Holding Public Officials Accountable in the International Realm: A New Multi-Layered Strategy to Combat Corruption

Brian C. Harms

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Brian C. Harms*

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Introduction

[As slavery was once a way of life and now . . . has become obsolete and incomprehensible, so the practice of bribery in the central form of the exchange of payment for official actions will become obsolete. - John T. Noonan, Jr.]

Throughout history, corruption has flourished despite efforts to eliminate it. Recent reports of corrupt activities show that corruption affects all types of nations, from industrialized, to poor, to transitional. Today's global society is no exception. Newspapers and magazines across the world detail the exploitation of nations by their own leaders. The current

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2. See id.
4. The corruption revolution began in the early nineties with the overthrow of the corrupt Italian government which received dubious payments from Mani Puliti: “The considerable losses around the scandal-ridden Banesto bank of Spain; the virtually institutionalized practice of false invoices in France; and an appalling series of malpractice revealed in Belgium . . .” Francois Vincke, How Effective is the Business Community in Combating Corruption?, in Stuart Marc Weiser, Dealing with Corruption: Effectiveness of Existing Regimes on Doing Business, 91 Am. Soc'y Int'l L. Proc. 99, 102 (1997). The world could be witnessing a change in the consciousness of the people: they no longer accept corruption as part of the governmental process. “The end of the Cold War and the emergence of a truly integrated international economy have also contributed to the
fate of corruption could mirror that of slavery in the 1850s: it could be several years of irreversible change leading to the end of an outmoded practice.\(^5\)

The end of the Cold War has led to the consolidation of democracy, political stability, and respect for the rule of law, as well as effective development and the expansion of open, competitive markets.\(^6\) Corruption could undermine these advances.\(^7\) Great economic interdependence defines the world today, and corruption seriously threatens the stability of the international realm, the creation of democratic regimes, and the emergence of open markets.\(^8\)

Not only is corruption a threat to the international economy, but it is also a threat to the political life of many nations.\(^9\) Large-scale corruption is a violation of human rights. It takes from the people the power to efficiently dispose of their resources and further impoverishes the impoverished.\(^10\) Combating corruption requires a multi-pronged solution that takes into account both the economic and human rights effects of corruption.

In recent years, such international entities as the International Chamber of Commerce (ICC), Organization for Economic Cooperation and Development (OECD), and United Nations, have resolved to combat corruption. They aim their efforts at the supply side of corruption, that is, the regulation of international businesses. This Note argues that demand side initiatives to curb international corruption, which would emphasize monitoring bribe-takers (i.e. public officials), would bolster supply side initiatives, which target bribe-makers (i.e. international businesses). Non-governmental organizations and international institutions sufficiently combat the supply side of international corruption. Most countries prohibit public officials from receiving bribes, but are lax in enforcement.

widespread perception of corruption as a problem with inherently global ramifications.” Glynn et al., supra note 3, at 7-9.

5. See Glynn, supra note 3, at 28.

6. See Boswell, supra note 3, at 1166.

7. “In every country on the former front of the Cold War – South Korea, Taiwan, Mexico, Italy, and even Japan – holding the line against communism was more important than instituting real free markets and political competition. Now, shocks are beginning to rock the Establishment of the industrialized nations.” Rossant, supra note 3, at 5.

8. In the former Soviet bloc, beleaguered publics could confuse democratization with the corruption of the economy, which may lead to an authoritarian backlash. See Glynn et al., supra note 3, at 9-10. Furthermore, even while democracy is becoming more commonplace, especially in Latin America, Africa, and Asia, it is often weak, and corrupt leaders and institutions can cause it to fail. See Boswell, supra note 3, at 1167.


10. See id. at 105-07 (stating that international human rights documents guarantee a people's fundamental right to freely dispose of their wealth and natural resources); see also Jennifer M. Hartman, Government by Thieves: Revealing the Monster Behind the Kleptocratic Masks, 24 SYRACUSE J. INT’L. L. & COM. 157, 170 (1997) (“The right of peoples not to be dispossessed of their wealth and natural resources is not just any ordinary human right, but the fundamental human right, the right that transcends all others”).
Hence, the next logical step is to attack the demand side of corruption at the international level.\textsuperscript{11} International initiatives targeting demand side corruption should include legal initiatives and policy initiatives. Legal initiatives should include a new anti-corruption treaty which criminalizes the most contemptible acts of corruption,\textsuperscript{12} and administrative and judicial international machinery to create an effective avenue for citizens to hold public officials accountable.\textsuperscript{13} Policy initiatives should include employing international financial institutions to create contractual provisions for borrowing,\textsuperscript{14} and incorporating Transparency International to rally international public opinion and give legitimacy to international initiatives targeting demand side corruption.\textsuperscript{15} Such policy initiatives reduce the role of the government in the economy and the discretion public officials have in granting government contracts. These policy initiatives also allow nations to lay a domestic foundation upon which effective, international anti-corruption strategies can be built.

Operating under the assumption that corruption harms the public good, Part I of this Note discusses the causes and consequences of corruption, narrowing corruption to its most harmful manifestation: indigenous

\textsuperscript{11} As international corporations realize the costs of bribery to their businesses, their self-regulation has increased. Several non-governmental organizations, such as the ICC, OECD, and United Nations, have pushed efforts to curb the supply side of corruption. However, there has been little effort to curb demand side corruption at the international level, mainly for reasons such as sovereignty and culture. The problem is, controlling only one side of the corruption equation is not sufficient. The international community must limit the demand for corrupt payments because demand will create supply. Further, even though every country has laws against the receipt of bribes by public officials, enforcement is lax. Therefore, citizens have no way of holding public officials accountable. This leaves the international realm as the most attractive avenue for holding public officials accountable. Action in the international realm, however, should be limited to cases of systematic corruption, also known as indigenous spoliation. See Hartman, supra note 10.

\textsuperscript{12} See generally Stephen Muffler, Proposing a Treaty on the Prevention of International Corrupt Payments: Cloning the Foreign Corrupt Practices Act is Not the Answer, 1 ILSA J. INTL’L & COMP. L. 4 (1995) (proposing a treaty that combats the supply side of corruption, but the machinery proposed could also be used to curb demand-side corruption. Instead of criminalizing bribery, this treaty proposes civil sanctions as a remedy). Criminalization of bribery is a thorny issue. On one hand, a value-based criminalization will bring about dissent by those countries unwilling to define corruption based on western values. On the other hand, criminalization suggests moral indignation by the international community and parallels the domestic laws of all nations. If international criminalization takes into account these local laws and local cultures, it can be a powerful tool for citizens who want to hold their public officials accountable.

\textsuperscript{13} See id. at 36 (proposing a three step process to combat worldwide corruption: First, the establishment of a U.N. Anti-Corruption Committee to work with the ICC’s Standing Committee, the OECD, regional organizations, and TI, in consolidating and centralizing international efforts. Second, the creation of an Anti-Corruption Commission as an administrative agency, to investigate claims of corruption. Third, utilization of the new International Criminal Court for adjudication of the most contemptible charges of corruption.).


\textsuperscript{15} See Boswell, supra note 3, at 1168-69; see also Introducing TI, TRANSPARENCY INT’L, May 1994, at 1.
spoliation. Next, Part I analyzes the past and current state of domestic and international anti-corruption initiatives. Part II lays out the legal and policy initiatives necessary in attaining the appropriate solution to international corruption control. The Note concludes that the international community needs to create international initiatives and machinery to curb demand side corruption. The international community must give citizens the opportunity to hold bribe-takers accountable for the damage corruption causes.

I. The Historical Roots of Corruption and Attempts to Control It

A. The Complexity of Corruption

Before trying to solve the corruption problem, the international community must first understand the definition of corruption, the causes of corruption, and the consequences of corruption. Upon attaining this understanding, the international community can properly address the problem of corruption.

1. Defining Corruption

Corruption is "[t]he act of an official or fiduciary person who unlawfully and wrongfully uses his or her station or character to procure some benefit for himself or herself or for another person, contrary to duty and the rights of others."16 Corrugtion diverts resources allocated for the public good into the personal bank accounts of those charged with protecting the public good.17

Indigenous spoliation is recognized as the most harmful manifestation of corruption. Indigenous spoliation is defined as "an illegal act of depredation which is committed for private ends by constitutionally responsible rulers [and] public officials."18 In this form, corruption harms the public good19 not only through transferral of a nation's wealth to pri-
2. The Causes of Corruption

Corruption equals monopoly power plus discretion minus accountability. Attacking corruption requires targeting and understanding these three elements of the formula.

The first cause of corruption, the monopoly power of the public sector, is the degree to which the government controls and intervenes in the nation’s industries. The International Monetary Fund (IMF) traced much public corruption to government intervention in the economy, noting such examples as: trade restrictions, subsidies, price controls, and low wages in the civil service. Additionally, corruption not only feeds off of the government’s role in the economy, but also the discretion of public officials within the state’s regulatory framework.

This second cause of corruption, the discretion of public officials, is contingent upon the control the government has over the economy. The incidence of corruption not only depends upon the scope of public benefits available, but also the discretion officials have in dispensing those ben-

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**Benefit Analysis**, 61 Am. Pol. Sci. Rev. 417, 419-22 (1967) (arguing, from the economist’s perspective, that corruption can be useful for a country’s economy). As such, this Note does not discuss the potential efficiencies of corruption, accepting the conventional wisdom that corruption harms the public good.

20. A public official accepting bribes disturbs the wealth and resources of the country which entrusted the officials with power. See generally Kofele-Kale, supra note 9; Muffler, supra note 12; Shihata, supra note 14, at 460 (positing that favoritism is pervasive in human behavior and that petty bribes can be seen as charity or gratuity).

21. See Susan Rose-Ackerman, The Political Economy of Corruption, in Corruption and the Global Economy 45 (Kimberly Ann Elliott ed., 1997). Rose-Ackerman also notes that Systemic corruption undermines the legitimacy of governments, especially democracies. Citizens may come to believe that the government is simply for sale to the highest bidder. Corruption undermines claims that government is substituting democratic values for decisions based on ability to pay. It can lead to coups by undemocratic leaders. Military takeovers are frequently justified as a response to the corruption of democratic rulers.

Id.


23. “In the short run, removal of authoritarian controls, decentralization, privatization, and opening of [Eastern European and former Soviet Union] economies to international participation have vastly expanded opportunities for corruption; in some places, such as Russia, it is rampant.” Glynn et al., supra note 3, at 10; see also Boswell, supra note 3, at 1166 (contending that corruption could undermine the dividends gained at the end of the Cold War, such as consolidation of democracy, effective development, and open markets).

24. See Glynn et al., supra note 3, at 10.

25. “Where government regulations are pervasive, however, and government officials have discretion in applying them, individuals are often willing to offer bribes to officials to circumvent the rules, and, sad to relate, officials are occasionally tempted to accept these bribes.” PAOLO MAURO, WHY WORRY ABOUT CORRUPTION?, 4 (1997).

26. See id. at 5.
When states operate particular enterprises in lieu of private sector management, corrupt public officials have the ability to cause losses within the industry, especially when they are not held accountable. The third cause of corruption, the lack of accountability of public officials, coincides with the discretionary power of public officials. If public officials are able to use their discretion without threat of repercussion, then unchecked corruption could ensue. Lack of accountability corresponds with lack of market transparency, which permits inefficient practices to continue undetected. Where public officials with monopoly power over discretionary decisions are not held accountable, they have the incentive to be corrupt.

3. The Consequences of Corruption

The IMF notes several consequences of corruption: (1) corruption lowers investment and retards economic growth; (2) corruption misallocates talent; (3) corruption reduces the effectiveness of aid flows; (4) corruption leads to adverse budgetary consequences; (5) corruption lowers the quality of the infrastructure and of public services; and (6) corruption distorts the composition of government expenditure. Besides these direct effects of corruption, there are indirect effects. Not only will the rate of return of new investment be lowered, but the rate of return for existing and past investment will also suffer. In the end, public officials commence new, corrupt projects as the infrastructure deteriorates.

27. See Rose-Ackerman, supra note 21, at 44.
28. See Kenneth U. Surjadinata, Revisiting Corrupt Practices From a Market Perspective, 12 Emory Int'l L. Rev. 1021, 1082-83 (1998) (arguing that the more states become involved in the marketplace, the greater the likelihood that capital markets will relocate funds elsewhere); Glynn et al., supra note 3, at 11; Rose-Ackerman, supra note 21, at 36 (citing examples of corruption in the privatization arena: privatizations in Argentina favored those with inside information and connections; privatizations in Thailand involved kickbacks and commission fees; and, some privatizations in the former eastern bloc involved similar corrupt transfers).
29. "If the likelihood of detection and punishment is high, either the supply or the demand for bribes may fall to zero . . . The expected cost of bribery is the probability of being caught times the probability of being convicted times the punishment levied." Rose-Ackerman, supra note 21, at 40.
30. Greater transparency allows all internal activities of a country to be viewed without obstacles. "States can reduce inefficient practices by increasing the visibility of how rules govern transactions between parties." Surjadinata, supra note 28, at 1081.
31. See Bribonomics, Economist, Mar. 19, 1994, at 86; Klitgaard, supra note 22.
32. See MAuRo, supra note 25, at 6-7.
33. "Moreover, higher spending on capital projects will reduce the resources available for other spending." Vito Tanzi & Hamid Davoodi, Roads to Nowhere: How Corruption in Public Investment Hurts Growth 6 (1998); see also Kofele-Kale, supra note 9, at 15 (arguing that corruption does not have a socially beneficial side when wealth moves out of the country and into the bank accounts of public officials).
34. See Tanzi & Davoodi, supra note 33, at 10; Beverley Earle, The United States' Foreign Corrupt Practices Act and the OECD Anti-Bribery Recommendation: When Moral Persuasion Won't Work, Try the Money Argument, 14 Dick. J. Int'l L. 207, 222 (1996) (noting that not only is the cumulative burden on private agents great, but there is also great distortion within the international market due to the secrecy of corruption. The shifting of resources from high quality projects, such as clean water, to other projects deterio-
Corruption undermines growth and impedes development in the long run, creates political instability, and exacerbates inequalities.\(^{35}\) Corruption undermines growth by allowing private interests to determine economic policy rather than the rule of law.\(^{36}\) Thus, instead of an increase in the public good, the personal accounts of corrupt officials increase.\(^{37}\) This indigenous spoliation destabilizes emerging markets and limits the ability of a nation to build economies that can compete within the global market.\(^{38}\) High levels of corruption preclude high growth of a nation's gross domestic product.\(^{39}\) Any gains from corruption are short-term, whereas the negative effects of corruption are long-term.\(^{40}\) Most importantly, the expanding scope of corruption increases the periods of transition to a market economy and an open political system.\(^{41}\)

Similarly, open political systems cannot merely introduce liberalized institutions and market economies into a country. Transitional democracies need to balance the existence of diverse political forces.\(^{42}\) "Corruption rates global quality of life. Corruption stagnates economies by discouraging innovation and efficiency and encouraging large projects that produce large pay-offs. "As a growing number of experts are beginning to recognize, widespread corruption threatens the very basis of an open, multilateral world economy." Glynn et al., supra note 3, at 13.

35. See Rose-Ackerman, supra note 21, at 42-44; but see Surjadinata, supra note 28, (suggesting that ten percent of corrupt practices produce efficient outcomes. Therefore, anti-corruption initiatives should be based on market discipline rather than cultural values in order to eliminate the over-inclusion of efficient corruption. A view that answers cultural critiques of anti-corruption initiatives).

36. See KOF-KALE, supra note 9, at 14-15; Shihata, supra note 14, at 460 (positing that corruption creates a law different from that on the books, an ad hoc rule of law in which special interests are given priority over the public good).

37. "Illicit funds may be used for consumption by top bureaucrats, may be invested in legitimate businesses at home or abroad, or may be diverted into illegal businesses. Payoffs are more likely to be diverted into illegal activities or foreign bank accounts than other funds because they are already illegal and must be kept secret." Rose-Ackerman, supra note 21, at 43-44.


39. "Note that low corruption does not necessarily tie into highest GDP growth, but high corruption precludes high growth." Earle, supra note 34, at 223 (analyzing the correlation between corruption and GDP growth).

40. In the working of most economies, the impact of corruption is not less harmful, whether we look at market or non-market economies. While the phenomenon is complex and the cost may fall on other areas at future times, corruption can endanger the use of economic choices, increase the costs of transactions, reduce state revenue, increase public expenditures, penalize law-abiders, and produce adverse distributional effects . . . . Its prevalence over time could threaten macro-economic stability, raise the rate of inflation, and push business into the informal sector. Shihata, supra note 14, at 460-61.

41. "The scope and adverse impact of corruption . . . tend to increase in the periods of transition from non-market to a market system, and from a totalitarian to an open political system." Id. at 461; see also M. Naim, The Corruption Eruption, BROWN J. W. AFF. 245, 246 (1995) (arguing that the disclosure of corruption in recent years is a sign that democracy and markets are working).

often flourishes under one-party politics [due to lack of competition]... and fragmented corruption can lead to a collapse in political competition; if there is little to gain and much to lose by being in opposition, politics may take the form of a disorganized scramble for the spoils."  

Likewise, corruption creates societal instability by sowing the seeds of social and political tensions.  

This in turn threatens the very fabric of society, and undermines the effectiveness of the state and the legitimacy of government. "A share of the country's wealth is distributed to insiders and corrupt bidders, contributing to inequalities in wealth." Corruption thus deepens the inequities of society.  

racy which suggests that open political systems must first balance between accessibility and autonomy of political elites, and second balance between wealth and power:  

The first envisions a relationship between state and society in which private interests have significant political influence but officials can formulate and carry out policies authoritatively. The second refers to a situation in which both political and economic paths of advancement and numerous and open enough to reduce temptations to trade either wealth or power for each other.

Id.  

43. Id. at 67.

44. See Shihata, supra note 14, at 460 (corruption "transforms public rules and procedures based on democratic and meritocratic principles into ad hoc practices based on willingness and ability to pay or on personal connections and reciprocated favors"); Glynn et al., supra note 3, at 10-11; Earle, supra note 34, at 223 (bribery is anti-democratic in that, when unchecked, it may destabilize a society and actually encourage a return to dictatorship as a method of controlling corruption. If capitalism and bribery are viewed as handmaidens then democracy may be endangered, both economically and politically); Rose-Ackerman, supra note 21, at 45 (noting that in Somalia, autocracy degenerated to warlordism and that as Suharto's reign came to an end, Indonesia became a kleptocracy).

45. See Rose-Ackerman, supra note 21, at 44 (noting that in India and Pakistan, corruption in irrigation systems means that those at the bottom of the system may obtain much less water than they need even for subsistence farming, causing the poorest producers to suffer and starve).

46. See id. at 45; Glynn et al., supra note 3, at 10-11.

47. Rose-Ackerman, supra note 21, at 44 (noting further that the government must make up for high contract prices and for disappointing revenue generated by privatizations, both of which increase the wealth of elites, by raising taxes or cutting spending, which directly affects the poor who consume most of their income).

48. See id. at 45 (outlining corruption's consequences as including inefficient government contracting and privatizations which are extremely crucial for transitional democracies; raising the cost of business to MNCs; inefficient use of corrupt payments for corruption by top bureaucrats rather than strengthening the infrastructure; inequities broaden; military takeovers become justified as a response to corrupt democratic rulers; and growth either slows or comes to a halt).

Corruption is usually a rational response to the incentives faced by many that do business in countries where government influence is pervasive, where institutions are weak, and where government officials have a substantial degree of discretion in awarding access to activities under the control of the state. Furthermore, the longer a given economy or institution has endured corruption, the more ingrained it becomes and the more difficult it is to address.
The causes of corruption derive from the role of the government in the economy and the discretion and accountability of officials who make key decisions. Corruption leads to economic distortions, political instability, and the deepening of societal inequalities. The international community considers corruption a threat to liberalized markets, open political systems, and the general welfare of society.\(^{49}\) The threat of corruption to domestic and international stability has led to national and international anti-corruption initiatives.

B. Existing Efforts to Combat Corruption

The causes and consequences of corruption point to the legal and policy initiatives necessary to combat corruption. Almost every country condemns the receipt or payment of bribes to a public servant.\(^{50}\) By focusing on the person taking the bribe, the bribe-taker, these laws attempt to regulate the demand side of corruption. Domestic enforcement of such laws is lax, however,\(^{51}\) allowing the demand side of corruption to flourish.\(^{52}\)

An example of the demand side of corruption would be:

Company X and company Y are bidding on a dam project in country A. Official P requires a kickback of one million dollars from company X in return for awarding the contract to country A. Without the kickback, official P will grant the contract to company Y. When hundreds of millions of dollars are at stake, company X will pay the bribe for assurance of the contract.\(^{53}\)

Companies will pay public officials to be included as a bidder, to be included as the only qualified bidder, or to be selected as the winning con-

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\(^{49}\) See Glynn et al., \textit{supra} note 3, at 9-10; Boswell, \textit{supra} note 3, at 1167.

\(^{50}\) “Nearly every nation has made it a crime to bribe or attempt to bribe its state officials.” Muffler, \textit{supra} note 12, at 5; see also Noonan, \textit{supra} note 1, at 702; Hartman, \textit{supra} note 10, at 168.

\(^{51}\) “[U]ncovering evidence of corruption is notoriously difficult because both sides to the transaction have an interest in keeping it secret.” Rose-Ackerman, \textit{supra} note 21, at 49 (noting that not only are those reporting corrupt activities putting themselves in danger, but they are also bearing risks of being disciplined by superiors or attacked by co-workers, making enforcers less inclined to enforce corruption laws).

\(^{52}\) The International Chamber of Commerce and other domestic trade groups target the supply side of corruption by requiring codes of conduct and self-regulation within the domestic and international realm, with possible fines and other penalties for those companies who pay bribes. The onus of controlling demand side corruption, though, is put upon domestic enforcement through the processes of the police, administration, and judiciary.

Demand side initiatives focus on the bribe-taker or public official. By limiting the discretion officials have in granting government contracts and increasing incentives to not accept (or demand) bribes, the demand for bribes will decrease.

\(^{53}\) “In some poorer nations, if a foreign company is prepared to offer large sums of money to secure a project, the government of the country may have a difficult time preventing key officials from being tempted.” David A. Gantz, \textit{Globalizing Sanctions Against Foreign Bribery: The Emergence of a New International Legal Consensus}, 18 Nw. J. Int’l L. & Bus. 457, 468-69 (1998).
Allowing public officials to obtain bribes without punishment leads to an expansion of the demand side of corruption. The supply side of corruption has its roots embedded in the traditional notion that "when in Rome, do as the Romans do." This thinking creates a self-fulfilling prophecy, leaving international businesses with the choice of not bribing and being competitively disadvantaged or bribing more than other companies. International businesses often choose the latter. Countries generally leave the regulation of those making bribes to the bribe-makers themselves, businesses. The lack of self-regulation by international businesses and the lack of domestic laws condemning the making of bribes to foreign public officials allows supply side corruption to thrive. Only recently have there been advances upon the traditional supply side mind-frame.

The United States and the lesser-developed countries of the world want to end corruption. The industrialized nations, whose multinational corporations (MNCs) exploit corrupt officials by making bribes to them, have failed to join the anti-corruption revolution until recently.

Further, 

54. See Rose-Ackerman, supra note 21, at 34-38 (noting that firms will pay not only to gain government benefits, such as contracts, access to credit, good exchange rates, and subsidies, but also to avoid costs such as taxes, criminal penalties, and delays).

55. See id. (noting that payoffs are common in China where many raw materials are sold at state subsidized prices. Paraguay's multiple exchange rate system led to corruption as public officials manipulated the system for bribes. In Argentina, a reinsurance scheme organized by state officials and insurance middlemen deteriorated into outright fraud against the state. The going rate for a telephone installation was two hundred dollars in St. Petersburg in 1992. An Indian newspaper published the list of grease payments necessary for routine public services).

56. See Earle, supra note 34, at 221-22 (noting that the traditional supply side mind set must be overcome in order to combat corruption, and many current initiatives are targeted at changing perceptions).

57. "Foreign business, especially in developing countries, often contributes to the spread of corruption by assuming that pay-offs and connections are inevitable facts of doing business." Shibata, supra note 14, at 461. "Transnational companies have either adopted the practice of making [corrupt] payments or have felt compelled to do so, because these types of bribes are often offered by their competitors." Hartman, supra note 10, at 161.

58. See Vincke, supra note 4, at 101.

59. The Foreign Corrupt Practices Act and the International Chamber of Commerce Rules of Conduct, both introduced to the world in 1977, were the first attempts to eliminate the traditional view of corruption.

60. The United States wants to level the playing field with other industrialized nations due to its Foreign Corrupt Practices Act, and the lesser-developed countries want more efficiency in their government spending. See Glynn et al., supra note 3, at 19; Boswell, supra note 3, at 1168.

61. Japan, Germany, and several European nations are the most prominent culprits. One commentator explains that nationalism tended to dominate the European landscape where a German company would be bidding against a French company rather than another German company. Germany would not regulate corrupt companies who gain a competitive advantage over their French counterparts. See Earle, supra note 34, at 224-26.

MNCs no longer see corruption as an effective overall strategy in gaining government contracts.\textsuperscript{62} Gradually, corruption is becoming obsolete.\textsuperscript{63}

Corruption remained unchecked in the international realm until the 1970s, when two bodies took a stand. The U.S. Congress enacted the Foreign Corrupt Practices Act (FCPA) to regulate the activities of U.S. companies abroad.\textsuperscript{64} The International Chamber of Commerce (ICC) produced the Rules of Conduct to encourage MNCs to adopt corporate codes of conduct.\textsuperscript{65} Each has been criticized and amended over the past two decades, but neither succumbed to the traditional mind-frame that corruption is simply a part of international business. The durability of the FCPA and the ICC Rules of Conduct coupled with the explosion of corruption scandals in western Europe in the 1990s\textsuperscript{66} have led to the advancement of further anti-corruption initiatives by international non-governmental organizations (NGOs).

Figure 1 characterizes the analysis of current and future anti-corruption initiatives.\textsuperscript{67} Initiatives can be divided into two categories: international and domestic. The initiatives curb corruption either by striking at the supply side of corruption, the bribe-makers, or the demand side of corruption, the bribe-takers.
1. **Domestic Initiatives Targeting the Supply Side of Corruption**

The sole representative of domestic initiatives targeting the supply side of corruption is the FCPA of the United States. The FCPA targets U.S. MNCs and curbs corruption through criminalizing bribery by U.S. MNCs abroad. The FCPA regulates MNCs making bribes in other nations. Though amendments in 1988 diluted the capacity of the FCPA to regulate corrupt conduct, MNCs still ensure that they are FCPA-compliant. Since 1977, the FCPA has stood as the only domestic initiative taken to curb the supply side of international corruption.

In 1958, Congress enacted a law denying tax deductibility for bribes paid to foreign officials. Almost twenty years later, Congress enacted the FCPA on the heels of the Watergate scandal which exposed several corrupt practices by U.S. MNCs abroad. The Securities and Exchange Commission and Internal Revenue Service attempted to prosecute such infractions.

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### FIGURE 1

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<tr>
<th>International</th>
<th>Domestic</th>
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<tbody>
<tr>
<td><strong>Supply Side/Bribe-Maker</strong></td>
<td><strong>Quadrant 1:</strong> ICC Rules of Conduct</td>
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<td></td>
<td>OECD Recommendation</td>
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<td></td>
<td>U.N. Declaration and regional initiatives</td>
</tr>
<tr>
<td><strong>Demand Side/Bribe-Taker</strong></td>
<td><strong>Quadrant 3:</strong> Domestic laws in most countries</td>
</tr>
<tr>
<td></td>
<td>World Bank, International Monetary Fund, and Transparency International</td>
</tr>
</tbody>
</table>

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68. See supra text accompanying notes 67-68, Figure 1, Quadrant 2.
70. The extraterritoriality of the FCPA extends only to MNCs, for it does not regulate the behavior of foreign public officials. See United States v. Castle, 925 F.2d 831 (5th Cir. 1991) (per curiam) (holding that the FCPA does not criminalize receipt of a bribe by a foreign official and that foreign officials could not be prosecuted for conspiracy to violate the FCPA).
72. "The Watergate investigation's exposure of huge secret corporate slush funds, used to finance bribery of corporate officials, acted as a catalyst for the formation of the FCPA." Muffler, supra note 12, at 5; see also Glynn et al., supra note 3, at 17 (reporting that exposure of Lockheed Corporation's illicit payments of $25 million to Japanese officials, resulted in the resignation and criminal conviction of Japanese Prime Minister Kakuei Tanaka.).
but could find no law on which to base a conviction.\textsuperscript{73} Now, the FCPA criminalizes corrupt payments to foreign officials. The statute, as amended in 1988, prohibits American individuals or corporations from paying, offering to pay, or promising to pay, foreign government officials to influence any official act, induce an act or omission in violation of an official's duty, or induce officials to use their influence with the government to obtain business.\textsuperscript{74} The FCPA further holds U.S. managers liable for prosecution, fines, and even imprisonment if it is proven that they knew of an illegal act.\textsuperscript{75}

Complaints from U.S. MNCs' led to amendments of the FCPA in 1988.\textsuperscript{76} The amendments provided for three exceptions: (1) payments to lower-level officials to secure the performance of routine actions (so-called “grease payments”); (2) bona fide business expenditures; and (3) if the action is legal in the host country.\textsuperscript{77} Congress amended the mens rea requirement of the FCPA from "reason to know" to "knowing.\textsuperscript{78} These amendments decreased the ability of the Department of Justice and Securities and Exchange Commission to indict possible FCPA-offenders.

The FCPA is not a low priority for enforcement, though, as the $24.8 million fine paid by Lockheed demonstrates.\textsuperscript{79} Many times companies will plea bargain when being prosecuted under the FCPA. For example, Vitusa Corporation pled guilty in 1994 to a violation of the FCPA.\textsuperscript{80} Few FCPA

\textsuperscript{73} "To remedy this perceived anomaly, the U.S. Congress passed the FCPA on December 19, 1977." Vincke, supra note 4, at 99-100; see also Stephen F. Black & Roger M. Witten, Complying with the Foreign Corrupt Practices Act 2-3 (1997).


\textsuperscript{77} See 15 U.S.C. § 78dd-1(e); 78dd-2(f) (1988); see also Earle, supra note 34, at 210.

\textsuperscript{78} 15 U.S.C. § 78dd-1 (f)(2)(A)(1), (B). Knowing is defined as such person is aware that such person is engaging in such conduct, that such circumstance exists, or that such result is substantially certain to occur; or such person has a firm belief that such circumstance exists or that such result is substantially certain to occur... knowledge is established if a person is aware of a high probability of the existence of such circumstances unless the person actually believes that such circumstances do not exist.

\textsuperscript{id} See Earle, supra note 34, at 211-12 (discussing the Lockheed case where the company acknowledged wrongdoing in paying an Egyptian legislator and her husband, via their consulting firm, a fee for assisting Lockheed in securing the sale of three transport planes. The fine was the maximum provided by law and represented twice the profit to Lockheed on the sale of its C-130 planes).

\textsuperscript{80} See id. at 213-15 (discussing the Vitusa case where Vitusa had a contract for milk powder with the Dominican Republic in which the government delayed making the final payment on the milk powder. The government notified Vitusa of a “service fee” necessary for an official to use his influence to obtain the balance due on the contract. Vitusa agreed to pay the fee. Five days after payment, Vitusa discussed the legality of the payment with a U.S. embassy official who notified Vitusa that this would be an infraction
cases have gone to trial, and even fewer have gone to judgment. One case that did end in judgment involved an aerospace executive convicted of violating the FCPA anti-bribery provisions during dealings with the Niger Air Force.81 Due to this strong enforcement, MNCs usually self-ensure their FCPA-compliance and plea bargain when they are not.82

Unlike the United States, over the last two decades, the rest of the industrialized world did not enact legislation resembling the FCPA. In 1996, however, the United Nations (U.N.) declared that all members should criminalize international bribery and the Organization for Economic Cooperation and Development (OECD) recommended the same to its members. These efforts represented international initiatives targeting the supply side of corruption.

2. International Initiatives Targeting the Supply Side of Corruption83

There are several major international initiatives targeting the supply side of corruption. First, the ICC recently renewed its efforts to effectively enforce its Rules of Conduct by calling for MNCs to develop codes of conduct in line with the Rules of Conduct.84 Second, the OECD recently introduced its Recommendation Against Bribery in International Business Transactions calling for domestic implementation by national legislatures.85 Third, the U.N. tried to take action against corruption by calling for member nations to enact domestic legislation.86 Lastly, the Organization of American States (OAS), Council of Europe (CE), and Pacific Basin Economic Council (PBEC) also took regional action.87 All of these initiatives, outside of the ICC Rules of Conduct, attempt to reduce the supply of bribes by urging for countries to regulate their own MNCs' dealings abroad.

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81. See United States v. Liebo, 923 F.2d 1308 (8th Cir. 1991) (the executive was acquitted on seventeen other counts, but convicted for purchasing of airline tickets for a friend of an official with an important role in the contract approval process and for certifying to the Department of Defense that "no gifts or gratuities" had been given).

82. See Earle, supra note 34, at 213-20. This shows the influence the FCPA has on the international business realm.

83. See supra text accompanying notes 67-68, Figure 1, Quadrant 1.

84. See Extortion and Bribery in Business Transactions, supra note 65; Vincke, supra note 4, at 103-105 (Vincke, General Counsel of Petrofina, the Belgian oil company, is the chair of the Ad Hoc Committee on Extortion and Bribery in International Business Transactions within the ICC).


87. See Shihata, supra note 14, at 471-72 (the Inter-American Convention Against Corruption and the Protocol on Corruption to the EC Convention on the Protection of the Communities' Financial Interests, both prepared in 1996, target both demand side and supply side corruption by calling for the criminalization of corruption which involves public officials of the Member States).
a. The ICC Rules of Conduct

The ICC targeted MNCs as a response to the same scandals that prompted Congress to enact the FCPA. As early as 1975, the ICC created an international committee to establish rules on bribery and extortion in international commercial transactions. In 1977, the ICC became the first NGO to produce guidelines for multinational corporate conduct.

The international committee, named the Shawcross Committee, had four main tasks: (1) periodic review of matters relating to the Rules of Conduct; (2) interpretation, clarification, and possible suggestions for modification to the Rules of Conduct; (3) periodic reports to the Council of the ICC on its activities; and (4) the consideration of alleged infringements of the Rules of Conduct. The Shawcross Committee created the International Panel on Extortion and Bribery and Business Transaction (the “Panel”) which could only examine infringements when the adverse party explicitly consented.

The Panel never became effective, however, and the Rules of Conduct were never formally enforced. "The problem with the Panel was that its competence was based on self-regulation, but its intervention was still viewed as 'external.'" This does not mean the Rules of Conduct failed.

88. See Glynn et al., supra note 69 (naming the Watergate investigation and Lockheed scandals as catalysts for change); Vincke, supra note 4, at 99-100 (explaining that the Watergate investigation led to further discoveries of the widespread practice of payment of large sums to foreign government officials).

89. See Extortion and Bribery in Business Transactions, supra note 65.

90. See Vincke, supra note 4, at 99-100 (the ICC, the world business organization headquartered in Paris, was swift to react and was the first non-governmental organization to produce rules of conduct pertaining to bribery and other corrupt activities).


92. Extortion and Bribery in Business Transactions, supra note 65, Article 11.

93. Bylaws adopted by the 132d Session of the Council of the ICC, June 20, 1978, and incorporated as Part IV of the ICC, Extortion and Bribery in Business Transactions, 131st Sess. (Nov. 29, 1977). See id. art. 5 (providing that the Panel may, upon the request of any member or national committee of the ICC or any entity with a legitimate interest, examine any alleged infringement of the Rules of Conduct by any party, including non-members of the ICC and any public authority or official thereof. So, the ICC combined supply-side and demand-side initiatives, though in reality, no public authority would ever consent to examination).

94. See Vincke, supra note 4, at 100-01 (even though the Rules were generally well received, there may have been legal problems with the effectiveness of opinions delivered by the Panel).

95. Id. at 101 (discussing the difference between a self-regulatory system, where corporations have a complete set of internal rules embodied in codes of conduct, and a judiciary approach, which relies upon external rules imposed by the community and sanctioned by the judiciary. The Shawcross committee based the Panel upon notions of self-regulation, but the business community saw it as a quasi-judicial body and never integrated it into the life of the business community).
Instead, many MNCs began to self-regulate, and created codes of conduct that referred to the Rules of Conduct.\textsuperscript{96} The scandals during the 1990s led to a renewed effort within the ICC to review the 1977 ICC Report.\textsuperscript{97} In 1994, the Executive Board met and decided to focus its efforts on extortion and bribery and directed the ICC Secretary General to establish the Ad Hoc Committee on Extortion and Bribery in International Business Transactions ("Ad Hoc Committee").\textsuperscript{98}

The Ad Hoc Committee achieved three things after its formation. First, it produced recommendations to governments and international organizations to consolidate anti-corruption initiatives and work towards domestic implementation of the OECD Recommendation.\textsuperscript{99} Second, it revised the Rules of Conduct to expand the definition of bribery, created independent procedures for financial auditing to ensure greater transparency, and mandated that companies establish their own codes of conduct.\textsuperscript{100} Third, the Ad Hoc Committee developed an ICC follow-up program which set up a Standing Committee in place of the defunct Panel.\textsuperscript{101}

The ICC inhibits supply side corruption by compelling the business community to self-regulate through corporate codes of conduct and establishing a Standing Committee to follow-up on corporate self-regulation. The supply side initiatives of the ICC promise that the ICC will cultivate anti-corruption initiatives for many years to come and that the obsolescence of corruption may be realized in the near future.\textsuperscript{102}

\textsuperscript{96} See id. at 100-01 (positing that the Rules of Conduct changed the mentality in the international business community, and many corporations welcomed self-regulation. They would not, however, submit cases to a quasi-judicial body, constituted within an international business organization. They opted for self-regulation over a judicial approach, maintaining a modicum of control in their internal affairs).

\textsuperscript{97} See Heimann, supra note 91, at 151; Vincke, supra note 4 (naming the scandals of Italy, Spain, France, and Belgium).

\textsuperscript{98} See Vincke, supra note 4, at 102; Boswell, supra note 3, at 1173-75.

\textsuperscript{99} See Vincke, supra note 4, at 103-04; Boswell, supra note 3, at 1174 (stating that the Ad Hoc Committee endorsed OECD actions and the strong positions taken by the heads of the World Bank and IMF; furthermore, the Ad Hoc Committee called for more "transparent government procurement procedures, including disclosure of agents' commissions and requiring antibribery certifications by bidders).\textsuperscript{100}

\textsuperscript{100} See Vincke, supra note 4, at 104.

\textsuperscript{101} See id. at 105. The Standing Committee has eight primary tasks: (1) promote the Rules through the national committees of the ICC; (2) collect company codes and serve as a clearinghouse for companies seeking to develop their own codes; (3) sponsor seminars to stimulate interest in the Rules within the business community; (4) encourage national governments to include the business community in actions aiming at strengthening legislation against corruption; (5) serve as liaison with the OECD and other international organizations to provide the ICC viewpoint on anti-corruption action; (6) conduct a study to minimize exposure to extortion or bribery by personnel dealing with sensitive issues; (7) issue a report at least every two years to the ICC Board and Council; and (8) assess the Rules in the light of experience and recommend amendments.\textsuperscript{102}

\textsuperscript{102} See Heimann, supra note 91, at 147-61.
b. The OECD Recommendation

The scandals of the 1990s afforded the opportunity for other NGOs to become active in the anti-corruption arena.\(^1\)\(^3\) The OECD\(^1\)\(^0\) committed itself to the creation and support of market economies.\(^1\)\(^0\) This commitment and the scandals of the 1990s motivated the OECD to make an anti-bribery recommendation to its members in 1994.\(^1\)\(^0\)\(^6\)

The 1994 OECD Recommendation encouraged member countries to criminalize the payment of bribes of foreign officials.\(^1\)\(^0\)\(^7\) It sought extraterritorial application of bribery law much like the FCPA.\(^1\)\(^0\)\(^8\) The United States made a strong push to make the recommendation legally binding, but Japan and many European nations banded together against the United States.\(^1\)\(^0\)\(^9\) The 1994 OECD Recommendation created working groups to address the issues of criminalization, tax deductibility, procurement, and accounting practices, and set deadlines for further recommendations.\(^1\)\(^1\)\(^0\)

In 1996, the OECD made a second recommendation that narrowed the 1994 Recommendation. The 1996 OECD Recommendation confined itself to the prohibition of tax deductibility of bribes to foreign officials, thus attacking the supply side of corruption by reducing the incentives to make corrupt payments.\(^1\)\(^1\)\(^1\) This small step led to a breakthrough in 1997.

In 1997, the OECD ministers agreed to negotiate a convention to make payment of bribes to public officials a crime in all twenty-nine OECD member-nations.\(^1\)\(^1\)\(^2\) The member nations reached agreement on the comm-

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103. See Vincke, supra note 4 (naming the scandals of Italy, Spain, France, and Belgium); Earle, supra note 34, at 226 ("recent events reflected in the headline 'Europe in the Grip of Corruption Plague' suggest a continent confronting the economic consequences of bribery").

104. The industrialized nations founded the OECD to rebuild Europe after World War II and expanded in 1961 to become a forum for coordinating assistance to developing countries. The OECD maintains a membership of twenty-nine countries, thus, its geographic scope is limited. The membership includes: Australia, Austria, Belgium, Canada, Czech Republic, Denmark, Finland, France, Germany, Greece, Hungary, Iceland, Ireland, Italy, Japan, Korea, Luxembourg, Mexico, The Netherlands, New Zealand, Norway, Poland, Portugal, Spain, Sweden, Switzerland, Turkey, United Kingdom, and United States. Many industrialized nations are among these twenty-nine countries, so the degree of influence of the OECD remains great.

105. See Earle, supra note 34, at 225; OECD, U.S. Dep't of State Dispatch, Vol. 5 (No. 25), June 20, 1994.


107. See Earle, supra note 34, at 225.

108. See Shihata, supra note 14, at 470.

109. See Earle, supra note 34, at 225 ("Japan, with the backing of its European colleagues, objected to U.S. efforts to make the recommendation legally binding"); Muffler, supra note 12, at 15 (claiming that an anti-corruption convention based on the FCPA's criminalization will be "stigmatized as American 'moral imperialism' ").

110. See Earle, supra note 34, at 226; Boswell, supra note 3, at 1169.


mon elements of the crime, resolving a protracted impasse between some European nations. The 1997 Recommendation also included best practices for accounting, auditing, and procurement.

By monitoring the contracting procedures of international businesses, the OECD constrained supply side corruption in the international realm. The new convention, which came into force on February 15, 1999, promises to be a strong initiative targeting the supply side of corruption by criminalizing the payment of bribes by MNCs.

c. The U.N. Declaration and Regional Initiatives

The U.S. Congress and ICC were not the only bodies that took action against corruption in the 1970s. The U.N. Commission on Transnational Corporations completed a draft International Agreement on Illicit Payments. Not until 1995, amidst the scandals of western Europe, did the United Nations resolve to reconvene work on this draft agreement. The renewed efforts in the United Nations parallel the activity in regional institutions such as the OAS, Council of Europe, and PBEC, creating overlapping initiatives targeting the supply side of corruption.

In December of 1996, the U.N. General Assembly adopted a Declaration Against Corruption and Bribery in International Commercial Transactions. The Declaration called for states to criminalize payment of bribes...
to foreign public officials and to deny tax deductibility of bribes.\textsuperscript{120} The Declaration, though not legally binding, focused on the supply side of corruption by reducing incentives to make corrupt payments. It represents the growing anti-corruption sentiment in the international community.

At the regional level, several multilateral anti-corruption initiatives have been taken. As the United States vehemently pushed for a strong recommendation from the OECD, it also pushed for a multilateral agreement in the Organization of American States.\textsuperscript{121} Twenty-three countries signed and enacted the 1996 Inter-American Convention Against Corruption (OAS Convention).\textsuperscript{122} The Convention requires outlawing both supply side and demand side corruption.\textsuperscript{123} The confluence of the FCPA regulating U.S. MNCs, the OAS Convention seeking criminalization of corrupt activity, and NAFTA's North American Development Bank (NADB) requiring companies seeking loans to certify that they have not engaged in bribery or been convicted of bribery in the last five years, suggests a strong anti-corruption sentiment in the Americas.\textsuperscript{124}

The OAS Convention and NADB give citizens of Latin American countries a means by which to fight corruption domestically and governments incentive to eradicate corruption. They curb the supply side of corruption by tying contract validity to anti-bribery provisions. The regionalization of anti-supply side corruption efforts does not only occur in the Americas and with developing states, however. Europe's industrialized nations are joining the fight against corruption as well.

In 1996, the European nations took regional action. The Multidisciplinary Group on Corruption of the Council of Europe began work on two draft conventions, one calling for the criminalization of corruption and the other defining the terms of corruption.\textsuperscript{125} These drafts led to further work towards an European Union (EU) policy on corruption.\textsuperscript{126}

\textsuperscript{120} See Shihata, supra note 14, at 469-70.

\textsuperscript{121} See id. at 471 (stating that subject to the constitutional law of each member state, the Convention outlaws both demand side and supply side corruption, covers the extra-territorial application of anti-bribery laws, and prohibits "illicit enrichment," defined as "any unexplained significant increase in the assets of a government official").

\textsuperscript{122} See OAS Inter-American Convention against Corruption, March 29, 1996, reprinted in 35 I.L.M 724 (1996); Inter-American Convention Against Corruption (visited Oct. 29, 1999) <http://www.oas.org/En/prog/juridico/english/Sigs/b-58.html>. (All twenty-six members of the OAS have signed the Convention, and seventeen have ratified the Convention).

\textsuperscript{123} See id. (all countries already outlaw the demand side of corruption. The problem is enforcement of such laws). See Low et al., supra note 71, at 246-55. See Bruce Zagans & Shaila Ohri, The Emergence of an International Enforcement Regime on Transnational Corruption in the Americas, 30 Law & Pol'y Ins’t. Bus. 53, 54-64 (1999).

\textsuperscript{124} See Shihata, supra note 14, at 472; Boswell, supra note 3, at 1171-73 (noting that the OAS also approved a Program for Cooperation in the Fight Against Corruption on June 2, 1997).

\textsuperscript{125} See Shihata, supra note 14, at 472 (the draft Framework Convention on Corruption requires the outlawing of corruption and the adoption of domestic legislation by EU-members. The draft Convention on Corruption defines the forms of corruption, including both supply-side and demand-side corruption).

\textsuperscript{126} See id. at 472-73 (further EU corruption policies included: a Protocol on Corruption to the EC Convention on the Protection of the Communities' Financial Interests
In 1997, the EU Commission adopted a Communication to the Council and Parliament on a Union Policy Against Corruption. The Communication laid out a detailed policy program for action by the EU, its member-nations, and those seeking to become members. This led to the creation of a Draft Criminal Law Convention developed by the Council of Europe in 1998. These initiatives curb the supply side of corruption through monitoring the contracting procedures of MNCs and reducing the incentives of international businesses to make corrupt payments. They are indicative of the new anti-corruption sentiment in Europe.

Besides the Americas and Europe, the Pacific Rim nations have attempted to address issues of corruption. In 1997, the PBEC produced a Statement modeled after the ICC Rules of Conduct. The PBEC Statement presents a set of standards of corporate behavior for members to follow. Such standards present the first step for Pacific Rim countries to follow the lead of other areas of the world.

3. Domestic Initiatives Targeting the Demand Side of Corruption

Nations regulate the behavior of domestic public officials through domestic legislation. Nearly all countries have laws which outlaw bribery of public officials. The Indian Penal Code exemplifies a domestic initiative that targets demand side corruption. Sections 161, 162, and 165 combine

and a Convention on the Fight Against Corruption Involving Officials of the European Communities as Officials of Member States of the European Union).

127. See Boswell, supra note 3, at 1170-71.
128. See id. (noting that the Commission proposed to endorse the OECD Recommendation, abolish tax deductibility, strengthen procurement, accounting, and auditing requirements, and develop stronger anti-corruption measures in EU foreign aid programs).
130. European nations once opposed U.S. anti-corruption efforts in the OECD. As Council of Europe Legal Affairs expert Robert Lamponi stated in June 1994, Up until recently people knew corruption existed but didn't see it as a problem of society. Now it is obvious there's a major problem with clear international implications .... With the collapse of communism, the great presence of the state has vanished in the east, leaving every little official who holds a portion of power tempted to exploit it for his own personal gain.
Earle, supra note 34, at 226-227 (suggesting that the wave of scandals in Europe are forcing European nations to cope with the economic consequences of corruption).
131. All 20 members of the PBEC approved the Statement on Standards for Transactions Between Business and Governments (visited Feb. 10, 1999) <http://www.pbec.org/home>. The members include CEOs, Chairmen, and Senior executives from the most important companies in the region.
132. See Stuart H. Denning, Foreign Corrupt Practices, 32 Int'l. Law. 463, 467 (such standards include: "respect for national laws; avoidance of improper inducements; appropriate remuneration and control of agents; proper financial recording and auditing, transparency and disclosure of political contribution as required by law; and development of company codes of conduct.").
133. See supra text accompanying notes 67-68, Figure 1, Quadrant 3.
to prohibit public servants, and those close to them, from taking bribes in order to influence behavior.\textsuperscript{135} “Most foreign companies[, though,] still make bribes as they do not fear prosecution under Indian law.”\textsuperscript{136} Other examples of local prohibition of bribery include the Navajo Nation Code and Saudi Arabian Law. The Navajo Nation Code prohibits tribal officials, judges, or employees from receiving a benefit intended to influence such person’s discretion.\textsuperscript{137} In Saudi Arabia, demand-side bribery occurs when an official solicits “for himself as a third party, or accepted or received a promise or a gift to perform any duties of his function.”\textsuperscript{138}

Prohibition against bribery is also found in the Judeo-Christian tradition. Exodus pronounces: “You are not to accept a bribe, for the bribe blinds clear-sighted men and can distort the words of the righteous man.”\textsuperscript{139} Neither the coercive power of the state nor the moral force of biblical law has ebbed the flow of global corruption.

The fact that laws exist provides no solace when enforcement is lax,\textsuperscript{140} or when corruption is an accepted practice. “[S]trong evidence suggests that many countries, not solely those in the developing world, are unwilling or unable to enforce domestic anti-bribery legislation against their own government officials.”\textsuperscript{141} Domestic initiatives targeting the demand side of corruption naively ask corrupt leaders to judge themselves.

4. International Initiatives Targeting the Demand Side of Corruption\textsuperscript{142}

While domestic demand side initiatives have self-enforcement problems, international initiatives targeting demand side corruption do not face such a dilemma. International demand side initiatives substitute international judgment for domestic judgment by allowing international actors, such as the World Bank, World Trade Organization (WTO), and Transparency International (TI), to set standards for government contracting, create educational programs for citizens, and hear citizens’ claims of corrupt activity. Such initiatives enable citizens to hold their corrupt public officials accountable.

\textsuperscript{137} See Nation Code tit. 17, § 360(A)(1) (Equity 1995). A Tribal official who accepts a bribe may be removed from office. Id. § 365.
\textsuperscript{139} Exodus 23:8.
\textsuperscript{140} One example of lax enforcement would be the Marcos’ regime in the Philippines, under which $500 million of annual assistance was misused or stolen. See Hartman, supra note 10, at 169. Another example is the inefficient system of cronism found in Indonesia where the IMF recently demanded austerity measures to be taken. See Surjadinata, supra note 28, at 1077-78. One final example includes Thai government officials who hold personal stakes in troubled financial institutions and have a natural reluctance to discipline them. See Neel Chowdhury & Anthony Paul, Where Asia Goes from Here, Fortune, Nov. 24, 1997, at 103.
\textsuperscript{141} Gantz, supra note 53, at 468; see supra Part I.A.
\textsuperscript{142} See supra text accompanying notes 67-68, Figure 1, Quadrant 4.
The World Bank and IMF, two international financial institutions (IFIs) who lend to developing nations, offer several strategies to curb corruption. These strategies include: the participation of affected peoples and NGOs, such as TI, during project design; IFI supervision and auditing requirements during project implementation; the incorporation of new “no bribery” clauses into loan agreements by the parties; and outside firm post-review audits of procurements on a country basis.\textsuperscript{143} Such initiatives are private in nature and allow for flexibility in their creation.

The WTO recently prepared a Government Procurement Agreement covering the purchase of goods and services, including public works and public utilities, to ensure that the international procurement process was open and transparent.\textsuperscript{144} Such an arrangement on transparency, openness, and due process in government procurement did not receive wide acceptance when it came into force in January of 1996. As international public opinion for anti-corruption efforts increases, acceptance of transparent government procurement increases.\textsuperscript{145}

For efforts of international financial and trade organizations to succeed, the grass-roots organization Transparency International must shape international public opinion. TI, formed in 1993 and modeled after Amnesty International,\textsuperscript{146} seeks to raise public awareness and mobilize civil society and the private sector to work in coalition in over seventy countries with TI national chapters. The national chapters work with government and institutional leaders on initiatives that would support systemic reform.\textsuperscript{147} TI has been a catalyst for anti-corruption initiatives in the domestic and international realms.\textsuperscript{148}

\textsuperscript{143} See Shihata, supra note 14, at 479-81; Boswell, supra note 3, at 1169, 1173 (asserting that international financial institutions are taking stock of the roles they can play in combating corruption).

\textsuperscript{144} See Shihata, supra note 14, at 470 (A Working Group on Transparency in Government Procurement facilitated the negotiation of the Government Procurement Agreement). Greater transparency allows all internal activities of a country to be viewed without obstacles. “States can reduce inefficient practices by increasing the visibility of how rules govern transactions between parties.” Surjadi, supra note 28, at 1081.

\textsuperscript{145} See Shihata, supra note 14, at 470.

\textsuperscript{146} See Introducing TI, supra note 15, at 1; David C. Scott, Organization Aims to Shed Light on Shady Deals Worldwide, CHRISTIAN SCI. MONITOR, Mar. 23, 1994, at 6 (“[u]n the same way Amnesty International exposes human rights abuses, TI is . . . [a] Berlin-based organization dedicated to exposing the misuse of public power for personal profit.”).

\textsuperscript{147} See Shihata, supra note 14, at 470.

\textsuperscript{148} See generally National Integrity Systems: The TI Source Book (Jeremy Pope ed., 2d ed. 1997) [hereinafter The TI Source Book]. The TI Source Book outlines the steps countries must take to combat corruption. TI creates islands of integrity through Integrity Pacts, which require anti-bribery commitments in specific government contract settings. Examples include: a refinery rehabilitation project in Ecuador (1994), the privatization of telecommunications in Panama (1996), and procurement in the provincial government of Mendoza (1997). See Transparency International, Islands of Integrity: The Integrity Pact (visited Mar. 3, 1999) <http://www.transparency.de/activities/integrity-pact.html>. TI raises public awareness through its national chapters. Such activities include: publishing opinion polls (TI Bangladesh, TI Denmark), work on education tools for school children (TI Denmark, TI Venezuela), highlighting particular issues in local newspapers (TI Malaysia, TI Tanzania), publishing regular newsletters (TI Australia, TI Bangladesh, TI Canada, TI Germany), and holding national anti-corruption panels
International initiatives targeting demand side corruption will aid in
securing the political will necessary to affect internal change, broaden the
geographic scope of corruption control, and level the playing field for all
MNCs.149

II. A New Multi-Layered Strategy to Combat Corruption

Combating corruption requires a multi-layered strategy.150 First, nations
must introduce fundamental reform into their legal, economic, and admin-
istrative sectors to attack the roots of corruption. Second, the international
community must give citizens an avenue for holding corrupt public offi-
cials accountable by introducing international initiatives and machinery.
Roadblocks to international initiatives may slow the progress of anti-cor-
ruption efforts, but they are not insurmountable. Incorporating domestic
groups with new and old international machinery will create a hierarchy
through which citizens may bring claims of corruption. Combating cor-
ruption requires laying the domestic foundation and creating an interna-
tional structure for holding domestic officials accountable in the
international realm.

A. Foundational Principles: Attacking the Roots of Corruption

The foundation of anti-corruption efforts lies within fundamental reform.
Even though corruption requires a complex multi-pronged approach to
combat it, very basic steps can be taken to lay the proper foundation on
which further anti-corruption efforts can be built. Such steps include eco-
omic, administrative, and legal reform.151

(149) See Transparency International, National Chapter Activities

150. This Note offers a new weapon in the anti-corruption arsenal aimed at the
demand side of corruption because supply side initiatives have been taken and are cur-
rently on many international institutions agendas.

Because combating corruption is such a difficult undertaking, there are no sim-
ple solutions. To make progress requires action on many fronts. Corruption
must be attacked from both the demand side and the supply side: by private-
sector initiatives, such as corporate codes of conduct; by public-sector reforms,
such as more transparent procurement rules, deregulation, and privatization; by
better enforcement of existing laws prohibiting bribery of domestic officials; by
ending tax deductibility of bribes; by stricter auditing, accounting, and corpo-
rate disclosure rules; by providing easier access to government information and
greater freedom to criticize government officials; and by defining clearer con-

(151) See Shihata, supra note 14, at 463-68 (positing that although economic reforms
do not specifically target corruption, they do have a positive effect for anti-corruption
efforts; legal and administrative reforms are essential to the appropriate and efficient
operation of the government).
Corruption equals monopoly power plus discretion minus accountability. Reformers must aim anti-corruption efforts at these three components of corruption. This requires economic reform in the public sector to eliminate monopoly power, administrative reform to weaken discretion, and legal reform to strengthen accountability.

Economic reform would include liberalization of markets, monopolization of services, and deregulation. These measures would open up markets to competition and allow market discipline to regulate industries rather than the state by allowing the private sector to determine market price, economies of scale, supply, and demand. Market mechanisms would further ensure greater transparency and accountability by eliminating the complexity and secrecy of bureaucracy. States must limit the role of the government in the private sector.

Administrative reform, accordingly, must accompany economic reform. Reformers must make corruption more risky and more costly, by increasing the probabilities of detection and punishment. As the probability of detection of corrupt activities increases, through greater monitoring or enforcement, the amount of corrupt activities entered into decreases.

Increasing risks and costs is not enough, though. States must weaken the discretion given to public officials, by allowing market mechanisms to work. Governments must give incentives to public officials to stop cor-

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152. See Klitgaard, supra note 22.
153. See Shihata, supra note 14, at 463-68.
154. See id. at 463. Citizens must work to get government out of the business of bribery.
155. See Surjadinata, supra note 28, at 1069-70 ("in addition to the possibility that state governments will reduce their inefficient practices sua sponte and obtain the incidental rewards therefrom, markets may alternatively discipline governments to reform their inefficient institutions.").
156. See Rose-Ackerman supra note 21, at 41 ("Corrupt businesses and officials may create an elaborate structure of shell companies with offshore addresses to hide their peculation. They may engage in other costly efforts to cover their tracks.").
157. "The larger the role of the state, the greater the probability that its instruments will be used by public officials and civil servants to favor particular groups in addition to themselves." Vito Tanzi, Corruption, Governmental Activities, and Markets, Fin. & Dev., Dec. 1995, at 26. Reformers must beware, however, for if they do note first engender strong and effective institutions even privatization authorities and regulatory bodies may become corrupt See Glynn et al., supra note 3, at 11 ("Government officials in charge of privatizing publicly owned assets can become instant tycoons by selling them at low prices for a bribe or even acquiring them through their family or friends"); Rose-Ackerman, supra note 21, at 42-43 (noting examples of corruption in privatizations: in Argentina, privatizations favored those with inside information and connections; in Thailand, privatizations include kickbacks and commission fees; and in the former eastern bloc, some privatizations have involved similar corrupt activities).
158. See Rose-Ackerman, supra note 21, at 40, 46-50 ("The expected cost of bribery is the probability of being caught times the probability of being convicted times the punishment levied.").
159. See Shihata, supra note 14, at 464-65; Rose-Ackerman, supra note 21, at 48 (arguing that as the expected penalty increases, the level of peculation increases).
160. See Rose-Ackerman, supra note 21, at 51-53; Surjadinata, supra note 28, at 1081-84 (arguing that the market will compel privatization of formerly state monopolized
ruption, both through vigorous enforcement of anti-bribery laws and creation of "whistle-blower" statutes. Without enforcement of laws by the legal authorities, officials will continue their corrupt practices.

Legal reform must accompany administrative and economic reform. States need to strengthen their enforcement of laws and punishment of offenders. Increased monitoring, investigating, and evaluating help lessen corruption, for as the chances of detection increase, incidences of corruption will decrease. Increased punishment, severe enough to deter officials from taking the most exorbitant bribe, should parallel increased enforcement. Such legal reform would decrease the incidence of corruption.

Many scholars criticize international demands for structural reform. They claim that reforms enacted too quickly create instability in a country by increasing interest rates and destabilizing prices. Therefore, reforms should be implemented over a period of time to lessen the possibility of instability.

The reforms discussed above create a foundation and a climate in which open markets and democracies can thrive. Corruption flounders when market mechanisms rather than public officials determine the course of business rather than public officials. Open political systems expose corruption to the public, allowing citizens to choose non-corrupt leaders. Many countries may not embrace reforms if their culture and tradition accept "corrupt practices," which could undermine anti-corruption strategies of many nations.

B. Roadblocks to Holding Domestic Officials Accountable in the International Realm

This section discusses three roadblocks to holding officials accountable in the international arena: the roadblock of culture, the roadblock of sovereignty, thus taking decisions out of the discretion of public officials and putting them into the realm of market discipline).

161. "If [anti-corruption efforts are] effective, the perceived risks will deter civil servants from accepting or extorting payments." Rose-Ackerman, supra note 21, at 49 (suggesting that governments should consider promulgating whistle-blower statutes that encourage the reporting of malfeasance); see also Steve H. Hanke, The Curse of Corruption, Forbes, July 29, 1996, at 103 (reporting that a low threat of punishment induces corrupt behavior).

162. See Shihata, supra note 14, at 464-65; Rose-Ackerman, supra note 21, at 40.

163. See Rose-Ackerman, supra note 21, at 48 (suggesting that penalties must be tied to the marginal benefits of the payoffs received, so that as the risk increases so does the penalty); Shihata, supra note 14, at 465. "The taking of a bribe or gratuity should be punished with as severe penalties as defrauding of the State." William Penn, Some Fruits of Solitude, in REFLECTIONS AND MAXIMS (Edmond Goss, ed., Folcroft Library 1965).

164. See Rose-Ackerman, supra note 21, at 40, 46-50 ("The expected cost of bribery is the probability of being caught times the probability of being convicted times the punishment levied.").


166. See id.
eighty, and the roadblock of standing and other jurisdictional issues. Anti-corruption efforts must bypass these roadblocks to achieve effective results. In order to prevail over the roadblock of culture, anti-corruption efforts must overcome the fact that many countries have traditions which western states label as corrupt.

1. The Roadblock of Culture

Many countries of the world voice strong criticism towards the criminalization of practices held to be cultural in their societies, namely: gift-giving and intense loyalty to family and friends.\textsuperscript{167} Defining such practices as a crime does nothing but cause disregard for the law, for officials will continue to follow their cultural traditions rather than the new "western" laws.\textsuperscript{168} This section discusses states' cultural objections to value-based conceptions of corruption. First, it explains such problematic traditions. Then, it details the problems presented by imposing international law.

In Africa and Asia, gift-giving is a pivotal aspect of common social interactions.\textsuperscript{169} In the context of Africa and Asia, gift-giving was obligatory, and many times embedded in the framework of society.\textsuperscript{170} Gifts cre-

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\textsuperscript{167} The system of cronyism found in Indonesia where the IMF recently demanded austerity measures to be taken is an example of gift giving tradition. See Surjadinata, supra note 28, at 1077-78. Former head of government of Nigeria, General Obasanjo stated

I shudder at how an integral aspect of our culture could be taken as the 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 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.

\textsuperscript{168} See Surjadinata, supra note 28, at 1040.


\textsuperscript{170} The TI Source Book, supra note 148, at 5. In the Far East, there also are complaints that traditional practices are now corrupt: "Once, the exchanging of gifts was a laudable social custom emphasizing the importance of personal relations in social life. Now, bongtoo and chongji have distorted the practice into institutionalized bribery in the name of goodwill tokens." The TI Source Book, supra note 148, at 5. Although the commentators on Nigerian and Far Eastern customs call them distortions of an honorable tradition, the people of these countries still follow them. See Michael Johnston, The Political Consequences of Corruption: A Reassessment, COMP. POL., June 1986, at 463. Johnston suggests that

[the existence of ethnic factions among elites, the extent to which kinship norms mean that citizens and/or officials take a different view of patronage practices than does the law, or the exclusion of certain economic interests from decision-making processes, for example, can all be critical parts of the corruption story in specific settings.]

\textit{Id.}
ate a personal connection between citizens.\textsuperscript{171} Further, since elites were most often obligated to give gifts, the tradition of gift-giving can be viewed as a symbolic redistribution of wealth.\textsuperscript{172}

Along with gift-giving practices, many African and Asian cultures include an intense loyalty to family and friends.\textsuperscript{173} The two practices ingrain a culture with the custom of "I will scratch your back, if you will scratch mine."\textsuperscript{174}

Against the backdrop of loyalty and gift-giving, value-based "western" laws that proscribe "bribery" create conflicting priorities for officials in developing states.\textsuperscript{175} When faced with the choice, tradition will always win out over new legal norms.\textsuperscript{176} The imposition of western values on develop-
ing nations is seen as "cultural imperialism." "Developing states perceive extraterritorial application of value-based laws [like the FCPA] as a legally disguised attempt to impose western values." Developing states have different value systems than western states, and believe that western states' "cultural imperialism" is an affront to the international principle of territorial sovereignty. The argument of "cultural imperialism" comes at the intersection of cultural and sovereignty roadblocks, and therefore requires an adequate response.

An adequate response would either take local laws into account or use a non-value-based definition of corruption. Since nearly all countries have laws criminalizing bribery of public officials, local laws can be taken into account in defining indigenous spoliation as an international crime. In the alternative, the international community could also choose to use the market to determine what practices should be deemed corrupt. Either choice would lessen the effectiveness of the corruption challenge to international anti-corruption efforts.

International initiatives must allow citizens to affect internal change because citizens are more able to adapt anti-corruption efforts to their own culture. Externalities, such as the World Bank requiring a certain policy or an international administrative agency requiring compliance, cannot be

with a sledge hammer is never prudent, even if strong arguments can be made that the institutions are dysfunctional." Salbu, supra note 169, at 236.

177. See Surjadi, supra note 28, at 1026-27 ("developing states perceive the FCPA as a culturally arrogant encroachment on their ability to govern activities exclusively within their borders"). See Daniel Pines, Amending the Foreign Corrupt Practices Act to Include a Private Right of Action, 82 CAL. L. Rev. 185, 204-05 (1994); see Nichols, supra note 169, at 298.

178. Surjadi, supra note 28, at 1036.

179. LOUIS HENKIN ET AL., INTERNATIONAL LAW 15-16 (3d ed. 1993) ("The essential quality of Statehood in a State system is the autonomy of each State. State autonomy suggests that a State is not subject to any external authority unless it has voluntarily consented to such authority.").

180. See Muffler, supra note 12, at 5; Hartman, supra note 10, at 168; supra text accompanying notes 67-68, Figure 1, Quadrant 3.

181. Criminalization of bribery can rest upon the laws of each nation, thus allowing for cultural variances while retaining some teeth through actual enforcement. See Steven R. Salbu, The Foreign Corrupt Practices Act as a Threat to Global Harmony, 20 MICH. J. INT'L L. 419, 422-29 (1999) (discussing the need to interpret the nuances of a host country's law in the context of the host country's culture).

182. See Surjadi, supra note 28, at 1046-47, 1052 (discussing corruption from the standpoint of efficient and inefficient practices). The FCPA and the "western" view of corruption tends to label corruption as evil. Professor Surjadi believes this view to be overinclusive. Some efficient practices are included in the western view of corruption. Efficient practices should not be proscribed and that market considerations should regulate whether activity is inefficient, i.e. corrupt. For Professor Surjadi, culturally specific legal norms and presents a market-oriented approach to governing corrupt practices as an opportunity for western and developing states to converge their objectives for economic growth. See id.

183. Salbu notes that the practice of chonji "is better addressed internally," with the task of improving dysfunctional institutions "better left to the host country." Salbu, supra note 169, at 236.
the sole reason for change. In fact, externalities may be turned away because of another roadblock to anti-corruption strategies: sovereignty.

2. The Roadblock of Sovereignty

Sovereignty has frustrated many international initiatives over the years. First, this section explains the concept of sovereignty. Then, it describes the implications for sovereignty when nations sign international agreements or submit to customary international law. Lastly, it presents a solution to this roadblock of sovereignty by treating indigenous spoliation as a violation of human rights, thus placing individual responsibility upon corrupt officials.

The basis of sovereignty is the principle of par in parem imperium non habet (an equal has no dominion over an equal). The United Nations upholds this principle of international law as a basis of its creation. States interpret this principle to mean they have complete dominion over the resources under their control. Over the years, this absolute theory of sovereignty underwent much criticism, leading to a more restrictive theory of sovereignty.  

184. An externality is a catalyst from without the state, rather than from within the state. See THE RANDOM HOUSE COLLEGE DICTIONARY 468 (1st ed. 1984). International organizations and international initiatives that cause changes within nations are externalities to the extent they are not encompassed by domestic initiatives. Whereas internal laws have some modicum of legitimacy in the eyes of the citizenry, international initiatives seldom are understood or trusted by the people of nations. The extra distance, both physically and culturally, between citizens and international initiatives does not allow sound foundations to be built.

185. See id.

186. Sovereignty proved a barrier to the FCPA, for public officials could not be held accountable in U.S. courts. United States v. Castle, 925 F.2d 831 (5th Cir. 1991); see Earle, supra note 34, at 225 (The U.N. Declaration and OECD Recommendation were not able to become legally binding because of nations who believed corruption to be an internal, domestic issue); KOFELE-KALE, supra note 9, at 219 (arguing that sovereignty has been turned into a protective shield to keep perpetrators of acts of indigenous spoliation beyond the jurisdictional reach of both domestic and foreign courts).


188. See KOFELE-KALE, supra note 9, at 221 ("Over the last several centuries the European concept of the State has taken on the trappings of a legal cult which the legal order appears unwilling or unable to deviate from lest, perhaps, it fall under suspicion for apostasy.").

189. Over the years, the absolute theory of sovereignty has not remained static. There have been numerous challenges to this theory of the state, by theoreticians such as Hegel and Marx. See KOFELE-KALE, supra note 9, at 229, 242 ("Ringing endorsement[s] of limits of sovereignty provide the jurisprudential compass for navigating around the contemporary shoals of sovereign immunity defenses whenever these are raised by modern sovereigns in the context of spoliation disputes"). The restrictive theory of sovereignty, accounts for the state as a private actor in the international sphere. Public acts of governments are unreviewable. Private acts of governments are reviewable, and some writers suggest framing corruption in terms of a private act of a public official. See id. at 240 (if sovereignty exists to serve the ends of the state, then sovereignty should not be allowed to be used as a shield by corrupt public officials). When one looks at human rights conventions and commissions, sovereignty proves to be less of a roadblock. See id. at 107-08 (Many conventions refer to a "peoples" right to freely dispose of their natural wealth. This creates an affirmative duty on the government to use the economic
Even beyond the trend of decreasing sovereignty, states become legally obligated by treaty or by customary international law. The principle of *jus cogens* creates a norm of international law so fundamental that states cannot agree to contravene it. States are less effective in presenting sovereignty objections in the face of their legal obligations to international society.

To overcome the roadblock of sovereignty, the international community could place the corruption discussion under the rubric of human rights. Since the time of Nürnberg, sovereignty objections have collided with the fact that prosecuting human rights violations is a norm *erga omnes*. Some commentators believe indigenous spoliation violates human rights by taking away from the people their power to efficiently dispose of their resources:

The right of a people not to be dispossessed of their wealth and natural resources is not just any ordinary human right, but the fundamental human right. This right transcends all other rights and gives some semblance of form and shape to – and in a very real sense qualifies – all other rights. Acts of indigenous spoliation violate fundamental human rights.

If one sees indigenous spoliation as a violation of human rights, much like torture or slavery, then it becomes an international crime that circumvents state sovereignty. Similar to characterizing indigenous spoliation as a violation of human rights, the international community could bypass the

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190. Becoming a party to a treaty creates a legal obligation in that state; the *opinio juris* of customary international law is when states believe they have a legal obligation to follow the norm of customary international law. Whereas treaty-signing is an express consent, customary international law is based upon implied consent. Customary international law is dynamic, with new norms created over time. Due to the recent uprise against corruption, curbing corruption may be or soon will be a part of customary international law. *See id.* at 111-12.


192. *See Kofele-Kale, supra* note 9, at 361.

193. *See id.* at 105; Hartman, *supra* note 10, at 170


195. *See Kofele-Kale, supra* note 9, at 55-56.
sovereignty roadblock by holding public officials individually responsible for violating the fiduciary duty they owe their citizens. However, holding individuals responsible leads to several procedural issues. Even though time has eroded the substance of sovereignty, procedural by-products of sovereignty are still prevalent. These procedural by-products present a further roadblock to anti-corruption strategies: standing and jurisdictional issues.

3. The Roadblock of Standing and Other Jurisdictional Issues

This section examines the procedural and jurisdictional roadblocks to anti-corruption initiatives. First, it presents examples of standing. Then, this section examines reasons and ways to limit standing, due to a concern that threat of suit could be used to extort government contracts. Next, it analyzes the Act of State doctrine and Forum Non Conveniens. Finally, this section discusses the fact that new international machinery would reduce the effect of the standing and jurisdictional roadblocks.

Standing hampers the struggle against corruption by limiting those who can sue to hold public officials accountable. The ICC allows its national chapters to bring suits, as well as anyone who believes a legitimate violation of the Rules of Conduct has occurred. The International Court of Justice only allows states to be parties. The European Court of Justice, on the other hand, allows private causes of action. Yet, both courts only obtain jurisdiction upon consent by parties through treaties or other documentation. There are sound reasons for limiting access to these courts.

Litigating corruption claims presents a situation in which standing should be limited. A delicate balance arises between the ability to sue in court and the ability to put pressure on public officials to grant govern-

196. Holding individuals responsible, rather than the state as a whole, lessens the ability of a state to argue that anti-corruption efforts impinge on their sovereignty. See id. at 113-64 (discussing the doctrine of fiduciary relations as creating a duty placed upon public officials to protect the resources of the populace). Professor Kofele-Kale gives several examples of legal grounding, such as Anglo-American law, Islamic law, and Civil law. He further demonstrates that this fiduciary relationship between a public official and his or her citizens is a matter of customary international law. See id.

197. Examples include the Foreign Sovereign Immunity and the Act of State doctrine, founded upon more absolute ideas of sovereignty.

198. See Extortion and Bribery in Business Transactions, supra note 65.

199. See Statute of International Court of Justice, 59 Stat. 1055, T.S. No. 993, 3 Bevans 1179, June 26, 1945, art. 34, para. 1 ("Only states may be parties in cases before the Court").


201. The International Criminal Court has jurisdiction for a limited number of international crimes. Limiting jurisdiction to consent of states and to certain subject matter limit the possibilities of litigation in the field of corruption. Allowing private causes of action which hold individuals accountable increase the possibilities of litigation, and give citizens an avenue to prosecute public officials.
ment contracts. The double-edged sword of standing must be overcome: there must be standing to allow citizens to hold corrupt officials accountable, yet standing must be limited to prevent bribe-makers from pressuring public officials into awarding contracts.

The most attractive solution to the delicate balance of standing is to limit standing to those who truly want to hold public officials accountable. This suggests limiting standing to citizens affected by corrupt activities and national charters of Transparency International, two groups which would have few ulterior motives. Another possibility would be to criminalize corruption and allow a prosecutor to bring claims. Limiting standing in such ways lessens the opportunity for extortion by those seeking government contracts.

Standing is not the only jurisdictional roadblock to holding corrupt officials accountable in the international realm. The doctrine of Forum Non Conveniens and Act of State present other jurisdictional roadblocks to holding public officials accountable. The Forum Non Conveniens Doctrine allows a court which has jurisdiction over a case to decline to hear the case out of fairness to the parties if there is another court available which would be more convenient. A more convenient forum would be the

202. Supply side standing presents less of a roadblock, for MNCs cannot use the threat of litigation to pressure a domestic official in granting the contract to them. The ICC process presents a supply side standing situation. National chapters of ICC and other legitimate parties present cases against bribe-makers of the international realm, rather than bribe-takers. See Extortion and Bribery in Business Transactions, supra note 65. Demand side standing presents the danger of allowing a MNC to put pressure on public officials. Plaintiffs bring suit against public officials for alleged acts of corruption. If international businesses can threaten to be plaintiffs, then public officials may avoid such embarrassment by granting the contract to the international business. This danger can be avoided by limiting standing to citizens of the state (although national businesses may then have an advantage) or to chapters of TI.

203. Other reasons to allow someone to seek redress in the international realm could be to create more efficiency in government contracting by allowing MNCs to threaten suit. This is not a desired result of holding public officials accountable in the international realm, thus limitations should be placed upon standing.

204. The mission of TI is to increase the integrity of government as a whole and to develop state-specific systems and procedures to prevent and contain corruption. See The TI Source Book, supra note 148, at 5-6.

205. A prosecutor is under a duty to bring only justified charges against an alleged offender. Therefore, a prosecutor would not have an ulterior motive. For a discussion of the role of the ICC in combating corruption, see infra Part II.C.2.c.

206. An alternative argument to limiting standing in the international realm would be to not have litigation in the international realm at all. Corruption is a wholly domestic issue adequately addressed by internal processes. See Salbu, supra note 169, at 232. Internal processes, however, can break down, especially in a corrupt setting. Police may not arrest clearly corrupt superiors. Prosecutors may drop justified charges. The judiciary may dismiss strong cases. Litigants may not be willing to endanger their family and friends. Many times, domestic enforcement is futile. See infra note 212.


208. See Piper Aircraft, 454 U.S. at 235 (presenting a balancing test for Forum Non Conveniens).
nation in which the corruption occurred, thus plaintiffs would most likely face judges favorable to the corrupt government officials.209

The Act of State doctrine substantively ends litigation by holding the act of a sovereign valid.210 The Supreme Court decided that the Act of State doctrine was not appropriate in a case where the litigant, rather than asking the Court to determine the validity of an act of state, asked the Court to determine the validity of a contract obtained via a bribe.211 This suggests courts may circumvent the Act of State doctrine by determining that corrupt acts are not valid acts of state.

These jurisdictional roadblocks are usually procedural in nature and more often create roadblocks on the civil side of litigation.212 The Act of State doctrine and doctrine Forum Non Conveniens apply in the federal courts of the United States, where citizens may seek money damage awards, not criminal accountability for corrupt actions. In criminal prosecutions, prosecutors have greater opportunities for jurisdiction. Due to the burden of proof put upon a prosecutor, a court will usually be more lenient

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209. "This doctrine [Forum Non Conveniens] tends to be fatal in application. In a survey of the plaintiffs' lawyers in transnational cases that the federal courts dismissed on forum non conveniens grounds from 1947-1984, responses covered 85 cases; of those 85, not one resulted in a plaintiff's win in the foreign court; most cases were abandoned or settled for little." RICHARD H. FIELD ET AL., CIVIL PROCEDURE 1083 (7th ed. 1997) (citing David W. Robertson, Forum Non Conveniens in America and England: "A Rather Fantastic Fiction," 103 Law Q. Rev. 398, 418-20 (1987)).

210. The Act of State doctrine rests upon the fact that all sovereigns are equals, and thus, they cannot have dominion over one another. "Every sovereign state is bound to respect the independence of every other sovereign state, and the courts of one country will not sit in judgment on the acts of the government of another done in its own territory." Underhill, 168 U.S. at 252.

211. See W.S. Kirkpatrick & Co. v. Environmental Tectonics Corp, 493 U.S. 400 (1990) (suggesting that the Act of State doctrine is not as prominent today as it once was, especially in the commercial realm where states act as private agencies). Furthermore, the Act of State doctrine applies only in the context of public acts rather than private acts. See Kofele-Kale, supra note 194, at 70 (noting that the commercial exception to the Act of State doctrine may allow more litigation in the civil field of corruption control).

212. A counter argument to holding public officials accountable in other nations or in the international realm, is that corruption is a domestic issue that should be left to internal processes. What would normally be a jurisdictional roadblock, the doctrine of exhaustion of remedies, may provide an argument in favor of using external processes. The doctrine of exhaustion of remedies requires a complainant to exhaust local avenues of justice before seeking international relief. See Kofele-Kale, supra note 9, at 42. The doctrine of exhaustion of remedies does not apply where there are no laws in the state allowing relief or seeking redress within the state would be futile. See J. Briery, The Law of Nations 276-87 (6th ed. 1963). Briefly notes that

[i]f the local tribunals are notoriously corrupt . . . the individual is not required "to exhaust justice when there is no justice to exhaust." Again, if the wrong has been committed by . . . some high official, it not infrequently happens that the local law provides no remedy and in that case there are no local remedies to exhaust.

Id. In the corruption setting, enforcement of anti-bribery laws is non-existent and attempting to hold public officials accountable domestically is not only dangerous, but also futile. If no international avenue exists to hold public officials accountable, citizens' actions to fight corruption may be hopeless.
in allowing jurisdiction. To give citizens an alternative to the futility of domestic claims, two legal initiatives become attractive: labeling indigenous spoliation as an international crime and creating international machinery which allows appropriate parties to bring claims against public officials.

C. Legal Initiatives

The roots of corruption and roadblocks to fighting corruption suggest that the international community should divide initiatives to combat corruption into legal initiatives and policy initiatives. International legal initiatives should target accountability of public officials. Holding public officials accountable through domestic enforcement has not proven effective. International policy initiatives should incorporate citizens and grass roots organizations to combat monopoly power and discretion of public officials.

This section proposes two legal initiatives that target the accountability of public officials: the criminalization of indigenous spoliation in the international realm and the creation of international machinery to bolster current international and domestic anti-corruption initiatives. First, this section contemplates the creation of a multilateral treaty which criminalizes indigenous spoliation by public officials. Second, it examines the bases for holding public officials accountable. Third, this section addresses how the international community can bypass the roadblocks to criminalization. Fourth, it recommends the creation of international machinery. Finally, this section concludes that combining criminalization of indigenous spoliation with international machinery aids citizens in holding their corrupt public officials accountable.

213. A litigant loses control of the litigation, but also does not incur the costs of the litigation. The litigant purportedly wants justice done, so concern about money damages is low, and the desire to hold a public official accountable is high. Further, criminal sanctions impugn the disfavor of the international community.

214. In Sierra Leone, after throwing out senior government ministers for their corrupt activities, corruption persisted because "the organizational systems and culture have remained unchanged. The circumstances that produced the corruption have let it happen again." The TI Source Book, supra note 148, at 19. In Nigeria, "a state governor used mobile police to take hostage the Chief Judge of that state and his other judges who were presiding over an election case. The judges were not released until about 10 p.m., after a favorable judgment had been handed down." Id. at 59.

215. "The ability of civil society to monitor, detect, and reverse the activities of public officials in their midst is enhanced by proximity and familiarity with local issues." Id. at 5, 18-20, 35-38 (further arguing that TI national chapters are crucial to involving civil society in defending its essential interests. TI takes a holistic approach to combating corruption, realizing that the elimination of corruption is not an end in itself, but a means to attain the broader goal of a more effective, fairer, and efficient government). Limiting the role of the government in the economy should come through domestic efforts rather than international externalities because of the cultural roadblock. See supra notes 170-73 and accompanying text. Such domestic initiatives targeting monopoly power and discretion allow more internal stability for nations combating corruption.

Now that the OECD has completed its convention which criminalizes international bribery, the international community should seek to criminalize indigenous spoliation. Criminalization sends the powerful message that citizens will no longer accept corruption, that local laws criminalizing corruption will be supported internationally, and that the international community cannot tolerate the repercussions of indigenous spoliation on the international realm.

a. Criminalization

Criminalizing indigenous spoliation would place it on a par with international crimes such as slavery, torture, apartheid, and genocide. Such heinous violations of international law create enforceable claims against the perpetrators. These offenses are contrary to the interests of the whole international community, and as such, must be wholly denounced by the international community; so too must indigenous spoliation. A name given to the crime of indigenous spoliation is "patrimonicide," meaning "the laying waste of the wealth and resources belonging by right to a nation's citizens." Many organizations have attempted to define international crimes and draft international criminal codes, but the doctrine of ubi jus id remedium (where there is a right there must be a remedy) and the lack of a centralized international enforcement agency inhibited their ambitious efforts.

i. The Draft Code of Crimes

In 1991, the International Law Commission attempted to define international crimes in its Draft Code of Crimes against the Peace (Draft Code of

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216. But see Muffler, supra note 12, at 15 (arguing that criminalization should not be a part of a multilateral treaty because criminalization will be deemed American "moral imperialism," and nations will not agree to it and proposing a multilateral treaty which targets the supply side of corruption through civil actions); Surjadinata, supra note 28, at 1052 (arguing that criminalization should be limited to inefficient behavior and detailing the need to divide corruption into efficient and inefficient practices. Using efficiency and market mechanisms to determine corrupt activities eliminates the over-inclusion of efficient practices that a value-based system would include as corrupt). See Salbu, supra note 169, at 251 (stating that "the external imposition of any one set of norms and values is impracticable as well as imprudent").

217. See generally THE TI SOURCE BOOK, supra note 148.

218. See Kofele-Kale, supra note 9, at 55 (noting that all of these crimes represent instances when procedure is not a problem. Universal jurisdiction can be had because of the heinousness of the crimes).

219. See supra notes 190-91 and accompanying text (discussing jus cogens and erga omnes obligations).

220. See Kofele-Kale, supra note 9, at 39 (discussing how the International Court of Justice lent support to the notion that certain wrongs are of concern to the whole international community in the Barcelona Traction Case); Kofele-Kale, supra note 194, at 92.

221. Kofele-Kale, supra note 9, at 14.

222. See id. at 39-40.
The Draft Code of Crimes listed international crimes of which individuals could be held responsible. It extended the list beyond that of the Nürnberg Charter, which suggests that the list is not exhaustive. Today, a consensus has emerged that indigenous spoliation constitutes an international crime.

A consensus becomes binding law not only through treaties but also through customary international law. If nations see indigenous spoliation as an international crime worthy of imposing international sanctions, then a custom of preventing indigenous spoliation becomes a reality. Customary international law circumvents the need for a treaty, and creates a more flexible alternative to the wooden language of a treaty. In fact, support for holding domestic officials accountable in the international realm comes from a doctrine created at the end of colonialism: the doctrine of fiduciary relations.

ii. Customary International Law: Doctrine of Fiduciary Relations

A multilateral convention defining indigenous spoliation as an international crime is not the only way to criminalize indigenous spoliation. The edicts of customary international law may support criminalization. The doctrine of Fiduciary Relations allows criminalizing indigenous spoliation by treating it as a breach of a fiduciary duty. The bases for imposing fiduciary duties upon public officials are borne from three theories:

223. See Kofele-Kale, supra note 194, at 92 (noting that the Draft Code of Crimes represented the global community's willingness to proscribe offenses that "attack the very foundations of human existence, injure the vital interests of the international community, and regarded as criminal by that community as a whole").

224. See KOFELE-KALE, supra note 9, at 55 (stating that the Draft Code of Crimes put its emphasis on individuals rather than states, since crimes are committed by individuals. In this light, the Code drafters looked to the Nürnberg Charter for crimes which held individuals responsible, which included: genocide, apartheid, and torture. Other crimes for which individuals could be held responsible under the Draft Code include: international terrorism, illicit traffic in drugs, and willful and severe damage to the environment). There was also discussion of naming corruption a "crime against humanity." Corruption in Government 24 (U.N. 1990), TCD/Sem. 90/2, INT-89-R56 (Report of an Interregional Seminar held in the Hague, the Netherlands on Dec. 11-15, 1989). Since indigenous spoliation is the most devastating form of corruption, it follows that indigenous spoliation would also fit as a "crime against humanity."

225. See KOFELE-KALE, supra note 9, at 66-70 (arguing that indigenous spoliation meets all the tests presented by the ILC for its Draft Code of Crimes).

226. See supra note 190.

227. Customary international law allows for more flexibility in international enforcement. States do not become parties to it, but are obliged to follow its dictates unless they are a persistent objector from the first inception of customary international law.

228. See KOFELE-KALE, supra note 9, at 113-64 (discussing the doctrine of fiduciary relations as creating a duty placed upon public officials to protect the resources of the populace. The author gives several examples of legal grounding, such as Anglo-American law, Islamic law, and Civil law. He further demonstrates that this fiduciary relationship between a public official and his or her citizens is a matter of customary international law; RESTATEMENT (Second) of Trusts § 2 (1959) ("A trust . . . is a fiduciary relationship with respect to property, subjecting the person by whom the title of the property is held to equitable duties to deal with the property for the benefit of another person, which arises as a result of a manifestation of an intention to create it").
the entrusting theory; (2) the public trust theory; and (3) the voluntary assumption of duty theory.229

The entrusting theory advances the notion that the constitution grants certain powers to public officials, which they abuse when indigenous spoliation exists.230 The fiduciary's role in the entrusting theory is that of a property-holder who manages property entrusted to him by the beneficiary of the property's use, the populace.231 The theory indicates that public officials are servants of the people and the government owes a fiduciary duty of care to its citizens.232

The public trust theory bases itself upon the fact that citizens have an indefeasible public interest in their public wealth and resources placed under the guardianship of public officials.233 The doctrine rests upon the idea that the state owes citizens a duty of care with respect to the disposal of "common property" public resources.234 These public resources are held in a constructive trust for the people by public officials who must act as representatives for the benefit of the whole citizenry in common.235

The voluntary assumption of duty theory is founded upon the fact that public officials seek public office and take an oath of office.236 Fiduciary obligations rest upon the premise that an individual consciously chooses to seek public office.237 Upon obtaining an office, the office-holder must take an oath of office, which not only creates the fiduciary obligation of the office but lays out the commitment the office-holder will make in performing duties on the public's behalf. The delegation of constitutional powers from the people to the official and the expectation that such delegation will be used solely for the public good create the official's fiduciary obligation.238

The union of all three theories present a compelling case that indigenous spoliation is an international wrong within customary international law. When public officials allow inefficient projects to go through due to their acceptance of bribes, they breach their fiduciary duty to the public. This breach gives citizens a cause of action against their public officials in the international realm.

Such strong arguments still encounter resistance. States will argue that only they have the power to decide what crimes will be prosecuted within their borders, and based on the culture and tradition of the nation, states define crimes and the responsibility of leaders. The next section offers rebuttals to these objections.

229. See Kofele-Kale, supra note 9, at 146-56.
230. See id. at 146-49.
231. See id.
232. See id.
233. See id. at 149-51.
234. See id.
235. See id.
236. See id. at 152-56.
237. See id.
238. See id.
b. A Path around the Roadblocks

Whether the solution takes the form of a multilateral treaty or a statement of customary international law, concern for the cultures of nations raises a legitimate objection to criminalizing indigenous spoliation in the international realm. A three step argument undermines the cultural objection. First, nearly all countries have laws criminalizing bribery of public officials. Second, local laws can be taken into account in criminalizing indigenous spoliation. Third, indigenous spoliation, as an economic crime, can be couched in market-based terms rather than value-based terms. The international community can either factor culture into the anti-corruption equation or use the market to determine what constitutes the crime of corruption.

Beyond the cultural objection, countries will also raise a sovereignty objection to the criminalization of indigenous spoliation. Yet, a treaty or customary international law would place a legal obligation upon states. A legal obligation lessens the strength of the sovereignty objection.

Realistically, the international community needs a treaty to create a mechanism allowing citizens to hold their public officials accountable when domestic laws fail to give them adequate redress. If citizens seek to hold officials accountable for indigenous spoliation in the international realm, an international hierarchy to combat indigenous spoliation needs to exist.

2. International Machinery and the International Criminal Court

To have an effective international mechanism for holding public officials accountable, a three-layered hierarchy of agencies must exist to facilitate both international and domestic anti-corruption efforts. The base level would include the local enforcement in each country and international agencies committed to fighting corruption, which would funnel information and resources to the top of the level, the Anti-Corruption Commitment. [footnotes]

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239. See Muffler, supra note 12, at 5; Hartman, supra note 10, at 168; supra text accompanying notes 67-68, Figure 1, Quadrant 3.

240. See supra note 181.

241. See Surjadinata, supra note 28, at 1046-47, 1052 (discussing corruption from the standpoint of efficient and inefficient practices. The FCPA and the "western" view of corruption tends to label corruption as evil. The author believes this view to be overinclusive, with the fact that some efficient practices are included in the western view of corruption. He suggests that efficient practices should not be proscribed and that market considerations should regulate whether activity is inefficient, i.e. corrupt. In his final synopsis, the author condemns culturally specific legal norms and presents a market-oriented approach to governing corrupt practices as an opportunity for wester and developing states to converge their objectives for economic growth).

242. Developing nations object to "cultural imperialism" and value-based terms in the criminalization process as infringing on their self-determination. Several industrialized nations, mainly the European countries and Japan, opposed criminalization as an option within the OECD Recommendation. See id. at 1037-39; Earle, supra note 34, at 225.

243. Figure 2 exemplifies the International Anti-Corruption Hierarchy. See infra Part II.C.2.a.
Above the base level, an Anti-Corruption Commission would hold hearings and make recommendations as to whether an offense to go to the highest level of the hierarchy, the International Criminal Court.

FIGURE 2

<table>
<thead>
<tr>
<th>International Anti-Corruption Hierarchy</th>
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<tr>
<td><strong>Third Level:</strong> The International Criminal Court</td>
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<tr>
<td><strong>Second Level:</strong> Anti-Corruption Commission</td>
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<td><strong>First Level:</strong> Funneling and Consolidation</td>
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a. The First Level: Funneling and Consolidation

At the base of the anti-corruption hierarchy are key institutions which can affect internal policy changes, including: the internal governance of countries, domestic citizen groups such as TI national chapters, business groups such as ICC national chapters, and international institutions such as the World Bank and the United Nations. All of these groups fight corruption in different ways and with different results. Unfortunately, anti-corruption is not the sole initiative of many of these groups. So, the international community needs to create an organization to consolidate anti-corruption initiatives.

An Anti-Corruption Committee would centralize the new international focus on corruption and consolidate current efforts. If nations create a multilateral treaty, the Committee would ensure its operation. The organi-

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244. Examples of such international agencies would be: the United Nations, OECD, World Bank, and TI. Further, regional committees would help to funnel activities to the next level. Even the ICC could funnel any offenses of the demand side of corruption to the next level. A new international committee atop the base level would aid in consolidating and centralizing anti-corruption efforts. See Muffler, supra note 12, at 23.

245. Governments use legislation. Citizen groups use networking and education. The ICC uses business self-interest to call for incorporation of corporate codes of conduct (self-regulation) and its quasi-judicial panel to investigate violators of the Rules of Conduct. The World Bank and IMF use policy lending and other techniques when giving aid to countries. The United Nations and OECD operate as fora for discussing corruption and produce recommendations and declarations created by working groups.
zations at the base level would funnel information and materials to the Committee so that the Committee becomes an information center for anti-corruption initiatives. More importantly, the Anti-Corruption Committee would draft and consolidate the anti-corruption mandates, such as regulatory norms and the creation of integrity systems, to be accepted by the international community. Further, it would handle mediations and arbitrations. The Committee also would recommend cases that need to move to the next level of the hierarchy: the Anti-Corruption Commission.

b. The Second Level: The Administrative Agency

Mainly, the Anti-Corruption Commission's would hear disputes concerning possible corrupt practices by domestic officials. As an administrative agency, it allows citizens to hold domestic public officials accountable. It will mirror the work of the ICC Standing Committee which oversees supply side violations. The Commission and Standing Committee could work in conjunction to stop corruption in the international realm.

To effectively conduct its own investigations the Commission may need the power of international discovery. Though international discovery could be controversial, the Commission's power to punish should not be. Such punishment would include fines and other penalties enunci-

246. Transparency International becomes a very important part of the process since they already have the resources and disseminate information to those who ask for it. TI is an anti-corruption grass roots organization that will play an important role in empowering citizens to hold their officials accountable.

247. Such regulatory norms and anti-corruption mandates can be found within the OECD, United Nations, and domestic laws. See generally The TI Source Book, supra note 148.

248. See Muffler, supra note 12, at 23 (describing how such a committee would handle cases in which settlement is possible. Other cases will have to go to the Commission, where criminal penalties would be handed down).

249. See id. at 23 (presenting a treaty and machinery that would target supply side corruption. This same machinery can work to curb demand side corruption). This Note limits the inquiry to domestic public officials accepting bribes from MNCs, thus implicating the international realm. Every corrupt act has some minimal international implication, whether it be the health of a nation's economy or an MNC not getting a contract.

250. See Vincke, supra note 4. Whereas the ICC and the business community dislike a quasi-judicial body to hear supply side corruption claims, a Commission designed to hear demand side corruption claims may flourish. Instead of promulgating corporate codes of conduct in the private sector, the Commission will promote effective enforcement and monitoring in the public sector.

251. See Muffler, supra note 12, at 24 (suggesting that an international discovery provision would be somewhat controversial, but is necessary. A good addition to such a provision would be to limit assistance to the degree that national laws allow and permit reservations to such a provision). Nations would reject an international discovery provision as an impingement on territorial sovereignty and a possible threat to national security. One way around such objections would be to use national chapters of TI to conduct investigations as a compromise requiring full cooperation by the allegedly corrupt government.
ated in local laws. More severe penalties would only come out of the International Criminal Court, to which the Commission would send the most reprehensible offenses.

c. The Third Level: International Criminal Court

On July 17, 1998, the U.N. Diplomatic Conference in Rome established the Permanent International Criminal Court. The Rome Statute of the International Criminal Court affirms the principles of international law recognized by the Charter of the Nürnberg Tribunal. The Court has the power to exercise its jurisdiction over individuals who commit the most serious crimes against the international community. The Court is the culmination of over five decades of work to hold criminals accountable in the international realm.

The International Criminal Court sits atop the anti-corruption hierarchy and is the final destination of the most egregious offenders. The major concern is whether states would become members to the Statute of the Court, or to a new anti-corruption treaty, and accept the jurisdiction of the court. Currently, over seventy countries have signed the Rome Statute of the International Criminal Court. To ensure its operation within the hierarchy of anti-corruption machinery, states party to a new anti-corrupt-

252. The roadblocks of sovereignty and culture require the use of local laws at the penalty phase of the Commission, but the International Criminal Court does not have such a restriction. Constitutions of certain states do not allow for the high punishment that some states would require or allow.

253. If the Anti-Corruption Commission and ICC Ad Hoc Committee work in conjunction at this level, from both the demand and supply side of corruption, then recommendations can come from both organizations to the International Criminal Court.


256. Nuclear Age Peace Foundation, supra note 254.


258. See Rome Statute Signature and Ratification Chart, <http://www.igc.org/icc/rome/html/ratify.html> (visited Oct. 29, 1999) (Senegal became the first country to ratify the Statute of the Court in January 1999, followed by Trinidad and Tobago in April, San Marino in May, and Italy in July. Eighty-nine countries have signed the Statute, including: Albania, Andorra, Angola, Antigua and Barbuda, Argentina, Armenia, Australia, Austria, Bangladesh, Belgium, Benin, Bolivia, Bulgaria, Burkina Faso, Burundi, Cameroon, Canada, Chile, Colombia, Congo (Brazzaville), Costa Rica, Cote d'Ivoire, Croatia, Cyprus, Denmark, Djibouti, Ecuador, Eritrea, Finland, France, Gabon, Gambia, Germany, Georgia, Ghana, Greece, Haiti, Honduras, Hungary, Iceland, Ireland, Italy, Jordan, Kenya, Kyrgyzstan, Latvia, Lesotho, Liberia, Liechtenstein, Lithuania, Luxembourg, Macedonia (Former Yugolav Republic), Madagascar, Mali, Malta, Mauritius, Monaco, Namibia, Netherlands, New Zealand, Niger, Norway, Panama, Paraguay, Portugal, Poland, Romania, Samoa, San Marino, Senegal, Sierra Leone, Slovakia, Slovenia, Solomon Islands, South Africa, Spain, St. Lucia, Sweden, Switzerland, Tajikistan, Trinidad and Tobago, Uganda, United Kingdom, Venezuela, Zambia, and Zimbabwe. The United States has yet to sign the Rome Statute).
tion treaty should be able limit their acceptance of International Criminal Court jurisdiction to issues of indigenous spoliation.\textsuperscript{259}

i. Personal Jurisdiction

The personal jurisdiction of the International Criminal Court may extend to non-signatory nationals. A State Party may refer a case to the Prosecutor and:

the Court may exercise its jurisdiction if one or more of the following States are Parties to this Statute or have accepted the jurisdiction of the Court: (a) The State on the territory of which the conduct in question occurred or, if the crime was committed on board a vessel or aircraft, the State of registration of that vessel or aircraft; [or] (b) The State of which the person accused of a crime is a national.\textsuperscript{260}

Although the position of the United States is that the Court should not exercise personal jurisdiction over non-signatory nationals,\textsuperscript{261} there are convincing arguments that the Court should exercise such power.

The Court exercises jurisdiction over crimes that were already in existence because of customary international law.\textsuperscript{262} Therefore, the international norm that non-signatory nationals are not bound by crimes newly created by a treaty does not apply.\textsuperscript{263} Pursuant to Article 12, the ICC may exercise jurisdiction over a person as long as the state of the territory where the crime was committed or the state of the national of the accused consents.\textsuperscript{264} Article 12 permits the Court to exercise a form of limited universal jurisdiction.

Articles 17, 89, and 90 contemplate jurisdiction over non-signatory nationals as well.\textsuperscript{265} These Articles flow from the preamble of the Rome Statute which states "[r]ecalling that it is the duty of every State to exercise its criminal jurisdiction over those responsible for international crimes . . . ."\textsuperscript{266} The Rome Statute and its "legislative history"\textsuperscript{267} point to allowing

\textsuperscript{259} The International Criminal Court could allow signatory nations to limit the scope of their acceptance by setting up a special chamber to hear claims of indigenous spoliation. See infra Part II.C.2.c.


\textsuperscript{261} See, e.g., David J. Scheffer, The United States and the International Criminal Court, 93 AM. J. INT'L L. 12, 18 (1999).

\textsuperscript{262} See JORDAN J. PAUST ET AL., INTERNATIONAL CRIMINAL LAW 74-84, 95-110 (1996).

\textsuperscript{263} See id.

\textsuperscript{264} See Rome Statute, supra note 260, art. 12.

\textsuperscript{265} See id. Article 17, which discusses inadmissibility, deals with concurrent jurisdictional competence between the International Criminal Court and a non-signatory state. If the non-signatory state is unwilling to investigate or prosecute, then the International Criminal Court may take on the case. Article 90, which discusses admissibility, is the flip side of the same coin.

\textsuperscript{266} Id.

\textsuperscript{267} Mahnoush H. Arsanjani, The Rome Statute of the International Criminal Court, 93 AM. J. INT'L L. 22, 26 (stating that "[t]he overwhelming majority of states . . . could not agree to requiring the consent of the state of the nationality of the accused as a prerequisite for the court's jurisdiction . . . .").
the Court exercise its personal jurisdiction over non-signatory nationals as well as signatory nationals.

ii. Subject Matter Jurisdiction
The Court's subject matter jurisdiction over crimes of indigenous spoliation comes from Article 5 of the Statute of the Court which lists the crimes within its jurisdiction. Indigenous spoliation would fit into Article 7 which discusses "crimes against humanity." If persecution of citizens by misappropriating the resources and wealth of a country can fit within the definition of "crimes against humanity," then corruption falls within the jurisdiction of the Court.

Some argue that "crimes against humanity" refers only to crimes during times of war. Yet, the language is broad, and therefore is open to a broad reading. A better argument would state that "crimes against humanity" can consist of crimes during both war times and peace times. In times of peace, the deprivation of the power of the people to efficiently dispose of their resources should constitute a "crime against humanity." The Rome Statute also requires "crimes against humanity" to be systematic, intended, and done by the state, each of which fall into the definition of indigenous spoliation. Critics further will argue that the inclusion of indigenous spoliation will trivialize the other crimes historically included. Therefore, the International Criminal Court could subordinate indigenous spoliation claims by creating a panel dealing with indigenous spoliation or, after much deliberation, decide that indigenous spoliation is worthy of adjudication by the International Criminal Court.

268. The Court has jurisdiction over (1) the crime of genocide; (2) crimes against humanity; (3) war crimes; and (4) crimes of aggression. See Rome Statute, supra note 260.

269. Id. art. 7, paragraph 1(h) ("Persecution against any identifiable group or collectivity on political, racial, national, ethnic, cultural, religious, gender as defined in paragraph 3, or other grounds that are universally recognized as impermissible under international law, in connection with any act referred to in this paragraph or any crime within the jurisdiction of the Court").

270. Some discussion regarding corruption as a "crime against humanity" has occurred within the United Nations. See Corruption in Government, supra note 224, at 24.

271. Such as the raping and murdering of the enemies' women and children upon the capture of a city. Violations of international humanitarian law were found to be a threat to international peace and security in the War Tribunal of the former Yugoslavia. See S.C. Res. 827, U.N. SCOR, U.N. Doc. SC/RES/1993/827.

272. See STEVEN R. RATNER & JASON S. ABRAMS, ACCOUNTABILITY FOR HUMAN RIGHTS ATROCITIES IN INTERNATIONAL LAW: BEYOND THE NUREMBERG LEGACY 45-77 (1997) (stating that although the nexus to armed conflict remained in the charter of the Yugoslavia Tribunal, it did not remain in the charter of the Rwanda Tribunal. The authors further discuss the fact that international criminal scholars and bureaucrats presume that crimes against humanity can occur in times of peace. The nexus to armed conflict is also absent from the ILC's 1996 Draft Code.).

273. See Corruption in Government, supra note 224, at 24 (discussing the description of corruption as a "crime against humanity").

274. See RATNER & ABRAMS, supra note 272, at 57-67.

275. See supra notes 18-21 and accompanying text.

276. See supra notes 218-26, and accompanying text.
Assuming indigenous spoliation falls within the jurisdiction of the Court, the Court could play a significant role in the anti-corruption hierarchy. The Court could take referrals from the Anti-Corruption Commission. If the Court decides to create a special chamber, it could overcome objections raised against including indigenous spoliation as a "crime against humanity." The Court stands as powerful weapon against corruption in the international realm.

Another answer to the criticisms of an International Anti-Corruption Hierarchy would be to create domestic investigatory commissions. The International Anti-Corruption Hierarchy does not contemplate the creation of domestic investigatory commissions, also known as "truth commissions." Nations have used "truth commissions" in instances of human rights abuses. Governments may establish "truth commissions" in order to hold public officials accountable for indigenous spoliation. An investigatory commission may build a solid domestic foundation for anti-corruption efforts for several reasons:

First, . . . an effective panel can establish an official, authoritative record of abuses in a country, thereby helping to educate the public, possibly deter future abuses, and strengthen the rule of law. . . . Secondly, . . . [a truth commission] helps impart to the citizenry a sense of dignity and empowerment that can help them move beyond the pain of the past. . . . Thirdly, a commission can promote justice by imposing moral condemnation and possibly laying the groundwork for other sanctions, especially if it assigns responsibility for abuses. Fourthly, it can demonstrate that human rights are a priority for a successor government and further discredit the perpetrators of abuses. Fifthly, . . . an investigatory panel can more readily go beyond [judicial] confines to explore the historical and political context of the abuses and make recommendations to deal with past abuses and prevent future ones.

Such investigatory bodies can be suggested and constructed with the aid of NGOs and international policy initiatives.

277. See Rome Statute, supra note 260 (Article 14 allows states parties to make referrals about situations they feel to be criminal. Extending the referral ability to the Anti-Corruption Commission would not be too much of a stretch and may increase the efficiency of the New International Focus on Corruption. Articles 15 and 42 introduce the office of the Prosecutor of the Court. The Prosecutor can take referrals, conduct investigations, and prosecute individuals charged with crimes. The work of the Anti-Corruption Commission could create more efficiency for corruption charges in the office of the Prosecutor by doing investigations and pre-trial work before the trial stage).

278. See id. at Part 4: Composition and Administration of Court: Article 39: Chambers (The Statute divides the Court into Pre-Trial, Trial, and Appellate Chambers. Specialized chambers would give the Court more depth in its proceedings).

279. The Rome Statute is being held open for signatories until December 31, 2000.

280. See RATNER & ABRAMS, supra note 272, at 193 (stating that "[c]ommissions are usually created at a transition point 'to demonstrate or underscore a break with a past record of human rights abuses, to promote national reconciliation, and/or to obtain or sustain political legitimacy'" (citing Priscilla Hayner, Fifteen Truth Commissions - 1974 to 1994: A Comparative Study, 16 Hum. RTS. Q. 597, 604 (1994)).

281. RATNER & ABRAMS, supra note 272, at 202-03. Most powerfully, truth commissions also allow corruption investigations to be handled domestically.
All these legal initiatives may be for naught if countries do not achieve success in more basic, internal foundational reforms. Such internal reforms would be mostly economic in nature, aimed to eliminate government monopoly power and discretion of government officials. International policy initiatives would include contractual provisions by international financial institutions as well as educational programs by TI. Policy initiatives will not only strengthen domestic institutions, but also will aid in the international struggle against corruption.

D. Policy Initiatives
Criminalizing indigenous spoliation and providing an international legal mechanism for holding public officials accountable would empower citizens to fight corruption. Even with these powerful international tools, local governments and citizen groups need to act as catalysts for internal policy changes. International policy initiatives should target government monopoly power and the discretion of public officials. This section explores the role of international financial institutions and Transparency International in affecting internal policy changes. First, this section discusses how international financial institutions aid nations through policy lending and creation of Integrated Financial Management Systems. Then, it examines how TI raises public awareness and strengthens the political will of citizens through educational programs. Finally, this section concludes that international financial institutions and TI can aid countries in building the proper foundation on which further anti-corruption strategies can be built.

1. The Role of International Financial Institutions
International financial institutions facilitate anti-corruption efforts by limiting the role of the government in the economic realm. Through their lending programs, international financial institutions attack the monopoly power of bureaucracies in the economic field by introducing financial management systems and attaching required accounting and auditing procedures to loans. They dismantle administrative corruption by inhibiting the discretion public officials have in government contracts by requiring

282. See supra notes 151-66 and accompanying text.
283. See id.
284. IFIs, such as the IMF and World Bank, can increase their lending to countries that are not corrupt or show a decrease in corrupt activities. See Boswell, supra note 3, at 1173. These external funding agencies care how their money is spent and what effect they are having on developing nations. See Earle, supra note 34, at 234.
285. "An experienced World Bank official mentioned that complaints about inappropriate capital-labor ratios in evaluation reports were often a way of flagging corrupt deals." Rose-Ackerman, supra note 21, at 42; see also THE TI SOURCE BOOK, supra note 148, 116-23 (suggesting the use of Integrated Financial Management Systems (IFMS) which have been used by IFIs for projects in Bolivia, Argentina, Guatemala, Honduras, Ecuador, Colombia, Venezuela, Nicaragua, El Salvador, Panama and the Dominican Republic. Such an IFMS would aid anti-corruption efforts by controlling budgetary concerns at several levels; avoiding cash flow crises; spotlighting weaknesses in public sector management; internally validating integrity; allowing accounting control over
transparency throughout the period of government contract bidding, payment, and performance.\textsuperscript{286} International financial institutions aid anti-corruption supporters by bringing about fundamental reform.\textsuperscript{287}

The main vehicles through which international lending institutions can aid countries in their fight against corruption are policy lending and technical assistance loans.\textsuperscript{288} They also can lend aid through seminars, research, and grants,\textsuperscript{289} as well as creating private, contractual rights and duties in their lending instruments.\textsuperscript{290} Through these methods, lending institutions cultivate efficiency, transparency, and open markets.\textsuperscript{291}

In addition to policy lending, the World Bank provides technical and sectoral investment loans to allow reform in corrupt activities by providing the technology necessary for best accounting, budgeting, cash management, and credit management techniques.\textsuperscript{292} Through the Institutional Development Fund, the World Bank gives grants to countries for capacity building for purposes of introducing new legislation, procurement training, and studies to diagnose civil and legal problems.\textsuperscript{293} The World Bank also

resources; allowing transparency in public reporting; consistently enforcing anti-corruption criteria; and decentralizing authority and accountability).

\textsuperscript{286} See \textit{The TI Source Book}, supra note 148, at 121 (describing how good financial management counteracts corruption by imposing market discipline upon public officials; strengthening the probability of detection; creating a disadvantage for the corrupt; protecting highly vulnerable areas from corruption; permitting proper management and oversight; facilitating auditing procedures; and providing psychological control); Kimberley Ann Elliott, \textit{Corruption as an International Policy Problem: Overview and Recommendations}, in \textit{Corruption and the Global Economy} 222-23 (Kimberly Ann Elliott ed., 1997) (noting that the World Bank emphasizes transparency at all phases of the bidding process).

\textsuperscript{287} See \textit{The TI Source Book}, supra note 148, at 120-121; Elliott, supra note 285, at 222-23 (suggesting that the World Bank's largest contributions come through capacity building and promotion of institutional reforms).

\textsuperscript{288} See id.

\textsuperscript{289} See id.

\textsuperscript{290} International financial institutions play a pivotal role in shaping the mentality against corruption by implementing "no bribes" clauses in development contracts which create personal guarantees based upon reputation. In many countries, to lose face is a great sacrifice. Therefore, citizens avoid it at all cost. If taking a bribe causes one to lose face, then no matter how deeply rooted gift-giving and loyalty are, anti-corruption efforts will have an effect. See Surjadinata, supra note 28, at 1040. Taking a bribe would also lead to a private cause of action for breach of contract. With millions of dollars on the line, a breach of contract claim may be substantial.

\textsuperscript{291} Policy lending, initiated in 1980 to help countries improve their economic performance, includes structural and sectoral loans including general measures of deregulation, liberalization, and privatization; which aim to replace administrative constraints with market mechanisms. See id. at 482 (specific measures include: (1) banking laws and regulations to ensure health of financial sector; (2) tax laws and regulations to improve tax administration; (3) procurement laws and regulations for development products, including accounting and auditing systems; (4) legal and judicial reform; and (5) civil service reform); The Social Impact of Adjustment Operations: An Overview (World Bank Operations Evaluation Department, Report No. 14776, 1995).


\textsuperscript{293} See Shihata, supra note 14, at 483 (the price of grants to developing countries is reform rather than return of payment).
offers seminars through the Economic Development Institute and conducts research on corruption in various countries.\textsuperscript{294} Beyond education, the World Bank has issued anti-corruption guidelines which provide that "upon discovery of fraudulent or corrupt conduct by a bidder or borrower, the bank will reject the bidder's proposal for awards, cancel the remaining portion of loans, and debar the lawyers from future World Bank financing for a stated period of time or indefinitely."\textsuperscript{295} The World Bank takes an active role in fighting corruption and allowing countries to fight corruption.

The IMF likewise has taken the lead in advancing a Code of Good Practices on Fiscal Transparency - Declaration on Principles.\textsuperscript{296} The IMF based its Code on four principles:

- roles and responsibilities in government should be clear; information on government activities should be provided to the public; budget preparation, execution and reporting should be undertaken in an open manner; and fiscal information should be subjected to independent assurances of integrity.\textsuperscript{297}

The IMF and its control of monetary assistance ensure the implementation of the Code by member countries.\textsuperscript{298} "The Code will facilitate surveillance of economic policies by country authorities, financial markets, and international institutions."\textsuperscript{299}

Rather than empowering citizens to hold officials accountable, international financial institutions limit the role of the government in the economic sector and decrease the discretion of public officials by implementing Integrated Financial Management Systems, which allow for better accounting, auditing, budgeting, and cash and credit management.\textsuperscript{300} "Because these institutions often play a key role in major infrastructure projects, their posture can influence the course of key economic activities of governments and private parties around the world."\textsuperscript{301}

\textsuperscript{294} See id.


\textsuperscript{297} Id.

\textsuperscript{298} For example, the IMF agreed to lend billions of dollars to Indonesia only if the youngest son of former President Suharto gave up his monopoly in the production of cloves in which he received tax breaks and concessions. The agreement further led to close friends of Suharto losing cartels in other distribution avenues. See Seth Mydans, \textit{Suharto Agrees to End Monopolies: IMF Deal Would Dismantle Cartel of Family and Friends}, INT'L HERALD TRIB., Jan. 16, 1998, at 1.

\textsuperscript{299} Id.

\textsuperscript{300} See THE TI SOURCE BOOK, supra note 148, at 119-20.

\textsuperscript{301} Lucinda A. Low, \textit{Transnational Corruption: New Rules for Old Temptations, New Players to Combat a Perennial Evil}, 92 Am. SOC'y INT'L PROC. 151, 156 (1998) (suggesting that IFIs have a "multiplier effect that goes beyond their actual economic contributions").
Empowering citizens and rallying international public opinion is the specialty of another NGO: Transparency International.\(^3\)

2. The Role of the World Trade Organization

The World Trade Organization (WTO), predecessor to the General Agreement on Tariffs and Trade (GATT), has been advocating stricter government procurement practices in order to combat corruption.\(^3\) The WTO’s Government Procurement Agreement (GPA) entered into force on January 1, 1996.\(^4\)

The GPA was both voluntary and required changes in domestic law regarding bidding and procurement procedures.\(^5\) Many countries did not adopt the GPA, but the GPA was only the first step in the WTO’s war against corruption.

The WTO’s next step was to create a working group to study transparency in government procurement practices.\(^6\) The goal of the working group is to “develop elements of a future agreement on transparency.”\(^7\) Such an agreement would require the 132 members of the WTO to come in line with the new transparency procedures. Further, the WTO has a dispute resolution mechanism through which members can enforce compliance with the transparency features.\(^8\) The WTO will play a major role in combating corruption by creating bind agreements and allowing members to ensure each other’s compliance.

3. The Role of Transparency International

On September 22, 1998, Transparency International released its 1998 Corruption Perceptions Index (CPI), a poll drawing upon several surveys of business and public views of the extent of corruption in eighty-five countries around the world.\(^9\) Dr. Peter Eigen, Chairman of TI, called the 1998

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302. See Earle, supra note 34, at 232 (the mission of TI is to “curb corruption . . . establish and implement effective laws, policies, and anti-corruption programs . . . strengthen public support and understanding for anti-corruption programs and enhance public transparency and accountability in international business transactions and in the administration of public procurement”); Valeria Merino Dirani, Building Islands of Integrity - The Ecuador Model After One Year, TI NEWSL., Mar. 1995, at 3-4.


305. See id. at 1298.

306. See WTO, Singapore Ministerial Declaration, Dec. 13, 1996, art. 21, reprinted in 36 I.L.M. 218, 226 (1997); George, supra note 303, at 41 (stating that at the Singapore summit, “the United States altered the perception of business corruption from a moral concern to an international trade concern,” thus garnering support for a future agreement on transparency.


CPI a "wake-up call to political leaders and to the public at large to con-
front the abundant corruption that pervades so many countries."310

The CPI and the use of international media exemplifies what TI does
for anti-corruption efforts. Not only does TI call the attention of the world
to the problem of corruption, but also compiles data to prove its points.311
Additionally, TI effectively rallies international public opinion to the cause
of anti-corruption.312

TI has a far greater role than just rallying public opinion and raising
awareness. Through its seventy national chapters, TI can disseminate
information and foster educational programs about the damage corruption
causes.313 Through educational programs, TI can develop a generation of
citizens who will hold their public officials accountable.314

Transparency International also answers the concern of those corpora-
tions brave enough to fight corruption. TI designed the Transparency
International Integrity Pact (Pact):

(1) to enable companies to abstain from bribery by providing assurances to
them that (i) their competitors will also refrain from bribery and (ii) govern-
ment procurement agencies will undertake to prevent any form of corrup-
tion, including extortion, and will follow transparent procedures; and (2) to
enable governments to reduce the high cost and the distorting impact of
corruption on public procurement.315

The Pact would require a commitment, personally signed by a company
CEO, by a potential bidder to not offer or pay any bribes in connection
with the government contract.316 Furthermore, the government would
make the same commitment against bribery.317 "In essence, these commit-
ments are nothing other than a commitment to respect and invoke the
existing laws of the country."318

Within an anti-corruption framework, TI can inform the populace
about the international hierarchy citizens may use to hold public officials
internationally accountable. It can educate as to limiting the role of the

310. Id.
311. See generally THE TI SOURCE BOOK, supra note 148.
312. For example, after completion of the OECD convention, Peter Eigen stated, "[w]e
are determined to closely monitor how the convention becomes a legal reality and we are
certainly ready to cry foul when countries fail to meet their commitments." Peter Eigen,
The OECD Convention on Combating Bribery of Foreign Public Officials in International
313. See id. at 1.
314. The damages to third world economies . . . goes beyond the fact that the
wrong supplier or contractor might be chosen. When a government is per-
suaded, that is bribed, that it needs aircraft or a food processing plant which is
unnecessary or unjustified, not only is there a loss of scarce foreign exchange
resources, but also those resources have been deprived from worthwhile
projects.
Michael Holman, New Group Targets the Roots of Corruption, FIN. TIMES, May 5, 1993, at
4; see also THE TI SOURCE BOOK, supra note 148, at 35.
315. Eigen, supra note 312, at 23.
316. See id.
317. See id.
318. See id.
state in the economy and the need to build a strong private sector. Where appropriate, TI can educate as to the need for cultural reform. It has the power to affect internal change and basic reform through its grass roots movements.

No matter how effective the machinery one builds, without the proper foundation and support it will most certainly collapse. International financial institutions and Transparency International foster basic reform at the domestic level. They foster liberalization, deregulation, privatization, and education. They rally international public opinion to the support of anti-corruption initiatives. They provide hope.

Conclusion: A Complex Strategy for a Complex Problem

The solutions offered above are an attempt to solve a complex problem with a multi-layered strategy. Such a strategy must start at a basic level and gradually increase in complexity. Even though international corruption is multifarious, its solution commences very simply: people must realize that corruption harms every country. The cure for corruption begins at the domestic level. The people of every country must stop accepting the corrupt behavior of their leaders. People, however, do not have the political will nor the knowledge of how to stop corruption. The goal of the solutions above is to empower people to no longer accept corrupt practices and to hold corrupt officials accountable.

International initiatives which target the demand side of corruption would give citizens an avenue for holding public officials accountable in the international realm. The legal and policy initiatives create disincentives to be corrupt, and incentives to combat corruption. International financial institutions and Transparency International help educate the people to develop their own country's internal reform and stop accepting corrupt behavior. Such internal reforms will establish a foundation upon which further anti-corruption efforts can be built. A treaty criminalizing indigenous spoliation deters corrupt activity and bolsters domestic support in fighting corruption. An International Anti-Corruption Hierarchy engenders political will to fight corruption and to bring corrupt officials to justice. These efforts enable citizens to have the political will to achieve success in fighting against corruption. They give us hope that as we enter the twenty-first century, Judge Noonan's prophecy will come true: corruption will be as obsolete as slavery.