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The Sleeping Dog Stirs: New Signs of Life in Efforts to End Corruption in International Business

Carolyn Hotchkiss

For many years, international firms and executives treated the Foreign Corrupt Practices Act (FCPA) as the proverbial sleeping dog, best left alone. The FCPA was perceived as an overreaching and naïve attempt by the U.S. government to impose unrealistic moral standards on global business conduct. The statute was regarded as unenforced and unenforceable. Recently, however, the U.S. government has stepped up FCPA prosecutions. International organizations, such as the International Monetary Fund, the Organization of Economic Cooperation and Development (OECD), and Transparency International also have increased global interest in and efforts to combat corrupt business practices. In November 1997, OECD member nations and others signed an agreement that committed them to changing their national laws to fight bribery. This increased activity should be an early warning signal to executives that demonstrates the higher risk of exposure of and the higher level of legal and business consequences for corrupt practices.

In 1977, the United States became the first country to attack systematically the practice of bribery in international business transactions. The 1977 Foreign Corrupt Practices Act (FCPA) prohibited most payments of bribes to foreign officials and required businesses to keep accurate books and records of their transactions. Although the Carter Administration hoped that U.S. efforts would encourage other nations to enact anticorruption measures, that hope did not come to pass. As soon as the FCPA became law, critics lambasted it as ineffective, naïve, arrogant (for attempting to impose U.S. standards on other countries), and just plain bad for U.S. businesses. Even in the United States, the FCPA became a legal “sleeping dog,” as only 23 cases were brought by the Securities and Exchange Commission (SEC) and the Department of Justice between the enactment of the FCPA and its most significant amendments in 1988 (Salbu 1997).

In response to the criticisms of the FCPA, Congress amended it significantly in the Omnibus Trade and Competitiveness Act of 1988 (OTCA). The amendments made several technical and substantive changes to the criminal provisions of the FCPA that were designed to clarify ambiguous provisions of the FCPA and facilitate compliance (Earle 1989; Sheffet 1995). Congress, in amending the FCPA, recognized the futility of a unilateral approach to corruption in international business transactions. In the OTCA, Congress requested that the President pursue discussions with the Organization for Economic Cooperation and Development (OECD) on the issue of corruption and report back to it on international efforts to enact FCPA-like legislation.

Many observers of the legislative process believed that the reporting requirement of the OTCA was a prelude to the repeal of the FCPA (Earle 1996, p. 224). However, rather

than causing it to fade away, recent events have created new pressures to improve enforcement of the FCPA and to globalize its approach to bribery in international business transactions. Although there are still calls to repeal the FCPA (Salbu 1997), the arena for debate has shifted considerably in the past few years. Not only is enforcement of the FCPA likely to increase, but more countries are likely to enact restrictions on corrupt business practices. The Carter administration’s original vision probably will never be realized wholly, but much of it is likely to arrive over the next several years.

This article first examines the reasons for the renewed global interest in anticorruption efforts in international business. A serendipitous combination of geopolitical events has created a very favorable climate for anticorruption campaigns. These campaigns, however, would not be possible without new ways of thinking about the problem of corruption and its political impact. Policymakers have new conceptual tools at their disposal for regulating international business conduct. Therefore, the second part of this article examines the new conceptual framework for regulatory analysis and public policy. Finally, the third part of this article examines the new forms of public policy formulation, legal enforcement, and persuasion that are combining to create an environment that effectively could reduce the levels of corruption in international business.

Efforts to end corrupt business practices have passed a point of no return. Over the next several years, there likely will be effective national campaigns against corruption, an end to the tax deductibility of overseas bribes in most developed countries, new accountability for development aid and contracts, and voluntary standards for business certification. Business executives, corporate counsel, and policymakers need to take cognizance of the changing environment and devise effective strategies to monitor or change corporate conduct. The sleeping dog is waking; no one yet knows whether it is a friendly mutt or a vicious junkyard dog.

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The Geopolitical Landscape

Although there were several efforts to create multilateral policies, guidelines, or rules in the years after the passage of the FCPA, none of those efforts could succeed until several building blocks fell into place. The conjunction of five trends and events caught the attention of voters and policy-makers around the world, giving a new sense of urgency to efforts to combat corruption: (1) the end of the Cold War, (2) the arrival of the information revolution, (3) the global acceptance of the ideology of free trade, (4) the worldwide explosion of the volume and scale of corruption, and (5) a significant change in U.S. government policy. Without each of these events, the current efforts likely would not be taking place.

The End of the Cold War

Possibly the most significant precondition for the renewal of multilateral efforts to curb corruption was the end of the Cold War. The collapse of the former Soviet Union and its economic allies related directly to the later development of the movement against corruption. It began with Gorbachev's glasnost and perestroika initiatives. The new openness allowed public criticism and individual expression, and the restructuring that began in Gorbachev's era exposed the inherent bankruptcy and corruption of the Soviet system. The impact of Gorbachev's actions extended far beyond the Soviet Union, making possible the reforms and revolutions throughout Central Europe.

In the former socialist nations, the end of the Cold War had profound implications for business practices, both corrupt and honest. For these countries, the following four consequences set the stage for current anticorruption efforts and for international attention to the role of corruption in business:

- The movement toward more open societies exposed core levels of corruption in the former socialist states. Media were freed from state control, opposition parties became effective political players, and ordinary citizens could speak more freely about corruption.
- The economic restructuring caused the complete breakdown of old rules and controls, creating chaotic conditions and an explosion of corruption. The rise of organized crime in Russia is just one example of the effect of the breakdown of old controls. To varying degrees, the economic and social structures of the countries in transition collapsed. The absence of traditional controls on behavior created conditions for corruption to flourish (Dugan and Lechtman 1997).
- The opening of markets for domestic and foreign investment created widespread opportunities for corruption. Privatization of state-owned enterprises created a class of wealthy managers who sometimes had taken ownership of businesses by less-than-honest means. The opening of new economic sectors to foreign investors sometimes invited the kind of corrupt practices the FCPA was designed to address.
- The movement toward societies governed by the rule of law focused the attention of policymakers, investors, and citizens on the negative impact of corruption in civic life.

Just as important as the consequences of the transitions inside the former socialist nations were the consequences of the end of the Cold War on great-power diplomacy worldwide. Cold War politics featured, as the central organizing

principle, the face-off between two nuclear superpowers, the United States and the Soviet Union. As one commentator put it,

[V]irtually every major international conflict or bargaining arena was transformed into an adjunct of the Cold War power competition. Economics and ideology were the handmaidens of geopolitical rivalry of the superpowers, neither of whom would allow its intra-alliance relationships or relationships with non-aligned states to interfere with the imperative of maintaining a sufficient balance of military power vis-à-vis the other superpower (Brown 1995, p. 141).

The Cold War framework for foreign policy resulted in an "enemy of my enemy is my friend" approach to dealing with political leaders in much of the world. For example, much of the U.S. support of the apartheid regime in South Africa, the Marcos regime in the Philippines, the Mobutu regime in the former Zaire, and the Somosa regime in Nicaragua, among others, can be attributed to their perceived stance of staunch anticommunism. The end of the Cold War enabled a realignment of interests and an assessment of leadership that included factors other than ideology. The consequence of this realignment has been the exposure of the so-called *kleptocrats* and of corruption on a grand scale in many parts of the world. With the superpower clash pushed to the background, there is little further need to support corrupt officials in the name of wider geopolitical interests.

The end of the Cold War framework for public policy, with the accompanying transition of the former socialist economies, also caused a reexamination of development aid priorities. This is particularly so for the European Union (EU) and its member states, who found new strategic interest in supporting the successful transition of Central and Eastern European nations to market economies. The increasing competition for development aid monies caused a track record of corruption to become a more relevant factor in the award of new funds, displacing ideology as a major guiding principle.

The Information Revolution

A second factor coincident with the end of the Cold War was the arrival of the information revolution. The widespread use of fax machines, cellular and satellite telephones, satellite television, and the Internet vastly diminished the amount of control governments had over the information their citizens received and over information published about them. Even relatively restrictive regimes, such as Saudi Arabia, find that expatriates using the Internet are capable of launching corruption critiques that get worldwide notice (Committee Against Corruption in Saudi Arabia 1997).

Global and Regional Free Trade

A third event coinciding with the end of the Cold War is the growth of regional and global free-trade alliances. Some of this growth likely was caused by the shifting pattern of alliances that resulted from post-Cold War international relations. The developing nations, in particular, have become full partners in the new World Trade Organization (WTO) and agreed to changes in tariffs, nontariff policies, and intellectual property protection. The EU pushed toward significantly closer market, political, and financial integra-

tion. The North American countries agreed to create a free-trade zone, and trade-based cooperation among nations in Latin America and Asia gained new clout. In these organizations, attempts to reduce foreign exchange controls and cut public subsidies minimize opportunities for public corruption (Flanders 1997). The growth in size and effectiveness of the regional and global free-trade organizations is creating new fora for attacking corruption, as the third part of this article discusses in detail.

The Explosion of Corruption

Has corruption gotten worse, or are more cases of corruption simply coming to light? No one can have a definitive answer to that question, as much of the problem goes unreported and governments are not always pleased to admit the extent of corruption in their countries. However, the watchdog group Transparency International (TI) cites reports of increased demands for bribery around the world and concludes that corruption is rising dramatically. George Moody-Stuart, an expert on international business in the developing world and the Chairman of the British Chapter of TI, claims a huge increase in corruption in the developing world and the former Soviet Bloc. His calculation for contract corruption is straightforward:

- 5% of \$200,000 will be interesting to a senior official below top rank,
- 5% of \$2 million is in the top official's area,
- 5% of \$20 million is real money for a minister and his key staff, and
- 5% of \$200 million justifies the serious attention of a head of state (Vogl 1993).

Moody-Stuart also notes that, though "commissions" or kickbacks of 5% used to be common in international business, requests for payments of 10%–15% of the contract value are on the rise, with some recent reports of demands for commissions of 20%–30% (Vogl 1993).

Other experts agree with assessments of rising levels of corruption. Political and Economic Risk Consultancy Ltd. (PERC) of Hong Kong annually surveys executives regarding the extent of corruption in leading Asian markets. Political and Economic Risk Consultancy's 1997 report begins:

The problem of corruption in Asia is increasing in almost every country, according to a survey of more than 280 expatriate business executives working in the region. Of the 12 countries covered in our survey, only Singapore and the Philippines received better scores this year than in our last survey on corruption conducted one year ago. The scores for each of the remaining 10 countries deteriorated—in quite a few cases by considerable margins (PERC 1997).

Massive public scandals in India, South Korea, Italy, Germany, Japan, and Kenya, to name a few such countries, show that no part of the world is immune to corruption in its business transactions. German officials now estimate that the German economy loses DM 50 billion per year in inflated contract prices and lost tax revenue from kickbacks and bribes (Mitchener 1997). According to U.S. officials, between April 1994 and May 1995, U.S. businesses lost nearly 100 contracts worth \$45 billion because of the corrupt practices of other bidders (Kantor 1996). Such large

figures finally have attracted the attention of countries, especially the European ones, that traditionally have tolerated corrupt practices in business.

Changes in U.S. Government Policy

A final, and very important, factor in the sudden resurgence of interest in antibribery measures is a change in U.S. government policy. The FCPA, as the only statute criminalizing extraterritorial bribery, had a limited effect on global corrupt practices. The Clinton administration, soon after taking office, began a two-part effort to curb corruption, which consisted of increased enforcement of the FCPA and, more important, efforts to get international organizations and other countries to enact FCPA-like laws.

The U.S. government has begun to enforce existing FCPA provisions more publicly and more vigorously. In 1996, the SEC ended a ten-year hiatus in civil enforcement actions by filing a civil action against Montedison S.p.A. on the basis of bribes it paid to Italian government officials (*SEC v. Montedison S.p.A.* 1996). One indicator of the SEC's decision to step up its enforcement of the FCPA is that its action against Montedison, which involves bribes paid in Italy by an Italian business to Italian politicians, is based on Montedison's sale of American Depository Receipts on the New York Stock Exchange. At the time of this writing, the *Montedison* case still was pending.

In 1997, the SEC filed a civil action against Triton Energy Corporation and two of its key employees, alleging that the company used its Indonesian business agent to bribe Indonesian government employees to further Triton's Indonesian business interests (*SEC v. Triton Energy Corporation* 1997a). Triton agreed to a consent decree to settle the charges and was assessed a \$300,000 fine. The two individual defendants agreed to pay fines of \$50,000 and \$35,000 each, whereas four other persons had cease-and-desist orders entered against them (*SEC v. Triton Energy Corporation* 1997a, b).

The SEC further has signed agreements with more than 30 countries enabling easier SEC access to information that involves questionable payments to foreign officials (Bencivenga 1997). As Paul Gerlach, the SEC's Associate Director of Enforcement, states, "While we have not brought a lot of cases in the recent past, there will be more in the future" (Bencivenga 1997).

The Department of Justice, charged with criminal enforcement of the FCPA, also has become more active. In 1995, Lockheed pled guilty to violating the FCPA because it made unlawful payments to a consultant, who then became a member of the Egyptian Legislature, for the purpose of securing a contract for transport planes. It paid a \$24.8 million fine, a figure representing double its profits on the deal. One of its executives also pled guilty to corruption charges at that time, and another fled to Syria. After negotiations between the Syrian and U.S. governments, and imprisonment in Syria, the executive returned to the United States to pay a \$125,000 fine and serve an 18-month jail term (McGrath, Walsh, and Attai 1997). A former regional vice president for marketing at Lockheed, he became the first person jailed for FCPA violations.

In addition to enforcing U.S. law more vigorously, the Clinton administration has begun a campaign to use U.S. influence to get other countries to ban business bribery. The U.S. government's new willingness to use its clout in regional and global organizations, such as the Organization of American States (OAS), the OECD, and the WTO, is beginning to bring results. Key officials from the Department of State, the Department of the Treasury, and the Commerce Department are speaking publicly on the need to end corruption; key government reports now include information on the impact of corruption; and government officials are pushing to include the issue on the agendas of many international negotiations (USIA 1997). These actions represent a major policy change from the prior two administrations.

The New Corruption Paradigm

The changing geopolitical landscape is not the only factor influencing the recent interest in curbing corruption. The analytical framework has changed as well. As Earle (1996) discusses, when the United States enacted the FCPA, it did so on a moral basis. Until recently, the United States continued to conceive of the rationale for opposing corruption as one that stemmed from moral or ethical concerns. Unfortunately, this moral approach left room for attacks on the "Western values" and "cultural imperialism" of the opponents of corruption, particularly in Asian and African countries. For example, the Thai Deputy Minister of the Interior in 1996 publicly called on his staff to accept any money offered to them, saying, "This is part of traditional Thai culture" (TI 1997a). Framing the debate on corrupt practices in terms of ethics also enabled executives from the developed countries to engage in cultural relativism. For example, Lord Young, the former head of Cable and Wireless and former U.K. Secretary of State for Trade and Industry, stated: "Now when you're talking about kickbacks, you're talking about something that's illegal in this country, and that of course you wouldn't dream of doing ... but there are parts of the world I've been to where we all know it happens, and if you want to be in business, you have to" (Pitman 1997). The moral conception enabled the recipient countries to point fingers, appropriately, back at the bribing countries and accuse them of moral hypocrisy.

The new conceptualization of the corruption battle frames the issue in economic rather than moral terms. For policymakers, the economic analysis offers several advantages. It enables a less judgmental approach to some of the fundamental causes of corruption. For example, a great deal of petty corruption results from the poverty-level wages of civil servants. Civil service reforms, with increased wages, asset disclosures, audit requirements, and conflict-of-interest policies, are politically palatable policies in countries with a variety of cultural backgrounds. In all traditions, policymakers understand the economic motivations of agents and have ready tools to change outcomes.

The rethinking of corruption in economic terms has enabled researchers to engage in research on the transaction costs of bribery and corruption, analyzing the impact of corruption in terms that lenders, businesses, and policymakers can understand and use. One recent study, by Shang-Jin Wei of Harvard University, analyzed the cost of corruption in

terms of a tax on foreign investment and business and found that moving from a country with a low level of corruption, such as Singapore, to a country with the level of corruption of Mexico had the equivalent effect of a 20% tax on foreign business (Wei 1997).

Quantifying the cost and identifying the agents of corruption also has allowed new strategies to emerge. For example, the International Monetary Fund (IMF) sometimes has insisted on cutting the wages of civil servants and subsidies for human services as part of its loan conditions. However, moving a country toward the free market without providing some social support has been shown to create conditions in which corruption flourishes. As a result of current research, the IMF has had to reexamine some of its conditions for loans in transitional economies. Quantifying corruption also has led organizations such as the World Bank, which finances 40,000 contracts worth \$25 billion each year, to ask for financial controls and audits in countries such as Poland, Kenya, and Pakistan (*The Economist* 1997).

The proof of the impact of the economic conceptualization of the corruption problem comes on two fronts. First, in the developing world, which traditionally has been considered the recipient of much corruption, the talk of corruption as a traditional value is subsiding. The Philippines, for example, has done its own studies, which show that 20 years of corruption have cost its treasury nearly US \$48 billion (TI 1997a). Even Malaysia, once a staunch critic of the cultural imperialism of anticorruption measures, has convened its own conferences to combat business corruption and has begun to evaluate the subject in Islamic culture (TI 1997c). As General Olesgun Obasanjo, formerly the head of state in Nigeria, noted, regarding the argument that "gift giving" was a part of traditional African culture,

I shudder to think how an integral aspect of our culture could be taken as a basis for rationalizing otherwise despicable behavior. In the African concept of appreciation and hospitality, the gift is usually a token. It is not demanded. The value is usually in the spirit rather than in the material worth. It is usually done in the open, and never in secret. Where it is excessive, it becomes an embarrassment and it is returned. If anything, corruption has perverted and destroyed this aspect of our culture (TI 1996).

As many commentators have noted, numbered Swiss bank accounts are not part of any country's traditional culture, except perhaps Switzerland's.

Second, in the developed world, which usually has been perceived as the giver in the corruption equation, business leaders from many countries have seen the effect of corruption on their profit margins and have begun calling publicly for curbs on corruption, rather than accepting it as a way of doing business ("Open Letter" 1997). Their influence has helped to move political leaders toward real, effective curbs on corruption in major multinational corporations.

Using economic arguments against corruption has proven far more effective in engaging the attention of formerly reluctant participants, both on the supply and demand sides of the bribery equation. As TI (1996) observed in its *Source Book*,

[C]orruption leads to economic inefficiency and waste, because of its effect on the allocation of funds, on production, and on consumption. Gains obtained through corruption are unlikely to

be transferred to the investment sector, for example, as ill-gotten money is either used in conspicuous consumption or is transferred to foreign bank accounts. Such transfers represent leakage to the domestic economy. Furthermore, corruption generates allocative inefficiency by permitting the least efficient contractor with the highest ability to bribe to be the recipient of government contracts. In addition, since the cost of bribes is included in the price of the goods produced, demand tends to be reduced, the structure of production becomes biased, and consumption falls below efficiency levels. Thus corruption lowers the general welfare of the populace.

Multilateral Efforts to End Corruption in International Business

The past five years have seen the first real breakthroughs in efforts to end corruption in international business since the passage of the FCPA in 1977. Although some efforts have been, and will need to continue to be, national in scope, the difference between the past five years and the prior fifteen has been the multilateral nature of the campaign. The multilateral nature of the efforts to end corruption is the key to the effectiveness of the measures that finally will go beyond the talking stage. These multilateral efforts use the new tools of international law: the Nongovernmental Organization (NGO) and the Intergovernmental Organization (IGO). The campaign also uses the traditional tools of international law (the treaty, convention, and formal agreement) and the newer forms of "soft law" (e.g., voluntary standards). The combination of actors and techniques is beginning to change the rules for international business.

NGOs

Just as organizations such as Amnesty International, Human Rights Watch, and the World Wildlife Federation have been effective in raising public awareness and changing public policy in their respective fields, so TI aims to change the global debate on the issue of corruption. Although it is not the only NGO to deal with issues of corruption, it has been singularly effective, since its founding in 1993, at raising global awareness of corruption among policymakers and ordinary citizens, building international coalitions, lobbying international organizations, and providing research and technical assistance for its national chapters to use in creating national strategies to combat corruption.

In the four years of its existence, TI has helped to found 72 national chapters, created a *Source Book* of best practices, started several pilot projects to end corruption by creating what it calls "Islands of Integrity" in provinces and countries in the developing world, pushed the OECD to end the tax deductibility of bribes, lobbied the EU for legislation that addresses cross-border corruption, and developed an extensive Web site of information, research, and news from many parts of the world. Transparency International's most effective prod to efforts to end corruption, however, is its annual Corruption Index. A survey of surveys, the Index measures perceptions of corruption around the world. This public scrutiny has had a salutary effect on several of the countries in the index, most notably Pakistan and Malaysia.

As an NGO, TI has influence that governmental organizations lack. Its positions are not bound by foreign policy

concerns, so it is able to expose and critique corruption in all parts of the world. It has a two-pronged strategy, in which it helps local chapters find appropriate tools to combat corruption in each country while lobbying the home countries of the major multinational enterprises to curb practices such as allowing the tax deductibility of overseas bribes.

In addition to TI, several other NGOs have taken actions against bribery in international business transactions. Among the most important for grand corruption are those coming from the business and professional arenas. In 1995, the Federation of Consulting Engineers adopted model contract language for its standard contracts that included anti-corruption provisions (TI 1995). In 1996, the International Chamber of Commerce and the American Bar Association both published recommendations to their members to support ongoing actions against corruption in international business (American Bar Association 1996).

IGOs

Transparency International's work, along with the renewed efforts of the U.S. government, has led to action on the part of international organizations. In particular, the OECD, the OAS, the IMF, the World Bank, and the WTO have begun to take corruption seriously and create vehicles for altering the behavior of both sides. The primary emphasis in the recent multilateral actions is on *grand corruption*, which involves senior public officials and international bribes, as opposed to *petty* or *survival corruption*, which, though important, is a problem of domestic concern.

The OECD, representing the home governments of most major multinational corporations, has been reluctant to take serious steps to combat corruption. However, in 1994, at the urging of the U.S. government, it began a new effort to combat bribery. The OECD (1994) began with a set of Recommendations on Bribery in International Business Transactions, calling on member nations to take "effective action to deter, prevent, and combat bribery of foreign public officials in connection with international business transactions." It also mandated a 1997 review of progress made in implementing the recommendation (OECD 1994).

In 1996, the OECD agreed to a recommendation that committed the member countries to end the tax deductibility of bribes to foreign public officials (OECD 1996). Although this seems like an elementary step in any effort to combat corruption, a surprising number of countries still allow such tax deductions. One report estimates that German companies declare up to DM 600 million per year as bribes on their tax forms (Dixit 1995). Among OECD members, Austria, Belgium, France, Germany, Iceland, Ireland, Luxembourg, Netherlands, Portugal, New Zealand, and Switzerland all allow tax deductibility of bribes as an ordinary business expense, whereas Denmark and Sweden allow such deductions if bribes are a customary practice in the recipient's country. These deductions are limited to bribes paid to foreign, not domestic, officials (OECD Committee on Fiscal Affairs 1997).

Also in 1996, the OECD's Development Assistance Committee established the Recommendation on Anti-Corruption Proposals for Aid-Funded Procurement. In the year since the recommendation, 20 OECD members have

included anticorruption clauses in development contracts, allowing corruption to serve as a ground for cancellation and other sanctions (OECD Development Assistance Committee 1997).

At the Ministerial Council meeting in May 1997, the OECD Ministers reviewed the progress on bribery, determined that it had not been satisfactory, and strengthened its earlier recommendations. The member countries of the OECD committed themselves to introduce legislation in their own countries by April 1, 1998 and seek enactment by the end of 1998. The revised recommendation also urged immediate implementation to end tax deductibility of bribes to foreign public officials. The Council of OECD Ministers agreed to definitional language for corruption that the member countries will use in their proposed legislation. Finally, the OECD Ministers agreed to open negotiations on a binding international convention to criminalize bribery of foreign public officials, to be opened for signatures by the end of 1997 (OECD 1997a).

In November 1997, the OECD member countries, with the additional participation of Argentina, Brazil, Bulgaria, Chile, and the Slovak Republic, adopted a formal Convention on Combating Bribery in International Business Transactions. The Convention commits signing countries to (1) create laws banning bribery of political officials to get or retain business, (2) require companies to keep accurate books and records, and (3) facilitate the prosecution and extradition of businesspeople caught giving bribes. Like the FCPA, the Convention allows countries to have legal "grease payments." (OECD 1997b). Although the Convention has not gone into force yet and faces several obstacles on its way to implementation, it is a milestone in multilateral efforts to end corruption in international business.

With the encouragement of TI and the U.S. government, several other IGOs have taken steps to combat corruption also. The World Bank has tightened its procurement standards. The IMF, in July 1997, suspended a \$220 million loan to Kenya, citing corruption as the reason (CNN 1997). In a significant step, the OAS created the Inter-American Convention Against Corruption, in which the member states commit to criminalize bribery of foreign officials, make such bribery an extraditable offense, and waive the application of bank secrecy laws in corruption cases (OAS 1996). The Convention came into force in 1997 with 23 countries, including the United States, having signed, and seven (Bolivia, Costa Rica, Ecuador, Mexico, Paraguay, Peru, and Venezuela) having ratified it (Bureau of Inter-American Affairs 1997).

In addition to the IGOs that have acted in some way to curb international business corruption, the pressure is on several others to take meaningful actions. The United States unsuccessfully raised the issue of bribery before the 1996 WTO Ministerial Meeting in Singapore. Some U.S. officials have indicated a willingness to approach bribery as an unfair trade practice (Kantor 1996). Transparency International has pressured the EU on the issue of corruption; the EU Parliament has discussed the issue and may be undertaking a policy paper (TI 1997b). Government procurement agreements in the WTO, North American Free Trade Association, and EU offer additional measures to combat bribery by making the procurement process more transparent and open

to public scrutiny. Even the United Nations has resolved, through its Economic and Social Council, to support the other IGO actions against corruption and encourage all member states to participate in such efforts (United Nations Economic and Social Council 1996).

Taken together, the activities of the governmental and nongovernmental organizations would indicate that momentum against corruption is building. The traditional tools of international law—treaties, conventions, and custom—tend to be used as delaying tactics rather than enabling devices. However, the newer tools of international law—such as NGOs, soft law in terms of professional standards and recommendations, and public pressure from governments and the public—are starting to have an impact on the debate on corruption. Despite some continuing calls to repeal the FCPA (Salbu 1997), current efforts indicate that it is having an effect on many of the actors in international business.

Conclusion

Will all of the current efforts eliminate corruption in international business? No. However, several events have combined to suggest that a period of meaningful reform is at hand. The political stars are in alignment now that the Cold War is over. The movement toward more open societies has coincided with an information revolution that makes news and expertise readily available on a global basis. There are new tools for creating international law (and for bypassing the older structures of the law), in the form of NGOs, professional codes, and regional and global IGOs. The problem has grown to the extent that there is a new will to tackle it, this time on an economic as well as a moral basis.

For business leaders, the issue of corruption is coming into focus. The marketing executive from Lockheed mentioned previously in this article has finished his jail term and is serving two years of supervised probation. He might not be the only executive to see the inside of a cell. Many multinational businesses now have codes of conduct and professional standards they can use to decline to participate in corrupt activities. Still more businesses train their sales and marketing executives in corporate standards and have in-house or external compliance programs. Corrupt businesses probably will lose the tax advantage of bribes in the short to midterm. With a public light shining on corruption, they may want to face their shareholders with clear policies and consciences before they have to face the regulators.

For policymakers, the trend also is becoming clear. From the grass roots in every country, voters are disgusted by corruption. Haiti, Kenya, Zaire, Italy, South Korea, and France are just a few examples. Policymakers need to find solutions to corruption that fit their particular cultures and traditions. The policymakers in world organizations, such as the IMF and World Bank, similarly are realizing that, even with their limited mandates, they can act to reduce corruption. Turning away from the issue will negate the effectiveness of their organizations, as the funding nations no longer will accept the excuse that accountability is not the responsibility of the aid agencies.

With the help of a variety of sources, the sleeping dog of the FCPA has begun to stir. The principles of that statute are receiving a broader application in the developed and devel-

oping world. Politics and economics are acting worldwide to put public pressure on business executives and policymakers to curb corruption. It would be prudent for both groups to take note of the changing trend.

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