bank project. When I describe our analysis of the Bank’s sanctioning process and some of our recommendations for strengthening it, I will share some examples of the types of issues with which the Bank has wrestled in trying to strike the appropriate balance between protecting the funds it loans out and respecting basic principles of fairness.

From the inception of its anti-fraud and corruption efforts in the mid-1990s, the Bank has separated the two distinct functions that make up this effort - the investigation of activities involving fraud and corruption, whereby the Bank focuses on uncovering and compiling evidence of such actions, and the evaluation of the strength of that evidence, whereby the Bank determines whether sanctions should be imposed and, if they are, what sanctions are appropriate. In each of the three reports that my colleagues and I prepared, we were asked to deal with both aspects of the Bank’s program at least to some extent. I will address our principal findings and recommendations relating to how the Bank deals with both investigations of

instances of fraud and corruption, on the one hand, and sanctioning those found to have engaged in such practices, on the other.

With respect to the investigation of fraud and corruption, as I noted previously, in 1998, the Bank had established its Oversight Committee on Fraud and Corruption to oversee the investigations of allegations of fraud and corruption involving Bank staff and Bank-financed projects. The Bank had set up an internal Investigations Unit with a small number of well-qualified investigators, but, due to its limited capacity, had to contract out most of the investigative work to law firms and auditors. This structure had evolved in a piecemeal fashion over the course of several years as the effort to be more responsive to allegations of fraud and corruption gained momentum, and, while it was clearly well-intended, we found it to be somewhat cumbersome and inefficient.

The Oversight Committee was composed of senior officials of the Bank who brought a wealth of knowledge of and experience with Bank operations to the table. However, understandably, none of these officials had experience with investigative practices and procedures. Moreover, all had considerable demands on their time which made it difficult for the Committee to meet regularly and to provide the day-to-day support and attention that the Investigations Unit required. Some had oversight responsibility, directly or indirectly, for some of the very operational components of the Bank whose projects were the subject of investigation.

The Investigations Unit did not have sufficient staffing or resources to follow up on the various allegations of fraud and corruption that were being received by the Bank. The use of outside investigators has been satisfactory when the Bank had only a few matters under investigation at a time, but as the caseload increased, it became cost-prohibitive to continue to engage an ever-increasing number of outsiders who were unfamiliar with Bank practices to do

this work. We were also concerned that since the Investigations Unit reported to a committee of several senior officials, there was at least the appearance that the Unit lacked independence and could be subject to inappropriate pressure under certain circumstances. I should note that we did not observe any such pressure, but the opportunity itself was sufficient to raise reservations about the oversight role of the Committee.

Based on these findings, in January 2000, we recommended to the Bank that the Investigations Unit be merged into a new independent department, called the Department of Institutional Integrity, to be created and assigned the principal responsibility for conducting all investigations on behalf of the Bank into instances of fraud and corruption. We also recommended that the new Department exercise operational independence under the authority of the President of the Bank and report directly to the President. As part of the implementation of this new structure, we also made the following recommendations:

- that the new Department be headed by a Director with experience in the investigation and prosecution of fraud and corruption cases;
- that the Director be appointed for a fixed five-year term to minimize the potential for undue influence;
- that the Department recruit and develop a cadre of experienced in-house staff possessing investigative skills, knowledge of Bank procurement and personnel procedures, forensic auditing and contract auditing skills, and other characteristics necessary for mounting an aggressive effort against fraud and corruption;
- that the use of outside investigators be minimized;

- that the Department's personnel have access to all records, documents and properties of the Bank in conducting its investigations; and
- that the Oversight Committee on Fraud and Corruption be reconstituted and given a policy-making (as opposed to operational) mission with responsibility for general supervision and coordination of all of the Bank's programs intended to address problems of fraud and corruption, not just investigations.

I am pleased to say that these recommendations were accepted by the Bank and have been implemented.

Beyond the overarching recommendations for restructuring its investigative efforts, in January of 2000, we made a series of additional recommendations relating to the Bank's efforts to uncover fraud and corruption in projects it finances. These recommendations included the following:

- that the Department of Institutional Integrity, now known within the Bank as "INT," develop and nurture close working relationships with other offices in the Bank whose responsibilities and activities necessarily overlap with and complement those of INT, including the Legal Department, the Internal Audit Department and the Professional Ethics Office;
- that INT receive a mandate from the Board, so that its authority derive from the Bank's governing body not just from its chief executive officer;
- that INT develop procedures for reporting to the President of the Bank regularly on on-going investigations and prepare an annual report to the President summarizing its activities and accomplishments during the

preceding year and making recommendations for management and procedural improvements to aid in the deterrence or detection of fraud and corruption;

- that INT develop a strategic “risk management” plan for prioritizing its investigative resources based on an assessment of those contracts, projects, geographic regions and countries that may be particularly susceptible to fraud and corruption;
- that, in order to regularize and enhance the operations of INT, as well as to ensure fairness in the conduct of investigation, the Bank put in place written procedures with respect to INT’s practices in the following areas:
 - adopting policies and procedures that ensure investigations conform to acceptable norms, respect the rights of the accused and develop evidence that can be used effectively in subsequent proceeding;
 - designing systems to ensure that resources are used efficiently and to enable the Department to track ongoing investigations to ensure adequate internal monitoring and oversight.
 - developing policies and procedures, based on objective written criteria, to guide the Department in its decisions about making other offices within the Bank aware of problems at the appropriate time for informational purposes or remedial action, about pursuing a matter either through civil or criminal courts, and about making disclosures to affected or otherwise interested parties outside the Bank; and

- establishing procedures for the recruitment, hiring and training of qualified individuals capable of conducting investigations in a multi-cultural international organization.

In our 2000 report, we also proposed:

- that in addition to investigating wrong-doing that had already resulted in the loss of funds, the Bank develop ways to reduce opportunities for fraud and corruption from occurring in Bank-financed projects, such as: increasing the scope of and resources available for the pre-review of contracts; and increasing the requirements that disbursements be made only in increments upon demonstrated achievement of specific milestones;
- that the Bank regularly review its loan agreements, procurement guidelines and standard contracts, and insert additional provisions designed to facilitate the prevention and detection of fraud and corruption, such as: strengthening the Bank's audit rights, document retention requirements and contract representations and warranties; ensuring that investigators have access to relevant personnel and documents (whether in the control of the Bank or third parties); and expanding the definitions of "fraud" and "corruption" in the Bank's documents;
- that the Bank conduct routine background checks on new employees and on suppliers, contractors and consultants engaged in Bank-financed projects;
- that the Bank strengthen the financial disclosure requirements applicable to high ranking officials and others in particularly sensitive positions; and

- that the Bank adopt “whistleblower” rules protecting Bank staff that report misconduct, disclose information or otherwise cooperate with investigations involving allegations of fraud and corruption, as well as other types of wrongdoing.

Last year my colleagues and I had the opportunity to revisit some of these issues when we were asked by the Bank to review and comment on a strategic plan that the Department of Institutional Integrity had prepared and to review and evaluate how the structures that had been put in place were working and to what degree more needed to be done to implement our recommendations.

The proposed strategic plan focused on all aspects of the management and operation of INT. I will briefly comment on only the two most salient of these. The first is the Department’s proposed strategy to move from an emphasis on reacting to allegations of fraud and corruption when they are made, to a program that includes proactive and preventive actions. The second concerns the proposed budget and staff for the Department.

We found the proposal for becoming more proactive to be sound and consistent with our earlier recommendations. If INT depends solely on a reactive approach that responds exclusively to allegations of wrongdoing reported to the Bank, it would reward the most skillful manipulators of Bank funds, since it is usually only the most obvious forms of fraud and corruption that tend to raise sufficient suspicions to be reported to INT. It will, of course, always be critical to the effectiveness and credibility of the Bank’s anti-corruption program for INT to maintain its capacity and commitment to zealously pursue allegations of wrongdoing when they are reported. The proposed proactive and preventive efforts are a logical extension of INT’s

current work and are likely to strengthen INT's potential impact on the Bank's overall objective of detecting and deterring instances of fraud and corruption in Bank-financed projects.

We believe that these three kinds of efforts, reactive, proactive and preventive, should not be viewed as step-by-step progressions, but as component elements of an effective, coherent overall strategy, regardless of the level of INT funding. In any event, a more authoritative answer may be expected to emerge from a comparison of the costs and benefits of the three approaches that balances them against each other and that balances the overall utilization of Bank resources against the potential savings realized by reducing losses to fraud and corruption. Such an approach offers the prospect of more thoughtful resolution of competing considerations than less disciplined forms of evaluation.

Another aspect of INT's strategic plan that is a prime candidate for some form of econometric cost-benefit analysis is its proposal to structure a triage approach for case selection. Recognizing that the Bank's resources are finite and that INT is not likely to receive sufficient funding to enable it to undertake all the investigative activities that may be warranted, the proposed triage system would build upon a systemization of considerations that have been applied informally in INT's past allocation of resources. This is the only reasonable approach that can be taken.

We have encountered some concern that the concept of triage may seem to contradict the Bank's sincere expression of "zero tolerance" for fraud and corruption. Refusal to tolerate should not be confused with striking out at every instance of wrongdoing. As long as all cases receive at least preliminary investigation and assessment by INT personnel as contemplated by INT's proposal, as long as matters apparently involving even low levels of seriousness are occasionally brought to the sanctioning stage, and as long as all geographic

regions in which the Bank makes loans receive some degree of regular attention by INT's investigators, the triage system can be recognized as in furtherance of the zero tolerance concept, not in derogation of it.

Turning to INT's proposal for significant increases in its overall budget and staffing level, it is interesting to note that this was met by considerable skepticism in some quarters of the Bank. INT's staffing level had already given some offices in the Bank the impression of an instant bureaucracy exploding onto the Bank scene and apparently destined to expand without ultimate boundaries. At the same time, the staffing level had given INT personnel the impression of overwork and inadequate willingness by the Bank to confront fraud and corruption affecting large regions in which it operates.

It is important to recognize that any responsible business enterprise would have been attempting, from the time of its inception, to stem fraud and corruption that interfered with its mission. In the Bank, however, senior management began to acknowledge the problem openly only in 1996 – after significant amounts already had been lost to fraud and corruption. The Bank has a great deal of catching up to do.

In assessing the justification for the Bank's expenditures on its anti-fraud and corruption program, the appropriate measure, therefore, is not through comparison of INT's accelerated growth in total staff over its first few years with the Bank-wide growth in staff over the same period, but the size of the staff needed to do the job in an effective and cost-justified manner (tempered, to a reasonable degree, of course, by budget realities, competing Bank responsibilities, and similar constraints). Doing nothing, as was the case before, or doing only as much as can be accomplished by an arbitrarily limited level of personnel growth, is clearly not the proper response for an institution with a staff that probably possesses as great a capacity for

collective econometric analysis as any institution in the world. The Bank needs to develop a reasonable means of measuring, and recognizing in a practical fashion, the value of investigations as well as the costs. This is generally appreciated within the Bank, and many of the expressions of concern about INT's rapid growth and future ambitions appear to be bottomed primarily on a desire for assurance that the Department has the analytical capacity for concentrating resources effectively and the managerial capacity to assure that the anticipated effectiveness can be realized – all in the context of the Bank's principal mission.

While INT's strategic plan represents a major step forward, the planned uses of resources must be continually subjected to rigorous analyses and the manner in which its operates must be continually analyzed to identify areas where improvement can be made. In our report to the Bank last year, we identified a few steps that could be taken to improve INT's operations. These included the following matters:

- We continue to believe that INT would be well-served by having its terms of reference endorsed by the Board. While the Board has been asked to approve the strategic plan for INT, it has never taken any affirmative action on INT's role as the principal instrument of the Bank for the investigation of fraud and corruption in Bank operations. We think that bestowing such a mandate upon INT would strengthen its ability to obtain cooperation from other offices in the Bank and its authority to conduct investigations in countries throughout the world.
- We believe that INT's stature would also be enhanced if various constituencies, both within and outside the Bank, receive a clear and unambiguous message from the Bank's senior management that it is

committed to the fight against fraud and corruption. Since, as President Wolfensohn has noted, this objective was not always a part of the Bank's culture, it may be premature to assume that all Bank staff have accepted its importance. The President has consistently spoken out about the significance of this effort, as have several other Bank officials. It would be helpful if these senior managers would make it a point to regularly reaffirm the priority the Bank places on its anti-corruption effort and its connection to the Bank's anti-poverty agenda, and also acknowledge INT's central role in this effort. Another way to deliver this message within the Bank would be to incorporate information about the Bank's anti-fraud and corruption program and its importance into all of the Bank's core training program.

- We believe that while the President should continue to have the ultimate authority and responsibility for INT, a more regularized process would be useful for acquainting the Board of Directors with the general nature of the problems that INT is able to uncover. If the Board is to be expected to support INT's efforts and actions, it should be given a more complete understanding of what INT is doing and what its investigations uncover. In particular, the Board, through its Audit Committee, should have the opportunity to receive sufficient information about INT and its findings to appreciate whether there are endemic problems in a particular country or geographic region, whether there are systematic problems in how the Bank administers its programs, and whether there are internal obstacles within the Bank that prevent INT from effectively conducting its investigations. At the

same time, if the Audit Committee is going to be given access to such information, its members must recognize that INT would not be free to disclose the details of some ongoing investigations, and that such disclosure could be perceived as subjecting INT to the risk of undue influence from the Executive Directors whose nationals may be implicated in wrongdoing.

Last year, we also reviewed a set of issues that concern how and with whom the Bank shares the results of its investigations, in particular: whether the Bank should publicly disclose that it has concluded that a firm or individual has engaged in fraudulent or corrupt practices and that the firm has been sanctioned by the Bank; whether the details and the results of INT's investigation should be shared with affected or interested parties; under what circumstances the results of an investigation should be referred to law enforcement agencies or prosecutors for possible criminal charges; and in what ways the lessons learned from those investigations can be imparted to Bank managers.

The public disclosure of sanctions imposed by the Bank on the basis of findings of fraud or corruption should be automatic. Such disclosure will help achieve a level of deterrence that is one of the most valuable results of the Bank's effort. In addition, it will add credibility to the Bank's anti-corruption program and will enable member nations and other international organizations to protect themselves from becoming victims of the perpetrator in the future.

Beyond publicizing the fact that sanctions have been imposed, the Bank is understandably cautious about releasing the details of INT's investigative reports that describe the evidence of fraud and corruption giving rise to sanctions. Nevertheless, there will often be stakeholders, both within the Bank and in interested member states, that would benefit from

knowing the details of the fraudulent and corrupt activities described in these reports. Just as there is a deterrent effect from the public disclosure of sanctions, the disclosure to responsible officials of the particular events giving rise to those sanctions may provide an opportunity for the introduction of corrective measures that could prevent such events from recurring in future Bank-financed contracts. Over time, this could be of considerable benefit to the Bank.

We recognize that there frequently will be information contained in INT case reports that the Bank would have a legitimate interest in keeping confidential. Such information includes: information about INT's sources and methods of investigation, the disclosure of which could undermine INT's investigative capacity; information about cooperating witnesses, the disclosure of which could subject those individuals to retaliation or physical harm; information of a less than compelling nature, the disclosure of which could cause unjustified damage to the subject of an investigation; and information that, although seemingly credible, has no bearing on the culpability of the subject of an investigation and unfairly portrays an innocent third party in a negative light, the disclosure of which could cause damage to that party's reputation. In such instances, the Bank could decide on a case-by-case basis either to decline to release a case report in its entirety or to withhold those portions of the report that the Bank determines should not be released. The fact that these concerns may arise in some situations does not suggest that the Bank should routinely decline to release such INT reports.

If an INT report contained evidence of criminal activity, then it is likely that the government of the country whose laws have been broken will want to obtain that information. Some have argued that the Bank may have either a legal or a moral obligation to provide such information to its member countries. Without resolving such issues, it is apparent from a practical perspective that the Bank will have an interest in making criminal referrals in most, if

not all, instances when it uncovers evidence of a crime. We have recommended to the Bank that, as the number of matters eligible for criminal referral continues to increase, the Bank should regularize policies and procedures for evaluating such cases and for interacting with national officials in notifying them of the evidence and giving them access to the Bank files.

When INT investigators discover fraud and corruption in Bank-financed contracts, the evidence may place them in a unique position to identify problems in the Bank's operating procedures that have implications far beyond the matter being investigated. INT may be able to glean instructive information from a single case report, and, in addition, over the course of the many diverse and disparate matters that INT investigates, it may discover patterns and trends that should be called to the attention of operational managers within the Bank, as well as to the attention of officials in member countries with responsibility for the awarding or supervision of Bank-financed contracts. The kinds of information that might be revealed in INT's investigations include information that would show if there are endemic problems in a country or geographic region, if there are systematic problems in how the Bank administers its programs, and if there are particular techniques or schemes that are being used to facilitate acts of fraud or corruption in Bank-financed contracts. If these lessons are made known to operational managers in the Bank and national officials, it may be possible to correct the problems, or at least improve the procedures for the awarding and executing of Bank-financed contracts to the extent that the potential for future problems is lessened. The Bank would be doing itself a disservice if it were to fail to take advantage of the educational value of the reservoir of information accumulated by INT.

In our 2003 report, we also identified a number of technical issues relating to the Bank's policies and procedures concerning the investigation of incidents involving fraud and corruption that need to be resolved. These issues include:

- whether the Bank should be willing to grant immunity to a cooperating witness or to immunize certain information provided by a witness, and, if so, whether such authority should be given to the Director of INT or should be exercised only with the approval of a senior official outside of INT;
- whether the Bank should be willing to reimburse witnesses for expenses incurred as a result of their cooperation with INT;
- under what circumstances INT should have access to the contents of a staff member's computer files and e-mail databases; and
- under what circumstances the Bank should make Bank staff available to testify in court given that, as a result of the Bank's privileges and immunities, Bank staff cannot be compelled to provide testimony.

Issues of this nature must be dealt with in all national criminal justice systems, and they are resolved in the normal course. We understand that the Bank is still in the process of reviewing these matters and is attempting to resolve them in the near future.

It is likely that other procedural issues will confront the Bank as INT matures as an investigative body. When such issues do arise, we have encouraged the Bank to resist the understandable tendency to resolve these issues by circumscribing INT's activities in a manner that would simply minimize the potential for complaints by the subjects of investigations. Since INT possesses only a limited set of investigative tools and none of the powers common to law enforcement agencies, we have advised the Bank that it should be reluctant to take away any

prerogatives that INT would otherwise possess. To resolve such matters, we have also advised the Bank that, where there is disagreement between INT and senior managers over INT's methods of operation, the newly reconstituted Committee on Fraud and Corruption, now known as the Investigations Policy Committee, is an appropriate vehicle for recommending a resolution of the matter.

As I mentioned at the outset, in 2002, we were asked by the Bank to review and evaluate its process for imposing sanctions on firms and individuals that have been found to have engaged in fraud and corruption in Bank projects. The principal tool available to the Bank under such circumstances is to declare the wrong-doer ineligible for future Bank-financed contracts, a process known as debarment. We made recommendations to the Bank in some eighteen separate categories pertaining to its structures and procedures for imposing sanctions. These recommendations were thoroughly reviewed by the Bank's management and were presented to the Bank's Executives Directors. I have been informed that, earlier this month, all of our recommendations were accepted by the Board and that the Bank will proceed to implement those recommendations.

One of our principal recommendations with respect to the sanctioning process concerned the composition of the body given authority to frame the sanctions to be imposed by the Bank. As I described previously, in 1998 the Bank established a Sanctions Committee composed of five senior officials of the Bank to review evidence of fraud and corruption and determine whether or not to debar those found to have engaged in such actions. At the outset this composition was sensible because senior managers of the Bank are in a better position than any others to make thoughtful evaluations of whether it is in the interest of the Bank and its member nations to continue to do business with a firm that has engaged in practices that raise

serious ethical concerns. However, over time, it became apparent that the composition of the Committee could be problematic.

Some of the difficulties were of a managerial and administrative nature. An increasing caseload imposed greater time pressures on Committee members for reading the case files in preparation for hearings and for engaging in what has become in essence an adjudicatory exercise, rather than an exercise in business discretion. As senior Bank officials, each of the Committee members already has a full plate due to their principal responsibilities within the Bank and most had active travel schedules which made them unavailable for extended periods of time.

Other difficulties were more troublesome in that they could be perceived as affecting the basic fairness of the Committee's determinations. First, the members of the Committee, other than the General Counsel, are not lawyers, yet they are often called upon to deal with essentially legal issues, such as the weight to be given certain kinds of evidence and the adequacy of the overall submissions required to satisfy a particular standard of proof. Second, the managerial and professional positions of the Committee members within the Bank open the entire process to claims of at least an appearance of conflict of interest. The premise of perceived conflicts is that Bank managers cannot fairly judge matters concerning loans that their subordinates evaluated and supervised, and that they themselves may have approved. Third, and closely related to concerns about conflicts of interest, is the fact that senior officials by the nature of the positions in the Bank may be perceived as being subject to externally generated pressures from member governments trying to protect their own nationals. These latter two concerns – conflicts and external pressures – could be costly to the Bank in terms of the credibility of the debarment process.

For these reasons, we recommended to the Bank that the composition of the Committee be reconstituted to employ a system in which (a) the membership of the Committee is drawn both from current Bank employees who are not the most senior managers and from individuals who are not current Bank employees; (b) the membership on the Committee be balanced to ensure that it is composed of individuals with training and extensive experience in procurement matters, in law, and in the operations of the Bank or other international development banks; (c) the total membership consists of seven such individuals, with current Bank employees constituting no more than three; and (d) the Committee sits in panels of three to hear cases, with two members of each panel, including the chairman, being drawn from the Committee members who are not current Bank employees. We believe that a careful iteration of such an approach reasonably could be expected to minimize concerns about the current system – regarding membership availability and allocation of time, conflicts of interest, outside influences, and pressures of increasing caseload – while maintaining necessary membership experience and expertise.

We also made recommendations as to whether the Sanctions Committee should have the authority to impose sanctions on behalf of the Bank or should simply make recommendations to the President. Requiring the President of the Bank to review and evaluate every case in which fraud and corruption has been found and to determine whether the recommended sanctions are appropriate places an enormous burden on the President's time. Furthermore, since the parties subject to sanction come from countries that are represented on the Board of the Bank to whom the President reports, there is at least the perception that the President could be subjected to political pressure and undue influence on behalf of a party that had the support and sympathies of its government. For these reasons, it seems advisable not to

include the President in the sanctioning decisions and that, as long as the Sanctions Committee is composed, at least in part, of individuals who are not current Bank employees, the Committee should be vested with authority to make final decisions without further review or appeal.

One of the reasons we are comfortable with making the Sanctions Committee's decision final and nonappealable is that we also recommended that the Bank appoint an officer to review all cases that are directed by INT to the Sanctions Committee to determine whether the evidence is sufficient to warrant sanctions and to suggest what sanction might be appropriate. As a result, there would be two levels of review in the process, the Bank officer and the Sanctions Committee. Considerations of fairness would not dictate that further opportunities for appeal would be required.

The purpose of the reviewing officer within the Bank was intended to improve the Bank's sanctioning process in two other fundamental respects. First, we were concerned that the only mechanism for disposing of a case, no matter how strong or weak the evidence might be, was to conduct a full-blown hearing before the Sanctions Committee. Committee members must spend considerable time preparing for Committee proceedings and, as the quantity of evidence presented to the Committee continues to grow, an ever-increasing amount of time conducting hearings and meeting to decide how to rule on those cases. As the number of cases becomes larger, it will be more and more difficult for the Committee to hear cases and dispose of them in an efficient and timely manner. The role envisioned for the Bank's internal reviewing officer could alleviate much of this pressure. The accused will know that the reviewing officer, who is independent from those investigating the case, has reviewed the evidence and concluded there is sufficient evidence to warrant a hearing before the Sanctions Committee. The accused will also know what sanction has been recommended by the reviewing officer. Under these

circumstances, the accused may decide it is in its best interests to avoid the time and cost of proceeding to a full hearing before the Committee. In such cases, the sanction suggested by the reviewing officer will take effect and the matter will be closed without requiring any of the Sanctions Committee's time.

The second important feature of our recommendation for a reviewing officer is to provide the Bank with a mechanism for temporarily suspending the accused from participation in new Bank projects pending final action by the Sanctions Committee. Under the Bank's original procedures, an accused party remained eligible to be awarded additional Bank projects until the Sanctions Committee process had been completed and a debarment had been approved by the President. (The consequences of this approach are compounded by the fact that, since it could cause enormous costs and delays to a project that is already underway, a debarment does not affect contracts that have been previously awarded to a party that is subsequently debarred – although, under other long-standing Bank procedures, the contract could be cancelled if it was tainted by the same fraudulent or corrupt actions that gave rise to the debarment.) Since the accused could continue to compete for additional Bank contracts during the pendency of its case before the Sanctions Committee, the accused had an incentive to delay the proceedings as long as possible rather than bringing them to a speedy conclusion. Plainly, the Bank has an obligation to protect funds entrusted to it from misuse at the hands of a party who has already been shown by credible evidence to have engaged in fraudulent or corrupt practices, and the Bank would only look foolish were it to award further contracts under such circumstances on the mere technicality that it had not completed its formal processes. For these reasons, we recommended that if the reviewing officer determines, on the basis of the evidence presented by INT, that the accused has

engaged in fraudulent or corrupt practices, then the accused would be temporarily suspended until the Sanctions Committee's decision on the matter becomes effective.

The other recommendations contained in our 2002 report on the sanctioning process largely concerned procedural matters and the Bank's desire to strike an appropriate balance between an efficient and expeditious process on the one hand, and ensuring that the accused is afforded fairness on the other. Our recommendations on these procedural matters included the following issues:

- in response to arguments from some parties before the Sanctions Committee that the Bank should be subject to some sort of statute of limitations that would bar it from pursuing matters that occurred in the distant past, we recommended that, where there is reasonably sufficient evidence to establish that a firm has in fact engaged in fraudulent or corrupt practices, no matter how long ago the incident occurred, the Bank should retain the opportunity to protect its assets from misuse in the future by debarring the firm from participating in subsequent Bank-funded contracts;
- in considering the manner in which evidence is presented to the Committee, we recommended that the practice of receiving both written submissions and oral presentations should continue, with the caveat that, in order to keep the proceedings manageable, reasonable limits should be placed on the length of written submissions (other than documentary evidence) and the duration of oral presentations;
- with respect to the burden of proof, we recommended that the Bank should have the burden of establishing that an accused party has engaged in

fraudulent or corrupt practices, and that, where such evidence has been presented, the burden should shift to the accused to show cause as to why that party should not be sanctioned as a consequence of such behavior;

- since the standard of proof applied by the Bank that the evidence be “reasonably sufficient” to support a finding that fraud or corruption had occurred was considered ambiguous by several members of the Sanctions Committee, we recommended that the Bank adopt of a more descriptive standard, such as “more likely than not;”
- in response to demands from parties before the Sanctions Committee that they be given unfettered access to all documents in the Bank’s possession, we recommended that the Bank maintain the practice under its existing procedures with respect to providing access to its documents whereby the accused is not given unlimited access to Bank documents but is entitled to have access to all relevant evidence in INT’s possession, or known to INT, that would reasonably tend to exculpate the respondent or that would mitigate the respondent’s culpability;
- with respect to documents in the possession of parties under investigation by the Bank, we recommended that the Bank’s procurement guidelines and the documents required to be submitted by bidders on Bank-financed projects be revised to enhance the Bank’s ability to obtain meaningful information from the records of all parties that bid on Bank-financed contracts, whether or not they ultimately are awarded the contract, and that an accused’s obstruction of or failure to produce such documents or otherwise to cooperate with an

investigation should be considered by the Sanctions Committee, and the Committee should be permitted to draw an inference from such actions by the accused that the evidence it refuses to produce would tend to establish the accused's culpability;

- in response to demands from parties before the Sanctions Committee that the accused be permitted to confront adverse witnesses and compel them to testify in person before the Sanctions Committee, we recommended that the Bank should continue the practice whereby the Sanctions Committee accepts witness testimony that is provided indirectly through either INT or the accused, and that the Sanctions Committee assess the weight to be given to such testimony in view of all the circumstances, including the lack of opportunity to evaluate the witness's credibility by face-to-face observation and the lack of opportunity for the other party to cross-examine the witness;
- with respect to the range of possible sanctions that may be imposed on the basis of a finding of fraud or corruption, we recommended that the range be expanded to include one or some combination of the following: (a) permanent debarment; (b) debarment for a term of years; (c) a compliance program in lieu of debarment involving the positioning of monitors on a board of directors or elsewhere within a firm, the termination of corrupt employees, the initiation of ethical training for all employees, the adoption of systematic audits and investigations, and the encouragement of voluntary reporting by employees; (d) restitution; (e) formal reprimand; (f) other appropriate

sanctions; and in all cases (g) publication of the particulars of any sanction imposed;

- where there are circumstances beyond the underlying events surrounding the fraudulent or corrupt activities of the accused, such as prior conduct involving similar behavior, the magnitude of losses caused by the accused, or the damage done to the credibility of the Bank's procurement process, we recommended that the Sanctions Committee take such aggravating or mitigating circumstances into consideration in determining the appropriate sanction to impose;
- In considering the impact of the panoply of possible aggravating or mitigating circumstances, we recommended that the Sanctions Committee give special weight to the degree of cooperation an accused party provides to the Bank in the course of an investigation because of the benefits to the Bank and the efficient use of its resources that would result from such cooperation, and we recommended, in particular, that the Bank develop a voluntary disclosure program that would encourage firms and individuals to volunteer disclosure of wrongdoing before it is suspected by the Bank; and
- with respect to the parties that are potentially subject to being sanctioned by the Bank, we recommended that the authority of the Sanctions Committee to debar should apply not only to the parties that enter into contracts for Bank-financed projects, but also to any individual or entity that, directly or indirectly, controls or is controlled by the contracting party.

In addition to these recommendations, in our report on the sanctioning process we made recommendation similar to those described in our 2003 report that the Bank should make public disclosure of the sanctions it imposes and should share evidence of criminal activity with national law enforcement agencies and with other international organizations.

From a near standing start and in less than a decade, the World Bank Group has created a greatly enhanced and increasingly credible capability to deal with the problems of suspected fraud and corruption in its activities. Problems remain, to be sure, many of them referenced in my testimony today. But given a continued level of commitment from executive leadership, buttressed by clear authorization for its activities from the Bank's Board of Directors and a widespread recognition within the organization itself of the worth of such an undertaking, there is no reason why this effort cannot mature into a showcase operation of how to deal with the challenge of integrity problems within an international organization. Key to meeting this challenge will be the continued ability to attract and retain INT staff and leadership of the highest caliber and widest experience and to insure that INT is recognized to be a genuine resource by all engaged in the worldwide operations of the World Bank Group. An admirable beginning has been accomplished. Care must be taken to ensure that continued improvement remains the aspiration for the future.