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# Critical Importance of Controlling Corruption

HELMUT SOHMEN\*

## I. Introduction

Many years ago I was trained as a lawyer, in fact at one stage also here at Southern Methodist University (SMU). But having now been a business manager for almost thirty years, and as chairman of the Pacific Basin Economic Council (PBEC), I hope you will forgive me when I approach the subject of controlling corruption from a business perspective rather than in terms of a legal analysis.

Corruption is, after all, an economic crime. It is a rent-seeking activity. When one looks at estimates of some \$1.34 trillion (U.S. dollars) as the sort of annual profits made globally by organized crime, one starts to comprehend the degree of motivation that fuels corruption on the demand side. For Russia, it is estimated that forty percent of the country's Gross Domestic Product (GDP) is now controlled by organized crime, with about 41,000 economic entities beholden to criminal elements. Since the fall of the Soviet Union, federal officials and bureaucrats are said to have taken some \$100 billion (U.S. dollars) in bribes.<sup>1</sup>

When speaking about corruption, I always joke that any effort by a businessman to sound knowledgeable about the subject immediately risks the suspicion that one has had some relevant experience. Also, keep in mind that PBEC is partially a lobby group, and lobbying is a somewhat gray area when trying to define corruption.

I am reminded of the experience of an expatriate working in a small town in India who had problems with his kitchen sink. When the plumber asked for an exorbitant sum after cleaning the drains and refused to leave if not paid, the expatriate decided to phone the local police. He was assured they would come right by and sort things out provided, of course, that he was agreeable to pay them the usual "attendance fee."

In my own case, perhaps the main qualification for giving this lecture is the fact that the current Commissioner of the Independent Commission Against Corruption (ICAC) in Hong Kong, where I live, used to be my secretary. Her name is Lily Kwan Yam Pui-ying, and she is doing an excellent job in a difficult position at a critical time. In truth, she is a senior civil servant and was secretary to a government committee I chaired in 1994 to review the opera-

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1. Saul Froomkin, *Corruption in the 21st Century*, Address at the Independent Commission Against Corruption Conference (Mar. 22, 1999).

tions and the accountability of the ICAC. Our committee produced some seventy-six recommendations for change and improvement. However, we left the principal structure, operating style, and the powers of the agency pretty well as they were. By and large, it had done an excellent job in the twenty years since its establishment, and one does not want to tinker with obvious success in that field or risk demotivating good people just to score points.

PBEC, as the most prominent independent business associated in the Pacific Rim, has taken a strong interest in the subject of corruption and, as recently as May 1998, has unanimously promulgated a Charter on Standards for Transactions Between Business and Government.<sup>2</sup> Given the fact that PBEC counts some 1,200 member companies from twenty widely different economies employing some eleven million people, and collectively generating sales of some \$4.25 trillion (U.S. dollars), this was no mean achievement.

PBEC is arguing for integrity, transparency, and accountability in dealings between enterprises and public bodies, in particular as concerns the awarding of government contracts and permits, tax matters, environmental, and other regulatory matters, and judicial and legislative proceedings.

The PBEC Charter also calls for the respect of laws and standards, a prohibition on improper inducements, the control of agents, and proper financial recordings and auditing procedures. Management and directors of enterprises are encouraged to establish proper internal guidelines and controls, and to ensure statutory conformity and proper disclosure of political contributions. PBEC supports the notion of "zero tolerance" on the basis that integrity should not be negotiable. The in-house PBEC Committee on Transparency continues its work, and is prompting our organization to support other efforts being made in this field at the national and international level.

## II. Current Developments

These efforts are many and varied, and have taken on a new momentum in recent years for reasons described in more detail later.

The United States was first with legislation when it put the U.S. Foreign Corrupt Practices Act of 1977<sup>3</sup> on the statute books. It prohibits all U.S. corporations and their U.S. and foreign officers and directors, but not their foreign subsidiaries, from offering money or anything of value to foreign officials in order to obtain or retain business.

In March 1996, twenty-three countries belonging to the Organization of American States (OAS) signed the Inter-American Convention Against Corruption (ICAC). I understand that only ten countries have ratified it.

Also in 1996, the United Nations produced a Declaration Against Corruption and Bribery in International Commercial Transactions, while the International Chamber of Commerce in Paris issued a Revision to its Rules of Conduct on Extortion and Bribery in International Business Transactions. A year later, the VIII International Conference Against Corruption promulgated the Lima Declaration of 1997.

The most important international effort to date, however, is the Organization for Economic Cooperation and Development's (OECD) Convention on Combating Bribery of Foreign Public Officials in International Business Transactions, signed on December 17,

2. Pacific Basin Economic Council, *Charter on Standards for Transactions Between Business and Government* (visited Sept. 20, 1999) <<http://www.pbec.org/policy/1998/igmstandards.htm>>.

3. U.S. Foreign Corrupt Practices Act of 1977, Pub. L. No. 95-213, 91 Stat. 1494 (1977).

1997, by twenty-nine OECD member nations and five non-member nations.<sup>4</sup> It should have become effective on February 15, 1999, after the requisite ratifications.

The OECD Convention provides a base for creating effective anti-bribery systems in countries with different legal systems. Its principal provision, article 1, makes it a crime for "any person" to "offer, promise, or give any undue pecuniary advantage, whether directly or through intermediaries, to any foreign public official."<sup>5</sup> This convention goes further than the U.S. legislation,<sup>6</sup> but still does not address the issue of payments to foreign political parties, party officials, or candidates. It also does not provide comprehensive coverage of foreign subsidiaries. It left open the question of tax deductibility for bribes, although there is general agreement that they should be eliminated. The issue of the collective monitoring of undesirable or illegal practices was deferred to subsequent agreements. PBEC has also publicly supported the advent of the OECD Convention and is encouraging nations that have not yet signed it to do so.

Together with national governments, a number of other supranational institutions have taken a much more intense interest in the subject of corruption.

The Asian Development Bank has announced a set of guidelines to combat corruption, particularly in the field of procurement, and is tightening up its lending policies and practices to prevent the availability of credit to projects where bribery is suspected or proven.

The Inter-American Development Bank has also started to increase its support for private sector reform efforts, and is keen to ensure proper procurement practices.

In a similar vein, the World Bank has stepped up its audit procedures to strengthen borrower accountability, and has published procurement guidelines that its clients should observe, barring firms that offer bribes from further bank finance, and even threatening to cancel loans to governments whose officials are found to have solicited bribes.

The World Trade Organization (WTO) is also working on an Agreement on Transparency in Procurement. The International Monetary Fund (IMF) has announced that it will restrict its involvement in countries where the level of corruption is deemed to negatively affect domestic economic performance. APEC's Government Procurement Experts Group<sup>7</sup> continues to deliberate on how to increase transparency and how to enlarge the support for regional activity meant to prevent corruptive practices.

Transparency International, a Berlin, Germany-based non-profit, non-governmental global alliance of national groups endeavoring to pursue greater accountability in government and an honest business environment, has also become more active in recent times. It attempts to promote public awareness through lectures and conferences, by packaging Special Integrity Programs, and by focusing on the underlying causes of corruption. The latter in particular is important.

More conferences are being organized to highlight corruptive practices and their possible prevention or eradication. Eighty-nine nations participated in the "Global Forum in Fighting Corruption and Safeguarding Integrity among Justice and Security Officials," chaired by U.S. Vice President Al Gore, which focused on corruption in police forces and in the

4. Argentina, Brazil, Bulgaria, Chile, and the Slovak Republic.

5. "Any person" includes legal persons. This provides some problems in jurisdictions that do not recognize the criminal liability of legal entities, such as Germany, Sweden, or Switzerland.

6. The U.S. legislation does not include bribery in government procurement, tax payments, or judicial proceedings in its ambit.

7. The Asia-Pacific Economic Cooperation process now embraces 21 member economies in the Pacific.

military. Hong Kong held a multinational conference named "Fighting Corruption into the 21st Century" as part of the ICAC's twenty-fifth anniversary celebration. A large number of corruption experts came to the Special Administrative Region (SAR) to discuss the Hong Kong experience, and to examine practical approaches in corruption fighting, preventive education, and likely trends in the next century with their local counterparts.

### III. Changing Attitudes

Why this renewed and extensive interest in corruption? After all, incidents of corruption are as old as mankind and seem to be an intrinsic by-product of human nature that carries with it strong instincts of self-preservation, competitive behavior, as well as a large dose of greed. Corruption is never quite black and white but comes in many forms and shades. There is simple gift-giving with ulterior commercial motives (evening entertainment, fancy restaurants, or golf outings<sup>8</sup>), and then there are elaborate schemes designed to provide preferential access to market positions, to financial assets or to other public goods, with a big register of other inducement methods in between.

Corrupt behavior can be caused by a simple wish to avoid frustration by getting around bureaucratic hurdles, but it can also be the starting point for elaborate and more sinister attempts at influencing legislative programs or judicial decisions.

Many habits formed by the need to rely on strong private relationships for business dealings are today described as corrupt. Social traditions that developed over centuries—not least from the feudal structure and the mind-set that characterized long periods in the development of the world's civilizations—did not see much that was objectionable in offering and accepting bribes. The "looking after friends" and the "purchase" of favors was a matter of courtesy and necessity and part of normal dealing, not something unusual, dishonest, or illicit.<sup>9</sup> Often the community values actually required regular outward signs of recognition of persons of higher authority, of greater rank, or of more influence from those in subordinate positions. In other words, bribing your way through life was not reprehensible at all, it was smart. It would assure success in business and in the professions, and more often than not, the very survival of those offering bribes, not just their personal well-being.

Such practices in personal and commercial intercourse, whenever readily understood and accepted as a norm, become part of the culture and, as a result, much more difficult to change or abandon. The ways of producing goods and providing services can be influenced and adjusted over a relatively short period of time because of technical progress and individual technological advances, but we need to remain aware that the human character follows a biological clock and is much slower in adapting.

It is probably the open recognition of this weakness that has prompted some economists to seriously suggest that corruption should not be seen as entirely negative. Indeed, some have argued that bribery might still be required or could be very useful in underdeveloped economies as a necessary lubricant to permit faster economic growth. "Oiling the wheels" is an old engineering solution to generate higher speed and to ensure less frequent breakdowns in machinery. It is perhaps not surprising that the concept imposed itself in the context

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8. These are examples of traditional practices that in the last two years have brought down a number of politicians and civil servants in Japan—no doubt to the latter's considerable surprise.

9. See *What's Wrong With Nepotism, Anyway?*, THE ECONOMIST, Mar. 20, 1999, at 58.

of social interaction when discussing social and economic progress, quite apart from being a ready excuse for behavior that was starting to become the subject of criticism.

In the old days, the lines of distinction between “allowed” and “disallowed” behavior among men of honor used to be fuzzier, especially since political authority was often vested in individuals with a high degree of unquestioned discretion (especially when derived through dynastic succession), and not in the sort of impersonal institutions that we have in most places today. These institutions have clearly defined organization charts, internal responsibility, and reporting rules and are run by elected public officials, are subject to wide scrutiny, and have to prove objectivity, impartiality, or neutrality.

What, then, has changed the global attitudes toward corruptive behavior, and what has turned it from a widely tolerated practice to one that is seen as negative or outright destructive? A number of factors are responsible.

#### A. GLOBALIZATION

At the top of the list I would put the relentless process of economic and political globalization, itself essentially caused by the rapid advance in computing power, cheap communications, and cheap transportation. Today, information has become the latest and most powerful factor of production, having the benefit of being both repeatedly usable and almost ubiquitous.

Globalization is producing a number of changes to the existing scene that will assist in the effort to reduce or eradicate corruption:

- Globalization means the gradual removal of market niches and oligopolies.<sup>10</sup>
- It leads to a blending of cultures.
- Globalization also tends to blur the differences between political systems and the various forms of government administration.
- It puts pressure on governments to work towards economic liberalization, in particular by removing more of the existing administrative barriers.
- Globalization increases social mobility based on merit, rather than origin, caste, or family connections.
- Globalization also forces the pace in competition among locations, and creates truly global benchmarks. Tolerance levels for inefficiencies tend to become much lower.

Mobile international capital has quickly discovered the global advantages of choice and speed, and is more than willing to exploit system weaknesses anywhere to maximize the opportunities for arbitrage and profit. As a result, because they are (and probably have to be) fairly unscrupulous, the managers of short-term international capital flows have become the scapegoats for many of the economic ills today.

However, the current Asian economic crisis was precipitated not so much by the hedge funds, as we are led to believe by our politicians, but by governments’ unwillingness or

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10. A new concern is raised by the recent merger mania, resulting in significantly higher concentrations of economic power in the hands of fewer players. However, monopolistic entities might not, in fact, be as much “in need” of corruptive practices as oligopolistic cartels, since the former can feel more confident to get their way through sheer size and market muscle, while the latter must still compete within the cartel. Cf. E. K. Y. Chen, *Megatrends in the 21st Century: Market-Oriented Anti-Corruption Policies*, Address at the Independent Commission Against Corruption Conference (Mar. 22, 1999).

inability to recognize and remedy their inherent institutional problems, or by not facing the consequences of a pursuit of outdated economic policies and political practices. Some countries, especially in the developing world, still seem convinced that the old ways are better. They and their peoples risk losing out in the intensifying global competitive race.

Easy information flows and improvement in education have given the world an unprecedented ability to make comparisons on a global scale on almost anything. Few communities are cut off from the rest of the world. Computers and the Internet allow individuals access to data and to opinions and ideas, irrespective of location. National boundaries are becoming irrelevant for many economic activities. In fact, national boundaries today sometimes inhibit, rather than promote, economic advancement. The world should start to think more seriously about the justification for maintaining the nation-state, not just glibly talk about the "borderless world" on the one hand, and the need for regional missile defense systems on the other.

Adherence to "best practice," as well as superior performance and innovative capability, now play a major part in determining the success or failure of enterprises, more than personal relationships and the resultant need to keep them alive with courtesies of a material kind. It is slowly dawning on everyone that corruption does not need to be a natural by-product of doing business, as is the realization (and widening acceptance) that corruption is not necessary for doing good business.

The process of globalization, of course, also has negative effects in that the ease of modern communications assists criminals, particularly in allowing more extensive and more complex cross-border crime to take place. Easy money flows, "helpful" jurisdictions, financial institutions under the control of criminal syndicates, and new computer technology make it that much more difficult to prevent money-laundering and credit fraud, for example. Cyberspace crime is undoubtedly on the increase. International mobility also makes it correspondingly much more problematic to trace and eradicate corruption.

## B. DEMOCRATIC DEVELOPMENTS

Next to the globalizing economy, it is the modern democratic systems that provide billions of people today with an environment in which equality and human dignity are protected by the rule of law and no longer by the rule of men.

Functioning democracies are, by definition, prone to regular changes among those in power, to a certain extent reducing the attraction of investing in personal relationships since they may turn out not only to be temporary, but occasionally counter-productive. Democratic governments also mean open and accountable power structures and decision-making processes that can be, and are, readily and publicly scrutinized. With guaranteed freedom of speech and freedom of the press in democratic systems, the risks of public embarrassment and other community sanctions are thus correspondingly higher, and will have a serious dampening effect on the temptation to abuse public office for personal gain, the classic short definition of corruption.<sup>11</sup>

Changes in political regimes, and the transformation from one political philosophy to another, however, do raise new problems. As we have seen again in recent times, the nec-

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11. There is, in fact, no clear and universally accepted definition of corruption—further evidence of its complexity.

essary adjustment processes can affect the livelihood of large populations and create breaks with traditions, leading at least temporarily to instability and uncertainty. It is not surprising that countries like China and Russia are struggling today in the way European nations struggled in past centuries when faced with similar, albeit mostly more gradual, social and political change.

### C. POLITICAL REASSESSMENT

The world today is also more advanced in recognizing the essential factors that drive economic progress, create wealth, and enhance material well-being.

While there may have been doubt during most of the twentieth century about the relative merits of competing political philosophies and their economic manifestations, the fall of the Berlin Wall in 1991 and current efforts in China, the world's most populous country, to engage in reforms leading towards the creation of a market economy<sup>12</sup> should be convincing evidence of the superior benefits of open capitalist systems and competitive marketplaces.

Where there is still no trade liberalization, where there continues to be excessive government involvement in the economic processes through state ownership of enterprises and politicized managerial decision-making, or where there still exist price controls, subsidies, directed credit, or excessive regulation, cronyism, nepotism, and corruption will remain a serious threat.<sup>13</sup>

Put simply, while an absence of institutional rules and regulations to govern personal behavior can facilitate arbitrary, discretionary power, an excess of government rules and regulations will equally feed the supply side of corruption. In the current world, deregulation seems to be by far the wiser choice.

### D. ECONOMIC CONSIDERATIONS

Probably the most fundamental change in attitudes, however, has come with the realization that corrupt practices extract significant costs in each society in which they prevail, and exert a blocking rather than a facilitating influence on economic activity. I have mentioned at the beginning what kind of profits can apparently be made from organized criminal activity.

As Transparency International executives like to mention,<sup>14</sup> corruption may be a moral issue, but it has now also become a developmental issue. Corruption unquestionably distorts rational decision-making and increases transaction costs. A World Bank study in 1997 found from a survey of business executives that corruption was perceived to be among the three most important obstacles to conducting business in developing countries.

According to other estimates, corruption acts as a "tax" on public projects, with some observers suggesting that as much as thirty percent can be added to project costs on oc-

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12. Officially and euphemistically called a "socialist market system with Chinese characteristics." In a 1999 session of the National People's Congress in Beijing, provisions in the Chinese Constitution were amended and now refer to private enterprise as an "important" (and not just a "complementary") sector of the national economy.

13. Recent events in the International Olympic Committee, and in the European Commission in Brussels, ending with the en masse resignation of all EU Commissioners, has again highlighted the potential for abuse when discretionary authority is relatively wide, but the operating style is rather secretive and control mechanisms comparatively insufficient.

14. See M. Schloss, Address at the PBEC Conference (May 26, 1998).

casian. Governments can lose substantial revenue through the corrupt behavior of its officials. In some countries, billions of dollars in foreign exchange earnings seem to go missing every year—in those instances smuggling is likely so widespread because of corrupt customs officers.<sup>15</sup>

Through insider dealings and market-restraining practices, corruption can distort market forces and thereby the efficient allocation of resources. Lower government revenues will naturally result in fewer physical infrastructure investments or in their proper maintenance, as well as force a reduction in spending in areas such as education, health, and welfare, or consumer and environmental protection. Very often not only the quantity, but the quality of new investment suffers, as well as productivity. The impact on the economic growth potential of economies afflicted by a high level of corruption can no doubt be substantial. What we probably need are many more in-depth analyses of the consequences in an effort to convince and better educate.

Corruption undermines investor confidence, dissuades foreign investment, prompts capital outflows, and slows economic development because private capital—as I mentioned earlier—prefers transparent and accountable markets, predictable scenarios, and macroeconomic stability. Very simply stated, corruption makes an economy less competitive. In Hong Kong we have seen over the years that a successful anti-corruption campaign can make the economy stronger vis-a-vis its neighbors and its regional and international competitors, in both relative and absolute terms.

At the same time, corruption provides the basis for the expansion of other criminal activity, from drug dealing to syndicated fraud, from money-laundering and false subsidy claims to the circumvention of national security rules and weapons embargoes. Public trust in the rule of law and in public administration suffers. Democratic institutions can become destabilized. The chance of human rights abuse increases. These are regressive developments in an age when economic performance is closely related to the free dissemination of ideas that in turn promote greater personal flexibility and mobility, and more knowledge, imagination, and innovation.

As I said, it will become increasingly important for all governments that wish to combat corruption to have the political will to be persistent. Governments must make stronger attempts to produce public information as to the cost of corruption and the savings that are achievable by eliminating it. Fighting corruption, of course, also costs money, very often in substantial amounts, and the taxpaying public must be fully convinced that these are funds well spent.<sup>16</sup>

#### IV. Enforcement and Prevention

Fighting corruption is not easy. Corruption is a secretive and conspiratorial offense with no readily identifiable victims other than society at large. As ICAC officials in Hong Kong put it to my Review Committee in 1994, “there is no scene of crime susceptible to forensic examination, no corpses to be identified and examined for clues, nor victim witness, and rarely any untainted witnesses.”<sup>17</sup> Indeed, acting against corruption requires special in-

15. Such unexplainable figures, for instance in China, then have to be carried in the national statistics as due to “errors and omissions.”

16. The Hong Kong ICAC, for example, operates on an annual budget in excess of HK\$700 million (\$90.5 million U.S. dollars).

17. *Report of the ICAC Review Comm. to the PBEC (1994)*, at 27.

instincts, special powers, and imaginative methods<sup>18</sup> to make up for the difference in the nature of bribery as against other crimes on the statute books. Often, corruption can only be fought efficiently by reversing the burden of proof.

A comparatively small number of jurisdictions worldwide have set up dedicated agencies similar to the ICAC in Hong Kong,<sup>19</sup> while the majority prefer to deal with the problem through dedicated branches of the regular police forces, or via investigatory units in other executive arms of government.<sup>20</sup> The creation of special institutions with a higher degree of autonomy and/or extended police powers raises some difficult questions, since in order to protect the rights of individuals these powers must in turn be circumscribed sufficiently, with institutional safeguards put in place to prevent potential abuse.

Wherever the anti-corruption efforts may be concentrated, often there will also be a conflict between the duty to hunt down offenders and bring them to justice, and strong political sensitivities, bearing in mind that in most investigations "public officials" are involved.<sup>21</sup>

High-profile investigations of allegedly corrupt public officials could work to undermine public trust in the political authority generally or confidence in particular branches of government.<sup>22</sup> But on the other hand, failure to pursue offenders except where the evidence is incontrovertible not only carries the same risk, but will additionally create doubts about the effectiveness of the anti-corruption agency's work and about a government's commitment that adherence to the rule of law is uppermost on its national agenda.

Therefore, the choice should be quite obvious, but will very much depend on the circumstances prevailing in each jurisdiction. A reality check is always beneficial. Hence, there are calls from those professionally involved in the fight against corruption that all solutions should be home grown and tailor-made and, equally importantly, should depend on the cooperation of all in the society under the slogan "corruption is everybody's business."

In particular, commercial interest groups, professional associations, labor unions, and concerned civic groups and other non-governmental organizations have a responsibility in their respective communities to try and help change existing mindsets, and to participate in eradicating the underlying causes of corruption.

The Hong Kong experience may again be illustrative. When the ICAC was set up, corruption prevention through education and strong community relations work were seen as two important adjuncts to the investigatory work of the agency. Over the years of the ICAC's existence, it has been very successful in its efforts—corruption is regarded by Hong Kong

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18. Such methods include having to be equally secretive and relying on undercover work, information gathering, and insiders as willing witnesses. As the forms of corruption evolve, so obviously must the methods to combat them.

19. The agencies include Singapore's Corrupt Practices Investigation Bureau, Independent Commission Against Corruption, New South Wales (Australia), and the Anti-Corruption Agency in Malaysia. There are different degrees of political influence acting on such agencies in different countries. The Hong Kong action in setting up the ICAC followed widespread corruption in the police force that therefore ruled itself out of consideration for being the instrument to tackle the problem.

20. In the United States, the Department of Justice oversees enforcement under the Foreign Corrupt Practices Act, along with, to some extent, also the Securities Exchange Commission.

21. The judiciary in many jurisdictions seems to take a more lenient view of economic crime than of other criminal offenses: penalties meted out often appear comparatively mild.

22. For many years, Interpol, the agency that coordinates the liaison between national police forces linked together in an international network to investigate cross-border crime, was hesitant to take on corruption cases for that reason. There has also been an attitude change in that body in recent times.

people not only as a social evil but as quite unnecessary for commercial results. The support of the community and its trust in the work of the ICAC is also evident in the high degree of public willingness to report actual or suspected incidents of bribery.

Governments must remain conscious of the need to deal with the problem of corruption from both the demand and the supply side. Underpaid public officials, excessive regulatory and bureaucratic systems, wide personal discretion, lax discipline in the uniformed services, and/or weak oversight bodies—even where these do exist—will tend to create a fertile ground for corruptive practices every time.

Those charged with the enforcement of anti-corruption laws should also take into account the ongoing need for generating a perception of effectiveness while maintaining an image of fairness. Not surprisingly, sometimes corruption investigators are too keen to prove themselves. Exceeding the limits of their authority can have very negative public relations consequences. Outside and broadly based control is therefore a crucial element in the make-up of an effective and respected anti-corruption body. Admittedly, to find the right balance every time is not easy.

One worrisome development appears to be the expectation by many legislators, embodied in a number of statutes and conventions, that anti-corruption agencies are capable of investigating offenses or pursuing offenders beyond the confines of their national jurisdictions. When one of the main objectives has to be to give anti-corruption efforts and agencies an aura of efficiency and success in order to stimulate wide public support, any statutory ambitions that cannot be easily implemented are apt to put this effectiveness in doubt and should be carefully considered.

Difficult as it is to chase criminals in a home jurisdiction, it is even more difficult to do so overseas, particularly within the complex set of circumstances usually involved in cases of corruption. The best results are achieved when support for crime fighters comes from within the community, and it stands to reason that the local team will always receive stronger support. The solution can only lie in closer liaison and cooperation by the various involved agencies across national boundaries and improved extradition procedures, rather than in the attempt to be all things to all people in all places, which quickly increases<sup>23</sup> the chance of facing embarrassing failures. The motto should at all times be: "Take what you can, not what you can't."

Corruption prevention, as part of the much larger question of ethical behavior, has also appeared on the agenda of corporate governance study groups, on the listing rules of stock exchanges, on the curricula of business schools, and on the brief of human resource departments in large companies and industry associations.

Larger corporations find it relatively easy to establish compliance functions, employ in-house legal advisors, produce elaborate staff manuals, and publish codes of conduct. These are positive developments in the right direction and thus are welcomed and sponsored by the PBEC. Codes of conduct can heighten awareness among a wider audience although they are sometimes criticized as rather inadequate and ineffective attempts at self-regulation. In all cases corporate efforts will, of course, still need to be backed by government action and by the threat of serious criminal sanctions. Both can and should go together.

These attempts, however, hide a serious practical problem. In many countries with a high incidence of corruption, not only in the developing world, the domestic economy is not

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23. Mutual legal assistance and making bribery of a foreign official an extraditable offense under national laws and in extradition treaties are specifically provided in the OECD Convention, arts. 9 and 10.

carried by big local or multinational corporations that can make their own corporate rules about employee behavior. In many of these places, the national economy is based on a multitude of small- and medium-sized enterprises. These entities, by definition, do not have the organizational capabilities, or the money, to engage in elaborate compliance actions and in extensive advisory and monitoring schemes. We should, therefore, not be misled into believing that anti-corruption problems will be solved because a number of “big boys” have signed up for the campaign. A lot of hard work will still need to be done at ground level, since the temptation to offer bribes is probably inversely proportional to the size and economic importance of the enterprise. By the way, the same rule can no doubt be applied to entire countries—the smaller the jurisdiction, the bigger the threat of corruption.<sup>24</sup>

## V. Conclusions

It is often said that corruption is the product of bad men and bad laws. So the solution should be simple: improve the laws and get good men to administer them. We should wish it was that simple. Even very draconian laws are usually not sufficient. A composite approach is certainly needed.

Corruption is the result of an interplay of many factors. It is a phenomenon as old as mankind, if not actually part of human nature. Corruption pervades all civilized society, and cultural advancement or greater sophistication does not make its occurrence less likely. It affects all manner of institutions: governments, police forces, armies, banks, charitable organizations, and social clubs. Corruption is pernicious even when it is accepted as part of the pattern of everyday life—it produces inequality and unfairness and high social costs. It can be proven that corruption limits economic growth and keeps millions of people poorer than they should be.

Corruption is the easy way out, and it takes great strength and will power, both on the individual and the communal level, to mount effective counter-attacks. Sizeable financial resources are required and the battle can never be declared won. It needs everlasting vigilance and continued commitment. Civic and social consciousness, reinforced through education, must remain an essential part of the armory.

Fighting corruption means fighting for a just society, not necessarily for an easier existence, because it means putting the common welfare before the aspirations and desires of individuals. Success in this battle would mean that, as human beings, we have managed to reach a higher level of rationality, which seems to me to be a goal worth pursuing. Failure, on the other hand, will mean a continued threat to civil society, to the well-being of nations, and ultimately to the safe progress of mankind.

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24. Of some countries it is jokingly said that “they have the best governments that money can buy.” See Froomkin, *supra* note 1.

