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Juan Carlos Linares

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AFTER THE ARGENTINE CRISIS: CAN THE IMF PREVENT CORRUPTION IN ITS LENDING? A MODEL APPROACH

Juan Carlos Linares

*“Corruption hurts the poor disproportionately—by diverting funds intended for development, undermining a government’s ability to provide basic services, feeding inequality and injustice, and discouraging foreign investment and aid.”**

INTRODUCTION

Argentina has recently been a hotbed of economic, social and political disagreement. Once heralded as nation of rags to riches immigrants in Buenos Aires and spirited gauchos in the wide-open Pampa, it has now been relegated to a global example of fiscal irresponsibility in government and international lending.

The International Monetary Fund (IMF), a leading character in the unfolding Argentine saga, has also come under harsh criticism from scholars who argue that its lending policies have failed miserably to correct the economic conditions that it has sought to improve. Jeffrey Sachs himself has labeled the IMF as “the typhoid Mary of emerging markets.”¹

Though many valid explanations exist as to the cause of Argentina’s financial collapse, without a doubt, a major reason is the corruption afflicting many of the institutions for decades. In Argentina alone, “the level of corruption that persists is staggering in scope” and “involves enormous sums of money.”²

* Kofi Annan, United Nations Secretary-General, in his statement on the adoption by the General Assembly of the United Nations Convention against Corruption, at http://www.unodc.org/unodc/crime_convention_corruption.html (last visited Jan. 30, 2004).

¹ *Frontline: The Crash: Interview with Jeffrey D. Sachs*, at <http://www.pbs.org/wgbh/pages/frontline/shows/crash/etc/script.html> (last visited Dec. 13, 2003) [hereinafter *The Crash*]. Jeffrey Sachs is the Galen L. Stone Professor of International Trade at Harvard University and the Director of the Center for International Development. He has served as an economic advisor to governments in Latin America, Eastern Europe, Russia, Asia and Africa.

² David Hess and Thomas W. Dunfee, *Fighting Corruption: A Principled Approach; The C2 Principles (Combating Corruption)*, 33 CORNELL INT’L L.J. 593, 596 (2000) [hereinafter Hess & Dunfee] (“While it is impossible to determine the current precise level of coarse bribery, a 1997 World Bank estimate placed the total corruption involved in international trade at \$80 billion per year.”).

This paper focuses on curtailing the corruption inherent in the lending practices of the IMF and, subsequently, preventing another economic disaster, as has occurred in Argentina. In fact, if the IMF will succeed in future attempts to restore a state's monetary and fiscal standing, it should incorporate language of the accounting and record-keeping provisions of the U.S. Foreign Corrupt Practices Act into its loan agreement policies, thereby conditioning its loans upon transparency and good governance over borrowed funds.

Part I of this article introduces corruption and its affect on international lending. Part II describes the IMF and its mandates, and illustrates its role in the recent economic problems in Argentina. Part III outlines accounting provisions of the Foreign Corrupt Practices Act (FCPA) and demonstrates its potential effectiveness in curbing corruption on an international scale. Part IV concludes, as the paper begins, with the notion that the IMF will better serve its function as international lender when it deals directly with the problem of corruption inherent in its loans.

Transparency International, in its 2003 Corruption Perceptions Index, ranked Argentina 92 of 133 countries according to how corruption is perceived to exist among public officials and politicians.³ With this knowledge, the IMF poured funds into the country throughout the 1990's to the present. Not surprisingly, much of this money went not to the planned economic austerity programs, but rather to the private coffers of many Argentine politicians and officials. In fact, in one provincial city, the Argentine mayor "built an office that resembled a scaled-down presidential country house before being convicted in 2000 of misappropriating public funds and threatening a former city official."⁴ As a result of these practices, many in the region feel that years of IMF assistance and "economic liberalization have done little to alleviate poverty, and they have little trust in their leaders to carry

³ Press Release, Transparency International Corruption Perceptions Index 2003 (Oct. 7, 2003) at http://www.transparency.org/pressreleases_archive/2003/2003.10.07.cpi.en.html (last visited Nov. 18, 2003); see also Walter Perkel, *Foreign Corrupt Practices Act*, 40 AM. CRIM. L. REV. 683, 711 (2003) ("Perhaps the most influential actor in civil society with regard to anti-corruption efforts is Transparency International."); see generally Transparency International Mission Statement, at http://www.transparency.org/about_ti/mission.html (last visited Dec. 13, 2003) ("TI is the only organization devoted solely to diminishing corruption in the international commercial arena, where it promotes the principles of decentralization, participation, diversity, accountability, and transparency in an effort to foster preventative measures against corruption.").

⁴ Matt Moffett, *One Tough Mayor Shows Argentina How To Clean House*, WALL ST. J., July 1, 2003, at A1. Since the economic collapse, there are "small but growing number of Latin American leaders fighting the region's deeply embedded corruption at the local level."

out reforms without lining their own pockets.”⁵ Even the most well-meaning of IMF plans has been undermined by corruption.⁶

Consequently, the IMF should strive for accountability, not only its lending practices but also the borrowers’ use of funds for stated purposes. A key component of this is transparency. “A regulation or law is to be transparent if the process and the effects of the regulation or law can be seen [sic] through easily, just as one can see easily through a clean window.”⁷ Accordingly, the IMF would be wise to establish transparency by following the path of its funds to assure the successful execution of programs and, ultimately, to achieve its mandate.

INTERNATIONAL LENDING FOR ECONOMIC DEVELOPMENT

In recent years, international lending has increased exponentially in dollar amounts, with the IMF at the forefront of this relatively new practice. Argentina serves as an example, however, of international lending practices leading to economic, political, and social instability at national levels.

The International Monetary Fund

The IMF was created when twenty-nine countries signed its Articles of Agreement on December 27, 1945.⁸ “It was established to promote international monetary cooperation, exchange stability and orderly exchange arrangements, to foster economic growth and high levels of employment, and to provide temporary financial assistance to countries to help ease balance of payments adjustment.”⁹ Addition-

⁵ David Luhnnow et al., *Latin America’s Season of Discontent*, WALL ST. J., Oct. 16, 2003, at A21.

⁶ *Id.*

⁷ William B. T. Mock, *An Interdisciplinary Introduction to Legal Transparency: A Tool for Rational Development*, 18 DICK. J. INT’L L. 293, 295 (2000). “If someone subject to the law can understand what is expected of her, can understand and comply with the commands of the law, and can foresee the consequences of compliance or non-compliance, then the law is transparent. If not, then the law is opaque.”

⁸ Barbara Crutchfield George and Kathleen A. Lacey, *A Coalition of Industrialized Nations, Developing Nations, Multilateral Development Banks, and Non-Governmental Organizations: A Pivotal Complement to Current Anti-Corruption Initiatives*, 33 CORNELL INT’L L.J. 547, 577 (2000) [hereinafter George & Lacey]; see also International Monetary Fund, *About the IMF*, at <http://www.imf.org/external/about.htm>. (last visited Dec. 13, 2003) [hereinafter *About IMF*].

⁹ *About IMF*, *supra* note 8. The IMF is an international organization of 184 member countries.

ally, the IMF provides the machinery for consultation and collaboration on international monetary problems.¹⁰

The IMF is a multilateral institution, headquartered in Washington D.C.,¹¹ controlled by the U.S. and other industrial countries. It was established to help member countries maintain agreed exchange rates.¹² The IMF uses its own mechanisms to ensure stability in international exchange rates. One such mechanism is surveillance. Surveillance entails maintaining “a dialogue with its member countries on the national and international consequences of their economic and financial policies.”¹³ These activities have instilled a reputation of the IMF as a “global watchdog, suitably positioned to determine when and where a financial crisis may occur.”¹⁴

In its modern existence, the IMF has used its mandate to infuse capital into troubled economies, “thereby acting as a catalyst to restore private sector confidence in the system and attract investment to the economy.”¹⁵ Indeed, in the last two decades, the IMF has engaged in several well-publicized bailouts, including those in Mexico, Thailand, South Korea, and Indonesia.¹⁶ During this period the IMF has emerged as an international lender of last resort, commanding sizeable resources due to support from the G-7 countries.¹⁷

The IMF has also, in turn, leveraged its loans to achieve reforms, both macro and micro, in debtor countries.¹⁸ It “imposes condi-

¹⁰ *Articles of Agreement of the IMF*, Dec. 27, 1945, art. 1, 60 Stat. 1401, 2 U.N.T.S. 39, available at <http://www.imf.org/external/pubs/ft/aa/index.html> (last visited Dec. 14, 2003) [hereinafter *IMF Articles*].

¹¹ George & Lacey, *supra* note 8, at 577. The IMF boasts a staff of over 2600 individuals drawn from 122 different countries.

¹² HAL S. SCOTT AND PHILLIP A. WELLONS, *INTERNATIONAL FINANCE* 11 (10th ed. 2003) [hereinafter SCOTT & WELLONS]; see also John V. Paddock, *IMF Policy and the Argentine Crisis*, 34 U. MIAMI INTER-AM. L. REV. 155, 157 (2002) (noting that “[a]t present, the United States dominates the IMF decision-making process, with Japan and Europe also weighing in.”).

¹³ International Monetary Fund, *IMF Surveillance*, at <http://www.imf.org/external/np/exr/facts/surv.htm> (last visited Dec. 14, 2003).

¹⁴ George & Lacey, *supra* note 8, at 577.

¹⁵ *Id.* (citing *About IMF*, *supra* note 8); see generally Tom Petrino, *The Financial “White Knight”: IMF Demystified*, L.A. TIMES, Nov. 22, 1997, at A1 (“The IMF funding pool is the sum of subscriptions by the IMF’s 182 member nations, which essentially keep a share of their national currencies on deposit with the IMF. The IMF deals only with a recipient country’s central bank, feeding money directly into that institution and thus bolstering the financial reserves ultimately backing the government.”).

¹⁶ George & Lacey, *supra* note 8, at 577.

¹⁷ SCOTT & WELLONS, *supra* note 12, at 1339. Notwithstanding the fact that the IMF cannot print its own currency.

¹⁸ *Id.* at 1342.

tions on borrowing governments that frequently involve raising taxes and interest rates and cutting government bureaucracy and social spending.”¹⁹ This approach has been popularized by the term the “Washington consensus,” promoting a set of Western “economic dogma” focused on economic liberalization and characterized by discredit of the state and praise of free markets.²⁰

As a creditor, the IMF has the authority to insist that the applicant country “adopt institutional reform measures intended to eliminate corrupt practices which undermine economic stability.”²¹ The recent bailouts in developing countries “focused global attention on the potential influence of the IMF in ‘promoting good governance in all its aspects, improving the efficiency and accountability of the public sector, and tackling corruption.’”²² As a consequence, in 1997, the IMF implemented seemingly competent guidelines to “promote public sector transparency and accountability.”²³

The guidelines were meant to “improve efficiency and support sustained economic growth” by using a “‘more proactive approach in advocating policies’ and actively [pursuing] ‘the development of institutions and administrative systems that aim to eliminate the opportunity for corruption [and] fraudulent activity in the management of

¹⁹ Paddock, *supra* note 12, at 172. These reforms may lead to higher unemployment rates or reduced government salaries in debtor countries.

²⁰ Luis Banck, *International Monetary Fund: Distributional Impacts of IMF-Supported Economic Reforms: A Case Study of Mexico*, 3 GEO. PUBLIC POL’Y REV. 115 (1998).

²¹ George & Lacey, *supra* note 8, at 577.

²² *Id.* at 578 (quoting International Monetary Fund, *IMF Adopts Guidelines Regarding Governance Issues* (Aug. 4, 1997), at <http://www.imf.org/external/np/sec/nb/1997/NB9715.htm> (last visited Dec. 14, 2003) [hereinafter *Guidelines*]).

²³ *Guidelines*, *supra* note 22 (“As regards possible individual instances of corruption, IMF staff should continue raising these with the authorities in cases where there is a reason to believe they could have significant macroeconomic implications, even if these effects are not precisely measurable. Such implications could arise either because the amounts involved are potentially large, or because the corruption may be symptomatic of a wider governance problem that would require changes in the policy or regulatory framework to correct. Instances could include, for example, the diversion of public funds through misappropriation, tax (including customs) fraud with the connivance of public officials, the misuse of official foreign exchange reserves, or abuse of powers by bank supervisors that could entail substantial future costs for the budget and public financial institutions. Corrupt practices could also occur in other government activities, including the regulation of private sector activities that do not have a direct impact on the budget or public finances, such as ad hoc decisions made in relation to the regulation of foreign direct investment. Such practices would be counter to the IMF’s general policy advice aimed at providing a level playing field to foster private sector activity.”).

public resources.”²⁴ Furthermore, the guidelines seek to achieve “an evenhanded treatment of governance issues in all member countries,’ ‘enhanced collaboration with other multilateral institutions, in particular the World Bank’ and an improved ‘use of complementary areas of expertise [among anti-corruption initiatives].”²⁵ With its 1997 guidelines, the IMF purportedly has significant leverage to “require developing nations reduce internal corruption.”²⁶

Incidentally, the IMF policy of subjecting borrower nations to its conditions has sparked debate between those who see a borrower country’s political institutions as unduly susceptible to Western economic ideals, and others who believe that, “if the IMF did not lend, the government would be unable to implement reforms.”²⁷ In the end, however, there is little evidence that IMF conditions, usually requiring contradictory fiscal and monetary policies, have worked.²⁸ IMF conditionality has been extended substantially beyond traditional macro policy with little proof of success in reducing debt crisis.²⁹

For instance, the Washington consensus assumes a “one size fits all” policy, which “holds that there is only one path for development, and only one way for a government to organize its economy and society.”³⁰ As one commentator notes, “this approach is ethnocentric and undermines other non-financial value” and “[a]s a result, there have been profound dislocations around the world, as governments dismantle universal entitlements and social safety nets to fit the IMF’s very narrow conception of sound finance.”³¹ Likewise, in November 1998, the U.S. Congress’ International Financial Institutions Advisory Commission, in considering the future roles of international financial institutions, including most prominently the IMF, ruled in favor of ending IMF long-term lending tied to policy conditions.³²

Argentina and the IMF

“Argentina captured the title for the largest sovereign default when it defaulted on its \$141 billion external debt in late December 2001.”³³ The default itself was a culmination of years of failed eco-

²⁴ George & Lacey, *supra* note 8, at 578 (quoting *Guidelines*, *supra* note 22).

²⁵ *Id.* at 578 (quoting *Guidelines*, *supra* note 22).

²⁶ George & Lacey, *supra* note 8, at 577-78.

²⁷ SCOTT & WELLONS, *supra* note 12, at 1342.

²⁸ *Id.*

²⁹ *Id.*

³⁰ Timothy A. Canova, *Banking and Financial Reform at the Crossroads of the Neoliberal Contagion*, 14 AM. U. INT’L L. REV. 1571, 1644 (1999).

³¹ *Id.*

³² SCOTT & WELLONS, *supra* note 12, at 1345. The Commission was dubbed the Meltzer Commission for its Chairman, Allan Meltzer.

³³ *Id.* at 1329.

conomic strategies and what many saw as excessive influence from the IMF.

In 1991, in a now highly scrutinized decision, the Argentine government adopted a Currency Board, which fixed the peso equal to the U.S. dollar.³⁴ The government's intent was to make imports cheaper and to curb inflation, and the initial success of the program brought much acclaim to the Argentine Ministry of the Economy.³⁵ The appreciation of the Peso, however, placed exports and domestic producers at an immediate competitive disadvantage against the inexpensive imports.³⁶

Having received substantial financial assistance from the IMF, the government was obligated to make periodic repayments. In 1995, however, Argentina's government recognized that its one to one peg to the dollar, as well as its new economic liberalizations, had failed to generate sufficient capital to meet its repayment obligations.³⁷ That year, the government was forced to renegotiate its IMF loan agreement, resulting in a significant decline in the Argentine stock market and beginning a recurrent pattern "over the next six years, where the government would deny the gravity of the situation only to capitulate and lose face shortly thereafter."³⁸

What also followed was a series of new agreements with the IMF for repayment, conditioning each instance with specific targets for economic reform.³⁹ Pressured by the IMF and its member countries, most notably the U.S., the Argentine government agreed to reform labor law and the social security system, in addition to introducing competition in the energy and telecommunications sectors.⁴⁰

Consequently, Argentines from all segments of the economy, including "[b]usiness leaders, economists, and trade union leaders, protested then President Carlos Menem's introduction of tax increases and spending reductions."⁴¹ The government, nevertheless, seemed unable or unwilling to fully comply with the new conditions, yet the IMF continued to make loans, due perhaps to the institution's unwill-

³⁴ *Id.* The Peso was pegged to the dollar under the guidance of then Economy Minister Domingo Cavallo.

³⁵ Paddock, *supra* note 12, at 155 ("To the extent the Dollar crept upward in the 1990s in relation to other currencies, the Argentine Peso also began to appreciate and imports became cheaper.").

³⁶ *Id.*

³⁷ *Id.* at 158-59 (fearing an adverse market reaction, the government denied a report that it would have to renegotiate IMF loan conditions).

³⁸ *Id.* at 159.

³⁹ SCOTT & WELLONS, *supra* note 12, at 1330.

⁴⁰ *Id.*

⁴¹ Paddock, *supra* note 12, at 162.

ingness to abandon the failed project and its “expectation of an eventual turnaround.”⁴²

By 1998, Argentines viewed the IMF’s bailouts as carried out to protect the affluent, whose bad investments were repaid with IMF loan money at the expense of the poor, who ultimately absorbed the costs of the “austerity programs installed to pay for those loans.”⁴³ At the time, one third of the Argentine population was living below the poverty line and there was fourteen percent unemployment. Although the IMF countries were satisfied with the loan conditions, Argentine government workers and the working class erected roadblocks to protest the rising unemployment rate and potential IMF austerity measures.⁴⁴ Mass protests lead to one death and several injuries during anti-IMF riots.⁴⁵

By late 2000, with Argentines already humbled by foreign criticism of their circumstance, the IMF was planning new loans to the country in excess of \$15 billion.⁴⁶ Talks on extra funding stalled, however, and it became evident to the IMF and its member countries that it had “not assign[ed] systemic risk to the crisis.”⁴⁷

Then the collapse occurred. The government, in a panic to reserve currency, limited bank depositors to 2,000 Peso withdrawals per month from current accounts and froze withdrawals from accounts in dollars altogether.⁴⁸ The government also controlled transfers of funds out of Argentina, reduced the interest payments on \$45 billion of government bonds held by local investors, made local banks roll over \$360 million in Treasury bills, and seized assets of pension funds in order to avoid a formal default on public debt.⁴⁹ By the end of 2002,

⁴² *Id.*

⁴³ *Id.* at 166-68 (Similarly, “after the Asian crisis, George Soros remarked that the IMF responded by saving many economies from default, but in the process, it effectively “bailed out foreign investors who had speculated in their unsustainable growth.”); see also *The Crash*, *supra* note 1.

⁴⁴ Paddock, *supra* note 12, at 169. “Changes in IMF policies have forced investors to share more of the risk but this has only resulted in higher lending costs.”

⁴⁵ *Id.* at 156. Concurrent with the renegotiations, significant deficits existed because of large “pension systems, large grants to regional governments, corruption, and an inefficient, subsidized private sector.”

⁴⁶ *Id.* at 171-72. “In a widely publicized remark, United States Secretary of the Treasury Paul O’Neill insulted the Argentine people by seeming to equate their nation’s importance to Uganda’s. Alan Greenspan, in an appearance before Congress, referred to the Argentine crisis as domestic in nature.”

⁴⁷ *Id.* *supra* note, at 176.

⁴⁸ SCOTT & WELLONS, *supra* note 12, at 1329.

⁴⁹ *Id.*

an estimated fifty percent of the population was below the official poverty level.⁵⁰

The IMF was immediately blamed for contributing to the default.⁵¹ In retrospect, many critics believe “the IMF [was] too rigid in demanding policies that the government [could not] accomplish,”⁵² while others hold that “the IMF was too lenient and let Argentina continually ignore the loan conditions.”⁵³

Undoubtedly, a major cause of the collapse resulted from the steadfast tradition of internal corruption amongst the region’s elites. Indeed, inadequate constraints were adopted to curtail corruption, where in a nation like Argentina, “traditional distrust of the state led to disrespect for the rule of law, resulting in corruption and tax evasion.”⁵⁴ Even now, after the collapse, the Argentine people share the burden of the new currency limits, while the wealthy transfer funds out of the country.⁵⁵

During the 1990s, graft grew more visibly than ever as Argentina enjoyed a dramatic increase in investment after embracing the IMF’s free market policies.⁵⁶ Many economists view graft, which drained government funds and contributed to Argentina’s chronic budget deficits, as an underlying cause of Argentina’s financial catastrophe. To address chronic budget deficits, the Argentine government continued borrowing until lenders refused to make additional loans.⁵⁷

In April 2003, Argentina elected Nestor Kirchner its new president, by default, with many expecting the nation’s economic and financial woes to turn around.⁵⁸ In the months since the elections, IMF

⁵⁰ *Id.* at 1334.

⁵¹ *Id.*

⁵² *Id.* at 1329.

⁵³ Paddock, *supra* note 12, at 179. “A study by the Heritage Foundation found that in terms of per capita wealth, of the eighty-nine loan recipients from 1965 to 1995, 54% were no better off compared to the time they received the first IMF installment. Of these countries, 35% were poorer, of which almost half had economies which had been reduced by 15%. Moreover, if investor confidence were the key for a recovering economy, it would seem that limiting corruption would also be important to the IMF. Yet, the IMF, no less in Argentina than in Russia, Korea, and Indonesia looked the other way as even the money it loaned was used for corrupt purposes.”

⁵⁴ *Id.* at 178.

⁵⁵ *See Id.* “In a decade as the IMF’s neo-liberal show state, unemployment rose from 3% to 20%, the number of people in poverty climbed from 200,000 to 5 million, and illiteracy grew from 5% to 32% as education and government budgets were slashed.” *Id.* at 178-79.

⁵⁶ Moffett, *supra* note 4, at A1.

⁵⁷ *Id.*

⁵⁸ SCOTT & WELLONS, *supra* note 12, at 1334.

negotiations had resumed, “GNP was expected to grow 4% in 2003, inflation was in the single digits, and the peso had risen 20% against the dollar in four months, forcing the central bank to intervene.”⁵⁹

President Kirchner’s priorities have been political legitimacy and economic growth, as well as a firm stance against IMF repayment terms and endemic corruption.⁶⁰ His attempts at stamping out corruption, however, have come under considerable stress, partly because Peronism, the party to which he belongs, lacks serious opposition, and is implicated in corrupt financial practices.⁶¹ The President, at present shows no sign of giving in to corruption, “though some Argentines wonder whether the president really has the stomach to tackle his party’s corrupt old guard.”⁶²

President Kirchner’s authority comes from his high poll ratings, which he earned by promising to be a crusading reformer.⁶³ Meanwhile, the nation is slowly but surely gaining confidence, with a majority of fifty-three percent saying opening the economy had been positive, notwithstanding the economic crisis.⁶⁴

PREVENTING CORRUPTION

“Corruption equals monopoly power plus discretion minus accountability.”⁶⁵ Corruption undoubtedly stems from the government’s

⁵⁹ *Id.* at 1335.

⁶⁰ *Hard or Soft? Brazil, Argentina and the IMF*, *ECONOMIST*, Sept. 27, 2003, at 38; see also *Uruguay’s Bold New Oil Policy- Uruguay’s Referendum Echoes A Regional Mood*, *ECONOMIST*, Dec. 13, 2003, at 34 (“Argentina’s Nestor Kirchner has demanded a big write-down from creditors and threatened to default on loans from the IMF.”).

⁶¹ *The Mission-Nestor Kirchner’s Search For Political Allies*, *ECONOMIST*, Oct. 4, 2003, at 36 [hereinafter *The Mission*].

⁶² *Id.* “If he really intends to shake up his country’s politics, he will have to strike before his aura fades.”

⁶³ *Id.*

⁶⁴ David Luhnnow, *Latin America Looks Hard at U.S.*, *WALL ST. J.*, Oct. 28, 2003, at A15.

⁶⁵ Brian C. Harms, *Holding Public Officials Accountable in the International Realm: A New Multi-Layered Strategy to Combat Corruption*, 33 *CORNELL INT’L L.J.* 159, 164 (2000) (noting that the causes of corruption are (1) the monopoly power of the public sector; (2) the discretion of public officials, contingent upon the control the government has over the economy; and (3) the lack of accountability of public officials, coinciding with the discretionary power of public officials); see also Nora M. Rubin, *A Convergence of 1996 and 1997 Global Efforts To Curb Corruption and Bribery in International Business Transactions: The Legal Implications of The OECD Recommendations and Convention For The United States, Germany, and Switzerland*, 14 *AM. U. INT’L. L. REV.* 257, 264 (1998) (defining corruption as the abuse of public office for private gain).

role in the economy; the greater discretion of public officials within the state's regulatory framework and the larger the scope of public benefits available to them, give officials more discretion to take advantage those benefits.⁶⁶ When they are not held accountable, corrupt public officials may cause a domestic economy to experience enormous financial losses.⁶⁷

In Argentina, public officials were able to abuse their discretion without any threat of repercussion, as the lack of accountability and transparency in the government permitted their practices of graft and corruption to continue undetected.⁶⁸ Concurrently, the IMF tried to avoid involvement with Argentina's internal governance.⁶⁹ "In the 1990s, however, the IMF realized that abstention was no longer a feasible approach to attaining their objectives."⁷⁰

Accordingly, the IMF must forcefully address issues of corruption to have any chance of success in future financial assistance programs. The U.S. Foreign Corrupt Practices Act presents a valid model for securing accountability in financial transactions, and its acceptance by other international organizations demonstrates its adaptability to institutions like the IMF.

The Foreign Corrupt Practices Act

The U.S. Congress enacted the Foreign Corrupt Practices Act (FCPA) in 1977 as part of the 1934 Securities Exchange Act (SEC).⁷¹ The FCPA was a response to the heightened awareness of corruption of the day, from the Nixon presidential scandal to the everyday practices of bribery in foreign transactions. An admirable initiative creating criminal penalties for those who corrupt foreign officials, critics argued that the United States was placed at an immediate, competitive disadvantage with other international trading states in bidding

⁶⁶ Harms, *supra* note 65, at 164. Where public officials with monopoly power over discretionary decisions are not held accountable, they have the incentive to be corrupt.

⁶⁷ *Id.* ("The IMF notes several consequences of corruption: (1) corruption lowers investment and retards economic growth; (2) corruption misallocates talent; (3) corruption reduces the effectiveness of aid flows; (4) corruption leads to adverse budgetary consequences; (5) corruption lowers the quality of the infrastructure and of public services; and (6) corruption distorts the composition of government expenditure.").

⁶⁸ *Id.*

⁶⁹ Hess & Dunfee, *supra* note 2, at 604.

⁷⁰ *Id.* (claiming that, "[f]or example, the World Bank estimated that 20-30% of its lending to Indonesia went to corrupt officials").

⁷¹ 15 U.S.C. § 78 dd-1 (1977).

for third party business.⁷² This criticism chiefly resulted from the FCPA's more popular provisions criminalizing the bribery of foreign officials by U.S. corporations and individuals pursuing business in other countries.⁷³ However, the FCPA also required that companies with publicly-traded stock meet certain standards regarding their accounting practices, books and records, and internal controls.⁷⁴ These accounting provisions were an attempt to address the broader problem of corporate concealment of illicit transfer of funds, which businesses under SEC jurisdiction often had disguised by means of improper accounting procedures.⁷⁵ Although the language has been made clear in the years since its inception, "the corporate governance approach embedded in the accounting provisions has remained a part of all subsequent legislation."⁷⁶ The accounting provisions, unlike the anti-bribery sections, which apply to both "issuers and domestic concerns," apply only to "issuers" registered under the Securities Exchange Act of 1934.⁷⁷ Essentially, the 1977 Act required every issuer of registered securities to "(1) make and keep books, records, and accounts which accurately and fairly reflect, in reasonable detail, transactions and dispositions of assets, and (2) devise and maintain a system of internal accounting."⁷⁸

Broad language initially caused confusion about the interpretation of some of the language used, so the U.S. Congress added clarifying details in the 1988 Amendments by deleting the "reason to know" standard.⁷⁹ "Congress also clarified the corporation's responsibility to make a 'good faith effort' in the financial record-keeping and internal accounting controls of foreign subsidiaries in which U.S. companies have a minority interest."⁸⁰

The FCPA was again amended in 1998 to implement the Organization of Economic Cooperation and Development ("OECD") Con-

⁷² Heather Manweiller & Bryan Schwartz, *Creating The Free Trade Area Of The Americas: A Proposal for an Anti-Corruption Dimension to the FTAA*, 1 ASPER REV. INT'L BUS. & TRADE L. 67 (2001) [hereinafter Manweiller & Schwartz].

⁷³ Perkel, *supra* note 3, at 683.

⁷⁴ *Id.*

⁷⁵ George & Lacey, *supra* note 8, at 559.

⁷⁶ *Id.*

⁷⁷ 15 USCS § 78m(a). Any stock issuer, who engages in interstate commerce or whose securities are traded on a national stock exchange, who has more than five hundred shareholders, and whose assets exceed \$ 1,000,000 is required to register its securities with the SEC; *see also* George & Lacey, *supra* note 8, at 560.

⁷⁸ George & Lacey, *supra* note 8, at 560 (noting that an American company need be neither foreign nor corrupt to come within the scope of the accounting sections of the FCPA.)

⁷⁹ *Id.* at 561

⁸⁰ *Id.* at 562.

vention on Combating Bribery of Foreign Public Officials in International Business Transactions.⁸¹ The 1998 Amendments extended the FCPA's jurisdiction beyond America's borders to allow greater enforcement efforts by U.S. prosecutors, increasing SEC and Department of Justice ("DOJ") enforcement of the FCPA, and furthering the U.S. goal of eradicating corruption in foreign business practices.⁸²

Two main aspects of the FCPA's accounting provisions, in particular, serve as competent models in preventing the type of corruption experienced in IMF lending. They are the record-keeping provisions and the internal control provisions.

Record-keeping

The first significant requirement of the accounting provisions requires all issuers to "make and keep books, records, and accounts, which, in reasonable detail, accurately and fairly reflect the transac-

⁸¹ Perkel, *supra* note 3, at 684; see also Foreign Corrupt Practices Act Amendments of 1998, Pub. L. No. 100-418, § 5003, 102 Stat. 1415, 1424 (1988) (requesting that the President develop an anti-bribery agreement "with member countries of the Organization of Economic Cooperation and Development, *OCED Convention on Combating Bribery of Foreign Public Officials in International Business Transactions: Ratification Status*, at <http://www.oecd.org/dataoecd/52/53/2406809.pdf> (last visited Dec. 16, 2003) [hereinafter OECD Convention]. All thirty OECD countries (Australia, Austria, Belgium, Canada, Czech Republic, Denmark, Finland, France, Germany, Greece, Hungary, Iceland, Ireland, Italy, Japan, Korea, Luxembourg, Mexico, the Netherlands, New Zealand, Norway, Poland, Portugal, Slovak Republic, Spain, Sweden, Switzerland, Turkey, the United Kingdom, and the United States) and 5 non-signed OECD countries (Argentina, Brazil, Bulgaria, Chile, and Slovenia) have signed the OECD Convention.

⁸² 15 U.S.C. § 78m(b)(2)(A). The 1998 Amendments, adding the OECD, look the same as those set forth in the 1988 Act: (A) make and keep books, records, and accounts, which, in reasonable detail, accurately and fairly reflect the transactions and dispositions of the assets of the issuer; and (B) devise and maintain a system of internal accounting controls sufficient to provide reasonable assurances that (i) transactions are executed in accordance with management's . . . authorization; (ii) transactions are recorded . . . in conformity with generally accepted accounting principles; (iii) access to assets is permitted only in accordance with management's . . . authorization; and (iv) the recorded accountability for assets is compared with the existing assets at reasonable intervals and appropriate action is taken with respect to any differences; see also Perkel, *supra* note 3, at 687 (stating that despite the 1998 amendment, the impact of corruption remains a potent and debilitating force affecting numerous industries in the international economic arena); Stuart H. Deming, *The Foreign Corrupt Practices Act: The Accounting and Record Keeping Provisions*, 2002 A.B.A. Sec. Int'l Law & Prac. 1.

tions and dispositions of the assets of the issuer.”⁸³ This applies to all payments of funds, not just those that are material in the traditional financial meaning.⁸⁴ Moreover, the “reasonable detail” requirement entails keeping a “level of detail and degree of assurance as would satisfy prudent officials in the conduct of their own affairs.”⁸⁵

The misconduct that the record-keeping provisions seek to prevent includes: (i) the failure to record illegal transactions; (ii) the falsification of records to conceal illegal transactions; and (iii) the creation of records that are quantitatively accurate, but fail to specify qualitative aspects of the transaction.⁸⁶ These too are broadly defined, so as to implicate what may seem as merely isolated incidences of violations. This undoubtedly serves to heighten the gravity of the measures involved.

Internal Controls

The FCPA’s accounting provisions also require issuers to devise and maintain a system of internal accounting controls that will provide “reasonable assurances” that all transactions are properly authorized.⁸⁷ “The purpose of the internal controls provision is to ensure that issuers use accepted methods of accounting when recording economic transactions or protecting assets.”⁸⁸

Specifically, the FCPA requires corporate accountability by making reasonable assurances that, *inter alia*:

- (i) transactions are executed in accordance with management’s general or specific authorization;
- (ii) transactions are recorded as necessary (I) to permit the preparation of financial statements in conformity with generally accepted accounting principles or any other criteria applicable to such statements, and (II) to maintain accountability for assets;
- (iii) access to company assets is permitted only in accordance with management’s general or specific authorization; and
- (iv) the recorded accountability for assets is compared with existing assets at reasonable intervals and ap-

⁸³ 15 U.S.C. § 78m(b)(2)(A).

⁸⁴ Deming, *supra* note 86, at 1.

⁸⁵ 15 U.S.C. § 78m(b)(7)(2004).

⁸⁶ Perkel, *supra* note 3, at 689; *see also* DONALD R. CRUVER, *COMPLYING WITH THE FOREIGN CORRUPT PRACTICES ACT 14-17* (ABA Sec. of Business Law, ed. American Bar Association, 2d. ed. 1999).

⁸⁷ 15 U.S.C. § 78m(b)(2)(B)(2004). “Reasonable assurances” are measured against the reasonable detail standard. 15 U.S.C. § 78(b)(7).

⁸⁸ Perkel, *supra* note 3, at 689 (citing Deming, *supra* note 82, at 3).

propriate action is taken with respect to any differences.⁸⁹

The “reasonable detail” and “reasonable assurance” standards on record-keeping and internal control were criticized by the business community as exacting overly stringent constraints on their ability to conduct business. Subsequently, Congress adopted a “prudent person” standard for the amount of disclosure required by the FCPA.⁹⁰ The requirement has, therefore, developed a “level of detail and degree of assurance in record-keeping that would satisfy prudent officials in the conduct of their own affairs.”⁹¹

In terms of enforcement, the SEC and the Justice Department share duties under the FCPA, “where the SEC prosecutes civil violations of the accounting and anti-bribery provisions as applied to issuers,” and “the Department of Justice prosecutes civil violations by domestic concerns.”⁹² The Department of Justice, however, “has exclusive jurisdiction in regard to criminal prosecutions, whether by a domestic concern or an issuer.”⁹³

“As it now stands, the FCPA requires companies to keep accurate records and maintain a system of internal controls, and outlaws the practice of bribing foreign officials and other categories of recipients for the purpose of obtaining a business benefit.”⁹⁴ Because of the FCPA’s success in achieving the government’s aims, the U.S. has pressured other nations to institute similar anti-corruption initiatives.⁹⁵

International Efforts at Adopting the FCPA

At the behest of the U.S., which encouraged the preventing of corruption globally, thirty-five nations signed the OECD Convention in 1997, after a lengthy process that began three years earlier.⁹⁶ The Convention, like the FCPA, “requires that all participating parties criminalize the bribery of foreign officials, outline appropriate sanctions for violations, and agree to extradite those charged with a bribery offense.”⁹⁷ Accounting and record-keeping provisions of the

⁸⁹ 15 U.S.C. § 78m(b)(2)(B).

⁹⁰ George & Lacey, *supra* note 8, at 562.

⁹¹ *Id.*

⁹² J. Lee Johnson, *A Global Economy and the Foreign Corrupt Practices Act: Some Facts Worth Knowing*, 63 MO. L. REV. 979, 987 (1998).

⁹³ *Id.* at 987.

⁹⁴ Perkel, *supra* note 3, at 687.

⁹⁵ Manweiller & Schwartz, *supra* note 73, at 67.

⁹⁶ Rubin, *supra* note 65, at 283-87.

⁹⁷ Perkel, *supra* note 3, at 704; see Organization for Economic Cooperation and Development, *Bribery Convention: Steps Taken and Planned Future Action*, at <http://www.oecd.org/dataoecd/50/33/1827022.pdf> (last visited Dec. 16, 2003).

Convention were similar to those adopted by the FCPA in its 1998 amendment.⁹⁸ Argentina, a non-OECD member, signed the Convention in 2001, but has yet to ratify it, although ratification is expected in the near future.⁹⁹

The Organization of American States (“OAS”) also adopted an anti-corruption regulation in its Inter-American Convention Against Corruption, which criminalizes transnational bribery in the Western Hemisphere.¹⁰⁰ The OAS Convention seeks to “prevent, detect, punish and eradicate corruption in the performance of public functions,” and targets both the bribe-giver and the bribe-receiver, hence surpassing the prohibitions contained within the OECD Convention, which merely targets the conduct of the bribe-givers.¹⁰¹

Like the OECD Convention, signatory nations are to maintain “systems for registering the income, assets and liabilities of persons who perform public functions in certain posts as specified by law and, where appropriate, for making such registrations public.”¹⁰² Its provisions, however, do not go as far as the FCPA’s in attempting to establish sound accounting principles in foreign transactions.

Interestingly, both the OECD and OAS Conventions were modeled in part after the FCPA, and “these multilateral organizations were able to take advantage of the successes and failures of the original U.S. legislation and its amendments.”¹⁰³ As a signatory to both Conventions, and having ratified the OAS Convention,¹⁰⁴ Argentina is required to implement the proscribed measures. In practice, though, Argentina and its government has been unable to properly address its issues of graft and corruption in its own government circles.

⁹⁸ OECD Convention, *supra* note 81. at Art. 8 (discussing the OECD’s latest efforts to combat international corruption through accounting procedures).

⁹⁹ Conference, *The Experts Roundtable: A Hemispheric Approach to Combating Corruption*, 15 AM. U. INT’L L. REV. 759, 769 n. 5 (2000).

¹⁰⁰ Inter-American Convention Against Corruption, Mar. 29, 1996, OAS, 35 I.L.M. 724, at <http://www.oas.org/juridico/english/Treaties/6-58.html> (last visited Sept. 19, 2004) [hereinafter OAS Convention] The OAS has thirty-five member states, all from the western hemisphere (Cuba has been excluded since 1962); *see also* Perkel, *supra* note 3, at 705.

¹⁰¹ George & Lacey, *supra* note 8, at 564.

¹⁰² OAS Convention, *supra* note 104, at Art. III(4).

¹⁰³ George & Lacey, *supra* note 8, at 558.

¹⁰⁴ Organization of American States, *Signatures and Ratifications*, at <http://www.oas.org/main/main.asp?sLang=& sLink=tp://www.oas.org/juridico/english/fightcur.html> (last visited Dec. 17, 2003). (“Pursuant to the provisions of Article XVIII of the Inter-American Convention Against Corruption, the Government of Argentina appointed the Ministry of Foreigner Affairs, to serve as the Central Authority for the Republic of Argentina.”).

On a global scale, the United Nations recently sponsored an initiative to curtail corruption in its U.N. Convention against Corruption.¹⁰⁵ The agreement criminalizes bribery, money laundering, and embezzlement of public funds, and requires countries to take steps to prevent corruption. Over ninety-five countries have signed the new law.

The Convention, however, neither requires signatory countries to enact new anti-corruption laws, nor does it mandate sanctions for violating the pact. Critics also note that the Convention does not clearly define what it seeks to prevent, labeling it as anti-corruption rhetoric. In essence, though it is difficult to measure the Convention's impact at present, what is clear is that without vigorous enforcement, investigation, or the ability to support genuine compliance, the Convention's authority will not reach the level of success that has resulted from the FCPA.

Lastly, the World Bank¹⁰⁶ has attempted to control fraud and corruption by evaluating corruption levels when designing development assistance strategies and implementing aid projects.¹⁰⁷ In fact, the World Bank has established an independent audit program and expanded personnel oversight of its procurement processes, initiating a multi-faceted program designed to combat corruption in its funded projects while helping nations to reduce internal corruption and supporting international anti-corruption programs.¹⁰⁸ The World Bank's steps in addressing the corruption issue in its loan projects have well exceeded the efforts taken by the IMF at present. The IMF would be

¹⁰⁵ United Nations Convention against Corruption, at http://www.unodc.org/unodc/crime_convention_corruption.html (last visited Jan. 30, 2004).

¹⁰⁶ World Bank Institute, *About the World Bank Group, History*, at <http://www.worldbank.org/html/extdr/about/history.htm> (last visited Dec. 15, 2003); see also George & Lacey, *supra* note 8, at 575 ("The Bank stimulates productive investment in developing countries by, *inter alia*, lending capital to countries for infrastructure projects, financing banking and corporate reform, and engaging in other projects intended to help the poor and unemployed in developing economy nations.").

¹⁰⁷ Rubin, *supra* note 65, at 276-78 (describing the efforts being made by international financial institutions).

¹⁰⁸ Perkel, *supra* note 3, at 687; see also World Bank Institute, *Governance & Anti-corruption Overview & Strategy*, at <http://web.worldbank.org/WBSITE/EXTERNAL/EXTABOUTUS/0,,contentMDK:20040558~menuPK:34559~pagePK:34542~piPK:36600~theSitePK:29708,00.html> (last visited Dec. 15, 2003) (promoting the World Bank's strategy to combat corruption); Alejandro Posadas, *Combating Corruption Under International Law*, 10 DUKE J. COMP. & INT'L L. 345, 395-408 (2000) (illustrating international organizations' programs to combat corruption).

wise to follow the World Bank's lead in identifying corruption as a problem that should be dealt with immediately and appropriately.

Incorporating the FCPA as IMF Lending Policy

"A legacy of the centralized style of government handed down by the conquistadors, corruption has undermined Latin America's potential for centuries."¹⁰⁹ This is common knowledge to most governments and institutions of the world, and should have been known to the IMF when it made the decision to provide financial assistance to Argentina. In fact, U.S. Secretary of State Colin Powell bluntly urged Argentina in 2002, then the third largest economy in Latin America, to address its institutional flaws and to discourage, *inter alia*, excess public sector borrowing, politicized judicial systems, a lack of transparency in government activities, and, ultimately, corruption.¹¹⁰ Although Argentina is a signatory member of the OECD and OAS Conventions, its roots of corruption run so deep that many of its leaders are not willing to abandon the spoils system, despite its evils, thereby allowing illegal financial practices to continue unchecked.¹¹¹

The IMF took a tough stance with Argentina throughout its renegotiations. The IMF's subsequent bailout, however, either because of its own institutional pressure or from U.S. insistence that it provide new money, confirmed that the IMF's position on eradicating corruption was not solid. The IMF's decision to lend shows that it is committed neither to any meaningful policy change, nor to any credible promises of corruption reform in its debtor nations.

Indeed, leading economists have demanded that detailed reports, audits, and opinions covering IMF programs with debtor countries be published.¹¹² Even though prolonged studies and consultation with outside experts are not always possible in a rapidly developing crisis, preserving better records of the process can serve as a foundation for assuring the success of its programs and eventual repayment.

For these reasons, the IMF itself should look to the FCPA as a model in forming its anti-corruption standards, indeed using those principles as a condition to the loans themselves, especially where borrower countries have not proven a capacity to harness corruption in their own governments. The IMF's current guidelines, though acknowledging the problem of government corruption, do nothing to guarantee that its funds will be used for stated purposes. The FCPA's record-keeping and internal controls provisions, without a doubt, include the necessary language for the IMF to manage the path of its

¹⁰⁹ Moffett, *supra* note 4, at A1.

¹¹⁰ *Id.*

¹¹¹ *Id.*

¹¹² Paddock, *supra* note 12, at 180.

loaned funds. With a few changes, its eventual implementation by the IMF would do much to stifle the corruption inherent in the countries that seek its financial assistance.

For one, the applicable FCPA provisions apply to “issuers” of registered securities under the SEC. In contrast, the IMF should apply its FCPA-like anti-corruption regulation to all “receivers,” that is, to those individuals or organizations that receive funds flowing from the initial disbursement by the IMF to the debtor country’s central bank.

Moreover, the IMF should most certainly adopt the “reasonable detail” requirement of the record-keeping provision. Here, individuals or organizations to which the government will disburse IMF-originating funds to further the objectives of the loan assistance program, should register with and provide information to the IMF, sufficient to satisfy “prudent IMF officials and members” in the conduct of their own affairs. The benefit of this provision is the assurance that receivers are documented and readily identifiable when funds are mismanaged or lost through graft or corruption. It also lessens the opportunity to falsify records to conceal improper or unauthorized activities.

Correspondingly, the IMF should also require receivers to devise and maintain a system of internal accounting controls that will provide “reasonable assurances” that all transactions concerning IMF-originating funds are properly authorized. The purpose of the internal controls provision, as with the FCPA, is to ensure that receivers use accepted methods of accounting when recording transactions or protecting assets.

This solidly establishes debtor accountability by making reasonable assurances that, *inter alia*, transactions are executed in accordance with the IMF and the debtor country’s goals in mind; transactions are recorded as necessary to permit the preparation of financial statements in conformity with generally accepted accounting principles or any other criteria applicable to such statements, and to maintain accountability for assets; access to IMF-originating assets is permitted only in accordance with the debtor country’s general or specific authorization; and the recorded accountability for IMF assets is compared with existing assets at reasonable intervals and appropriate action is taken with respect to any differences.

Technology can also be a valuable tool in combating corruption under and FCPA-like model. Requiring posting of a receiver’s personal or organizational financial information on the web¹¹³ can support transparency, as the Internet gives more people unprecedented access to information. In an interdependent, mutually reinforcing manner,

¹¹³ Moffett, *supra* note 4, at A6.

technology-driven openness and transparency can help to cement the success of IMF programs, and can even foster the development of democratic institutions.¹¹⁴

The theme in adopting these FCPA-like approaches is to establish accountability in the handling of IMF-originating funds to fulfill program goals, and to assure that IMF members will receive repayment. Because of the enormous amounts of money that may be involved and the numbers of people that may come in contact with this capital, however, some will criticize this approach as impractical to enforce. Useful here, though, is the approach adopted by the OECD Convention to provide for Mutual Legal Assistance.¹¹⁵

Nations like Argentina, though not entirely an emerging market, will find it difficult to enforce the anti-corruption safeguards imposed by the IMF's model policy. As a result, IMF member countries, undoubtedly among the wealthiest in the world, should provide along with its financial assistance programs the guarantee of providing mutual legal assistance in enforcing and overseeing the proper maintenance of records and accounting practices as it concerns IMF-originating funds. In fact, it would behoove IMF member countries to do so in order to assure themselves of repayment of these loans.

Another criticism that will materialize against the IMF's implementation of an FCPA-like anti-corruption standard is that the IMF should not condition its financial assistance upon arbitrary stipulations which will benefit the IMF more than the borrower country. To some, however, the IMF already acts as a vehicle for leveraging foreign policy, notably that of the U.S.¹¹⁶ Currently, the IMF limits debtor country flexibility by demanding the opening of telecommunications and energy markets, impositions for which the U.S. is notorious. In contrast, the IMF should primarily push for the eradication of corruption in debtor country markets, in order for IMF members to more ef-

¹¹⁴ Steven R. Salbu, *Information Technology in the War Against International Bribery and Corruption: The Next Frontier of Institutional Reform*, 38 HARV. J. ON LEGIS. 67, 93 (2001) ("Like technology, transparency supports the continued maintenance of a liberal democracy. Democracy's liberties and freedom then continue to bolster openness and transparency.").

¹¹⁵ OECD Convention, *supra* note 81, at Art. 9. ("Each Party shall, under the fullest extent possible under its laws and relevant treaties and arrangements, provide prompt and effective legal assistance to another Party for the purpose of criminal investigations and proceedings brought by a Party concerning offences within the scope of this Convention and for non-criminal proceedings within the scope of this convention brought by a party against a legal person. The requested Party shall inform the requesting Party, without delay, of any additional information or documents needed to support the request for assistance and, where requested, of the status and outcome for the request for assistance.").

¹¹⁶ Paddock, *supra* note 12, at 181.

fectively compete economically in those debtor countries, and to lessen the risk that debtor countries will need further financial assistance. The FCPA model approach imposes conditions that will indubitably help all parties concerned in the long term.

As it stands, the IMF's programs are difficult to judge objectively because of the lack of transparency in the decision-making and implementation process.¹¹⁷ The IMF executive board should consult with anti-corruption experts and make operations public so that objective criticism and review can take place.¹¹⁸

Furthermore, the IMF frequently uses teams that have little or no experience with the debtor country or its institutions.¹¹⁹ By practicing due diligence through monitoring of the borrower country and submitting regular reports to the Board,¹²⁰ the risk of corruption as it concerns IMF-originating funds is minimized, and the success of an FCPA-like regulation is further assured.¹²¹ In essence, the IMF should have its staff ensure that receivers are aware of and are complying with this policy.¹²²

Insufficient regulation of corruption leads to irresponsibility in the public and private sectors.¹²³ When corruption is allowed to run amok, the poor are left to pay for IMF bailouts that often simply serve to enable wealthy investors to shuttle capital out of the country.¹²⁴ Part of the tragedy, though, is that the IMF and the United States do not practice what they preach.¹²⁵ While the institution and its member countries vow to combat corruption in places like Argentina, they act,

¹¹⁷ *Id.* at 180. The lack of transparency and secrecy in the organization makes it impossible to objectively evaluate IMF performance; see also The International Monetary Fund, *Code of Good Practices on Transparency in Monetary and Financial Policies*, at <http://www.imf.org/external/np/mae/mft/sup/part1.htm> (last visited Dec. 16, 2003) (identifying desirable transparency practices for central banks in their conduct of monetary policy and for central banks and other financial agencies in their conduct of financial policies).

¹¹⁸ Paddock, *supra* note 12, at 180.

¹¹⁹ *Id.* at 181.

¹²⁰ Gary M. Brown, *Exchange Act Registration and Reporting: What a Public Company Should Know*, in *Nuts and Bolts of Securities Law* 159-62 (1997) (citing FCPA compliance as one of many requirements for public companies); see also IMF Articles, *supra* note 10, at Art. VIII, Sec. 5 (mandating the Furnishing of Information) ("The Fund may require members to furnish it with such information as it deems necessary for its activities, including, as the minimum necessary for the effective discharge of the Fund's duties, national data on [member countries].").

¹²¹ Perkel, *supra* note 3, at 708.

¹²² *Id.*

¹²³ Paddock, *supra* note 12, at 182.

¹²⁴ *Id.*

¹²⁵ *Id.* at 183.

rather, to open markets that have long been corroded by illegal practices.

CONCLUSION

An Argentine mayor recently proclaimed that, “we’re trying to let light into government’s dark corners.”¹²⁶ People in Argentina “learned long ago to expect the worst from government,” yet sophisticated entities like the IMF continue to pursue fool-hardy objectives without adequately addressing issues of corruption.¹²⁷

The IMF, as evidenced in its Articles of Agreement, was never meant to comprehensively address corruption in its loans.¹²⁸ This soft stance on corruption, as a result, plainly contributed to Argentina’s financial decline, which will have the effect of reducing the flow of foreign capital to Argentina in the near future.

The IMF’s soft stance on corruption also poses several future problems. For one, it confirms to the Argentine leadership that the IMF is unwilling to pursue substantial reforms in corruption. This encourages further political corruption, making any significant reform practically impossible. Consequently, by making reform unachievable, the IMF perpetuates poverty and economic instability. The IMF’s failure in Argentina also sends a message to the leaders of other borrower countries negotiating with the IMF that issues of corruption reform will be passed on to subsequent governments, so long as lucrative markets remain open for business. Yet, corruption reform is the only way for countries to generate income on a permanent basis.

As a result, skepticism has grown about the intentions of the IMF and U.S. for the region.¹²⁹ This has occurred because dominant Board members, such as the U.S., in complete disregard of government criminal activity, have pushed the IMF’s loan packages to Argentina, among others. Accordingly, the world’s disaffected are increasingly making their voices heard: “People have had it.”¹³⁰ Essentially, the IMF has become a symbol of globalization, frustration, and the sentiment that the government is not interested in the welfare of the people.¹³¹ In fact, in Argentina, the poor and working classes demand

¹²⁶ Moffett, *supra* note 4, at A1.

¹²⁷ *Id.*

¹²⁸ Jerome I. Levinson, *Repressive Regimes Shouldn't Get a Loan*, WASH. POST, June 15, 1998, at A23.

¹²⁹ Luhnnow, *supra* note 65, at A15.

¹³⁰ Cordoba, *supra* note 5, at 21 (“A weak economy, thanks in part to the recent U.S. slowdown, accounts for some of the simmering anger.”).

¹³¹ *Id.*

that the government not renew its debt-payment agreement with the IMF.¹³²

In contrast, the United States' FCPA has energized U.S. firms and the U.S. government to pursue a level playing field in business and business transactions.¹³³ As a result of the FCPA's success in the U.S., other governments and international organizations have also required accounting and transparency in connection with public procurement, and have taken steps to strengthen civil society.¹³⁴

Unfortunately, the problems inherent in developing an effective international anti-corruption regime include the practice of corruption itself, which in some governments has been embedded for centuries.¹³⁵ Notwithstanding, if it is to have any success in future financial assistance programs, the IMF must confront the reality of the need to design and implement an effective anti-corruption policy as a condition to its loan agreements.¹³⁶ Indeed, the IMF would be wise to adopt a model like the FCPA to avoid future disasters, as occurred in Argentina.

¹³² *Id.* "Argentina, a staunch U.S. ally in the 1990's, nowadays defends warmer relations with Cuban dictator Fidel Castro and Venezuela's populist leftist Hugo Chavez as a result of popular disillusionment with the IMF and Washington."

¹³³ Bruce Zagaris and Shaila Lakhani Ohri, *The Emergence of an International Enforcement Regime on Transnational Corruption in the Americas*, 30 *LAW & POL'Y INT'L BUS.* 53 (1999).

¹³⁴ *Id.*

¹³⁵ *Id.* These include "low salaries for government officials, the need or desire to supplement the modest salaries of officials, the use of clever business practices to mask the receipt of illicit payments, and a fear that leaning on transnational bribery may cause a loss of business, are among the many problems that restrict political will."

¹³⁶ *Id.*