



## Executive Summary

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Tuesday 19 October 2021 | 14.00 – 16.30 CET  
VIRTUAL MEETING

### 1. Welcome and Opening of the Meeting

- Commission Chair Denis Simonneau and Viviane Schiavi, ICC Deputy Director for Anti-corruption and Responsible Business Conduct, welcomed over 110 registered participants from 33 countries worldwide to the virtual meeting of the ICC Commission on Corporate Responsibility and Anti-corruption.
- Denis Simonneau underscored the Commission's proactive stance in developing its [Strategy and Action Plan](#) which aligns closely with and supports ICC's overall strategy. This commission strategy was developed under the oversight to the Global Policy Director and in consultation with ICC national committees and members. The commission leadership remains committed to continue to update the plan to take into account priorities of ICC members.

### 2. ICC Working Group on Whistleblowing Guidelines Summary

- Denis Simonneau opened a discussion on work underway to develop a new edition of the ICC Guidelines on Whistleblowing that were first issued in 2008. The ICC Working Group to carry out this work was constituted in March 2021, with over 60 members from 20 countries across Europe, North America, South America, Latin America and Asia. Hema Lehocky, Chief Compliance and Ethics Officer, Afry (Sweden) and Manuel Castelo Branco, Managing Associate, Linklaters (Portugal) were appointed as Co-Chairs of this ICC Working Group.
- Hema Lehocky briefed members on the timeline for the preparation of the text, on main themes arising in the course of the revision and on relevant standards: Main points included:
  - Designing and implementing whistleblowing channels are seen as key for an enabling environment for integrity and, as a result, for sustainable growth. These measures can help reduce tolerance of corruption and increase transparency in doing business;
  - Opinion has changed considerably on the role of whistleblowers since the 2008 edition of the ICC Guidelines on the subject. Now there is even more awareness of the benefits that whistleblowers can bring and of the difficulties they face. It is also increasingly recognized that employees may be dissuaded from reporting wrongdoing because of fear of retaliation;
  - In recent years the appreciation of the benefits of whistleblowing has expanded beyond the aim of fraud prevention and detection to an overall objective of fostering transparency.
- *Timeline to date on preparation new edition of ICC Whistleblowing Guidelines*
  - 14 April 2021 - First ICC Working Group meeting chaired by commission Chair Denis Simonneau;
  - June and July 2021 – a number of meetings held by the Leadership of this ICC Working Group – Co-Chairs Hema Lehocky and Manuel Castel Branco;

- 8 August 2021 – First draft of new edition of the ICC Whistleblowing Guidelines circulated for comment by September;
- 27 September 2021 – Second ICC Working Group meeting chaired by Co-Chairs Hema Lehocky and Manuel Castel Branco.
- October 2021– Review and close consideration by Working Group Co-Chairs of comments submitted.
- **Standards on Whistleblowing Systems and Whistleblowers Protection**  
 In addition to taking into account views conveyed by ICC members and national committees, the revision of these ICC Guidelines is taking into consideration the ISO 37002 Guidelines on Whistleblowing Management Systems and the EU Whistleblower Protection Directive.
  - [The EU directive on the protection of persons who report breaches of Union law](#) was published in October 2019, to be transposed into national law by EU countries by the end of 2021. The Directive clearly takes the perspective of the whistleblower, with a strong focus on whistleblower protection. The Directive requires companies to make it safe and easy to report. It provides that the employer must be able to prove non-retaliation if called upon to do so.
  - [The International Organisation for Standardisation \(ISO\) guidelines on whistleblowing management systems](#) (37002:2021) provides clarity on terminology with regard to Whistleblowing Systems and places a clear focus on communication and education. It links the establishment of Whistleblowing systems with the company leadership and culture, and places emphasis on performance evaluation and continuous improvements.
  - Ms. Lehocky noted that the preparation of the next edition of the ICC Guidelines on Whistleblowing will include an Introduction and will take into account points raised in the consultations with members, including:
    - covering possibilities for a company to make a whistleblowing system mandatory or not and to allow anonymous reporting;
    - addressing the importance of addressing communication and education.

Ms. Lehocky underscored the high level of engagement shown from Working Group members as well as the sharing of best practices and of different cultural norms around the world. The commission leadership and members thanked Ms. Lehocky for her presentation, conveying strong support for the work underway to prepare new edition of the ICC Whistleblowing Guidelines.

### **Action**

Following the second meeting on 27 September of the ICC Working Group on Whistleblowing Guidelines, and a discussion at the 19 October meeting of the Commission on Corporate Responsibility and Anti-corruption, the Working Group Co-Chairs will prepare a second draft of these ICC Guidelines that will be circulated for final review by the Commission.

## **3. UN Initiatives for Integrity and Transparency**

- **Special Session of the UN General Assembly Against Corruption ([UN GASS](#))** – Viviane Schiavi, ICC Deputy Director Corporate Responsibility and Anti-corruption, introduced the item of ICC’s engagement at the first ever UN General Assembly Special Session against Corruption (“UNGASS”) that was held from 2 to 4 June 2021. ICC had worked hard to prepare for this event, including by organizing a special ICC Webinar that drew over 300 registered participants in March 2021 on consideration of the possibility of an International Anti-corruption Court. The aim of UNGASS was a fundamental review by states parties to [UNCAC](#) of key gaps in the international anti-corruption framework 15 years after UNCAC entered into force. Preparatory meetings ahead of UNGASS focused on prevention,

law enforcement, beneficial ownership transparency and measures to address impunity. A political declaration by member states would be issued at UNGASS session on how to build better enforcement of the UN Convention against Corruption.

ICC's First Vice-Chair, Maria Fernanda Garza, who is also ICC High-level Integrity Champion, presented to the commission ICC's engagement and her representation of ICC at the UNGASS 2021 session. At her keynote address at UNGASS, Ms. Garza conveyed:

- a resilient post-pandemic economy needs to be underpinned by a renewed focus on integrity and good governance, and that this is only possible through enhanced public-private cooperation.
- while the entry into force of the UN Convention against Corruption- or "UNCAC" - in 2005 was a landmark achievement, in the years since, not enough progress has been made in tackling global corruption through UNCAC's review mechanism.
- Scaling up the fight against corruption would also help level the playing field for the millions of businesses throughout our network that should not risk losing commercial opportunities to those willing to pay bribes or kickbacks.

Ms. Garza noted that while the political declaration adopted at UNGASS was not as ambitious as wished for, it could help pave a way forward for real progress. The UNGASS Declaration's endorsement of collective action between the public and private sectors and its commitment to beneficial ownership transparency were welcome for example. Ms. Garza concluded by pointing to the UNGASS declaration's invitation to States to identify gaps and solutions in the global anti-corruption framework. This is the first time there is an official recognition that more needs to be done for UNCAC implementation, and there's a plan for the UNCAC Conference of States Parties to examine this at their next meeting this December in Cairo at [CoSP9](#).

- **UN High-level Political Forum Side session against corruption**

Maria Fernanda Garza presented on the UN High-level Political Forum Side session against corruption that ICC co-organized in July 2021, at which she delivered a keynote opening address. This session advanced consideration of innovative approaches to close the accountability gap in global anti-corruption, including through the role of technology. ICC organized this session with Integrity Initiatives International to drive consideration post-UNGASS of novel ways to close the gap on anti-corruption enforcement. This UN session that drew over 300 participants worldwide, brought together Expert Speakers from governments, civil society, and business and to explore new approaches, including:

- scaling up integrity through judicial reform;
- crowding in fresh perspectives, including from Serena Ibrahim, Leader of Youth against Corruption, a youth-led initiative that aims at contributing to preventing corruption through new ways such as innovation and entrepreneurship;
- profiling views from Anita Schieffer of Siemens Energy on how everyone, public and private sector, all countries, need to have and play by the same rules and on how business needs positive recognition from governments for their compliance programs;
- covering Tech for Integrity issues, by Carlos Santiso of the Latin American Bank, on how digital transformation of government can help reduce corruption.

Ms. Garza noted that there was broad consensus at the ICC-III UNHLPF session that public-private cooperation is the only way to make real progress, including through Responsible Business Conduct in Procurement, Beneficial Ownership Transparency and Whistleblower Protection. The Commission Chair Denis Simonneau, who delivered the closing speech at the UN HLPF session in July, thanked ICC First Vice-Chair Maria Fernanda Garza for her vigorous leadership on integrity on behalf of ICC in the highest fora, including the UN.

## **Action**

- A number of ICC members will provide global business perspectives to the ninth session of the Conference of the States Parties to the United Nations Convention against Corruption (CoSP 9) in Sharm El-Sheikh, Egypt 13-17 December 2021.
- ICC will continue to monitor developments and will advise members of opportunities to influence the process as they arise.

## **4. G20 and B20 Initiatives for Anti-corruption, Integrity and Compliance**

- Ms. Garza, ICC First Vice-Chair, presented on the development of policy recommendations by the B20 Italy Integrity and Compliance Task Force, which she co-chaired during 2021. Unlike other B20 task forces, this Task Force has a direct governmental counterpart, the G20 Anti-Corruption Working Group (G20 ACWG).
- Maria Fernanda Garza noted that it was an honour to bring her experience as CEO of Orestia, a Mexican company, and her leadership as First Vice Chair of the International Chamber of Commerce, to her position as Co-Chair of the B20 Italy Integrity & Compliance Task Force. All B20 Italy Task Forces took into account the need to address key transitions in these areas:
  - Environmental
  - Digital
  - Integrity
  - The need for a resilient economy
  - The impact of Covid-19
- Ms. Garza presented the B20 Italy Policy priority areas for 2021:
  - *Responsible conduct through the Procurement Cycle*
    - Improving the efficiency of public administrations
    - Enhancing the digitalization of public administration processes
    - Fostering integrity and transparency through the procurement cycle
  - *Sustainable Governance in Business*
    - Including the need to assess ESG performance through standardized non-financial reporting
    - And improving integrity and compliance in the supply chain
  - *Cooperative Compliance models and rewarding systems (i.e., protection of whistleblowers, public-private cooperation to enhance compliance)*
    - Recommending public private cooperation to enhance compliance
    - Corporate compliance efforts such as due diligence
    - Promote self-disclosure by offering reduced penalties and leniency programs, ensuring the re-inclusion of firms that have come clean in public tenders.
  - *Beneficial ownership Transparency*
    - Including the need to adopt technology to ease access to Beneficial Ownership information
    - Developing digital national public registers
    - Better international cooperation between authorities
- A notable aspect of these B20 Italy Task Force recommendations is that for the first time they come with key performance indicators that enable the measurement and tracking of implementation of the recommendations.
- The B20 Italy officially conveyed its final communiqué to the G20 Presidency at the B20 Final Summit that took place last week on 7-8 October 2021. The Italian G20 Presidency will

culminate in the Leaders' Summit, which will be held in Rome on 30 and 31 October with the handover to G20 Indonesia taking place on December 1st.

- Ms. Garza closed her presentation by underscoring that this Task Force rightly recognizes the growing need to address in a more interconnected way supply chain issues, ESG factors, integrity, transparency and anti-corruption, and that this will clearly be the challenge for all - business and government alike - to meet moving forward.

### **Action**

- ICC will continue to advocate business interests in the context of the Indonesia G20-B20 cycle, including to support of Whistleblower Protection and for recognition of private sector anti-corruption compliance as key priorities

[Summary of B20 Italy Integrity & Compliance Task Force recommendations](#)

## **5. ICC Task Force “Addressing Issues of Corruption in International Arbitration”**

*Sophie Nappert, Co-Chair, ICC Task Force on Addressing Issues of Corruption in International Arbitration, Arbitrator, 3VB*

- Sophie Nappert presented developments in the work of the ICC Task Force on Addressing Issues of Corruption in International Arbitration, including the draft report on Red Flags and Other Indicators of Corruption that had been circulated to this Commission prior to its 19 October meeting for review and comment.

[Memo and Draft Report of Track 3 - ICC Commission on Arbitration and ADR](#)

[Task Force on Addressing Issues of Corruption in International Arbitration – “Red Flags and Other Indicators of Corruption”](#)

### **Summary**

- This ICC Task Force is developing guidance for addressing issues of corruption in international arbitration.
- The Methodology of the work was initially based on seven Tracks with the aim of endeavouring to conclude by 2022:
  - Track 1: Scope of work of the TF
  - Track 2: List of Issues – (including issues of quantum/remedies/consequences)
  - Track 3: Red Flags or other indicators of corruption and Artificial intelligence
  - Track 4: Research database of ICC cases
  - Track 5: NCs Questionnaire for country reports
  - Track 6: Questionnaire for the input of other arbitral institutions
  - Track 7: Quantum (later incorporated into Track 2)
- New Tracks added include:
  - Track 8 – Standard and Burden of Proof
  - Track 9 – Ability of Arbitral Tribunals to address *sua sponte* perceived or alleged corruption
  - Track 10 – Parallel Proceedings
- Additionally, a questionnaire has been sent to national committees to gather data from their national contexts.
- Ms. Nappert provided information on the memorandum and draft report produced by the “Track 3” work stream on “Red Flags and Other Indicators of Corruption” of the ICC Commission on Arbitration and ADR Task Force “Addressing Issues of Corruption in International Arbitration”.
  - The work of Track 3 kicked off on 5 May 2021, with a mandate to reflect upon issues arising out of “Red Flags and Other Indicators of Corruption and Artificial Intelligence”. Since then, the Track 3 Coordinators have developed a memorandum draft report that was produced under the oversight of the Track 3 Coordinators: Lucinda Low, Xavier Andrade, Patrick Baeten, and Abdulhay Sayed.

- The memorandum provides background on the approach taken, the challenges with which the Track 3 Coordinators had to grapple in preparing the draft report and highlights some aspects of the draft report for discussion.
- The aim of this draft Report “Red Flags and Other Indicators of Corruption” is not to suggest arbitrators what to do with red flags, but to propose a methodology that helps to systematise their analytical process in the face of red flags.
- Ms. Nappert noted that the ICC Task Force greatly values the dialogue with the ICC Commission on Corporate Responsibility and Anti-Corruption and is grateful for any feedback that the latter’s members may wish to provide.
- Hélène van Lith, Manager for the ICC Commission on Arbitration, noted that great appetite had been conveyed from members the Arbitration Commission for the work of this Task Force.
- Members expressed anew their appreciation on how this ICC Task Force:
  - leverages synergies of between ICC’s longstanding DRS and Anti-corruption expertise.
  - taps into overlapping constituencies on shared priority of Rule of Law.
  - fosters greater integration within ICC.

### **Action**

- Commission members are invited to send as soon as feasible to [viviane.schiavi@iccwbo.org](mailto:viviane.schiavi@iccwbo.org) their views on the Memo and Draft Report – “Red Flags and Other Indicators of Corruption”.

## **6. Business and Human Rights**

*Crispin Conroy, Permanent Observer to the UN, Geneva, ICC*

*Sierra Leder, Global Policy Team, ICC*

- Commission Chair, Denis Simonneau, invited Crispin Conroy and Sierra Leder to report on the ICC Informal Working Group on Business and Human Rights, which was launched in early 2021, with more than 100 members from a range of companies and regions. A copy of this PowerPoint presentation is sent with his summary record.
- Crispin Conroy paid tribute to Professor John Ruggie, author of the UN Guiding Principles on Business and Human Rights, upon his passing.
- The Working Group has met three more times since the last meeting of the Commission, and has discussed:
  - Insights on the UNGPs10+ report and business perspectives on the decade to come with Dante Pesce (UN Working Group on Business and Human Rights Chair) and Anita Ramasastry (UN Working Group on Business and Human Rights Member);
  - Recent draft EU legislation on mandatory due diligence with Guus Houttuin (European External Action Service Senior Adviser on Trade Issues) and Madelaine Tuininga (DG Trade Head of Unit);
  - An advance briefing on the upcoming UNGPs10+ roadmap with Dante Pesce (UN Working Group on Business and Human Rights Chair)
- ICC contributed to the UNGPs 10+ Roadmap for Implementation through ICC regional consultations on business perspectives in ICC Latin America (led by ICC Mexico and ICC Argentina); ICC United Kingdom; and ICC European Union, and the ICC BHR Working Group has conducted various interactions with UN Working Group members.
- ICC has also undertaken a number of external activities, including a webinar series on due diligence with the BCSD (World Business Council for Sustainable Development) and the Geneva Centre for Business and Human Rights; a Recommitment to the UNGPs with the UN Global Compact; a Commemoration of the UNGPs 10<sup>th</sup> Anniversary with the Geneva Chamber of Commerce, Industry, and Services; and support of regional events such as the

ICC Germany Workshop on Supply Chain Due Diligence and the ICC UK International Trade and Prosperity Week Panel on Business and Human Rights.

- ICC participated in this year's 7<sup>th</sup> Session of the Open-Ended Intergovernmental Working Group on Transnational Corporations and Other Business Enterprises with Respect to Human Rights (OEIGWG) including issuing a statement on the 3<sup>rd</sup> revised draft of a legally binding instrument on business and human rights. ICC conveyed views on the draft legally binding instrument during an intervention at the 7<sup>th</sup> OEIGWG in Geneva on 25 October 2021.

## 7. Tech4Integrity - The integrity dividends of digitalisation

Carlos Santiso, Director of the Governance Practice on Digital Innovation in Government, Development Bank of Latin America, presented on how tech is shaping the future of integrity in times of crisis. Mr. Santiso is also Member of the WEF Advisory Group on Anticorruption and Member of the UN Advisory committee this summary record.

- Mr. Santiso noted that governments and companies alike are increasingly leveraging tech for integrity, by using tools including data analytics and artificial intelligence. While the correlation between government digitalisation and corruption control is well-established, the causation remains more difficult to pin down. Digitalisation has long been a tool for government modernisation, especially in public financial management. However, integrity is not usually the prime driver for digital government reforms. and it is important to untangle the specific integrity benefits from different types of digital reforms.
- Data policy is impacting the ability of both governments and business to use data to promote integrity. UNESCO will soon issue a new soft norm on the responsible and ethical use of data and AI.
- In looking at the impact of technology and data on corruption, there is a distinction between large-scale corruption scandals stemming from big contracts, and “every day” bureaucratic corruption encountered when, for example, seeking to register a company or pay one’s taxes. In both cases technology has long been a part of state modernization efforts; what is changing now is the capacity be able to analyse data.
- Within the [WEF's Tech4Integrity Platform](#) two distinct developments have been noted: tech actors making better use of data analytics to detect, prevent and deter fraud and an increasing will to leverage tech integrity benefits from government digitalization.
- The “Paradise Papers” investigation showed how Tech start-ups have supported recent journalistic efforts to uncover offshore jurisdictions that some contended were used to facilitate improper tax avoidance. A French Tech start-up Linkurious and a Swedish start-up Neo4j Technology basically analysed relationships between different types of data to help uncover these activities.
- As to government digitalization, the integrity benefits include:
  - greater access to information and open government data, that increases actionable transparency.
  - reduction of discretion and limits in-person interactions in government transactions and services by unscrupulous public officials, limiting opportunities for bribe solicitation.
  - reduction of transaction costs for service users, which increases voluntarily compliance by citizens and companies.
  - more competition in government contracting, which drives down costs and reduces collusion.
  - increase in trust and of governments’ capacity to deliver, by facilitating access to public services and making them more efficient, simpler and reliable
- With the pandemic, the introduction of universal digital identity, digital beneficiary registers, and digital transfers has improved targeting and reduced leakage in social protection programs. Also, with the increase of public procurement fraud during the Covid-19 crisis,

government auditing entities can increasingly use data analytics to detect suspicious practices and detect collusion between companies. Procurement agencies are also mining data more to develop red flagging and related techniques to uncover fraudulent activities. Some governments are also trying to go beyond cash to reduce the opportunity for bribery in many contexts.

- Companies are weighing more the digital maturity of governments to interact with, to evaluate indicators of risk.
- Mr. Santiso pointed out that while the integrity benefits are unquestionable, digitalisation also creates new corruption risks, thus increasing the complexity of technological solutions that governments need to procure. Also, the more governments go digital, the more they expose themselves to cybercrime and ransomwares.

### **Action**

- The commission will continue to examine the way tech can be leveraged for integrity.
- Members are encouraged to share input on actions and developments in the area.

### **8. Date and location of next meeting**

- The hope is to hold an in-person or hybrid meeting at ICC in Paris in Spring 2022.
- Denis Simonneau announced that, after six years of chairmanship, he intends to step down from his role as Commission Chair and indicated that a new Commission Chair will be chosen in due course.
- Enthusiastic appreciation was conveyed by Viviane Schiavi, the Commission Vice-Chairs and commission members to Denis Simonneau for his strong, knowledgeable and diplomatic leadership of the Commission since November 2015.

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