

Global Expert Group Meeting
Corruption involving Vast Quantities of Assets
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Speaker: Ms. Maria Pia Sacco, Senior Legal Advisor, International Bar Association

Good morning, everybody.

It is a great honour to be here and, on behalf of the IBA, I would like to express my gratitude to the UNODC for the invite and to the Norwegian government for hosting us.

The International Bar Association is the foremost organisation for the international legal profession. Its membership is comprised of more than 80,000 individual international lawyers and some 190 bar associations and law societies spanning more than 170 countries.

Since its establishment in 1947, the IBA has a long history of promoting ethical conduct, transparency and the rule of law among the global legal profession. During my short presentation, I would like to focus on two different, and equally important, dimensions:

1. Awareness raising and cultural change;
2. Development of international policy, best practices and guidelines.

In carrying out these activities, the IBA partners with relevant stakeholders, including international organizations.

In particular, in April 2010, the IBA, in cooperation with the Organisation for Economic Co-operation and Development (OECD) and the UN Office on Drugs and Crime (UNODC), launched the Anti-Corruption Strategy for the Legal Profession. This project focused on the role lawyers play in fighting corruption in international business transactions and the impact on the legal practice of international anti-corruption instruments. To gain a better understanding of the possible risks the legal profession faces in this regulatory environment, an exploratory survey was conducted among IBA members. In total, 642 professionals from 95 jurisdictions participated:

- Nearly half of all respondents stated that corruption was an issue in the legal profession in their own jurisdiction; and
- Nearly 40 per cent of respondents, had never heard of the major international instruments that make up the international anticorruption regulatory framework.

These results led to a series of anti-corruption workshops in nearly 30 jurisdictions and to the publication in 2013 of an Anti-Corruption Guidance for Bar Associations. We thought that, in order to spur cultural change, it was not only important to talk to talk but it was also necessary to walk the walk!

Moving to more recent initiatives, I would like to refer to the Report of the IBA-OECD Task Force on the role of lawyers and International Commercial Transactions, published in May 2019. The task force was established in 2016, in the aftermath of the Panama Papers and Paradise Papers scandals. After three years of work and consultations, the report outlines a set of principles designed to guide lawyers and law firms when undertaking work associated with commercial structures, particularly of an international character. Lawyers play a crucial role in society, functioning as key operators for the administration of justice and they should not place themselves in a position where they may be said to be aiding and abetting the commission of a criminal offense!

In particular, *“a lawyer should not facilitate illegal conduct, and should undertake the necessary due diligence to avoid doing so inadvertently”* (Principle 1). Moreover, a lawyer *“should not use the confidential nature of the lawyer-client relationship or the principles of legal professional privilege to shield wrongdoers”* (Principle 2) and whenever a lawyer *“has reasonable grounds to believe that the conduct may be or may become illegal in a jurisdiction(s) [...], then the lawyers should give due and proper consideration to ceasing to act and terminate the retainer”* (Principle 5). Even though these principles are not designed as formal obligations, the Task Force advocates that where adopted, their disregard ought to result in the application of proportionate disciplinary measures.

Finally, the need for a consistent definition of the scope of the legal professional privilege across different jurisdictions was highlighted in a 2018 IBA publication on structured settlements for international corruption offenses. Out of the 66 countries considered, 57 have some form of ‘cooperation process’ for the settlement of foreign bribery offences between public and private actors. However, authorities have differing expectations regarding what constitutes cooperation sufficient to mitigate penalties. This variance may affect the ability of a cooperating company to assert the attorney-client privilege and inadvertently may waive privileges applicable in other jurisdictions. This lack of clarity and harmonization may also affect individuals and companies’ incentives to self-report and further work in this regard will be carried out by the IBA. It is, in fact, in the best interest of lawyers, bar associations and law societies, to work with governments and decision-makers to understand how lawyers can strike a balance between the respect for confidentiality and professional secrecy on the one hand and avoiding the facilitation of illegal conducts, on the other one. To this end, the IBA is further embarking on a project on legal professional privilege and confidentiality, with a view to engage with international regulatory bodies on this issue.