

THE ANATOMY OF TRANSNATIONAL CORRUPTION

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Transnational corruption is one of the most complex, serious, and intriguing forms of criminal activity that impacts the developing world. This article seeks to unmask this form of corruption, which the authors have found has a common anatomy throughout the world. This article describes the various schemes repeatedly employed by corrupt actors worldwide: bribery, kickback brokers, front companies, bid rigging, official-owned enterprises, theft from government accounts, and abuse of public assets. Finally, this article recommends actions that international financial institutions can undertake to mitigate or reduce the incidence of this social, developmental, political, and national security threat.

“Corruption is an insidious plague that has a wide range of corrosive effects on societies... It undermines democracy and the rule of law, leads to violations of human rights, distorts markets, erodes the quality of life, and allows organized crime, terrorism and other threats to human security to flourish.”

United Nations Secretary-General Kofi Annan speaking to the U.N. General Assembly.^a

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I. INTRODUCTION

In the realm of international aid and development, various corruption schemes have been devised by individuals and corporations throughout the world. A German company and its subsidiaries collude to fix the price of contract bids on multiple water projects in Africa, effectively depriving the purchaser government of the benefits of competition and lower prices. A U.S. corporation pays kickbacks to government officials in exchange for contracts on development projects. Government

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officials in various nations, using sophisticated procurement schemes, siphon high percentages of public funds being used for development purposes and offshore those funds into personal accounts. A European corporation, working on a roads project, steals from its own project in order to pay bribes to government officials to have their invoices paid. In the Middle East, government officials award contracts to entities in

which they have a financial interest. A corporation doing business on a publicly financed contract in an African project employs front companies set up in the United States as subcontractors to funnel money to government officials and staff members of an international organization. These incidents are just a handful of examples of transnational corruption that occur within the developing world on a massive and systemic scale.^b This type of corruption is so pervasive that we have come to recognize it as “ubiquitous transactional transnational corruption.” Corruption is so embedded in the monetary transactions of the developing world that it becomes entangled with the fabric of the financial sector, making its detection and prevention all the more difficult.

Transnational corruption is one of the most complex, serious, and intriguing forms of criminal activity that impacts the developing world, which desperately needs foreign aid and development funds.^c Generally, corruption may be defined as a “behavior which deviates from the formal duties of a public role because of private-regarding (personal, close family, private clique) pecuniary or status gains; or violates rules against the exercise of certain private-regarding behavior.”^d For

purposes of this article, transnational corruption is defined as the type of corruption that crosses borders, involves corporate and state actors, and employs sophisticated and grand schemes to siphon the wealth of a developing country from its rightful owners: the people of the country. Quite simply, it is the grand theft of public funds for private gain. This may be contrasted with other forms of corruption such as cronyism and small-scale shakedowns by low level government officials.^e

The authors chose to focus on transnational corruption because this form of corruption is particularly devastating to developing countries and has the potential to create a disaffected civil society, which leads to a plethora of social evils.^f Societies of disaffected peoples do not support their elected leaders or respect the rule of law, allow their institutions to erode, and could ultimately see their society teetering on the brink of collapse.^g Some have even argued that grand corruption generates and then feeds terrorism – thus furthering one of the greatest threats to global peace and security in this millennium.^h To fight this grand social, development, political, and national security threat, the authors seek to unmask its form and describe its anatomy. Thus, the operative question to be addressed in this article is, how do these interrelated state and corporate actors steal?ⁱ After dissecting this anatomy, the authors will make recommendations to international financial institutions as to how to fight this global threat.

II. THE ANATOMY OF TRANSNATIONAL CORRUPTION

Of particular importance to the authors is the common anatomy of transnational corruption throughout the world. The authors have found that transnational corruption takes a widely similar form, shape, nature, and anatomical structure worldwide.^j The schemes employed by corrupt actors, whether in Africa, the Middle East, Asia, or Latin America, possess remarkably similar features. As a result, international regulators, enforcement officials, governments, international organizations and the like could attack transnational corruption globally using similar methods. This would not be the

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case if the anatomy was mutable in nature or contained features unique to specific geographical areas.

Implicit in this analysis is a critique of those who argue that corruption is largely a cultural phenomenon, as unique in character as local customs, music, art, and other forms of expression. Daniel Treisman claims that several cultural factors influence the perceived corruption levels of states.^k He replicates the findings of previous academics and finds that, “countries with Protestant traditions and those with more developed economies have higher quality governments. Both factors are significantly and robustly associated with lower perceived corruption.” Treisman also finds that “countries with a history of British rule [are] robustly rated ‘less corrupt’” and that “...federal states were more ‘corrupt’ than unitary ones.” Finally, a “...long period of exposure to democracy” has a “significant” effect.^l

This theory of corruption as culture is confronted squarely by Dr. Daniel Kaufman Ph.D., who argued at the Conference for the United Nations Convention Against Corruption, in Merida, Mexico:

There is no solid evidence that corruption is culturally determined. Thus, there is no basis to justify a lax approach to corruption due to a cultural justification....[W]hile historical factors are of relevance in understanding the evolution of the quality of governance and institutions in a country, there is no deterministic historical legacy which countries cannot transcend, as witnessed by the vastly different institutional, governance and anti-corruption performance of countries in the same region with very similar historical, cultural, and linguistic antecedents.”^m

We have argued in the past that although a “precise universal boundary” between acceptable and unacceptable behavior does not exist,ⁿ there is considerable evidence suggesting that all cultures recognize corrupt behavior and understand its impact.^o

There have been volumes of research and numerous scholarly articles written on corruption from the perspectives of particular disciplines such as economics, law, sociology, anthropology, and business and trade.^p Several studies have attempted to explain corruption and what effect it may have on a nation. They have focused specifically on the definition of corruption,^q whether corruption has a positive or negative impact on a nation,^r and whether corruption lowers foreign investment

and aid.^s It is fair to say that research in these areas has been adequate. However, some authors note that the attention given to corruption is not as thorough as it should be.^t Relatively little is known about how corrupt individuals carry out their actions or the impact and interrelationships of the various corruption schemes. In addition, what is clearly lacking is an examination of the idea of a common anatomy of corruption. This article does not seek to dispute the existing definitions of corruption or argue against those who claim that grand transnational corruption escapes condemnation regardless of culture, region, or legal system anywhere in the world.^u Rather, this article's purpose is to dissect and describe the various schemes repeatedly employed by corrupt actors to siphon hard currency from developing countries throughout the world.^v

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A. BRIBERY

The grand centerpiece of corruption is bribery or “kickbacks.”^w Bribery is a universal phenomenon that occurs across the globe. It is the most common form of corruption and we have not found a culture or region where this practice does not occur. It is generally considered illegal in some form or another in every society (e.g., receipt side, payment side, or both). However, in social discourse, most cultures have distinct words that describe it as a socially neutral matter, thus obscuring its illicit nature.^x However, we are not discussing the petty “administrative” payments that accompany requests for government services in developing countries, but rather the large percentage payments to government officials in exchange for senior level/ministerial action.^y

Perhaps the largest and most damaging type of bribe in the area of grand corruption is the kickback associated with governmental contracts in the developing world. Many of these contracts are financed by multilateral development banks (MDBs), nongovernmental organizations (NGOs), wealthy donor nations, or a country's own tax-derived resources. Kickback schemes are quite simple, even in their grandest form. A multinational company that wins a contract pays a large bribe to government officials, who influence the award of this contract. The amount of the bribe varies but is normally a percentage of the total

contract value.^z Even in international competitive bidding involving multinational companies,^{aa} contractors know the going “market rate” for bribes in specific regions and factor that percentage into the bidding process. Thus, a company does not enjoy a competitive advantage

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because they pay a bribe; the bribe is merely a fixed cost that all bidders must bear.^{ab} Recent evidence suggests that the average amount of bribe costs is on the rise, just like other costs such as labor, goods, and supplies.^{ac} An emerging body of evidence demonstrates that this form of bribery is so commonplace that payments of the “market rate” to government officials are

paid without objection by the multinational company and are simply regarded as “the way business is done” in these developing countries. As a result, this “market rate bribery” is built into the process with little documentary evidence of the payments, making it extremely difficult to detect.^{ad}

B. KICKBACK BROKERS (E.G. LOAN BROKERS)

In other cases of bribery where the rates of bribes fluctuate, the “market rate” has not been set, or high percentage rates of kickbacks are sought, other facilitation mechanisms are necessary. One common method is the use of a “broker.” These brokers appear on the scene in a variety of forms. A multilateral company that is bidding on a contract approaches or is approached by an individual or entity that offers to be a “local representative” for the multinational company. The local representative has knowledge and networks that can “assist” the multinational company in obtaining the contract. Obviously, partnering with local entities or individuals is a wise strategy, particularly when the bidding company does not have an established presence. Thus, not all local representatives are agents of corruption; however, a vast number of them in the developing world may serve that function in addition to providing local advice and expertise. The local representative acting as a “loan broker” will generally sign some type of subcontract or consultancy agreement with the multinational company to make the relationship appear legitimate. In illicit schemes, the consultancy or subcontract is signed and funded, often at extremely high prices, for

little observable or quantifiable work. The consultant is given specifications or terms of reference that are vague or general (e.g., “put the company in the position to win the bid”), and is paid extremely high premiums.^{ac} What actually occurs is that the broker facilitates the award of the contract by spreading his fee to government officials who can ensure that the multinational company wins the award. By having this “go between,” the multinational company can claim distance and ignorance regarding what happened to the fees that were paid to the consultant. In order to gain insight into this relationship, the authors gained the confidence of a number of so-called “brokers,” who have described their tradecraft as extremely common-place and well-known within the business community.

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C. FRONT COMPANIES

Another mechanism used to siphon money is the awarding of contracts to companies owned or controlled by government officials. These companies are awarded large contracts, either because of rigged bids (discussed below) or because all bidders are colluding so that the designated front company wins. Since there is no true competition, the prices for goods and services are exorbitant. In other cases, the front company acts as a subcontractor to the multinational company and serves as the “broker” for arranging the contract award. In others, the company is simply the recipient of a bribe. Again, the front company has the outward appearance of a legitimate subcontractor. In many instances, the government officials who are awarding the contracts dictate to the multinational company that it would be “efficient” if it hired a particular local subcontractor to enhance its performance. Many multinational companies, particularly those based in jurisdictions where strong anti-bribery laws do not exist or have not been enforced (e.g. Western Europe),^{af} accept these subcontractors as the cost of doing business in the developing world.

Detecting these front companies can be difficult in a technical sense because they are incorporated by the laws of developing countries where adequate records of ownership are difficult to find or do not exist. One

remarkably effective mechanism of gaining local knowledge concerning the ownership of front companies is questioning civil society in

the developing country. Local residents are likely to know who owns and controls these companies and will readily share this information with would-be investigators, so long as they maintain the confidence and anonymity of the informant. While this local knowledge is generally not juridical evidence of corporate control, the information obtained from local residents can be of great use to investigators in developing leads to uncover corrupt front companies.

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D. BID RIGGING

Bid rigging is a method of ensuring that a particular company wins a contract, either because kickbacks were paid by the company to ensure its receipt of the contract or because government officials hold secret (or not so secret) interests in the company. In order to rig a bid on a contract that is being tendered for international competitive bidding, government officials preparing the contract must employ a device or scheme to ensure that it is ultimately awarded to a designated bidder. The simplest form of bid rigging is the establishment of an agreement among government officials as to who should win a particular bid. These agreements are made orally by government procurement officials with the understanding that they will receive some form of consideration (usually a kickback) for entering into this conspiracy.

More elaborate forms of bid rigging include tailoring specifications to favor a particular bidder or providing a bidder with insider information so that the designated company can put in the lowest bid. Still other devices include instructing a bidder to "low ball" a bid with the understanding that upon award of the contract, the bidder will be able to acquire a contract amendment to increase the value of the contract in order to compensate for the low-balled contract. Regardless of the scheme or device employed, the ultimate purpose of the rigging is to ensure the award of a contract to a designated bidder. This has the effect of depriving the government of true and honest competition – a necessity for obtaining the lowest price and best quality of goods. Per-

haps even worse is that in environments where bid rigging is prevalent and known, honest companies will not waste resources in developing competitive bids, further depriving the citizenry of the benefits of competition. The rigging of bids though collusive practice has been found to be extremely prevalent in Asia, although the authors have found significant cases in Western Europe as well.^{ag}

E. OFFICIAL-OWNED ENTERPRISES

In many countries, local contractors are openly owned and run by prominent government families. These official-owned enterprises tend to receive a vast majority of government-financed contracts. In many cases, the ownership of these companies is not a secret.^{ah} The situation creates a monopolistic business environment depriving the public of proper competition and its intended benefits. In some rather startling cases un-

covered by the authors, governments have proposed development projects with MDBs that have ostensible legitimacy, but are actually targeted towards enterprises in which government officials hold an interest. For example, in countries where government officials own road construction companies, MDBs tend to favor road development projects, thereby personally benefiting the government officials who own the road companies. This “pork-barreling” of development projects directs precious resources away from their best use and instead enriches the government leaders who propose the contracts.

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F. THEFT FROM GOVERNMENT ACCOUNTS AND ABUSE OF PUBLIC ASSETS

In yet another form of corruption, officials may simply steal from project accounts by writing checks to themselves or to family members. Often, these check payments are based on fraudulent invoices. In a number of cases, payments for consumable office supplies allow for government officials to swindle government proceeds with ease. In still other abuses, projects financed by public proceeds for buildings are

never utilized by the public, but rather are taken by the government officials and converted for personal use.

In highly efficient corruption schemes, government officials will virtually employ the full panoply of corrupt devices to extract as much wealth as possible from a publicly financed project. The Kenyan Urban Transport Infrastructure Project is an example where virtually every element of the anatomy of transnational corruption has taken place. The scheme, designed by a host of local and international actors, employed front companies, middlemen, off-shore accounts, conflicts of interest and clever illicit tradecraft to siphon large sums of public funds.⁴¹ Ultimately, the actors were identified and referred to law enforcement authorities. The case is noteworthy from an international perspective because it represented perhaps the first

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multi-jurisdictional criminal investigation coordinated among U.S., Kenyan, and Swedish authorities by the World Bank.

III. RECOMMENDATIONS FOR INTERNATIONAL ACTION TO CURB CORRUPTION.

Because the authors focus on a transnational form of corruption, our recommendations primarily address the international efforts that can be undertaken to mitigate or reduce the incidence of corruption.

A. ESTABLISHING AN INVESTIGATIVE CAPACITY IN INTERNATIONAL FINANCIAL INSTITUTIONS.

It is well-known the international community, particularly among MDBs, that corruption flourishes globally. Perhaps the most significant reason for the expansion of corruption is the understanding between multinational bribe payers and senior government officials that silence works in both parties' best interests. This "conspiracy of silence" lies undisturbed because the government officials control the instrumentality of state (i.e., law enforcement), which would otherwise have the ability to detect and expose corrupt transactions. For years, this conspiracy

of silence was left undisturbed by the donor community; it was seen as a purely domestic law enforcement issue and not one for the MDBs.

At one time, the World Bank considered the problem to be solely political.^{aj} As such, World Bank officials considered policing it to be outside the mandate of its charter.^{ak} This view changed in 1996 when Bank President James D. Wolfensohn successfully argued that corruption was *not* a political issue, but an issue of development and poverty that needed to be attacked using a variety of mechanisms.^{al} One such mechanism, which now serves as a model for other MDBs, was the development of an independent investigative body.^{am} This body has the authority to conduct global investigations to ensure that World Bank proceeds are used for the purposes intended. The presence of an independent investigative body, not within the control of any one particular government, can act to disrupt the conspiracy of silence that exists between corrupt governments and multinational actors. By investigating and exposing these corrupt actions, it is hoped that government officials will come under pressure to reduce corruption in their governments.

One piece of legislation enacted in 2001 by the U.S. government supports the creation of these independent investigative bodies within MDBs.^{an} The act “internationalizes” a counter-fraud and corruption effort in U.S.-funded international financial institutions (IFIs) by threatening to withhold 10 percent of their funding if they do not develop internal fraud and corruption investigative offices within their respective institutions. The purpose of these offices is

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to ensure that the money lent by the institution is used for its intended purpose. This requirement is consistent with the charters of the World Bank and many other IFIs^{ao} and many have complied, including the World Bank, the InterAmerican Development Bank, and the European Bank for Reconstruction and Development. However, the U.S. law stops with this requirement and does not explain what should become of the investigative findings or what sanctions – if any – should be imposed when acts of fraud and corruption are uncovered. In reality, this act

is a preliminary soft push, stipulating only that IFIs take “steps to develop” these offices and withholds only 10 percent of the United States’ financial commitment if IFIs do not comply.^{ap} Thus, more work needs to be done. Recognizing this need, the U.S. Senate Foreign Relations Committee launched an unprecedented investigation into corruption in MDBs.

MDBs have a number of options after they obtain evidence confirming that fraud or corruption has occurred. They may debar corrupt companies, suspend or cancel funding to a borrower country, or provide the evidence to a country with proper jurisdiction for criminal prosecution.^{aq} Unfortunately, with the exception of the World Bank, the other MDBs have not created robust international investigative unit whereby they can take credible enforcement action.^{ar} If the other banks invested in this capability, the MDBs could bring tremendous pressure to bear on the corrupt actors. However, this pressure will

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only work if the MDBs act boldly to publish their findings in the widest possible manner. The negative publicity associated with a new level of transparency among corrupt multinational actors would place tremendous pressure on the corporate boards of such actors.

B. CORRUPTION INFORMATION SHARING AND COLLECTIVE SANCTIONING BY MULTILATERAL DEVELOPMENT BANKS

Many MDBs have developed internal fraud and corruption investigation units, but a lack of information sharing and collective action limits the effectiveness of these efforts. Accordingly, MDBs should consider the creation of a “Transnational Corruption Information Sharing Center” (TCISC). This center could be housed in one of the MDBs and could operate a database of corruption intelligence uncovered by the MDBs’ investigative units. The MDBs could use the information processed by this center for a variety of functions, such as strategic business decision-making, investigative resources, and cooperation with member governments’ law enforcement units.

In addition to information sharing, MDBs could deter corrupt transactions by collectively sanctioning offenders based on the findings of

one MDB's international corruption investigation. Support for collective international administrative sanctions against corruption has gained momentum in international organizations like the World Bank and the International Monetary Fund (IMF). Both institutions now allow for the revocation of funding from entities or governments that have taken part in misprocurement or widespread corruption. However, for such sanctions to truly become collective, more cooperation among various MDBs will be needed. For example, if the World Bank debarred XYZ Company because of corrupt practices and other MDBs debarred XYZ Company based upon the World Bank's investigative findings, collective sanctions would have a much greater effect. As a result, XYZ Company and its principals could not receive contracts from a borrowing country for construction projects if any MDB were financing the reconstruction effort within the borrowing country. Furthermore, if MDBs shared information regarding corrupt government activities, the MDBs could leverage their financial might to force governments to address these problems.

While collective sanctioning of fraud and corruption of this sort would be a new development in the realm of international organizations, support for such collective sanctioning may be found in the ongoing development of an international norm against corrupt and fraudulent practices, especially with regard to financial dealings in the developing world. There are numerous multilateral and regional efforts designed to foster cooperation among nations to fight fraud and corruption, including the international anti-corruption conventions of the Organization of American States (OAS) Inter-American Convention Against Corruption, the Organization of Economic Cooperation and Development (OECD) Convention on Combating Bribery of Officials in International Business Transactions, and the Council of Europe Criminal Law Convention on Corruption. These various conventions include scores of countries, but only varying degrees of legal harmonization. Ultimately each of the conventions maintains national jurisdiction over such crimes.^{as}

Collective sanctioning among multilateral, bilateral and regional development institutions, as well as donor agencies, would require express agreements among these institutions. Like criminal sanctions, the main obstacles to developing collective sanctions would be the au-

tonomy interests of each organization, the fear of politically motivated debarments, and competition among development agencies. As the authors have noted previously:

One regional MDB might not want to be bound by the findings of an IFI from another region, especially in cases where the sanctioning of a business from one region may favor a business competitor from another region. A fear that domestic business interests from a particular region prompted the sanction might lead to further suspicion of the collective sanctions approach.^{at}

These obstacles might be overcome if IFIs retain the right to autonomously review the findings of other institutions and make independent determinations, while working to harmonize their rules defining

corruption and the standards of proof required for a finding of misconduct. Express agreements requiring cooperation rather than competition among IFIs would also help reduce non-cooperation.

While the collective sanctioning system might not work flawlessly in all cases, international normative forces exist to support its creation. Indeed, the architecture for such a system of cooperation has already been laid down in the aforementioned international

anti-corruption conventions. While there is clearly no silver bullet in eradicating fraud and corruption, there is still more that can be done by using and modifying existing international mechanisms.

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C. CREATION OF VOLUNTARY DISCLOSURE PROGRAMS AMONG THE MDBs

In the mid 1980s, U.S. defense contractors created the Defense Industry Initiative. This initiative was designed to clean up fraud in U.S. defense contracting. The U.S. Department of Defense (DoD) responded with the DoD Voluntary Disclosure Program (VDP). Under this program, contractors could come to the DoD and disclose fraud and corruption in their operations. In exchange for a complete, timely, and truthful disclosure, the DoD would accept the information and agree not to debar the contractor from eligibility for future defense

contracts. The contractor would make restitution of any damages to the DoD, agree to be audited, and create or strengthen internal compliance programs. In addition, the U.S. Department of Justice would look favorably on the disclosures of the contractor when considering whether to prosecute the company. In fact, since the inception of the program, only three of the approximately 500 entities in the program have been prosecuted, and those were for misrepresentations in the disclosure process.^{au} As a result of this program, the burden of uncovering and cleaning up the defense contractor industry shifted in large part to the contractors themselves. This shift resulted in significant savings in investigative resources by the DoD.

The MDBs should consider adopting their own Voluntary Disclosure Program modeled after the DoD's. Contractors could come forward and disclose to the MDBs illicit activities in which they have engaged while working on MDB-financed contracts. This voluntary disclosure would be an extraordinarily powerful tool to uncover the anatomy of transnational corruption operating in the developing world.

Adopting such a program however, is not without significant policy questions. What would the MDBs do with the information they receive from contractors? What if the multinational corporation disclosed to an MDB that it paid bribes to a country's national leaders in exchange for a large contract? After all, if an MDB publicly disclosed such information, it might well destabilize the very nation the MDB was attempting to support.

These recommendations would go along way to curbing corruption in IFI-funded contracts. One method to induce these international organizations to reform their practices would be for other national authorities to follow the example of the 2001 U.S. legislation and, through their constituent representatives on these bodies, insist on these reforms as a condition of continued support.

IV. CONCLUSION

Corruption is enduring, complex, and an aggressive cancer to development.^{av} It is a particular problem in post-conflict countries, which are often the focus of intense international aid. As a result, corruption thrives upon the very resources needed to stabilize unstable countries

and worsens their plight. As U.S. Sen. Richard Lugar (Republican, Ind.) noted in May 2004, “It is critical that every development bank dollar reaches its intended recipient ... unfortunately that is not happening – corruption remains a serious problem.... [N]ot only are the impoverished cheated out of development benefits, they are left to repay the resulting debts to the banks.”^{aw}

Many scholars have opined that culture is a major factor that fuels corruption in developing and post-conflict societies. However, culture is not a determinative factor in whether corruption will flourish. In the

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examples examined in this article, which occurred in different regions of the world, often with multiple cultures involved, corrupt state machines prospered regardless of culture. Corruption is not unique to particular cultures, to developing nations, or

to post-conflict countries emerging from years of difficulty or strife. In reality, corruption conspiracies may fester anywhere in the world where there are inadequate controls, insufficient enforcement, and unsatisfactory compliance regimes in place to thwart this illicit activity. In the end, corruption is usually simply a matter of opportunity and greed.

This article has focused on the usefulness of coordinated efforts by IFIs in rooting out the corruption that takes hold in the post-conflict and developing world when international aid finally arrives. However, strengthening sanctions by IFIs is only one prong of what must be a

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multidimensional attack. Local and international NGOs devoted to combating corruption are necessary throughout the developed and developing world alike. NGOs, such as Transparency International, that advocate for financial and govern-

mental transparency and accountability are critical to exposing corruption.^{ax} The role of a free and responsible media cannot be understated as an essential partner in this ongoing battle. Governments must also proactively take on corruption by establishing competitive salaries for civil servants based on merit, direct “hotline” access for complaints, ombudsman offices, as well as participation in international conventions that not only ban corrupt business practices but take affirmative steps

to investigate and sanction such activity.^{ay} Global efforts by individual states, regional organizations, international financial institutions, and NGOs are necessary to eradicate corruption in the developing world and post-conflict societies alike. 

NOTES

^a David R. Francis, "Why Fighting Corruption Helps the Poor," *Christian Science Monitor*, 13 Nov 2003, 16.

^b Examples of corruption are from fieldwork on file with authors.

^c The World Bank, *Helping Countries Combat Corruption* (Washington, D.C.: 2000); Cheryl W. Gray and Daniel Kaufmann, "Corruption and Development," *Finance & Development* 35, no. 1 (1998) 7, citing a recent survey conducted in over sixty developing countries of more than "150 high ranking public officials and key members of civil society" where public sector corruption was cited "as the most severe impediment to development and growth in their countries." See also S. Wei, "Corruption in Economic Development: Beneficial Grease, Minor Annoyance, or Major Obstacle?" presented at the UNDP/Transparency International Thailand Workshop on Integrity in Governance in Asia, Bangkok, Jun-Jul 1998, 16, discussing that foreign investors prefer to invest in less corrupt countries; Wei, 24, argues that research indicates that slower growth rates are linked a country's corruption level.

^d J.S. Nye, "Corruption and Political Development: A Cost-Benefit Analysis," *The American Political Science Review* 61 (1967), 417-427.

^e Examples of this type of corruption include the policeman who accepts a bribe in exchange for freeing a potential criminal offender and the system of bribes that has recently emerged in Iraq's overcrowded passport bureaus. Jackie Spinner, "Bribe Pushes Up Cost of Gaining An Iraqi Passport," *Washington Post*, 31 July 2004, sec. A, p. 17. However, Professor William Black from the LBJ School of

Public Affairs, University of Texas, notes that even petty forms of corruption can be deadly and serious. He remarks how terrorists in Chechnya were able to infiltrate Moscow to detonate bombs by bribing a border guard. See William Black, "Combating Corruption: The Legal and Ethical Challenges," comments at Institute of International and Comparative Law and the Santa Clara Journal of International Law symposium, 26 Mar 2004.

^f See A. Doig and S. McIvor, "Corruption and Its Control in the Developmental Context: An Analysis and Selective Review of the Literature," *Third World Quarterly* 20 (1999), 660, for a discussion on the links between corruption and various types of international crimes. In July 2005 at the G8 summit in Gleneagles, the G8 recognized the devastating impact of corruption on developing countries, particularly in Africa, and implored the leaders in Africa to "promote good governance and take action against corruption." *G8 Gleneagles Communiqué*, 8 July 2005, <<http://www.g8.gov.uk/>> (14 Aug 2005), 15. Arguably corruption on such a large scale that its universal condemnation could be described as *jus cogens*. Brian C. Harms, "Holding Public Officials Accountable in the International Realm," *Cornell International Law Journal* 33, no 1 (2000), 159 ("Jus cogens and erga omnes obligations represent two forms of protection of matters of paramount importance to international society. Some would suggest that stopping corruption falls within these doctrines.").

^g Nye.

^h Francis. See also, Roy Cullen, "Money Laundering and Corruption as New Threats to National Security," remarks at

the International Conference on Parliamentary Oversight of the Sphere of Security and Defence, Kiev, Ukraine, 27-28 Sept 2002 (“Economic crimes, such as money laundering and corruption, are a threat to the development of new market economies and democratic principles, and because they are trans-national in nature, they are rightly dealt with by multilateral organizations like NATO. The financing of terrorist activities and related money laundering activities threatens the peaceful coexistence of countries and people around the world”); Adolfo Aguilar Zinser, “The New Government Responsibility: The War Against Corruption, National Security, and Social Equity,” Inter-American Development Bank, Social Equity Forum, 1-2 Nov 2001 (“One of the key factors for national security in Mexico at the dawn of the 21st century is government transparency”).

ⁱ Barbara Crutchfield George, et al., “The 1998 OECD Convention: An Impetus for Worldwide Changes in Attitudes Toward Corruption in Business Transactions,” *American Business Law Journal* 37, no. 3 (2000), 492-93 (“It is continually repeated that bribery of foreign public officials has a corrosive impact on investment, economic growth, the development of market-based economies and democratic institutions along with undermining political stability. Corruption threatens democracy and development, discourages investment, discriminates against the poor and destroys public confidence in democratic government.”); Omar Azfar et al., “The Causes and Consequences of Corruption,” *Annals of the American Academy of Political and Social Science* 573 (2001), 46-52 (positing that corruption at micro levels may affect aggregate national income levels); Philip M. Nichols,

“The Myth of Anti-Bribery Laws as Transnational Intrusion,” *Cornell International Law Journal* 33, no. 3 (2000), 627-34; John Ashcroft, remarks at the World Economic Forum, Davos, Switzerland, 22 Jan 2004, <<http://www.usdoj.gov/archive/ag/speeches/2004/12204agweb.htm>> (26 July 2004).

^j The authors base their core findings on three principle datasets: actual investigations or exposure to evidence of grand schemes of corruption encountered in their investigative work, published cases coming from various enforcement actions, and field work solicited by the authors from governmental, NGO, military, and civil society actors. What the authors have found in all of these sources is a startling and consistent similarity in the anatomy of corruption both within the developing world and the West.

^k Daniel Treisman, “The Causes of Corruption: A Cross-National Study,” *Journal of Public Economics* 76 (2000), 401.

^l *Ibid.*

^m Daniel Kaufman, “Anti-Corruption Within a Broader Developmental and Governance Perspective – Some Lessons from Empirics and Experience,” statement to the High Level Political Signing Conference for the United Nations Convention Against Corruption, Merida, Mexico, 9-11 Dec 2003.

ⁿ Glenn T. Ware and Gregory P. Noone, “The Culture of Corruption in the Post-conflict and Developing World” appeared in *Imagine Coexistence: Restoring Humanity After Violent Conflict*, ed. Antonia Handler Chayes and Martha Minnow (San Francisco: Jossey-Bass, 2003).

^o See e.g., David Kennedy, “The International Anti-Corruption Campaign” Con-

necticut Journal of International Law 14 (1999) 465; Steven R. Salbu, "The Foreign Corrupt Practices Act as a Threat to Global Harmony," *Michigan Journal Of International Law* 20 (1999), 449; Nichols, 655; Susan Rose-Ackerman, *Corruption and Government: Causes, Consequences, and Reform*. (Cambridge, U.K.: Cambridge University Press, 1999); Azfar, et al.

^p Ibrahim Shihata, "Corruption-A General Review with an Emphasis on the Role of the World Bank". *Dickinson Journal of International Law* 15 (1997), 451. Shihata notes that "[e]xperts have different perspectives on the meaning, causes, and effects of this universal phenomenon..." See also A.Posadas, "Combating Corruption Under International Law," *Duke Journal of Comparative and International Law* 10 (2000); F. Heimann, "Combating International Corruption, The Role of the Business Community in Corruption and the Global Economy," *Corruption and the Global Economy*, ed. K. A. Elliot (Washington, D.C.: Institute for International Economics, 1998).

^q M. Johnston, "The Political Consequences of Corruption: A Reassessment," *Comparative Politics* 18 (1986) 459-477; K.J. Meier and T.M. Holbrook, T.M., "I Seen My Opportunities and I Took 'Em': Political Corruption in the American States," *The Journal of Politics* 54 (1992) 135-155; J.G. Peters and S. Welch, "Political Corruption in America: A Search for Definitions and a Theory, or If Political Corruption Is in the Mainstream of American Politics Why Is it Not in the Mainstream of American Politics Research," *The American Political Science Review* 72 (1978) 974-984; J. Girling, *Corruption, Capitalism, and Democracy*, (London and New York: Routledge, 1997); Nye; P. deLeon, *Thinking About Political Corruption* (London: M.E.

Sharpe, Inc., 1993); A. Doig and S. McIvor, "Corruption and its control in the developmental context: an analysis and selective review of the literature," *Third World Quarterly* 20 (1999) 657-670.

^r P. Mauro, "Corruption and Growth," *The Quarterly Journal of Economics* 110 (1995) 681-712; D. Kaufman, "Corruption: The Facts," *Foreign Policy* 107 (1997) 114-132; Johnston; Meier and Holbrook; Nye; P. Eigen, "Corruption in a Globalized World" *SAIS Review* 22 (2002) 45-59; Doig and McIvor.

^s Mauro; A. Alesina and B. Weder, "Do Corrupt Government Receive Less Foreign Aid?" National Bureau of Economic Research Working Paper Series, (Cambridge, Massachusetts: National Bureau of Economic Research, Inc., 1999); A. Shleifer and R.W. Vishny, "Corruption" *The Quarterly Journal of Economics* 108 (1993) 599-617; C. Lancaster, *Transforming Foreign Aid: United States Assistance in the 21st Century*, (Washington, D.C.: Institute for International Economics, 2000); Doig and McIvor; Ware and Noone,.

^t Peters and Welch; H.G. Kebschull, "Political Corruption: Making it the 'Significant Other' in Political Studies," *PS: Political Science and Politics* 25 (1992) 705-709.

^u High-Level Political Conference for the Purpose of Signing the United Nations Convention Against Corruption, Merida, Mexico, 9-11 Dec 2003, <www.unodc.org/unodc/en/convention_corruption_merida.html> (26 July 2004).

^v Fieldwork and interviews conducted by the authors provide the substance of the analysis in the following six corruption schemes in addition to published cases. See, e.g., *Securities and Exchange Commission v. The Titan Corporation*, Civil Action No. 05-0411 (U.S.D.C., D.D.C., filed March 1,

2005) (requiring Titan to pay over \$28 million in civil and criminal fines for violating the FCPA by funneling, through intermediaries, inappropriate payments to government officials in Benin and several Asian countries); *SEC vs. Monsanto Company*, Case No. 1:05CV00014 (U.S.D.C., D.D.C, filed January 6, 2005) (requiring Monsanto to pay a \$500,000 fine for funneling over \$700,000 of bribes or questionable payments to government officials in Indonesia during 1997-2002); *United States v. InVision Technologies* (not prosecuted; settlement filed Dec. 6th, 2004) (requiring InVision, as a result of illicit payments made through third parties to foreign officials in Thailand, China, and the Philippines, to pay \$800,000 in fines and disclose to the U.S. government all activities which may violate the FCPA); *Securities and Exchange Commission v. ABB Ltd.*, Case No. 1:04CV1141 (U.S.D.C., D.D.C., filed July 6, 2004) (requiring Zurich-based ABB Ltd. and its US-based subsidiaries to pay a \$16.4 million combined civil and criminal fine as a result of illicit payments made to government officials in Nigeria, Angola, and Kazakhstan).

^w Nora M. Rubin, "A Convergence of 1996 and 1997 Global Efforts to Curb Corruption and Bribery in International Business Transactions: The Legal Implications of the OECD Recommendations and Convention for the United States, Germany, and Switzerland," *American University International Law Review* 14 (1998) 257-269.

^x Throughout the world, cultures have come to adapt normal language to disguise bribery. For example, in Africa, a kickback is defined as tea, chai or harumbe. In the West, words such as sugar or sweetener have been used to obscure the illicit nature of these payments.

^y The Foreign Corrupt Practices Act of 1977, as amended, does not criminalize certain payments to foreign officials for nondiscretionary services such as having mail delivered, phone service installed, etc.

^z The authors have uncovered elaborate "commission sharing agreements" between joint venture multinational companies, allocating kickback amounts among the partners based on their percentage of interest in the company. See, also FN 27 generally.

^{aa} This type of bidding process is in theory supposed to generate the most competition, the highest quality, and the lowest prices. See, e.g., World Bank, "Guidelines: Procurement Under IBRD Loans and IDA Credits" Guidelines," May 2004, <<http://siteresources.worldbank.org/INTPROCUREMENT/Resources/Procurement-May-2004.pdf>> (27 July 2004).

^{ab} The obvious impact of this fixed rate for bribes is an increase in the total cost of the contract. This cost becomes a "tax" that is passed on to tax payers who ultimately finance government contracts. See, Emad Mekay, "Development: Poorest Pay for World Bank Corruption – U.S. Senator," *Global Information Network*, 17 May 2004.

^{ac} The authors have uncovered bribe payments ranging from 10-65% in government contracts financed out of public funds. Field work conducted by authors on file with authors.

^{ad} One method that can be used to detect "market rate" bribery is a detailed forensic examination of all bids and prices to determine whether there are fixed percentage increases in goods, materials and services offered under the bid that are above that of the true market

prices of these goods. World Bank, “Fiduciary Review of the Second Sulawesi Urban Development Project, Overview Report,” June 2002, <[http://lnweb18.worldbank.org/eap/eap.nsf/Attachments/SulawesiFROR0602/\\$File/SulawesiFROR0602.pdf](http://lnweb18.worldbank.org/eap/eap.nsf/Attachments/SulawesiFROR0602/$File/SulawesiFROR0602.pdf)> (26 July 2004).

^{ac} In one particular instance encountered by the authors, the “broker” was contracted to provide “air supplies” to the multinational.

^{af} To date, there has not been a single known prosecution within the framework of the OECD convention in Europe. See Organization for Economic-Cooperation and Development, <<http://www.oecd.org>> (27 July 2004).

^{ag} In the Sulewsi Project financed by the World Bank, a detailed investigation involving 2,500 separate contracts issued by National, Provincial and local governments. The evidence indicated that virtually all of the contracts were to have colusive bidding practices. *Supra* note 30.

^{ah} In cases uncovered by the authors, the companies were registered corporations with government officials listed as directors, shareholders, or officers of the corporation.

^{ai} The Kenyan investigation was lead by Glenn Ware and has been the subject of considerable attention in corruption owing to the various corrupt elements at play within the grand scheme. See “World Bank Official Admits Graft in Kenya Deal,” 19 Apr 2002 <<http://www.globalpolicy.org/nations/laundry/regions/2002/0419wb.htm>> (16 Aug 2005); Pamela Chepkemei, “World Bank’s Project Engineer Faces Corruption Charge,” 16 May 2002 <<http://www.nationaudio.com/News/DailyNation/16052002/News/News84.html>> (16 Aug 2005).

^{aj} James D. Wolfensohn, speech to Third Annual Conference of International Investigators, 7 Mar 2002 (transcript on file with authors). See also, Dick Thornburgh et al., *Report to Shengman Zhang, Managing Director and Chairman of the Oversight Committee on Fraud and Corruption, The World Bank, Concerning Mechanisms to Address Problems of Fraud and Corruption*, (21 Jan 2000) 8-9.

^{ak} International Bank for Reconstruction and Development, Articles of Agreement, Article IV, Section 10.

^{al} James D. Wolfensohn, Annual Meeting Address, 1 Oct 1996, <<http://web.worldbank.org/WBSITE/EXTERNAL/NEWS/>> (27 July 2004).

^{am} Department of Institutional Integrity (INT), <<http://wbln0018.worldbank.org/acfiu/acfiuweb.nsf>> (26 July 2004). See also, “World Bank Board Endorses Anti-Corruption Strategy,” 20 July 2004, <<http://wbln0018.worldbank.org/acfiu/acfiuweb.nsf>> (26 July 2004).

^{an} Public Law 106-429, §588, Foreign Operations, Export Financing, and Related Programs Appropriations Act, 2001. Specifically, Public Law 106-429, Section 588 states: Sec. 588 (a) Funding Conditions - -Of the funds made available under the heading “International Financial Institutions” in this Act, 10 percent of the United States portion or payment to such international Financial Institutions shall be withheld by the Secretary of the Treasury, until the Secretary certifies to the Committee on Appropriations that, to the extent pertinent to its lending programs, the institution is... (3) Taking steps to develop an independent fraud and corruption investigative organization or office.

^{ao} International Bank for Reconstruction and Development Articles of Agreement,

Article III, Section 5 (as amended effective February 16, 1989). See also, e.g., Agreement Establishing the Asian Development Bank, Article 14 (Operating Principles); Agreement Establishing the Inter-American Development Bank, Article 3 (Operations).

^{ap} The authors recognize ten percent of the United States' financial commitment is a significant amount of money yet the fact remains it is *only* ten percent.

^{aq} See, e.g., World Bank News Release, "World Bank Sanctions Acres International Limited," 23 July 2004. See also, World Bank, "Procurement," <<http://www.worldbank.org/html/opr/procure/debarr.html>> (27 Dec 2004). World Bank, "Guidelines," Section 1.15 and 1.25. See, e.g., World Bank News Release, "Bolivia Convicts 15 Individuals for Fraudulent and Corrupt Practices Based on World Bank Referral," 21 Jul 2004; World Bank News Release, "Republic of Guinea Convicts Three of Corruption Based on World Bank Referral," 17 Jun 2004; World Bank News Release, "World Bank Welcomes Swedish District Court Decision on Bribery Case," 13 Jan 2004. While other Banks, such as the InterAmerican Development Bank, have some investigative capacity, the capacity of the World Bank's investigative unit is unmatched collectively by the remaining MDBs.

^{ar} Danielle Langton, "Anti-Corruption Standards of the International Financial Institutions," Congressional Research Service report, 30 Apr 2004 (indicating that the World Bank led other international financial institutions in anti-corruption initiatives).

^{as} P. Henning, "Public Corruption: A Comparative Analysis of International Corruption Conventions and United States

Law," *Arizona Journal of International and Comparative Law* 18 (2001), 793.

^{at} Ware and Noone.

^{au} World Bank, Study of Voluntary Disclosure Programs.

^{av} Wolfensohn, Annual Meeting Address.

^{aw} Mekay.

^{ax} See Transparency International <<http://www.transparency.org>> (29 Dec 2004).

^{ay} Wei, 21. Singapore and Hong Kong are positive examples where cabinet ministers' salaries are commensurate with large multinational firms' CEOs resulting in both countries having "very low corruption levels." Wei, 18.

