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PERSPECTIVES

International Financial Institutions Face the Corruption Eruption:¹ If the IFIs Put Their Muscle and Money Where Their Mouth Is, the Corruption Eruption May Be Capped

*James P. Wesberry, Jr.**

[L]et's not mince words: we need to deal with the cancer of corruption. In country after country, it is the people who are demanding action on this issue. They know that corruption diverts resources from the poor to the rich, increases the cost of running businesses, distorts public expenditures, and deters foreign investors. They also know that it erodes the constituency for aid programs and humanitarian relief. And we all know that it is a major barrier to sound and equitable development.... Let me emphasize that the Bank Group will not tolerate corruption in

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¹ "Corruption eruption" is a popular term to describe the present upsurge of corruption throughout the world apparently first used by Moisés Naím, in Moisés Naím, *The Corruption Eruption*, BROWN J. WORLD AFF., Summer 1995, at 245.

the programs that we support; and we are taking steps to ensure that our own activities continue to meet the highest standards of probity.

James D. Wolfensohn, President of the World Bank²

I. INTRODUCTION

Two unusual, but similar, events occurred almost simultaneously in Geneva and Washington during the past year. An alleged criminal act by an international civil servant was disclosed publicly and prosecuted by the International Financing Institutions (IFIs)³ involved. In Washington it was a regional budget officer who embezzled funds from the World Bank.⁴ In Geneva it was an accountant who stole from the United Nations Conference on Trade and Development (UNCTAD).⁵

Only a little over a year ago employees of the IFIs dared not even utter the word "corruption." Today, that seems to be all they can talk about. From the end of World War II to almost the end of this century, IFIs maintained a "three-monkey policy" toward corruption—they did not see it, they did not hear of it, and they never, never spoke of it—except perhaps in hushed code words like "rent seeking."

For over fifty years if corruption was suspected or known, IFIs brushed it under the rug. Policies and practices were exactly the opposite of the above quoted statement of World Bank President Wolfensohn. Whitewash was the name of the game and it was applied with a broad brush...until the corruption eruption across the globe, even within the IFIs and their projects. Corruption in the governments of emerging democracies became pervasive. The public sector was largely discredited and the entire concept of governance based upon communal ownership and government control was jettisoned. In parallel, white-collar crime against business skyrocketed and collusive business practices carried out for selfish gain captured the headlines, as banking and financial institutions crashed, humiliating, among oth-

² Los Angeles Times syndicated column distributed November 8, 1997. (on file with the author)

³ International Financing Institutions, for purposes of this article, are deemed to include all international and bilateral organizations that finance development activities or projects through loans, grants or otherwise.

⁴ Albert B. Crenshaw, *World Bank Dismisses Employee In Alleged Embezzlement Scheme*, WASH. POST. Aug. 21, 1996, at F3. The incident was also the subject of a memorandum to all World Bank staff disclosing the incident as an unacceptable occurrence that would be prosecuted. Over several years, a employee took advantage of her post to appropriate travel funds for trips not taken. Previously such cases were not publicized internally or externally, nor were they normally prosecuted.

⁵ *U.N. Official Given 18 Months Suspended for Embezzlement*, Assoc. Press Rep., Sept. 25, 1997, available in 1997 WL4885130. The Associated Press reported the sentencing of an UNCTAD employee charged with 59 fraud and 49 forgery offenses resulting in the embezzlement over 10 years of more than \$500,000 by organizing fictitious meetings and pocketing the allowances due the non-existent participants. This was reported as the "first case of its kind." *Id.*

ers, their lawyers and their auditors. The private sector launched efforts to strengthen internal controls. Even so the corruption eruption continued.⁶ As it did citizens reacted even more strongly to reject it and anti-corruption organizations and efforts began to erupt as well.

Many civil society groups, popularly termed "Non-Governmental Organizations" (NGOs) are entering the anti-corruption battle and new specialized anti-corruption NGOs are being formed daily.⁷ Meanwhile existing professional organizations and civic groups are mounting their own efforts.⁸

Citizen reaction and increasing activism forced governments to react as well. In the past few years, powerful politicians have fallen world-wide and have even been forced from office, as the result of citizen-backed official actions by governments. This has occurred in countries where corruption had been considered a way of life, a part of the culture that could not be changed. Today, anti-corruption commissions or specialized agencies under other names are being set up by governments, primarily to ward off irate citizen activists, and existing agencies such as Attorneys General and Auditors General are being strengthened. We now have two great forces engaged in combat: the corruption eruption vs. the anti-corruption reaction, surging like twin hurricanes, swirling in opposite directions across the planet and touching down in nearly every country.

In the midst of such a situation, IFIs could not continue the three-monkey policy. They did not give it up cheerfully, however, and only time will tell whether they will really contribute to the fight against the corruption eruption or will merely talk about it while avoiding real participation.

This article addresses what IFIs are doing, are not doing, and hopefully might do to help cap the corruption eruption sweeping our world. The arti-

⁶ The author rejects the suggestion, often raised when corruption is discussed, that there has been no real increase in corruption, that the present phenomena result from an increase in the publicity given to corrupt acts due to modern media techniques and technology, resulting in the proliferation of news stories about corruption, in effect an eruption of publicity about, and interest in, corruption but not of corruption itself.

⁷ Transparency International (TI), based in Berlin, has become the best known global NGO, primarily due to its annual release of the Corruption Perception Index that ranks many countries according to the perceived comparative degree of corruption. TI claims to have over 70 national chapters in operation across the world. For more information on TI, see <<http://www.transparency.de.html>>. Many other existing and new NGOs are announcing their entry into the anti-corruption arena. Some are expanding existing activities, while others are being formed solely to fight corruption.

⁸ While working for USAID, the author was project manager of a project funded by USAID and undertaken by one of the first professional groups to enter the fray, the Inter-American Accounting Association (IAAA). The IAAA declared 1990 as "The Year of Combat Against Corruption" and, during that year, distributed 30,000 wall posters and 10,000 books, held seminars and otherwise focused attention on corruption among its 28 professional accountancy organizations in 22 countries. In addition, the International Federation of Accountants on March 29, 1996 announced the formation of an anti-corruption task force. See *Inter-American Convention Against Corruption*, Mar. 29, 1996, *Organization of American States*, 35 I.L.M. 724 (1996).

cle primarily relates the efforts of the World Bank in this area and briefly discusses efforts by other major IFIs.

II. THE WORLD BANK BREAKS THE ICE

President James Wolfensohn's speech opening the October 1996 World Bank/IMF Annual Meetings uncorked the anti-corruption reaction among the IFIs. He buried the three-monkey policy as he remonstrated:

[W]e ... need to address transparency, accountability, and institutional capacity. And let's not mince words: we need to deal with the cancer of corruption.

In country after country, it is the people who are demanding action on this issue. They know that corruption diverts resources from the poor to the rich, increases the cost of running businesses, distorts public expenditures, and deters foreign investors. They also know that it erodes the constituency for aid programs and humanitarian relief. And we all know that corruption is a major barrier to sound and equitable development.

Solutions ... can only be home-grown. National leaders need to take a stand. Civil society plays a key role as well. Working with our partners, the [World] Bank Group will help any of our member countries to implement national programs that discourage corrupt practices. And we will support international efforts to fight corruption and to establish voluntary standards of behavior for corporations and investors in the industrial world.

The Bank Group cannot intervene in the political affairs of our member countries. But we can give advice, encouragement and support to governments that wish to fight corruption and it is these governments that, over time, will attract the larger volume of investment.... [T]he Bank Group will not tolerate corruption in programs that we support; and we are taking steps to ensure that our own activities continue to meet the highest standards of probity. If we find evidence of corruption in projects in which we are involved, we will cancel the projects. But we can encourage and work with the many countries that are interested in taking anti-corruption measures, through technical and monetary assistance.⁹

Since then, IFIs have not been the same. In closing the 1997 World Bank/IMF Annuals Meetings in Hong Kong on September 23, 1997 Wolfensohn elated:

I was thrilled with the debate on corruption. I think it is astonishing that in one year we should have come from being scared to mention the word to having it as the central theme on the Development Committee agenda. I do not think that anyone underestimates the difficulty of eradicating corruption completely. But what is significant is that we

⁹ James D. Wolfensohn, *Accountants and Society: Serving the Public Interest*, Address at the Opening Session of World Bank/IMF Annual Meetings in Washington, DC (Oct. 1, 1996) (text on file with the author).

are focusing on the corruptors and the corruptees; trying to make corruption illegal, in fact, criminal.¹⁰

A month later, speaking by interactive video, he told 4,000 CPAs meeting at their 15th World Congress of Accountants in Paris:

Eighteen months ago I couldn't talk about corruption. Eighteen months ago I was told that corruption was a political not an economic issue.... This year in Hong Kong, corruption was a central issue. Why? Because we know that corruption is detrimental to development.

My bottom line on corruption is simple. Corruption impedes growth and development and penalizes the poor. If a government is unwilling to take action despite the fact that the country's development objectives are undermined by corruption, then the Bank Group *must* curtail its level of support to that country.¹¹

Wolfensohn referred to accountants as "the custodians of probity," stressed their "moral and ethical responsibility to serve the public interest," and cautioned them to help governments institutionalize accountability mechanisms, assure independent offices of Auditors General, agree on common global accounting and auditing principles and standards providing for disclosure and open government.¹² He also urged them to take first steps against money laundering.¹³ He now makes similar forceful remarks before whatever group that he may be addressing.

Immediately after his October 1, 1996 speech, World Bank President Wolfensohn set up an internal task force called the Corruption Action Plan Working Group with a mandate to produce an action plan to fight corruption within three months. A highly-qualified senior staff member of the Bank, experienced in the public sector, headed this group. Twenty-five more staff members from different disciplines and backgrounds, working across the world, composed the group's membership, divided into four sub-groups. Due to the nature of their work, the members all shared one common interest, a concern about the risks and problems of corruption. Key Transparency International officials advised the group as it dealt with numerous drafts of the report, which became considerably shorter as major sections relating to internal Bank anti-corruption efforts, and an annex containing a staff survey were peeled off for separate internal use.

In typical bureaucratic fashion, it took more than the three months Wolfensohn had hoped for to produce a result, one which did not really constitute the action plan he had ordered. But, for the World Bank, which

¹⁰ James D. Wolfensohn, Concluding Remarks at the 1997 World Bank/IMF Annual Meetings in Hong Kong, in World Bank Group, Press Release No. 73, Sept. 23-25, 1997, at 3-4 (on file with the *Northwestern Journal of International Law & Business*).

¹¹ James D. Wolfensohn, Accountants and Society: Serving the Public Interest, 3 (Oct. 26, 1997) (Background Paper for Remarks to the World Congress of Accountants) (emphasis in the original) [hereinafter *Accountants and Society*] (on file with the *Northwestern Journal of International Law & Business*).

¹² *Id.* at 4.

¹³ *Id.*

had looked the other way from corruption for over fifty years, it was a great leap forward. The report of the task force, *Helping Countries Combat Corruption: The Role of the World Bank*,¹⁴ was finally considered and endorsed by the Bank's Board of Executive Directors on September 2, 1997, in time to be printed and distributed at the Hong Kong Annual Meeting.

This historic World Bank Anti-Corruption Report envisions four levels of effort by the Bank to fight corruption:

1. Preventing fraud and corruption in World Bank-financed projects, obviously the most visible and vulnerable area of concern.
2. Assisting countries fight corruption, if and when they request it.
3. Seriously considering corruption in the World Bank's internal planning, in the design of its projects and in its analysis and policy dialogue with countries which lead to agreeing upon strategies.
4. Supporting international efforts against corruption.¹⁵

The Corruption Action Plan Working Group concluded that:

- Corruption is a global problem (it is not limited to developing countries).
- Sustainable development demands the control of corruption (its social and economic costs fall disproportionately on the poor).
- Corruption puts political support for aid programs at risk (by undermining the confidence of those who finance aid that it really works).
- The time has come to address corruption more comprehensively (a window of opportunity has been opened by worldwide events and citizen reaction).
- Corruption is a governance issue (which the World Bank can address as it relates to economic concerns).
- Tackling corruption is neither easy nor quick (it is a symptom of deeper seated factors).
- Committed country leadership and support is essential (achieving and maintaining the political will to combat corruption requires sustained leadership and support from citizens and civil society).
- The World Bank should address corruption more explicitly (within its mandate, utilizing its comparative advantage).
- Help can be provided to countries in designing and implementing their own anti-corruption strategies.
- The World Bank can pay more attention to corruption when designing and assessing economic reforms.

¹⁴ THE WORLD BANK, *HELPING COUNTRIES COMBAT CORRUPTION: THE ROLE OF THE WORLD BANK*, Sept. 1997 [hereinafter ANTI-CORRUPTION REPORT] (on file with the *Northwestern Journal of International Law & Business*).

¹⁵ *Id.* at 3.

- More emphasis can be put on strengthening public sector management and governance.
- Projects supported should set an example of best practice (procurement and disbursement by the World Bank should progressively place more emphasis on borrower accountability).
- The impact of corruption should be raised in the World Bank's dialogue with borrowers.
- Country assistance strategies and project design should more explicitly address corruption and its economic effects.
- Knowledge about corruption should be accumulated, disseminated and applied (by dedicating more resources to understanding the dynamics of corruption).
- Skill gaps among the World Bank's staff must be filled (especially in financial management, procurement and public sector management).
- Working relations with partners should continually be built and strengthened (including governments, NGOs and the private sector at the country level and bilateral donors, other international organizations and NGOs regionally and globally).
- Active partnership should be sought in multilateral efforts to control corruption and reduce transnational bribery.¹⁶

The following sections attempt to summarize a bit more fully some of the seventy-three-page report.

III. THE WORLD BANK DEFINES AND ANALYZES CORRUPTION

The "abuse of public office for private gain" constitutes the official brief definition of corruption presented in the Anti-Corruption Report.¹⁷ The definition is discussed and elaborated upon in a footnote covering almost a full page of small type. Further elaboration following the definition states that:

Public office is abused for private gain when an official accepts, solicits, or extorts a bribe. It is also abused when private agents actively offer bribes to circumvent public policies and processes for competitive advantage and profit. Public office can also be abused for personal benefit even if no bribery occurs, through patronage and nepotism, the theft of state assets, or the diversion of state revenues.¹⁸

The Anti-Corruption Report points out that corruption does not always involve two persons, nor does it always involve persons from the private as well as the public sectors, concepts often misunderstood.¹⁹ It does not

¹⁶ *Id.* at 4-7.

¹⁷ *Id.* at 8.

¹⁸ *Id.* at 8-9.

¹⁹ *See id.* at 8-11 (discussing definition and types of corruption). President Wolfensohn himself (and many others as well) is fond of saying that it takes two to corrupt, that there is

mince words at times. For example it points out that accountability systems may become dysfunctional and that the normal “watchdog institutions” of government (auditors, ombudsmen, the press, and anti-corruption bodies) are ineffectual or, even worse, politicized.²⁰ It recognizes corruption scales as varying from “grand” to “petty,” based on type or size, as being “political” or “bureaucratic” and the occurrence of corruption as being “isolated” or “systemic.”²¹ Systemic corruption occurs when formal rules are in place, but are superseded by informal rules, and corruption may be “pervasive,” spreading throughout the public sector, or confined to specific locations or types of transactions.²² The Anti-Corruption Report rejects economic models, popular some years ago, which held that corruption could have some positive economic effects, deeming these to be only short run advantages, which ultimately become costly.²³

The World Bank is concerned about corruption for two principal reasons:

- Fiduciary Responsibilities and Image: The need to ensure that the projects it finances are as free as possible from fraud and corruption (which would discredit the integrity of lending programs and undermine that of the Bank itself).²⁴
- Anti-Development Impact: The cost of corruption to borrowing countries and its negative impact upon their development (thus defeating one of the main purposes for the World Bank’s existence).²⁵

Some of the costs of corruption the World Bank has identified are:

- Diversion of scarce development resources (especially from projects to alleviate poverty, thus hurting the poor);
- Macroeconomic instability;

always a corruptor and a corruptee, and implying that private sector corruptors may be worse than public sector corruptees. See *Accountants and Society*, *supra* note 11, at 4. This latter inference inevitably comes up at any seminar or conference on the subject of corruption. These concepts are, of course, highly incorrect for a number of reasons. Only the corrupt act of bribery takes two persons and the corruptor may well be the solicitor, not the giver of the bribe. Many other types of corrupt acts in government are performed by only one person, or by several persons who work together without involving the private sector, just as many corrupt acts in the private sector do not involve those in government. Inevitably, in these days of the rejection of the concept of accountability, the exposed corrupted “corruptees” plead innocence due to the overwhelming presence of the powerful corruptor, harking back to the flimsy excuses offered by the human inhabitants of the Biblical Garden of Eden, where Adam charged Eve with being the corrupter, while she blamed the serpent.

²⁰ See ANTI-CORRUPTION REPORT, *supra* note 14, at 13.

²¹ *Id.* at 9-10.

²² *Id.* at 11, 13.

²³ *Id.* at 14-15.

²⁴ *Id.* at 25.

²⁵ *Id.* at 4-5.

- Deterrence of private investment (especially foreign investment);
- Discrimination against small entrepreneurs;
- Harm to the environment; and,
- Undermining of trust in government and the rule of law.²⁶

IV. BRIBERY

Bribes are a major concern of the World Bank. They can be offered to gain an advantage or acquire goods, services or other things provided by governments. They may be sought by government officials in exchange for supplying such things. Here is how the Anti-Corruption Report classifies and discusses bribes:

- Government contracts. Bribes can influence the government's choice of firms to supply goods, services, and works, as well as the terms of their contracts. Firms may bribe to win a contract or to ensure that contractual breaches are tolerated.
- Government benefits. Bribes can influence the allocation of government benefits, whether these are monetary benefits (such as subsidies to enterprises or individuals or access to pensions or unemployment insurance) or in-kind benefits (such as access to certain schools, medical care, or stakes in enterprises being privatized).
- Lower taxes. Bribes can be used to reduce the amount of taxes or other fees collected by the government from private parties. Such bribes may be proposed by the tax collector or the taxpayer. In many countries the tax bill is negotiable.
- Licenses. Bribes may be demanded or offered for the issuance of a license that conveys an exclusive right, such as a land development concession or the exploitation of a natural resource. Sometimes politicians and bureaucrats deliberately put in place policies that create control rights, which they profit from by selling.
- Time. Bribes may be offered to speed up the government's granting of permission to carry out legal activities, such as company registration or construction permits. Bribes can also be extorted by the threat of inaction or delay.
- Legal outcomes. Bribes can change the outcome of the legal process as it applies to private parties, by inducing the government either to ignore illegal activities (such as drug dealing or pollution) or to favor one party over another in court cases or other legal proceedings.²⁷

Former Auditor General of Canada, Kenneth M. Dye, now head of a consulting firm, emphasized the threat of bribery to his own firm in a recent

²⁶ *Id.* at 17-19.

²⁷ *Id.* at 9-10.

speech to the partners of a prominent Canadian firm of chartered accountants that specializes in forensic audit work:

In developing countries, bribery is one of the main tools of corruption in government. Bribes can be and are used to influence the government's choice of suppliers for goods and services as well as to ensure that contract breaches are tolerated. In our Cowater consulting firm, we have not been able to negotiate contracts where we have won the technical proposal competition, but we refused to pay bribes.²⁸

Benefits acquired by bribery may vary considerably. Very large contracts or other benefits resulting from bribery are considered grand or wholesale corruption, as compared to small or petty corruption.²⁹ The Anti-Corruption Report states that "[g]rand corruption is often associated with international business transactions and usually involves politicians and bureaucrats."³⁰ Bribery does not necessarily take place within the country. It may be carried out entirely outside the country thus complicating jurisdictional problems and acquisition of evidence.

Petty corruption may be pervasive throughout the public sector so that almost all licenses or services from the government are expected to be paid for.³¹ Often, to share the proceeds, bribes are pooled in elaborate sharing arrangements among groups such as police or customs officials.³² Because of their volume, the aggregate costs of petty corruption, in terms of both money and economic distortions, may be as great if not greater than those of grand corruption.³³

V. THEFT

Theft of state assets or financial resources by officials charged with their stewardship is also corruption.³⁴ Often such theft is considered by public officials to be justified if their salaries are inadequate. In these situations, accounting and asset control systems are typically weak or non-existent, as is the institutional capacity to identify and punish wrongdoers. According to the Anti-Corruption Report, "officials may pocket tax revenues or fees (often with the collusion of the payer, in effect combining theft with bribery), steal cash from treasuries, extend advances to themselves that are never repaid, or draw pay for fictitious "ghost" workers, a pattern well

²⁸ Kenneth M. Dye, *Navigating Government Corruption Mazes*, Address Before the Lindquist Avery MacDonald Baskerville Inc. Partner's Meeting, Toronto (Dec. 4, 1997) (on file with the *Northwestern Journal of International Law & Business*).

²⁹ ANTI-CORRUPTION REPORT, *supra* note 14, at 9.

³⁰ *Id.*

³¹ *Id.* at 10.

³² *Id.*

³³ *Id.*

³⁴ *Id.*

documented in the reports of audit authorities. In such cases financial control systems typically have broken down or are neglected by managers."³⁵

VI. CORRUPTION IN THE PRIVATE SECTOR

Private sector fraud and bribery often have costly results. Unregulated financial systems permeated with fraud can undermine savings, deter foreign investment, and make a country vulnerable to financial crises and macroeconomic instability. Criminal elements may take over entire banks or other financial institutions for the purpose of wholesale fraud.

A strong corporate focus on profitability does not prevent individual employees from soliciting bribes from suppliers. When corruption is systemic in the public sector, firms that do business with government agencies are compelled to either participate in bribery or abstain from dealing with the government.

The Anti-Corruption Report mentions private sector corruption but its principal thrust is corruption in the public sector. It states:

Public sector corruption is arguably a more serious problem in developing countries, and controlling it may be a prerequisite for controlling private sector corruption. Still, Bank activities can also promote the control of bribery and fraud in the private sector by helping countries strengthen the legal framework to support a market economy and by encouraging the growth of professional bodies that set standards in areas like accounting and auditing. In the long run, controlling corruption in the private sector may require improvements in business culture and ethics.³⁶

VII. CAUSES OF CORRUPTION

Some causes of corruption mentioned in the Anti-Corruption Report are:

- Weak institutions where government policies generate economic rents.
- Low and declining civil service salaries and promotion unconnected to performance.
- Dysfunctional government budgets.
- Inadequate supplies and equipment.
- Delays in the release of budget funds, especially when this involves pay.
- Loss of organizational purpose.
- Use of public office for private gain by senior officials and political leaders.
- Lack of protection for those who resist corruption.

³⁵ *Id.*

³⁶ *Id.* at 11-12.

- A public service long dominated by patron-client relationships, in which the sharing of bribes and favors has become entrenched.
- Pay levels historically low, with the informal understanding that staff will find their own ways to supplement inadequate pay.
- Closed political systems dominated by narrow vested interests.
- International sources of corruption associated with major projects or equipment purchases.
- Weak accountability.
- Eroded ethical values.
- Unenforced rules of conduct and conflict of interest.
- Inoperative financial management systems resulting in no formal mechanism to hold public officials accountable for results.
- Ineffectual watchdog institutions such as ombudsmen, auditors, and the media.
- Special anti-corruption bodies turned into partisan instruments whose real purpose is not to detect fraud and corruption but to harass political opponents.
- a divergence between the formal and the informal rules governing behavior in the public sector.

The Corruption Action Plan Working Group found that “[w]here corruption is systemic, the formal rules remain in place, but they are superseded by informal rules...in practice the anti-corruption law is not enforced and informal rules prevail.”³⁷ Government anti-corruption mechanisms and agencies may continue to operate but do not have the intended effect upon corruption.³⁸ Instead, they give a sense of false confidence. Emphasis must be shifted back to the formal rules by strengthening institutions that control corruption. Thus a strong legal framework to control corruption requires more than having the right legal rules in place. It requires, according to the Anti-Corruption Report, “addressing the sources of informality, first by understanding why the informal rules are at odds with the formal rules and then by tackling the causes of divergence.”³⁹

VIII. ACTIONS BY THE WORLD BANK

The World Bank’s Procurement and Consultant Guidelines were revised to include a section specifically addressing fraud and corruption.⁴⁰ As a result, borrowers of Bank loans, and bidders, suppliers, and contractors under Bank contracts must “observe the highest standards of ethics during

³⁷ *Id.* at 13.

³⁸ *Id.*

³⁹ *Id.*

⁴⁰ THE WORLD BANK, GUIDELINES: PROCUREMENT UNDER IBRD LOANS AND IDA CREDITS, § 1.15 (1995).

the procurement and execution of such contracts.”⁴¹ A new section in the procurement guidelines states that the Bank will reject award proposals if it determines that the bidder engaged in corrupt or fraudulent practices while competing for the contract at issue.⁴² The Bank will also cancel any portion of a loan allocated to a contract that involved corrupt or fraudulent practices.⁴³ The section also provides that any firm that has engaged in corrupt or fraudulent practices while competing for a Bank-financed contract will be ineligible for future Bank-funded contracts (either indefinitely or for a stated period of time).⁴⁴ Moreover, procurement contracts must now include provisions allowing the Bank to inspect accounts and records or have them audited by Bank appointed auditors.⁴⁵

In 1997, the World Bank adopted more transparent procedures for selecting consultants.⁴⁶ It now requires public advertisement of larger assignments, public disclosure of short listed firms and their technical scores, and public opening of financial proposals.⁴⁷ The Bank also introduced a new provision in the Procurement and Consultant Guidelines to allow a “no bribery pledge” in the bid form, but only at the borrower’s request, which would obligate parties to abide by national fraud and corruption laws in bidding and executing contracts.⁴⁸ Governments seeking such a clause in World Bank financed contracts would have to satisfy the Bank that such an understanding would be matched by robust measures by governments to address the domestic causes of bribery. In addition, the Bank is launching in-depth surprise procurement audits of certain projects in some countries to identify weaknesses in the procurement supervision system. Also, the latest Guideline revisions require the use of Standard Bidding Documents issued by the Bank.⁴⁹ The Standard Bidding Documents require disclosure of any commissions and gratuities paid in association with a bid or a contract. Such documents have a wide impact as, sometimes, borrowing country governments use them for their own procurement.

The Bank’s training arm, the Economic Development Institute (EDI), has been directing efforts on piloting new approaches to governance, focusing on accountability and transparency (primarily anti-corruption initiatives) and Service Delivery Surveys (SDS) (involving aid-financed surveys of household attitudes to service delivery, including corruption carried out

⁴¹ *Id.*

⁴² *Id.* § 1.15 (b).

⁴³ *Id.* § 1.15 (c).

⁴⁴ *Id.* § 1.15 (d).

⁴⁵ *Id.* § 1.15 (e).

⁴⁶ THE WORLD BANK, GUIDELINES: PROCUREMENT UNDER IBRD LOANS AND IDA CREDITS, § 1.15 (1998)

⁴⁷ *Id.* § 2.7.

⁴⁸ *Id.* § 1.16.

⁴⁹ *Id.* § 2.19.

on behalf of governments).⁵⁰ Increasingly, these approaches are being incorporated into mainstream World Bank operational work through training and technical assistance components of country programs. EDI's "National Integrity" and institutional strengthening programs expanded in 1997 from Uganda, Tanzania and Jordan, to Ukraine, Bangladesh, Ghana, Benin, Malawi, Mauritius, Yemen and Gaza. In 1998, similar programs are expected to extend to Bolivia, Nicaragua and Venezuela.

IX. CORRUPTION IN WORLD BANK FINANCED PROJECTS

There have been many allegations of corruption in projects financed by the World Bank over the years. Traditionally these allegations have been denied and whitewashed. For example, on July 27, 1997, an assistant professor at Northwestern University, Jeffrey Winters,⁵¹ was reported in the Jakarta press as saying that at least a third of World Bank loans to Indonesia "leak into the government bureaucracy and disappear." Corruption in Indonesia has been widely publicized over the years, and the country has always been ranked among the most corrupt countries according to Transparency International's Corruption Index since the survey began (in fact Indonesia was considered the most corrupt country in the world in the very first such ranking).⁵²

As has traditionally been its posture, the Bank immediately issued a denial of the allegation. The World Bank's Vice-President for East Asia and the Pacific, Jean-Michel Severino declared:

We know exactly where our money is going. Worldwide we have very stringent standards for disbursement of our loans. If supervision of our projects produced any evidence of misappropriation or misallocation of

⁵⁰ See The World Bank Group Economic Development Institute, *Regulatory Reform and Private Enterprise*, <<http://www.worldbank.org/html/edi/edirp.html#psm>> and *Governance and Anti-corruption Program*, <<http://www.worldbank.org/html/edi/gac/gac.htm>> (visited November 14, 1998).

⁵¹ Professor Winters is an expert on Indonesia and author of *JEFFREY WINTERS, POWER IN MOTION: CAPITAL MOBILITY IN THE INDONESIAN STATE* (1996). Dr. Winters is considered an authoritative source of information and analysis of the political contribution corruption scandals involving large contributions from Indonesians sources which were brought to light during the 1996 US presidential campaign. In a lengthy call-in radio show for NPR, on November 5, 1996 Winters said, "Some of the most wealthy people in the world...live in places like Indonesia...This money is squeezed out of Indonesia's own population and to some extent out of the business people as they have to make huge payments...One of the biggest costs (of doing business in Indonesia) is in the incredible payoffs and corruption that go to the officials in government." *Talk of the Nation: What Has Indonesia Gained From Political Contributions?* (National Public Radio broadcast, Nov. 5, 1996) available in LEXIS, News Library, Curnws File.

⁵² See Transparency Int'l, *Transparency International Publishes 1997 Corruption Perception Index*, Press Release, July 31, 1997, available at <<http://www.transparency.de/press/1997.31.7.cpi.html>> (visited November 14, 1998).

our funds, we would take swift action to stop it. We do not tolerate corruption in our programs. On this principle there is no compromise.⁵³

Stating that the Bank was puzzled by the allegation, he went on, "We have checked his claim, which he has made in the past, and found nothing to support such an estimate."⁵⁴

The Bank's Resident Representative in Jakarta, Dennis de Tray stated:

It is deeply regrettable that our work for the people of Indonesia should be misrepresented in this way. The procurement of goods and services financed under Bank loans is conducted through open, transparent and competitive international procedures. Funds are disbursed only to suppliers of these goods and services under contracts approved by the Bank. There is full accountability on the use of Bank funds through a comprehensive system of independent ex-post financial audits of project accounts. The Bank itself carries out separate reviews on the use and development impact of its loans.⁵⁵

For those familiar with the Bank, this approach clearly indicated that *at that time*, prior to the issuance of the Anti-Corruption Report, little attention was actually being paid to Wolfensohn's newly-expressed declarations on corruption. Anti-corruption authorities know well that where corruption is taken seriously, allegations of it are also taken seriously, rather than simply brushed over by a knee-jerk denial. These denials issued so promptly were considered laughable by those persons who know that the procurement, disbursement, supervision, auditing and review processes cited primarily have been cosmetic measures which, though printed in operations and policy manuals, and often repeated in speeches and official pronouncements, were rarely given high priority. These type of statements by Bank officials are considered justifiable by some where a country's "dignity" may have been questioned. Many others, however, strongly feel that this type of "official cover-up" of corruption over the years by the World Bank and other IFIs has in fact aided and abetted corruption in government, and especially in international development projects.

It is only the recent realization of the degree of vulnerability to major financial losses affecting the stability of countries, and even of entire regions, and the real risk of highly embarrassing scandals that is fueling efforts to face up to the implicit cost of corruption to worldwide development efforts. Wolfensohn understands this, as do many top officers of the World Bank and virtually all its lower level staffers. Unfortunately, there are still a number of upper and midlevel staff members who came up under the old "three monkey policies" who find it very hard to change. Their attitude continues to exist in spite of a tremendous effort to create change con-

⁵³ The World Bank Group, *Indonesia and the World Bank*, Press Release No. 98/1426/EAP, July 28, 1997, available at

<<http://www.worldbank.org/html/extdr/extme/1426.htm>> (visited November 14, 1998).

⁵⁴ *Id.*

⁵⁵ *Id.*

sciousness within the Bank by utilizing the most modern training and motivational techniques.

The Indonesia corruption cover-up was dramatically exposed recently when, as a result of the Asian financial meltdown, the World Bank President visited Jakarta and was confronted by local community leaders who criticized the Bank for lending huge sums to the Indonesian government while ignoring reports of "rampant corruption" and lack of accountability. The head of the Indonesian think tank, Econit, voiced concerns that errors made by the Bank such as "insufficiently monitoring the use of its own funds" had contributed to the economic crisis. Put on the defensive, Wolfensohn conceded that the Bank "got it wrong" but defended it against charges that it was guilty of collusion, deceit and shoddy economic reporting. He was widely quoted in the press for admitting the Bank made "mistakes" in its analysis of Indonesia's problems, and underestimated the economic impact of pervasive corruption. He was described as "angrily" rejecting criticism that the Bank had done nothing to tackle corruption telling reporters he constantly raises the issue in countries around the world. "I have talked often about corruption and openness. Corruption, where it exists, is the biggest cancer in terms of development," he stated.⁵⁶

X. CORRUPTION IN TENDERING FOR GOVERNMENT CONTRACTS

The recurrent anti-corruption rhetoric characteristic of politicians must be taken with a grain of salt. A rather alarming but typical case of corruption in tendering for government contracts and concessions was recently reported in Canada. In April 1995, the President of Sri Lanka had spoken to the Paris Club about the need to clean up corruption. "Yet, only a few months earlier, her personal protocol secretary had approached an international consortium led by Mihaly International Canada Ltd., to propose that the secretary "represent" the group in dealings with the new Sri Lankan government on a 300-megawatt electric power project. After the offer was declined, the government cancelled the contract award."⁵⁷ The involved parties described their experience and reaction by stating that:

⁵⁶ Summarized from the following news articles of February 5, 1998: Jay Solomon, *World Bank Says It Was Wrong on Indonesia*, WALL ST. J., Feb. 5, 1998, at A17; Jay Solomon, *World Bank Chief Admits to Misjudging Indonesia*, WALL ST. J. EUR., Feb. 5, 1998, at 2; *Wolfensohn Must Rise to the Occasion*, BUS. DAY, Feb. 5, 1998, at 2; *World Bank Disbursing \$1b to RI this Month*, INDONESIA OBSERVER, Feb. 5, 1998, at 1, as well as from World Bank Internal News Summaries dated February 4 and 5, 1998 (on file with the *Northwestern Journal of International Law & Business*). Wolfensohn was apparently visibly upset. Bangkok's *Business Day* described Wolfensohn as "evasive and defensive." *Wolfensohn Must Rise to the Occasion*, BUS. DAY, Feb. 5, 1998, at 2. He would probably have been even more upset had someone made him aware that one of his vice presidents had denied outright corruption in Bank projects in Indonesia just seven months earlier in a formal Bank press release.

⁵⁷ See John H. Walker & J. Michael Robinson, *Business Ethics: Lenders Must Act on Corruption*, GLOBE & MAIL, Jan. 15, 1998, at B-2. John H. Walker is the "chairman of Mi-

Such behaviour is all too typical of what goes on in many countries, where paying for contracts is almost institutionalized. First, the government issues an exclusive letter of intent to a company or consortium for a project. Often, the job is to be privately financed, constructed and operated on a "build, own, operate and transfer" method, with the country taking possession at the end of the concession, say 20 years. Significant design, engineering, legal and financial advisory expenditures are made. If negotiations with the bid winner go well, the losing competition plots, with the help of their political and civil service "friends," to sabotage the project and/or extract unauthorized payments from its sponsors. If improper payments are refused, problems start occurring: Requests are made for additional capital works, or for a new rate structure for the product (e.g. tolls for a road, the price for electricity etc.). Anonymous telephone calls are made, proposing that money be deposited in offshore bank accounts.

The competition, sensing victory, goes into intense lobbying to enlist the support of individuals close to the administration. Even diplomats are dispatched to make a case for cancellation on behalf of their national client competitors. Eventually, the project is cancelled, despite the expenditure in good faith of large sums.

At that point, you can leave gracefully or fight. The consortium chose to fight. It is demanding arbitration at the World Bank-sponsored International Centre for Settlement of Investment Disputes in Washington to recover its costs and losses.⁵⁸

The irate Canadians feel that IFIs must no longer turn a blind eye while extortion and bribery hurt the prospects of countries in which they are trying to alleviate poverty and misery. They say:

The IFIs - particularly the World Bank, the Asian Development Bank, the Inter-American Development Bank and the European Bank for Reconstruction and Development - could bring an end to corruption by requiring that all projects in which they are involved be audited and all parties be accountable. The major commercial bankers of the world should contribute by not permitting funds transfers from politicians and civil servants to offshore accounts. But the IFIs are the key. They have the financial clout. Unless one of them supports a project, other principal public and private financiers rarely will.⁵⁹

haly International Canada Ltd., an international management consulting and development firm, and J. Michael Robinson is the director of the international practice group in the Toronto law firm Fasken Martineau." *Id.* In this article, the two authors irately lambast corrupt practices describing their own experience.

⁵⁸ *Id.*

⁵⁹ *Id.* Theoretically, international projects are audited; however, in practice this has traditionally been a very low priority. Indeed, the usefulness and quality of audit work is questionable and rarely subject to quality control reviews, audit terms of reference are often vague, project accounting records often unauditible or poorly maintained, financial reports are untimely thus making audits even more untimely and auditors resist becoming involved in matters related to fraud and corruption, nor are they encouraged to do so. Rarely is there any discipline in the financial reporting and audit process, despite the existence of eloquent

The Canadian businessmen think that a “top-down” solution involving the IFIs is needed. They suggest that IFIs close ranks and deny financing to any project until it is proved to be corruption free. They maintain that this would stop corruption cold because “when the IFIs turn off their money taps, other private and public money will not flow.”⁶⁰

XI. THE INTERNATIONAL MONETARY FUND ISSUES GUIDELINES

While the World Bank, in the person of James Wolfensohn, has been more loquacious on the subject of corruption, the International Monetary Fund (IMF) produced the first tangible guidelines to attack corruption. On August 4, 1997, the IMF Executive Board released guidelines warning that, “Financial assistance from the IMF...could be suspended or delayed on account of poor governance, if there is reason to believe it could have significant macroeconomic implications that threaten the successful implementation of the program, or if it puts in doubt the purpose and use of the IMF resources.”⁶¹ The Board instructed IMF staff to consider corruption and accountability issues in its relations with borrowing countries.⁶² The IMF guidelines are worded in the language of economists, which makes them difficult to understand for laypersons. The Guidelines do, however, officially recognize the problem of corruption for the first time. More importantly, they call the attention of IMF staff to the threat that corruption poses to international lending for development.

written rules and regulations. Usually, audit arrangements are left to the borrower and the IFI project manager, parties who lack audit expertise and have vested interests in positive audit results. The emphasis of project audits generally is upon financial presentation, not value for money or an assurance that resources are being used for their intended purposes. Units responsible for audit quality rarely exist in IFIs and where they do, they are severely understaffed and are unable to give assurance that audits are serving their intended purposes. In summary, while audits are statutorily required by IFIs, they are generally innocuous, untimely and therefore useless. They furnish IFIs with only cosmetic accountability, not the kind of accountability that the Canadian businessmen seek.

⁶⁰ *Id.* The simple solution of turning off the money taps is heresy to an IFI. Speeding up the flow of money through the pipelines and opening the taps wider is the name of the IFI game. The suggestion made by Messrs. Walker and Robinson, though terribly logical, goes against the underlying culture and philosophy of the classic IFI and basically highlights the internal conflict within the IFIs where prudence and accountability considerations interfere with money flow, the lifeblood of the IFI. The problem is compounded for IFIs, as compared to commercial lenders, because there are no free market controls which focus lending decisions to consider prudence and accountability (though a strong argument could be made that sovereign lending by commercial lenders likewise has often been free from normal market controls, thus causing the cyclical debt crises across the world).

⁶¹ EXECUTIVE BOARD, INTERNATIONAL MONETARY FUND, THE ROLE OF THE IMF IN GOVERNANCE ISSUES: GUIDANCE NOTE, adopted July 25, 1997, ¶ 16 [hereinafter GUIDANCE NOTE] (on file with the *Northwestern Journal of International Law & Business*).

⁶² See *IMF Takes Lead: Tough Guidelines Attack Corruption*, ACCOUNTABILITY/ANTI-CORRUPTION NEWSL. (Special Edition) (USAID Accountability/Anticorruption Project, Calsals & Assoc., Arlington, VA), Sept. 1997, at 1.

The IMF guidelines specifically seek to provoke greater attention to involvement in governance⁶³ issues through “a more proactive approach in advocating policies and the development of institutions and administrative systems that aim to eliminate opportunity for rent seeking, corruption, and fraudulent activity.”⁶⁴ Like the World Bank, the IMF expresses great concern that corruption issues be addressed only based on “economic considerations within its mandate.”⁶⁵ Its guidelines stress that the IMF cannot “adopt the role of an investigative agency or guardian of financial integrity in member countries.”⁶⁶

The IMF Guidance Note served notice publicly and formally that at last the world’s premiere IFI was going to take corruption seriously, and it beat the World Bank’s similar public action, approving its Anti-Corruption Report, by only thirty-eight days. In fairness, it should be noted that the Bank had emphasized corruption in its *World Development Report 1997: The State in a Changing World*. Once the leading IFIs finally decided to enter the anti-corruption arena a spirit of friendly competition arose which has been very fruitful to the entire anti-corruption movement. Both the Fund and the Bank have published a number of documents on corruption during the past year or so.⁶⁷

XII. ACTION BY THE IMF

Speaking before Transparency International (France) in Paris on January 21, 1998, IMF Managing Director Michael Camdessus answered a question he himself posed:

⁶³ Governance, the act, process, or power of governing, is a recently unearthed term that is sufficiently vague as to ensure its enduring popularity in literature prized for lack of specificity. “Good governance” has become the fodder for abundant literature dealing with almost anything deemed laudable in the public or private sector. Governance issues, therefore, involve anything that might improve the act, process, or power of governing, including anti-corruption measures.

⁶⁴ See GUIDANCE NOTE, *supra* note 61 (quotation from introductory note by Jack Boorman, Director, Policy Development and Review Department).

⁶⁵ *Id.* ¶ 16.

⁶⁶ *Id.*

⁶⁷ See, e.g. PAULO MAURO, INTERNATIONAL MONETARY FUND, WHY WORRY ABOUT CORRUPTION (1997); SUSAN ROSE-ACKERMAN, THE WORLD BANK, THE POLITICAL ECONOMY OF CORRUPTION—CAUSES AND CONSEQUENCES, (1996); and SUSAN ROSE-ACKERMAN, THE WORLD BANK, REDESIGNING THE STATE TO FIGHT CORRUPTION: TRANSPARENCY, COMPETITION, AND PRIVATIZATION (1996). In addition, the World Bank’s Economic Development Institute (EDI) has issued a catalog of its own publications on “integrity.” See PETTER LANGSETH & RICK STAPENHURST, ECONOMIC DEVELOPMENT INSTITUTE OF THE WORLD BANK, NATIONAL INTEGRITY SYSTEM: COUNTRY STUDIES (1997) (presenting studies of Uganda and Tanzania, highlighting the problem of corruption in those countries, the strategies adopted to fight corruption, and the role that EDI has played in assisting with the implementation of those strategies). The EDI is the lead unit in the World Bank’s anti-corruption efforts at this writing.

What specifically are we doing to combat corruption? Our institution has a macroeconomic mission, and our mandate is restricted to those specific instances of corruption that may have a significant—some would say demonstrable—macroeconomic impact. We do not hesitate to bring such cases to the attention of the authorities. The macroeconomic nature of corruption may be identified by the large amounts involved or the fear that specific cases of corruption are symptomatic of a wider governance problem. Examples might include tax and customs fraud with the involvement of senior public officials, the misuse of official foreign exchange reserves, and abuses of power by bank supervisors or failure on their part to take action. This has led us in some cases to delay or suspend our support until the member in question has taken appropriate corrective action, such as presenting external audit reports, canceling illegal contracts, and removing or even taking legal action against key officials found to be at the center of fraudulent practices.⁶⁸

The IMF has begun to put its muscle where its mouth is, somewhat to the amazement of the international borrowing community, as evidenced by an article from *The Indian Express* of Bombay. It stated:

In a stunning move that should send a jolt through India's venal political class and corrupt bureaucracy, the International Monetary Fund (IMF) has actually acted upon its recent threats to move against graft in developing countries.... In an unprecedented move, the IMF this week cut a \$220 million loan to Kenya because of that country's refusal to clean up pervasive bribery and self-enrichment.⁶⁹

With the World Bank joining IMF, both institutions actually suspended \$292 million in loans to Kenya in 1997. As a result, Kenya's currency plunged 18 percent as investors fled, inflation jumped and taxes had to be raised to make up the shortfall. Basically, both IFIs finally decided that Kenya was so corrupt that further lending to it was fruitless.

Kenya was an extreme case of corruption, but there are many more. Only the future will tell whether IFIs have the fortitude to continue such strong and unprecedented actions.

XIII. REGIONAL DEVELOPMENT BANKS⁷⁰

The Declaration of Principles of the Summit of the Americas of 1995 called upon the Organization of American States (OAS) and the Inter-American Development Bank (IDB) to jointly assist countries implement-

⁶⁸ See Michael Camdessus, *The IMF and Good Governance*, Address Before Transparency International (France) (Jan. 21, 1998).

⁶⁹ See Chidanand Rajghatta, *IMF Crackdown on Corruption in Projects*, *INDIAN EXPRESS*, Aug. 9, 1997.

⁷⁰ This section draws heavily upon information provided in *The Anti-Corruption Review* published by the U.S. Department of Commerce. See Office of the Chief Counsel for International Commerce of the U. S. Department of Commerce, *The Anti-Corruption Review* (visited April 1998) <<http://www.ita.doc.gov/legal>>. Information provided at this website is frequently updated.

ing their pledges of commitment to the Summit's Action Plan. The Action Plan provides the IDB with a mandate to play a supporting role in the implementation of the initiative of combating corruption. A Task Force on Corruption and Other Financial Crimes completed the initial phase of its work and submitted its conclusions and recommendations to integrate these issues into the IDB's work program. Thereafter, a permanent consulting group was appointed, headed by the Legal Department, to follow-up on the implementation of the recommendations.

The IDB is pursuing three major lines of work identified by the Task Force: 1) assistance to borrowing countries in their efforts to fight corruption, 2) minimizing the possibility of corruption in the use of the IDB's resources in activities financed by the IDB, and 3) ensuring that there is no corruption within the IDB itself. In addition, future plans include research activities and the organization of three seminars during 1998 that will raise awareness on the topics of Public Procurement, Money Laundering, and Judicial Systems Reforms.

The State and Civil Society Unit of the IDB devotes resources for strengthening government regulatory functions and improving transparency, responsibility and control over public service.

The African Development Bank (AFDB) has made progress on procurement reform. An important component of the major reorganization of the AFDB over the last two years included establishing a procurement unit with accountable, operational responsibility. The procurement dispute process, which was deeply flawed, has been radically overhauled and improved. Procurement award and disbursement data has been improved and procurement information disbursement information is included in the AFDB's annual report. The procurement rules for goods and civil works have been significantly upgraded and moved closer to those of the World Bank. Use of standard bidding documents is now required. First steps have been taken to strengthen procurement consulting rules. AFDB procurement staff have begun to participate actively in IFI technical procurement meetings.

The North American Development Bank (NADBank) has adopted a formal anti-corruption policy. The United States and Mexico have agreed that under the NADBank's guidelines, companies must certify that they will not bribe foreign or domestic officials in association with any NADBank funded project. Companies must have anti-bribery policies and state that they have had no bribery convictions within five years of the certification. NADBank may bar companies from future projects if it learns that they have been convicted of bribery or if they engage in corrupt practices in a NADBank-financed bid. Under NADBank's standard procurement policies, if the NADBank determines that a project sponsor has engaged in corrupt practices in a bidding process, it may decline to finance that contract or, if warranted, cancel that portion of the loan.

XIV. THE OECD ANTI-BRIBERY CONVENTION

No discussion in this area would be complete without mention of the activities of the Organization for Economic Cooperation and Development (OECD) and its historic achievement in signing, on December 17, 1997, the Convention on Combating Bribery of Foreign Public Officials in International Business Transactions.⁷¹ This instrument obligates the parties bound to it to criminalize bribery of foreign public officials, including officials in all branches of government, whether appointed or elected, as well as any person exercising a public function including that of a public agency or enterprise.⁷² Most interestingly, it also criminalizes bribery of any official or agent of a public international organization.⁷³ Thus, it extends to the officials and staff of the IFIs themselves. This alone is a major step forward as it will permit the IFIs to pursue prosecution of their own officials and employees if they are involved in corrupt practices. The complications of jurisdiction have been used to impede and delay such prosecution in the past.

The Convention requires parties to it to take necessary measures, within the framework of their relevant laws and regulations, to prohibit the establishment of off-the-books accounts and similar practices used to bribe foreign public officials or to hide such bribery.⁷⁴ Parties are to make bribery of foreign public officials a predicate offense for purposes of money laundering legislation on the same terms as bribery of domestic public officials.⁷⁵ Jurisdiction is to be established over offenses that are committed in whole or in part in each party's territory.⁷⁶ Participating governments pledged to work together to provide legal assistance relating to investigations and proceedings within the scope of the Convention, and to make bribery of foreign public officials an extraditable offense.

Certainly the signing of this Convention was the major anti-corruption achievement of 1997.

XV. WHO IS RESPONSIBLE FOR CORRUPTION?

Like the Indonesians who confronted World Bank President Wolfensohn and alleged that the World Bank's failure to consider corruption in their country made it an accomplice to corruption and consequently to the recent financial collapse costing many Indonesians their life's savings and their jobs, many persons accuse the IFIs of direct or indirect responsibility for corrupt practices, especially those involving their own projects.

⁷¹ Convention on Combating Bribery of Foreign Public Officials in International Business Transactions, Dec. 18, 1997, Organization for Economic Cooperation and Development, 37 I.L.M. 1 (1998).

⁷² *Id.* art. 1, 37 I.L.M. at 4.

⁷³ *Id.* art. 1(4), 37 I.L.M. at 4.

⁷⁴ *Id.* art. 8(1), 37 I.L.M. at 5.

⁷⁵ *Id.* art. 7, 37 I.L.M. at 5.

⁷⁶ *Id.* art. 4(1)-(2), 37 I.L.M. at 5.

Certainly the persons involved in corrupt acts must accept primary responsibility for them, but there are many mitigating factors. The most popular excuse for corruption, of course, is that the salaries of public servants are too low, which forces them to become corrupt out of duty to their families. The most believable excuse for corruption is that the opportunity was there and the temptation was too great. It may be very hard to raise the salaries of public servants in poor countries, but Dr. Robert Klitgaard says, it is not very hard to eliminate opportunities to be corrupt, to reduce temptations and to change incentives. According to Dr. Klitgaard, "combating corruption...begins with better systems. Monopolies must be reduced or carefully regulated. Official discretion must be clarified. Transparency must be enhanced. The probability of being caught must increase, and the penalties for corruption for both givers and takers must rise."⁷⁷

A very strong and practical view on the responsibility for corruption in IFI financed projects has been voiced by Brian Cooksey, a courageous development consultant with considerable experience in African countries, who feels that IFIs "in general seem to have a very high tolerance for the misuse of their money."⁷⁸ He warns of the risks of the very "governance" and "civil society" activities which are becoming increasingly popular as "answers" to the problem of corruption in IFI financed projects.⁷⁹ Commenting on the new IFI interest in combating corruption in the Transparency International Newsletter for June 1997, he makes some charges that demand airing since many other development officials and consultants agree with them strongly and know of similar cases in the countries where they have worked. He also suggests that based on the past experience of IFIs "there is little or no evidence that they have any idea of how to go about the task" of combating corruption:

One of the main reasons for the disappointing performance of structural adjustment programmes is the misuse of donor money, including systematic corruption. An extreme example is Tanzania's import support programme, which allowed local manufacturers and traders to import raw materials and finished goods. An increasing number of companies, both private and parastatal, began to abuse the system. They stopped paying counterpart funds. Import duty and sales tax were not paid on imports. Neither the Treasury nor the commercial banks had the administrative capacity or the integrity to handle large volumes of free foreign exchange, but the donors ignored the problem. Only when the scandalous behavior of the banks, the Treasury and the Minister of Fi-

⁷⁷ See Robert Klitgaard, *International Cooperation Against Corruption*, FINANCE AND DEVELOPMENT, Mar. 1998, at 4 (a quarterly publication of the International Monetary Fund and The World Bank).

⁷⁸ Brian Cooksey, *Who Is Responsible for Corruption in Aid?*, in TRANSPARENCY INT'L NEWSL., June 1997 available at

<<http://www.transparency.de/newsletter/NLJune97-3.html>> (visited on May 18, 1998).

⁷⁸ *Id.*

⁷⁹ *Id.*

nance has reached epic proportions, fueling inflation and completely derailing the budgetary process, did the World Bank and other donors finally pull the plug on import support.

In December, 1996, the IMF started disbursing a US\$240 million enhanced structural adjustment loan, but to date not one private or parastatal company has been put in receivership for the hundreds of millions of donor dollars which went astray via import support. This casual approach to large-scale corruption has been the norm among donors.

...

Well known examples are NGOs, many of which are created with the sole objective of embezzling donor money. Gender-related activities, youth and "informal sector" credit and job creation, and poverty alleviation attract multimillion dollar grants for projects as "seed capital."

With the coming of political pluralism, a growing volume of aid money has been channeled into "governance" activities. The disadvantages of governance from the donor perspective are that donors have little experience in this field, and the amounts of money which can be disbursed, compared to the amount of administrative work involved are relatively trivial.

...

Aid has served to encourage the establishment of a whole range of corrupt activities in "civil society" to add to those which already existed in the state apparatus. Many of those managing the corruption are recent migrants from the state sector, or straddle both public and private sectors. The politically acceptable employment of more local personnel as desk officers has served to increase the rate of corruption. The chances of being caught or punished are minimal. The few genuine local change-agents are crowded out by the charlatans and the opportunists.

The imperative to disburse at all costs makes it very difficult for donors to adequately monitor or evaluate the quality of their assistance, since it would put the agencies in a poor light if they were seen to be supporting non-performing or corrupt activities. Thus, as has generally been the case, the donors pretend that their assistance is being well used, and are even prepared to deny well founded allegations of the misuse of project funds.

...

The continued availability of donor money is the major determinant of the volume of aid, not performance, structural reform, or impact on target groups. Although further project aid cannot be justified on the basis of past performance, it continues to be a major form of aid delivery by both the World Bank and other donor agencies.

...

Tanzania's President Benjamin Mkapa recently published the report of the "Warioba Commission" against corruption, which documents in great detail the nature and extent of corruption in Tanzania. The picture which emerges is that of an oppressed people largely at the

mercy of an incompetent and corrupt state apparatus. The role of aid in helping to create and reproduce this lamentable state of affairs is worth exploring.

*Unfortunately, the report does not mention corruption in aid.*⁸⁰

I have not even mentioned the issue of growing corruption within the aid agencies themselves, particularly those in the UN system and the European Union. If corruption has become one of the major international issues of modern times, it would hardly be surprising to find that the virus has already infected and is spreading within the major agencies.

If countries with ...(rampant corruption)...can continue to enjoy billions of dollars of aid every year, it is not because they have demonstrated their ability to use aid wisely. But the donors are not well placed to extol the virtues of transparency and accountability which they do not practice themselves. To address the question of corruption in aid, the World Bank and the other agencies will have to take a long look at their own role in creating the problem which they now propose to cure.⁸¹

This voice crying in the wilderness will have to be heard eventually if the IFIs are to achieve credibility in their newfound crusade against corruption. IFIs will eventually have to accept some, perhaps much of the blame for the corruption they now propose to fight. Even so, the time is right and the battle must be fought.

XVI. CAN IFIS WIN THE FIGHT? WILL THEY HAVE THE WILL?

To do battle with the growing threat of globalized macronarcocyber-corruption,⁸² in the new war which has taken the place of the cold war, IFIs will need much more gumption than they have demonstrated in the past. They will need to clean out from their staff those officials and employees who cannot fully bring themselves to enter the battle. Some may be "conscientious objectors," some may be coconspirators with the corrupt, some may be fools, but the generals of the IFIs must have officers and soldiers that they can rely upon to wage the war. Currently, James Wolfensohn and Michael Camdessus and others like them are out on a limb that could well be cut off by traitors within their own organizations.

On the other hand if the IFIs under their leadership are able to overcome the internal and external forces waged against them and put the muscle and the money of the IFIs strongly on the line, the corruption eruption may finally be capped.

⁸⁰ Emphasis added.

⁸¹ *Id.*

⁸² A term coined by the author to stress the broad, all encompassing, narcotics-based, electronic money transfer-supported corruption threat to the planet.

Michael Camdessus' closing words in Paris before Transparency International summarize the impact the IFIs can have, if they work shoulder-to-shoulder with member governments and civil society:

Yes, the programs are far-reaching and confirm the basic intuition of your organization: that anyone who takes the need for transparency seriously will profoundly change the course of events. If you permit me to paraphrase the words of the Duc de Liancourt, Master of the Robes to Louis XVI, on July 14, 1789, I would say: "It's not progress, Sire, it's a revolution!" Such reforms will require a vast change in domestic business practices, corporate culture, and government behavior. Obviously, this will be a long-term process—a process in which the IMF, the World Bank, and others can assist, but one whose success depends on the efforts of the countries themselves....

"Revolution!" It is probably too strong a word. History will judge, but for the IMF, which for fifty years confined itself essentially, in accordance with its mandate and not without some success, to helping its member countries accept essential monetary and macroeconomic discipline, these are entirely new frontiers, both vast and promising, as they are for the World Bank and the other major international organizations. However, we must guard against leaving this work to the international organizations, which risks setting them up as the scapegoat for all the world's ills if progress should come too slowly. Like all revolutions, this one will be successful only with the unrelenting and ultimately irresistible pressure of civil society. Spearheading this effort, Transparency International has already contributed to bringing about change. The IMF is proud to work alongside Transparency International in this vitally important effort: on it depend good governance in service of society and the opportunity for a new form of citizenship.⁸³

⁸³ See Camdessus, *supra* note 68.