Report Concerning
the Proposed Strategic Plan of the World Bank’s
Department of Institutional Integrity,
and the Adequacy of the Bank’s Mechanisms
and Resources for Implementing that Strategy

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I. BACKGROUND AND TERMS OF REFERENCE

We have previously submitted a report to the Bank concerning mechanisms to address problems of fraud and corruption (dated January 21, 2000, hereinafter the “Original Report”), and a report concerning the debarment processes (dated April 1, 2002, and revised August 14, 2002, hereinafter the “Second Report”). We have now been asked (1) to review the foundation and direction of the proposed anti-corruption strategy as set forth by the Department of Institutional Integrity (“INT” or the “Department”) in its Strategic Directions and Business Plan Proposal dated February 2003 (hereinafter the “Strategic Plan” or “Plan”); (2) to evaluate the adequacy and functioning of the structures, procedures, resources, and management framework the Bank has in place to investigate allegations of fraud and corruption; and (3) to consider whether the proposed strategy and the existing structures are consistent with the recommendations in the Original Report. In the process, the current Report is to identify areas in which changes might be introduced to improve the quality, effectiveness, fairness, and efficiency of the investigative process.

Because of the thoroughness of the Strategic Plan and the detail with which we previously set forth our views concerning the Bank’s approach to fraud and corruption, we have attempted to limit that portion of this Report to a relatively brief summary of our present evaluations and suggestions, and then to focus on areas in which changes may be warranted and areas in which recommendations of the Original Report remain appropriate but as yet unfulfilled. Although the discussion is somewhat more truncated and conclusory than we might otherwise have produced, we believe that the observations and rationales will be understood by those who are the expected readers of the Report. To the extent that our views with regard to certain issues may require clarification or greater justification, we would be pleased to provide written or oral elaborations on those particular points.
II. METHODOLOGY OF THE REVIEW PROCESS

In the course of our review, we have carefully read the Strategic Plan, the first draft of the Strategic Plan, and the comments produced by the numerous Bank offices that reviewed the first draft. We have reexamined the recommendations of the Original Report and all relevant interview notes from the previous projects we have undertaken on behalf of the Bank. We have also examined pertinent staff rules, personnel policies and procedures, and Bank reviews as they relate to the work of INT; various documents relating to problems pertaining to, and means of addressing, fraud and corruption, that have been produced by the Bank for internal and external purposes; and documents pertaining to particular cases on which INT has worked. In addition, we have solicited, through personal interviews and telephone discussions, the views of over 50 individuals— including both outsiders and individuals at all levels within the Bank—who are knowledgeable about the needs of the Bank and the operations and practices of INT, including its interaction both with other departments and offices within the Bank and with national government agencies and other international institutions.

III. FOUNDATION AND DIRECTION OF THE PROPOSED ANTI-CORRUPTION STRATEGY SET FORTH IN THE STRATEGIC PLAN

A. Introduction

It is timely for the Bank to undertake a review of the structures, procedures, resources, and management framework it has in place to investigate allegations of fraud and corruption, and to put in place a strategic plan for its investigative function. The Bank introduced an in-house capacity to investigate allegations of fraud and corruption only slightly more than five years ago, and its efforts in this regard have expanded steadily since their inception. Given the level of resources allocated to this program, and the level of funds the program is designed to protect, the Bank has an obligation to donor nations to consider carefully how those resources should be deployed. This is especially true at a time when growing budget pressures in many developed countries make it more challenging for member governments to justify expenditures for international rather than domestic purposes, and greater attention is given by governments to assuring the proper use of allocated funds. Moreover, as we are frequently reminded, the World Bank now serves as the model for other international and multinational development agencies in forthrightly addressing problems of fraud and corruption. For these
reasons, it is important that the Bank establish and maintain a high standard for principled and effective protection of the funds entrusted to it.

B. General Observations Concerning the Strategic Plan

The institutional predecessors of INT were small, somewhat ad hoc units focused solely on investigating allegations of fraud and corruption in Bank-financed projects. From those early beginnings, INT has emerged as a 44-member Department that today describes its mission as to “reduce the risk of fraud and corruption in Bank-supported projects through a combination of investigations and sanctions in response to allegations and proactive measures for earlier detection and prevention.” It has undergone a particularly rapid development, has succeeded in attracting highly competent professionals, and recently has developed a management structure befitting its responsibilities. In brief, it has made significant and commendable progress.

INT has now developed a well-reasoned and comprehensive Strategic Plan to guide its future development and method of operation. It has circulated that Plan to all components of the Bank that would be affected by, or otherwise interested in, its execution. The responses of those components have exhibited a striking degree of concurrence in the general direction of the Plan and in the quality of its analysis—except, notably, with regard to the projection of necessary resources. In that area, while some accepted the concept that substantial additional resources may be required, some were troubled by the burgeoning budget projected by INT.

We, like the Bank components to which the draft Plan was submitted, agree with almost all of its provisions. The exceptions will be discussed below, as will a few additional salient matters. Our discussion of the Plan is somewhat limited because the thoroughness with which the Plan is explicated has made supporting comment superfluous. In general, we believe that INT has set its future course in a particularly thoughtful manner.

C. Proposed General Strategy for Implementing INT’s Responsibilities

A principal feature of INT’s proposed strategy is to move from reactive, to proactive, to preventive actions. We concur in this approach, and note that a potential
mechanism for determining the most efficient long-term allocation of resources among the three activities should in significant part be based upon cost-benefit analyses by Bank economists working with INT staff.

The three approaches may be analogized to the work of a fire department: reactive (responding to reported fires), proactive (looking for small fires before they become large ones), and preventive (working with others to prevent fires). All three concepts are necessary components of an intelligent strategy for any organization that has been created to deal with a persistent problem. In the context of INT’s work in the Bank, a reactive approach alone 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. Despite this fact, it will 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 will strengthen INT’s potential impact on the Bank’s overall objective of detecting and deterring instances of fraud and corruption in Bank-financed projects.

The addition of a proactive approach – ideally employing, for example, unscheduled examinations by forensic accountants, extrication of information from analyses by the World Bank Institute ("WBI"), and training of Regional project managers regarding indicia of fraud and corruption – would increase the likelihood of widespread deterrence and therefore might, over time, achieve a significant degree of cost effectiveness. This could be facilitated by adopting previously suggested measures concerning the inclusion of audit agreements in bidding documents as well as procurement contracts, and the development of particularly close coordination between INT and IAD, working independently on their own initiative and, at times, in conjunction with Regional managers. INT has already completed one proactive fiduciary review of a project in Indonesia – a very positive step – but we note that the review was undertaken at the behest of the Regional Vice President not on the initiative of INT. While one advantage of a proactive approach is that it can provide a valuable service to Regional managers by bringing investigative resources to bear on areas of particular interest or concern to those managers, a comprehensive proactive effort must do more than simply react to the priorities of
certain Bank managers. Accordingly, a central element of INT’s proactive approach must involve the development by INT of its own strategic “risk management” assessment and plan of action, as well as the willingness and ability of INT to undertake proactive investigations on its own initiative (or, where appropriate, in coordination with IAD).

A preventive approach holds the capacity for even greater cost effectiveness, and INT’s suggestions for “data mining” and “closing the learning loop” – working in conjunction with the Poverty Reduction and Economic Management Network (“PREM”), WBI, and other Bank offices – are of particular importance. In this regard, we believe that INT would also have a contribution to make in working with the Legal Department and PREM in encouraging nations to adopt more effective laws and justice system improvements of their own.

The question has been raised whether INT should be encouraged to pursue proactive and preventive work when it has not yet been able to maintain pace with its reactive work. We believe that these three kinds of efforts 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.

D. Proposed INT Budget and Staff

The Strategic Plan outlines a rationale for significant increases in INT’s overall budget and staffing level. This, particularly as set forth in the Plan’s original draft, has been met by considerable skepticism in some quarters of the Bank. INT’s existing staffing level has already given other offices the impression of an instant bureaucracy exploding onto the Bank scene and apparently destined to expand without ultimate boundaries. At the same time, the existing staffing level has given INT personnel the impression of overwork and inadequate willingness by the Bank to confront fraud and corruption affecting entire Regions.

It is important to recognize that any responsible business 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 half a century of operation and after significant amounts already had been lost to fraud and corruption. The Bank has a great deal of catching up to do. It is now attempting just that.

In assessing the justification for the Bank’s expenditures on this program, the appropriate measure, therefore, is not through comparison of INT’s accelerated growth in total staff – from zero to 44 in the course of five years – with the Bank-wide growth in staff over the same period, but the INT 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 the Department’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 other needs. While the Strategic Plan takes a major step toward supplying such assurance, the planned uses of resources must be continually subjected to rigorous analyses.

E. Proposed Triage System for Managing INT’s Workload

The Bank’s resources are finite, and all Bank programs of course must operate with a less than optimal level of funding. In recognition of that reality and of the likelihood that INT will not be able to undertake all the investigative (and preventative) activities that may be warranted, the Department has proposed the structuring of a triage approach for case selection. The proposed structure would build upon a systemization of considerations that were applied informally in INT’s past allocation of resources. This is the only reasonable approach that can be taken. But the culling of the cases that have been exposed by reactive or proactive means, in order to reach a workload that can be processed by INT’s staff (occasionally augmented by experienced outside counsel), is itself a prime candidate for econometric analysis. The
weighting process described in the Plan's Attachment 3 is a step forward, but, in the long-run, the cost-benefit component could profitably be expanded to test all of the identified factors – and to assign weights to everything from the potential for recovery of lost funds, through the relative deterrent potential of pursuit of different kinds of offenses, to the present value of future deterrence. That is not the forte of investigators and lawyers, but, as noted, it certainly is within the capacity of many of the Bank's economists. The Bank should be able to make practical use of such capacity if any institution can. At the very least, such an approach – by forcing the identification of relevant factors and sharpening thinking about their interrelationships – offers the prospect of more thoughtful resolution of competing considerations than less disciplined forms of evaluation.

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 the Plan, as long as matters apparently involving even low levels of seriousness are occasionally brought to the sanctioning stage, and as long as all Regions 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.

IV. ADEQUACY AND FUNCTIONING OF THE PRESENT STRUCTURES, PROCEDURES, RESOURCES, AND MANAGEMENT FRAMEWORK TO INVESTIGATE FRAUD AND CORRUPTION

A. INT's Mandate and External Support

INT's effectiveness depends, in part, on its ability to obtain the cooperation and assistance of those who may possess information relevant to the culpability of the subject of an investigation. To achieve this, it must be clear that INT has both the institutional authority as an instrument of the Bank to carry out its investigative functions and the support of the Bank's senior management in its efforts to do so. It also requires that INT have the support of other Bank components.
1. Mandate

INT was formed to fulfill a critical role in enabling the Bank to meet its obligations under the Articles of Agreement to ensure that the proceeds of any loan are used only for the purposes for which the loan was granted. Nevertheless, we are aware that some Bank officials are much less receptive to INT's activities than others, and that at least one country director has informed INT that there is no basis for the government in his country to recognize any authority for INT's investigators to conduct investigations “in country.” Since the work of INT has the potential of bringing its investigators into contact with virtually every department and office within the Bank and with government officials and private individuals in virtually every country around the world, it seems appropriate that the work of INT receive the imprimatur of the highest levels of the Bank.

The Board has endorsed procedures for the Bank’s investigations of fraud and corruption. However, since the last Board action on this subject, which occurred in late 1997 and was memorialized in an Operational Memorandum dated January 5, 1998, the Bank’s efforts to combat fraud and corruption in Bank-financed projects have evolved into a considerably more comprehensive and more effective structure, which has at its core the establishment of INT as an independent department within the Bank. Many of these changes have been disseminated in a series of announcements issued by various senior managers, culminating with the Terms of Reference that were circulated by the President to all Bank staff on November 27, 2002.

While the Terms of Reference provide an important narrative description of INT’s role and activities, it is not clear that the document would necessarily be read as serving the equally important purpose of reflecting a delegation of authority to INT to act in the name of the Bank. On their face, and without the accompanying e-mail message from the President that was sent to the staff, there is nothing to identify the Terms of Reference as an official Bank document. While their purposes may be understood within the Bank, we are doubtful that the Terms of Reference themselves would be compelling to a member government as an indication of INT’s legal authority to act as an instrument of the Bank.
For these reasons, we continue to subscribe to the recommendation made in the Original Report that the Board be asked officially to sanction – in general terms – the important anti-corruption work being performed by INT as well as the related work of other components of the Bank. Such an initiative by the Board could also be useful for establishing a framework, as discussed in Section IV.C.1 below, in which INT could, when appropriate, engage in periodic briefings of the Board’s Audit Committee.

2. **Support of Senior Management**

Just as the imprimatur of the Board can be critical to INT’s ability to operate effectively, it is vital that Bank staff, member governments, and members of the private sector who have access to Bank funds receive a clear and unambiguous message from senior management that it is committed to the fight against fraud and corruption. Since, as the President 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.

3. **Outreach by INT**

If INT is to capitalize on the endorsement of Bank management and to gain the confidence of Bank staff, INT should make it a priority to explain its purpose, function, and procedures to its many constituencies within the Bank. In the course of the interviews we conducted as part of this project, it was evident that those who were the best informed about what INT does, and what it does not do, were also those most comfortable with INT and supportive of its operations. To take advantage of this situation, INT would be well served by a strategic outreach effort to make its activities better understood by other departments and offices throughout the Bank.

We recommend that INT undertake an initiative to describe not only its role within the Bank, but also the importance of cooperative assistance to the success of the anti-corruption program, and the procedural standards that have been put in place to ensure that Bank
staff members with whom INT interacts are treated fairly and with respect. As part of INT's outreach, INT's managers and investigators should meet periodically with senior managers, Regional managers, and Bank staff, both at Headquarters and, to the extent that finances permit, "in country." We understand that INT is already working on written materials that set forth its purpose, function, and procedures and that will be available for distribution to its various constituencies.

As a related matter, the Bank should make an effort to incorporate information about its anti-fraud and corruption program in all of its core training programs. This would heighten awareness of the Bank's commitment in this area, and help convey an appreciation of INT's role.

B. Structural Issues Affecting INT's Anti-Fraud and Corruption Effort

The single theme that we have been directed to examine in this review is the manner in which the Bank proposes to address problems of fraud and corruption affecting Bank-financed projects. The principal institution that we have been asked to focus upon is, as noted, INT. Yet INT is assigned a dual responsibility: (i) a principal responsibility for investigating fraud and corruption, which may involve culpability on the part of bidders, contractors, subcontractors, or government officials, as well as Bank staff; and (ii) a secondary responsibility for conducting internal investigations of staff misconduct, which covers a wide variety of ethical and behavior issues ranging from failure to make court-ordered alimony or child support payment, to allegations of sexual harassment, to violations of Bank policies on dissemination of confidential information. Only the principal responsibility of INT was recommended in the Original Report; the internal investigation function was added when, at the time of the formation of INT, it appeared to be convenient for extraneous reasons to have the new Department assume the responsibilities of the Office of Professional Ethics. When the ethics counseling and educational functions were eventually transferred to a newly-created and independent Office of Ethics and Business Conduct, however, the responsibility for investigating grievances and ethics violations by Bank staff did not accompany them. That latter responsibility was left in INT because of the commonality of function, if not commonality of purpose, with INT's area of specialization – the conducting of investigations.
The investigation of fraud and corruption, and the investigation of personnel who have violated Bank ethical norms, are, in fact, quite different kinds of inquiries. To some extent, they require different talents, different approaches, and different sensitivities, and their reports are directed to different audiences with different responsibilities. In recognition of the differences both in the nature of the suspected wrongdoing and the status of the suspected perpetrator, INT assigns the two kinds of responsibilities to different investigators. The Bank is fortunate to have highly competent personnel performing each of these two functions, with about 16 investigators assigned to the 70 percent of the workload involving fraud and corruption matters, and 8 assigned to the 30 percent of the workload involving internal investigations of staff misconduct. As noted in the Strategic Plan, incidents involving fraud and corruption by Bank staff members are extremely rare, as reflected in the fact that less than five percent of INT’s fraud and corruption investigations involve allegations against Bank staff members. When such allegations do arise, the investigations are commonly conducted by a team composed of one or more persons assigned fraud and corruption responsibilities and one or more persons from the internal investigations unit.

The presence of the internal investigations function in INT has been a distraction for INT in its pursuit of its principal responsibilities and has colored perceptions of INT among some Bank staff members. Some in the Bank have suggested that it would be in the Bank’s interests to consider having INT focus exclusively — and thus more effectively — on matters involving fraud and corruption. We believe that the responsibility of the internal investigations unit for staff misconduct not involving fraud or corruption or other traditionally criminal conduct — an essentially managerial responsibility that may be considered philosophically and functionally more attuned to the work of the Department of Human Resources than it is to the primary work of INT — might be fulfilled effectively through a closer relationship with the work of the Bank’s human-resources specialists.

Although there are differing views on this subject within the Bank, and indeed within INT, we suggest that the Bank evaluate the possibility of transferring the internal investigations unit, perhaps to the Department of Human Resources, leaving INT to concentrate its full attention in its principal area of responsibility. Alternatively, since the internal investigations unit has evolved into an effective sub-agency, it may be capable of standing on its
own. If the internal investigations unit were separated from INT, cooperation and good relations between the two groups of investigators within the Bank of course would be expected to continue – particularly in cases involving fraud or corruption by Bank employees – as would their high levels of professionalism. Lost, however, would be a certain degree of economy of scale, and the closeness of the relationship of the two groups. All of these factors need to be weighed, and the appropriate conclusion is not self-evident, but as a part of the process of charting INT’s strategic direction the issue warrants the Bank’s consideration.

As a consequence of the fact that the focus of our review has been the Bank’s fraud and corruption program, the internal investigations function and other ethics-related functions have not been singled out for special discussion in this Report.

C. Operational Issues Involving Other Bank Components

In performing its responsibilities, INT interacts with a number of officials and offices throughout the Bank. The nature of these contacts ranges from supervision or oversight of INT, to consultation about appropriate policies, to coordination of operational matters related INT’s ongoing investigations and activities. In the course of our review, we have identified a number of areas where certain changes in the way these relationships are structured could result in improvements in the ability of INT, and of other Bank offices, to accomplish their respective missions.

1. Board/Audit Committee

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. Although there is a protocol in place that contemplates quarterly meetings between INT and the Audit Committee of the Board, apparently such meetings have taken place only sporadically. We would agree that the Audit Committee is the appropriate vehicle through which INT should communicate to the Board, but the current practice is unstructured and, in the name of confidentiality, sometimes provides too little information to permit the Committee to appreciate the risks posed by certain of the matters being brought to its attention.
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 it uncovers. In particular, the Audit Committee should have the opportunity to receive sufficient information about INT and its findings to appreciate whether there are endemic problems in a country or 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, the Audit Committee 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.

We understand that INT and the Audit Committee are reviewing ways to structure meaningful discussions that will permit INT to share appropriate and useful information with the Committee, and yet that helps assure against any confidential or sensitive information being disseminated beyond the Committee.

2. President

We were pleased to learn that, during the course of our review, a new protocol has been put in place to regularize the process by which INT reports to the President. Under these procedures, INT will submit written reports to the President and meet with him quarterly, with additional ad hoc meetings as necessary to call significant developments to his attention. Beyond this, we recommended in the Original Report that INT submit an annual report to the President setting forth in general terms the activities undertaken and the results obtained during the previous year, as well as any recommendations for managerial or procedural improvements to aid in the detection or deterrence of fraud and corruption. We recognize that the new, quarterly reporting process should accomplish much of what had been intended, but we continue to believe that an annual, summary report would be useful.

Although INT is an independent component of the Bank that reports directly to the President, in practice INT’s written communications with the President are currently transmitted through the Legal Department with copies to the Managing Director with administrative responsibility for INT, and INT’s meetings with the President are usually attended
by representatives of the Legal Department and the Office of the Managing Director. We recognize that it is useful, and certainly is appropriate, for the Legal Department and the administrative Managing Director to be privy to much of the information that INT provides to the President. It should be reconfirmed, however, that the usual practice does not in any way impinge upon INT’s ability to communicate freely and directly to the President whenever the circumstances require.

On a related subject, we understand that there is concern over the prospect of efforts by parties outside the Bank to compel the President to disclose information about investigations that is shared with him by INT. Due to the highly sensitive and confidential nature of such information and in order to avoid the necessity of invoking the Bank’s privileges and immunities in such a situation, an attempt has been made to render such information subject to the confidentiality protections of the attorney-client privilege by placing the Legal Department into INT’s channel of communication to the President as a matter of routine – even in those cases in which there would be no institutional interest in the participation of the Legal Department. However this practice may have evolved, it is unlikely that it could accomplish its objective; it is not clear how the presence of the General Counsel or other Legal Department attorney at a meeting, or his review of a written report, could cause the information conveyed under those circumstances to be subject to the attorney-client privilege. Accordingly, while there commonly would be a valid reason for the Legal Department to attend an INT meeting with President, and occasionally to be asked to review a written report, to the extent that privilege is the purpose to be served by including the Legal Department in all communications between INT and the President, this practice deserves reconsideration. We understand that the Legal Department shares our concerns on this point, and is currently reassessing the rationale for the practice.

3. Senior Management

As discussed previously, INT’s ability to receive support from senior management is critical to its success, and attempting to impart a better understanding of, and develop support for, INT’s activities should be an integral part of INT’s outreach efforts within the Bank.
One initiative INT has undertaken in this realm is a practice of involving senior managers in briefings and general strategy sessions about its ongoing investigations. Clearly this can be constructive in keeping managers informed about sensitive matters over which they may have responsibility and in achieving consensus about the methods INT employs in a particular investigation.

Conversely, some concerns have been expressed by Bank officials about including senior managers in INT’s investigative process as opposed to its planning process. First, as noted in our Original Report in the discussion of the role of the former Oversight Committee on Fraud and Corruption, there are inherent inefficiencies in trying to have a group that does not possess investigative expertise collectively determine the course an investigation will take. Second, this practice can foster the appearance that INT is not acting independently and could engender circumstances under which undue influence may be believed to have been exerted on an investigation. Third, concern over an unwarranted disclosure of information discovered in the course of an investigation, or even the fact that a certain matter is under investigation, usually requires that such information be maintained in the strictest confidence. For this reason, we had recommended in the Original Report that, in order to protect sources of information, to avoid prejudice to subjects of investigations, and to ensure the integrity of the investigative process, only those individuals who have a clear “need to know” should be briefed on the details — as opposed to the general status — of an investigation. Fourth, it has been noted that the preparation for, and participation in, these meetings is very time consuming, and takes investigators and Regional team leaders away from direct involvement in other ongoing investigations.

Obviously, there is a delicate balance between an effective briefing program for senior management and a program that provides too much information and authority. INT and policymakers within the Bank must give careful consideration to the extent to which it is appropriate and desirable to involve senior management in the investigative process.
4. Legal Department

The relationship of INT with the Legal Department is eased by the fact that the latter Department is staffed with highly professional and capable attorneys who repeatedly have demonstrated a sensitivity to the requirements of individual offices and departments that are in need of sound advice, while maintaining a principal focus on the broader needs of the Bank as a whole. The relationship is made more awkward, however, by the inherently difficult issues affecting the two Departments – issues that are more common to those that arise in national criminal justice systems rather than in international financial institutions. Several issues involving the Legal Department’s role in the Bank’s anti-fraud and corruption initiatives require evaluation, and the Department has concluded that, rather than being left to await the presence of a new General Counsel, the issues warrant attention at this time. The Legal Department has proposed a joint retreat at which the two Departments will have an opportunity to explore means of resolving the problems that affect them both.

From an operational perspective, INT’s relationship with the Legal Department may be the most important relationship it has with any department or office in the Bank. As we stated in the Original Report, an especially close collaboration between these two Departments is particularly important to INT since its work products are subject to scrutiny from various administrative and judicial bodies within the Bank, and from national governments, to the extent that investigations result in disciplinary proceedings, sanctions, civil actions, or criminal proceedings. The obvious connection between the role of the Legal Department and the Bank’s investigations of fraud and corruption was reflected in the fact that, prior to the creation of INT, all such investigations were under the supervision of the Deputy General Counsel for Administration, Finance and Institutional Affairs.

Since the investigative function has been reorganized as an independent department, the interaction between the Bank’s investigators and its lawyers has become somewhat more difficult. This results, at least in part, from the different roles INT and the Legal Department serve within the institution. Although the manner in which INT conducts an investigation may have implications for how the results of the investigation may be used against a firm or an individual found to have engaged in fraudulent or corrupt activities, it also may have broader implications for the Bank. As a result, the Legal Department often finds itself in the
position of having to advise INT on issues relating to the investigation of fraud or corruption, while also having to consider the impact of that advice on the Bank as a whole. Conversely, INT finds itself in the position of having to consult a department whose advice may not be based solely on what is most conducive to promoting the Bank's anti-fraud and corruption agenda. While these problems necessarily are common to the relationship between the Legal Department and all other components of the Bank, they are heightened by the presence among the INT investigators of a number of lawyers - lawyers with extensive experience in assessing the legal implications of investigative practices. Some degree of second-guessing and honest conflict is inevitable.

These institutional problems have been exacerbated by the current operational practice, discussed in Section IV.C.2 above, that routes INT communications to the President through the Legal Department. The practice results not only in review by the Legal Department, but sometimes in changes in the communication or even the substitution of the Legal Department for INT as the office of apparent origin. As a consequence, when INT needs the approval of the President, it finds that in many instances this process essentially allocates the final word to the Legal Department - not only on legal issues as it plainly should, but also on mixed legal-policy issues and pure policy issues involving investigations of fraud and corruption. The policy issues enumerated in Section IV.E below provide a sampling of the kinds of issues that INT and the Legal Department have had difficulty in resolving in a timely and satisfactory manner between themselves.

While we appreciate the utility of debating the occasionally different perspectives of INT and the Legal Department on issues involving investigative procedures, it does not seem appropriate to us that the Legal Department should be placed in the position of having to resolve these issues to the extent that they are matters of policy as opposed to matters of legality. To address this situation, when the two Departments disagree over a policy question, the matter would seem a proper one for referral to the Corporate Committee on Fraud and Corruption Policy (or a subcommittee composed of those members of the Committee whose individual backgrounds and official responsibilities in the Bank make them well-suited to resolve such issues). That Committee, with its policy coordination assignment, certainly should be expected to have a role in developing and coordinating the policies under which INT
investigations are conducted – investigations that are a centerpiece of the Bank's anti-corruption effort. Reference to the Committee would alleviate to a large degree the current burden upon the Legal Department, enabling it to focus on the strictly legal aspects of the issues involved, and also to be the principal exponent on the Committee when mixed legal-policy issues are presented for evaluation. The Committee, however, would first have to evolve into a functioning entity, as noted in Section IV.C.7 below.

Even if an effective mechanism is put in place to resolve differences arising over policy matters, INT and the Legal Department will continue to share an interest in addressing legal issues relating to investigative practices. Today the Legal Department possesses not only a broad understanding of the general legal needs of the Bank, but among its attorneys it has a number of specialists in particular areas of law that need to be addressed by the Bank with particular care. It does not, however, have a specialist in criminal justice issues. Although its attorneys do include well-qualified individuals whose backgrounds include corporate investigations and a limited stint in a prosecutor's office, it does not appear to us that the Legal Department’s level of experience in this field is sufficient for its analyses of criminal law and policy matters to be given the deference that might be accorded an office with specialists in criminal justice issues. This situation contrasts with that of INT, which has several attorney-investigators who provide it with an extensive level of criminal justice experience. We strongly suggest that the Legal Department hire, at a relatively senior level, an attorney with substantial experience and abilities in analyzing national criminal law issues and policy level problems. Such an attorney could also facilitate the Bank’s interaction with offices of national governments involved in criminal justice operations when coordination and cooperation is required on particular investigations. Indeed, an attorney with such a background could perform dual responsibilities as one of the two attorneys recommended in the Original Report for the functions described in the following paragraph.

One evolving and important area of Bank activity is reaching the point at which it would benefit from collaborative work by the Legal Department and INT. In our Original Report we had applauded the national legal and judicial assistance programs developed by the Bank primarily through the efforts of PREM, and had encouraged their expansion from a civil justice focus so that they might also be able to assist countries in the development of more
effectively designed, and more effectively operating, criminal justice systems. This was an area, we noted, in which PREM should coordinate particularly closely with senior attorneys in the Legal Department – experienced attorneys who would be filling new positions, created for this purpose, pursuant to a separate recommendation in the Original Report, and who would be familiar with the theoretical and practical operation of different forms of national justice systems. Although one of the senior positions apparently has been advertised but not filled, and the other apparently is not in the Legal Department’s current plans, the Legal Department has nonetheless made dramatic strides in the past two years by assembling a staff of eleven to work in this subject area. The unit appears well aware of the importance of its work not only from the standpoint of the Bank’s broader goals but from the standpoint of reducing national toleration of fraud and corruption as a cost-effective adjunct of the Bank’s more direct efforts to combat such activities. The unit also appears cognizant of, and comfortable with, PREM’s overarching responsibilities in this field and the importance of working harmoniously with PREM; the need to secure the commitment of both the Bank and the countries in which reform efforts are contemplated; and the desirability of coordinating such reform efforts, when practicable, with the United Nations Development Program, programs of other development banks, judicial assistance programs of donor countries, and the potential contributions of competent non-governmental organizations. It is apparent that INT has the capacity to make significant contributions to the criminal-investigations portions of these efforts, and will be positioned to do so as it implements its Strategic Plan. For its part, the Legal Department appears ready to welcome INT’s assistance with regard to the criminal justice reform program.

5. Internal Audit Department

In Section VI.B.2.e(2) of the Original Report, we made the following observations about the interaction between INT and IAD:

Since, by the nature of their work, both [INT] and IAD focus on past acts that may have involved fraudulent and corrupt practices, a close working relationship between the two departments is essential. Inevitably, IAD audits will uncover evidence of fraud and corruption that should be referred to [INT]. Similarly, certain matters reviewed by [INT] will be found not to involve fraud and corruption, but will nonetheless deserve scrutiny by IAD. In such situations, the two departments will need policies and procedures for referring matters to one another and cooperating on any ongoing investigation or audit following the
referral. They should also have arrangements for sharing information and resources and working jointly on particular matters when the situation warrants. Furthermore, the two departments should work together on their respective "risk management" strategies to identify areas in which the risk of fraud and corruption may warrant special attention.

Since these recommendations were made, the need for such levels of interaction and coordination between INT and IAD does not appear to have changed in any significant way. During that time, INT has added two well-qualified forensic analysts to conduct fiduciary reviews of projects. This capacity within INT may lessen the necessity of calling upon IAD for help with regard to some matters, but it should not be seen as reducing the need for cross-referral or as substituting for a close working partnership with IAD along the lines recommended in the Original Report.

6. Sanctions Committee

A number of recommendations concerning the Bank's debarment processes that we made in the Second Report have implications for the way in which INT conducts its activities and interacts with the Sanctions Committee. These recommendations will not be repeated here, but we urge the Bank to complete its review of these recommendations and implement those that it finds acceptable.

7. Corporate Committee on Fraud and Corruption Policy

Because aspects of the Bank's program against fraud and corruption are divided among a number of different offices, resulting in gaps in coverage as well as overlaps, there is a need for a single entity to provide oversight and policy guidance. When disagreements occur, the Bank needs to have a mechanism in place to weigh the competing considerations and recommend a resolution to the President or other appropriate officer. While there may be several avenues that could be pursued for reaching such a resolution, we continue to believe that the Corporate Committee on Fraud and Corruption Policy could best serve this role.

The establishment of the Corporate Committee was the first of the principal recommendations in our Original Report. In Section VI.B.1 of that Report we recommended that the former Oversight Committee on Fraud and Corruption be recast as a policy-level supervisory and coordinative body with responsibility for all of the Bank's programs
intended to address problems of fraud and corruption, rather than supervising the day-to-day activities of the investigations unit. Subsequently, when the Committee was in fact reconstituted and strengthened, a November 20, 2000 Kiosk Announcement described its new goal to be:

to ensure that the Bank develops anti-corruption policies and implementation strategies that are well designed, comprehensive, intercoordinated, and effective in helping to achieve the Bank’s poverty-reduction program. In fulfilling this purpose, the Committee would be expected to assure a reasonable balance of preventive and remedial measures, and to foster harmonious working relationships among the various offices working toward the Bank’s overall goals. . . . The Committee should be briefed periodically by representatives of the various offices over which it exercises policy development and coordinating functions, and, as a Committee, should report, and make recommendations, directly to the President.

We understand that, upon the Corporate Committee’s establishment, it met for purposes of initial organization, but, for a variety of reasons, it has been inactive since that time. Given the importance of the Committee’s assigned mission, this is a situation that the Bank should rectify. The Committee should be resuscitated. It should meet regularly to assure that the Bank’s various components involved in the anti-corruption program are aware of, and are able to coordinate with and contribute to, each other’s initiatives; to recommend resolutions of differences over policy matters that may arise among various components, including differences between INT and the Legal Department; and to promote a more comprehensive approach to the Bank’s overall risk management program in this area. The Corporate Committee could, and should, serve a valuable policy role in all facets of the Bank’s anti-fraud and corruption campaign. Of course, careful consideration should be given to the composition of the Corporate Committee and the selection of its chair.

8. **Staff Association**

Leaders throughout the Bank, in INT, and in the Staff Association, share a perception that the early, serious concerns of the Staff Association about INT and its purposes and methods have largely been assuaged. While INT and the Staff Association appear to have developed a channel of communication in which they can discuss matters of mutual concern in a frank and open manner, it is inevitable that there will always be some degree of tension between
the Staff Association and those assigned the responsibility of investigating staff misconduct. In any event, we are encouraged that, at present, the relationship between INT and the Staff Association appears to be one of considerable trust and respect. The leaders of each deserve credit for this achievement.

One unfortunate holdover from the previous state of the relationship is that, while the Staff Association’s initial negative impressions about INT were widely publicized, no official pronouncement has yet been made to reflect any change in attitude. It would be helpful if the Staff Association were to communicate its current, more positive perception of INT to the staff.

D. Operational Issues within INT

1. Work Product

There is a consensus among the people we interviewed that the quality of investigations and reports has improved steadily over the past two to three years. Some, however, find that the quality is inconsistent. There is also a general perception that it takes too long to complete investigations and prepare reports, although this perception exists primarily with regard to the internal investigation function.

2. Resources

We have been told that additional resources have been committed to INT for next year and that they are expected to be maintained in subsequent years. Whether this level of funding is appropriate cannot be determined until decisions have been made about the scope of the work that INT is expected to perform, e.g., how INT is going to handle the process of triaging cases and whether, and to what extent, INT should engage in proactive investigations. As discussed in Section III.D above, the Bank is in the process of resolving these matters through the consideration of the Strategic Plan, and, in the long-term, it could be aided in this respect by applying cost-benefit analyses to its assessment of INT resources.

3. Personnel

It is our perception that the investigators in INT are highly qualified and are sincerely committed to the Department’s objectives. By all accounts there is a strong esprit
de corps among the INT personnel. Nevertheless, a recent Bank survey revealed that the level of satisfaction with the “work-life balance” for INT’s personnel is considerably worse than for Bank staff as a whole. This presumably can be attributed in significant part to the Department’s workload exceeding its resources, and underscores the need to resolve questions surrounding the scope of INT’s responsibilities so that resources can be allocated accordingly.

Despite the overall favorable impression about the competence of INT’s investigators, some in the Bank have expressed concerns about the investigators’ lack of familiarity with, and sensitivity to, the Bank’s culture, and their lack of sophistication in matters relating to the Bank’s operations. One way to improve the understanding of investigators about Bank practices would be to place greater emphasis on this topic in the formal orientation that all new investigators receive when they join INT, and to require, in particular, concentrated training in the Bank’s procurement and task management operations. In any event, as INT’s role in the Bank becomes more institutionalized and INT’s investigators become more knowledgeable about the internal workings of the Bank, it is reasonable to expect these concerns to subside.

A personnel issue that is troubling to the staff of INT involves the fact that most members of INT are either consultants or serve on term contracts; the percentage of INT’s staff with open-ended contracts is disproportionately small when compared to other departments in the Bank. This presumably is the result of the fact that a large percentage of INT’s staff has been newly recruited to the Bank, and that most new Bank employees serve initially in a probationary status. Nevertheless, there is an uneasiness within INT that the “temporary” status of the vast majority of investigators may be an indication of a tepid degree of commitment to INT’s mission by senior management. This uneasiness does not appear to be at a level that could lead investigators to the assumption that success in certain kinds of investigations could embarrass the Bank to the extent of jeopardizing their employment, but it is an uneasiness that nevertheless should be recognized and addressed. We would encourage the Bank to make clear to its investigators that it is adhering to its general employment principles with regard to their tenure, and that it will proceed on its standard schedule to regularize their employment status.
4. Management Reports

INT has begun the development of monthly management reports designed to capture and describe important aspects of the Department’s work flow, as well as resource use, staffing, and staff development. These reports are very useful within INT in monitoring the work of the Department, and are helpful in reporting to senior management on progress in achieving INT’s performance goals. Currently, however, INT personnel must devote a considerable amount of time to the preparation of these reports, which reduces the time that could otherwise be devoted to investigations. This situation is expected to be ameliorated when INT’s new and more sophisticated information management system becomes operational later this year. In any event, INT should assess, both internally and with senior management, whether the benefits of the current form of these reports tend to outweigh the costs of preparation, and look for ways to abbreviate them to the degree that they can be produced as simple byproducts of the investigators’ routine work while retaining their utility to the recipients.

5. Security

Because of the nature of INT’s duties, its investigators are involved in the search for information that could be very damaging to high ranking officials in national governments and multi-national corporations. In some cases, this could expose INT personnel to retaliation and violence, particularly when they find it necessary to travel to remote regions. INT, and those with supervisory responsibility for INT, should request that the Security Office arrange reasonable protections when it advisable to assure the security of INT personnel, especially when on mission.

E. Policy Issues Relating to INT’s Functions

A number of unsettled policy issues – which will be described briefly in the following paragraphs – require some form of resolution so that INT has certainty as to the procedures it must follow and the tools available to it. In some instances, there exists an understandable tendency to resolve these issues by circumscribing INT’s activities in a manner that would minimize the potential for complaints by the subjects of investigations. On the other hand, there is a recognition within the involved departments and offices that INT possesses only a limited set of investigative tools and none of the powers common to law enforcement agencies.
The Bank must therefore balance the concern that it could be criticized for its investigative efforts against the potential harm to its reputation if its anti-corruption effort were not perceived to be serious. In any event, the Bank cannot afford to have inter-office policy differences remain unresolved for long - no matter how legitimate and principled their bases.

1. **Decision to Terminate an Investigation**

The Procedures of the Sanctions Committee that were adopted by the Bank in August 2001 (the “Sanctions Committee Procedures”) delegate authority to the Director of INT to decide whether to commence, suspend, or terminate an investigation. There is concern within some quarters of the Bank about the exercise of the authority to terminate an investigation in one particular situation - that is, when the termination applies to one of several suspected persons and the decision to terminate is made in exchange for that person’s agreement to provide evidence against others involved in the alleged wrongdoing. Such concerns rest on the view that no individual or entity that has even some degree of culpability for the wrongdoing should entirely avoid sanction. While this is a noble proposition (with which we generally agree), and while it is always preferable that those even peripherally involved receive at least some level of sanction, the proposition must be balanced against the unfortunate realization that, in some instances, the only way to obtain useful evidence against major participants in a scheme is to offer leniency to more minor actors as an inducement to, and as a recognition of the value of, their cooperation. The benefits of obtaining such evidence are especially compelling when the party whose culpability would be proven by such evidence is expected to have a realistic opportunity to engage in fraud or corruption in future Bank-financed contracts, and the party providing the evidence has little or none. The Bank’s sanctioning process is, after all, to protect against diversion of Bank-supplied funds - not, as in the case of a national criminal justice system, to impose a moral condemnation.

Under Rule 3(b) of the Sanctions Committee Procedures, the Director of INT has been given the discretion to terminate an investigation when he finds it to be “in the interest of the most effective usage of Bank resources and of the promotion and protection of the Bank’s mission and effectiveness.” We agree that this is a responsible approach. The Director of INT is in the best position to assess the benefits to the Bank of being able to proceed against the individual or entity incriminated by the evidence being offered, the value of that evidence,
and whether there is any prospect of obtaining evidence of such individual or entity's culpability in another manner. Moreover, the Sanctions Committee Procedures require that every six months the Director of INT file a written report with the President, the Sanctions Committee, and the Corporate Committee on Fraud and Corruption Policy, describing the circumstances under which he has decided to terminate any investigations during the previous six months. This reporting process provides an effective mechanism by which to monitor the manner in which the Director's authority is being exercised, and we believe it preferable to requiring prior approval each time that a portion of an investigation is to be terminated. We would encourage retention of the process contemplated by the current Sanctions Committee Procedures.

2. **Use of Information Against a Providing Party**

In some instances, the Bank may have an opportunity to obtain information from a party on the condition that the information to be provided (or "proffered") will not be used against that party. Rather than an agreement to terminate an investigation of a subject under the Sanctions Committee Procedures, as discussed above (which would effectively preclude further action against the subject by the Bank), a commitment of this nature would permit the Bank to pursue the subject if evidence was developed through other means (since only the specific information provided by the subject would be precluded from Bank use). This is simply a less restrictive alternative to the authority to terminate investigations granted to the Director of INT under Rule 3(b) of the Sanctions Committee Procedures. Since the Director has the broad authority to terminate the investigation of a particular subject, it is logical and appropriate that he have the narrower authority to agree not to use information obtained from a particular subject against that individual or entity. As with a decision to terminate an investigation, the criteria the Director should consider would include the benefits to the Bank in being able to proceed against the individual or entity incriminated by the evidence being offered, the value of that evidence, and whether there is any prospect of obtaining evidence of such individual or entity's culpability in another manner.

3. **Protection of the Identity of a Providing Party**

As discussed in the above two sections, some witnesses with collateral involvement in a fraud conducted by others may be unwilling to provide useful evidence to the Bank without some assurance that they will not be harmed by the Bank as a result of their
disclosures. Other witnesses – even without any involvement in a fraud – may be unwilling to provide such evidence due to a fear that they may be harmed by the individual or entity incriminated by their disclosures. Under such circumstances, it may be appropriate for the Bank to agree to limit its ability to use or disclose the evidence provided, recognizing that INT’s access to such information may provide the leads necessary to find incriminating evidence elsewhere, which may then be used by INT without endangering the safety or other interests of the original source of the information. In the context of the broad authority granted under Rule 3(b) of the Sanctions Committee Procedures, it seems appropriate for the Director of INT to have the lesser, subsumed authority to agree to limit the use or disclosure of such evidence.

4. **Written Agreements with a Providing Party**

While as a policy matter, the Director of INT should be the Bank official with the authority to determine when it is desirable and appropriate to make commitments to a cooperating witness, whether involving a decision to terminate an investigation or an arrangement under which evidence will not be used against the witness or a third-party, a separate issue arises when the witness asks for the agreement to be memorialized in writing. If INT is going to bind the Bank in a written agreement, there are legal implications to the Bank that must be taken into account. Under those circumstances, INT and the Legal Department should work together on the preparation and approval of the agreement with the witness. INT’s principal role should be to determine the appropriate scope of the commitments, and the Legal Department’s principal role should be to assure that the agreement is written in a manner that protects the Bank.

Once the form of the written agreement is in place, there is a question as to who should sign the letter on behalf of the Bank. In February 2002 authority was delegated by the General Counsel to the Director of INT authorizing him to execute agreements of this nature. This delegation of authority expired in February 2003. We are not aware that there were any problems with the way in which this delegated authority was exercised, and we recommend that the delegation be renewed.
5. **Reimbursement for Witness Expenses**

The Bank has recently received requests that it reimburse cooperating witnesses for expenses they incur as a result of their cooperation with INT in fraud and corruption investigations. It is not uncommon for national law enforcement agencies to reimburse witnesses for out-of-pocket expenses, to provide food and lodging to witnesses during the course of an investigation or trial, and, in some instances where the safety of a witness is at risk, to incur considerable expense in relocating the witness (and even providing the witness with a new identity after the witness has cooperated in a trial). Similarly, we have been informed that the Investigations Unit within the United Nations' Office of Internal Oversight Services will pay for travel and accommodation expenses of a witness during the course of an investigation or a criminal trial in which the witness provides testimony. In this context, it is hard to disagree with the proposition that the Bank should be able to reimburse a cooperating witness for limited expenses to the extent that, without such reimbursement, he would clearly be in a worse financial position than he would have been in had he chosen not to cooperate with the Bank.

We suggest that the Bank should compensate witnesses only where the anticipated benefits of doing so exceed the potential costs. In undertaking a cost-benefit analysis of a particular case, the financial costs will usually be amenable to measurement, but the benefits may be more amorphous. In attempting to quantify the benefits to the Bank, the factors to be considered should include several of those applicable in the situations described in the preceding sections: the magnitude of the alleged fraudulent or corrupt activities; the prevalence of similar activities by others in the country or Region; whether the information to be provided by the witness is available from other sources; whether the Bank has any other means of successfully pursuing the investigation; and whether the perpetrator has engaged, or is likely to have the opportunity to engage, in similar activities in other Bank-financed projects.

6. **Access to E-Mail**

The Bank's *Detailed Information Security Policy* permits INT to monitor and examine the contents of a staff member’s computer files and electronic mail databases where "there is a reasonable basis to suspect a violation of Bank policy, a criminal act, or other misconduct." The policy requires that such monitoring be pre-approved by the Director of INT, a Managing Director, and the General Counsel. Since the information in a staff member’s
computer files and electronic mail databases are the property of the Bank, we agree that, as a legal matter, the Bank is entitled to have access to such information. By adopting the standard contained in the *Detailed Information Security Policy*, the Bank has put ample safeguards in place to assure that respect for staff privacy is weighed in assessing the need for such access in particular cases.

In implementing this policy, some in the Bank have suggested that INT should have access to e-mails only when there is no other means to obtain evidence of the reasonably-suspected violation of Bank policy, criminal act, or other misconduct. This has resulted in INT finding its access to e-mail so restricted that it seems practically non-existent. Given the limited investigative tools available to INT and the fact that e-mail communications are the Bank’s property, we find the standard set forth in the *Detailed Information Security Policy* to represent an appropriate balance between the Bank’s interests in pursuing an investigation and the protection of staff privacy. We do not believe that a more restrictive standard is warranted, and we caution against imposing incrementally more rigorous standards rather than adopting a clear policy and implementing it in a consistent manner.

7. **Routing of INT Communications with the President**

As discussed in Sections IV.C.2 and 4 above, the Legal Department has been placed in a role of filtering INT’s communications with the President in the interests of rendering such communications confidential on the grounds of attorney-client privilege. Although the predicate for this process is a legal consideration, it carries policy consequences. As noted above, we understand that the Legal Department has initiated a review of this practice and has obtained an outside legal opinion on the question of whether such a practice would be effective in achieving its intended result. Prompt completion of this review will constitute a major step toward resolving the current uncertainties.

8. **Referrals to Local Authorities**

As INT has pointed out in its Strategic Plan, it is anticipated that, as a natural outgrowth of the investigative process, the number of matters eligible for criminal referral will increase. Section VI.C.15 of the Original Report recommended that regularized policies and procedures be developed for referring matters to national law enforcement agencies.
and prosecutors in a manner that enables the Bank to set forth the terms and limits of its cooperation so that the Bank’s privileges and immunities are not compromised. Pending the development of such policies and procedures, all such matters are being sent by INT for review by the Legal Department on an ad hoc basis before a referral can be made. As the number of matters eligible for criminal referral continues to increase, this review process will become increasingly cumbersome and the need for regularized policies and procedures will become even more critical.

9. **Testimony by Bank Staff in National Courts**

As the number of criminal referrals increases, it is likely that INT staff, as well as other Bank staff members, will be asked more frequently by member governments to provide testimony in court. As a result of the Bank’s privileges and immunities, Bank staff cannot be compelled to provide testimony. Although staff members may, with the Bank’s permission, testify on a voluntary basis, the Bank has not yet developed a clear policy regarding this issue.

The Bank should be willing to encourage such staff assistance, particularly in cases involving Bank-financed projects, as a reflection of its general interest in encouraging national governments to assume greater responsibility for fraud and corruption matters, to help assure that perpetrators are brought to justice, and to reap the benefits of the resulting deterrence. Moreover, if the Bank supports efforts by member countries in criminal matters, it is more likely that the Bank will be able to receive cooperation in its own investigations from investigators and prosecutors in those countries.

Whether to permit such testimony may be decided on a case-by-case basis. To assure that such decisions would not risk weakening the Bank’s privileges and immunities, the Legal Department and INT should work together in helping the Bank devise standardized policies and procedures governing cooperative testimony.

10. **Public Disclosure of Sanctions**

If the imposition of sanctions on persons and firms found to have engaged in fraud and corruption is to have a deterrent effect, other persons and firms in similar situations
must be made aware of the Bank's actions. This matter is discussed in greater detail in Section V.Q of our Second Report. For the reasons set forth in that Report, we continue to endorse the requirement in the Sanctions Committee Procedures for public disclosure of information concerning the identity of each sanctioned party and the nature of the sanctions imposed.

Some Bank officials have expressed concern that if the quality of the evidence supporting the sanctions appears weak, then the Bank could be subject to serious reputational harm and possibly even efforts to subject the Bank to legal liability for defamation. Obviously there are risks, and the Bank cannot take potential challenges to its privileges and immunities lightly, despite the fact that the success of any such challenge is extremely remote. But there are also risks in doing too little to discourage attempts to perpetrate acts of fraud or corruption in Bank-financed contracts. Rather than considering any weakening of the policy that mandates the disclosure of sanctions, we recommend that the Bank adopt practices that will bolster and justify its confidence in the outcome of its sanctioning process, by, among other things, implementing the recommendations contained in the Second Report, as well as related provisions in the Strategic Plan and this Report.

11. Dissemination of INT Reports

To the extent that the Bank is uncomfortable about making public announcements when sanctions are imposed, it is understandable that it would want to be particularly cautious about releasing INT's investigative reports that describe the evidence of fraud and corruption giving rise to those sanctions. Nevertheless, there will often be stakeholders, both within the Bank and in interested countries, 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 rising 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.

It should also be noted that in some instances an INT investigation may produce not only insufficient evidence to warrant sanctioning of one or more suspected parties, but affirmative evidence of lack of impropriety. In these instances, there exists a separate reason
for the Bank to permit dissemination to appropriate officials in the Bank or the government of the country involved – it could be critical to restoring the reputation of the individual or entity that had been suspected.

We recognize that there frequently will be information contained in the INT reports that the Bank would have a legitimate interest in keeping confidential. Such information includes: information about INT’s sources and methods, 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 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. In such instances, the Bank could decide on a case-by-case basis either to decline to release a report in its entirety or to withhold those portions of the report that the Bank determines should not be released. Certainly, the fact that such concerns may arise in some situations does not suggest that the Bank should decline to release INT reports under any circumstances.

12. Extraction and Use of Lessons Learned

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 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. A regularized process – a process that presumably would involve WBI and PREM, among others – should be put in place to analyze the results of INT’s investigations, to identify the lessons that may be learned, and to apply those lessons for the managerial purposes outlined in the Strategic Plan at paragraph 26. In addition, INT’s work could profitably be shared (through seminars, written case studies, and other means) with other international and multinational development agencies, and with appropriate national officials as well. In implementing such a program, of course, the Bank would need to be sensitive to the kinds of information to be disclosed, and should consider the same factors as are discussed above in the context of the potential release of case reports.

A program of the above nature of could have the potential of providing preventative benefits to the Bank at least equal to the value of the deterrent effects resulting from the Bank’s sanctioning process.

13. Review and Strengthening of Procurement Guidelines

From time to time in the past, the Bank has updated and revised its loan agreements, procurement guidelines, and standard contracts for various reasons. Section VI.C.7 of the Original Report recommended that the Bank regularly review these documents, and insert additional provisions designed to facilitate the prevention and detection of fraud and corruption. In this regard, we recommended that particular attention be given to: strengthening the Bank’s audit rights, document retention requirements, and contract representations and warranties; ensuring that investigators have access to all relevant personnel and documents (within the Bank and outside); and refining the definitions of “fraud,” “corruption,” and “conflict of interest” and making them consistent throughout applicable documents. In January 2003, the Legal Department asked that we review draft revisions to the definitions of the terms “fraud” and “corruption” as they are used in the Bank’s procurement guidelines – one of the matters the Original Report had singled out for particular attention. We responded with certain
recommendations for additional modifications, and encouraged the Bank to adopt the proposed revisions. In the Original Report we also noted that the Bank had received from an outside law firm specific recommendations for revising Bank documents in ways that would enhance the Bank's ability to investigate and establish instances of fraud and corruption. We encourage the Bank to complete its review of these latter recommendations and adopt those that are appropriate.

V. CONCLUSIONS

The Bank's capacity to investigate instances of fraud and corruption has grown dramatically over the past five years. The surge in its personnel focusing upon these problems has caused some observers to question the expense of maintaining such a capability and the direction in which it may lead, and has caused others to welcome the development of an investigative capacity and to question why it has taken so long. The Strategic Plan developed by INT provides thoughtful answers to some of these questions, and practical application of cost-benefit analyses could help in the long-run to supply answers to many of the remainder.

In pursuing its Strategic Plan, particularly those portions dealing with proactive and preventative initiatives as opposed to reactive investigations, INT must be able to work cooperatively with a number of other Bank offices. Accordingly, existing structures, procedures, and resources should be examined, and changed when necessary, to facilitate the smooth functioning of the Bank's anti-corruption program. We have identified some areas where further attention appears to be warranted. We have also identified some of the recommendations in our Original Report that have not yet been addressed by the Bank.

In general, we believe that INT has taken significant strides toward improving the Bank's ability to reduce the adverse effects of fraud and corruption. With minor improvements in the Bank's current structures and procedures, with adoption of the substance of the sanctioning process changes set forth in the Second Report, and with re-evaluation of the unaddressed recommendations in the Original Report, the Bank will be in a position to be held up as a model for other development banks and international institutions. The Bank's initiative, and its ongoing anti-corruption program, should be recognized as important and commendable.