Chapter 17

International Actors and Mechanisms

It is better to know some of the questions than all of the answers.[1]

James Thurber

Many may see corruption mainly as a domestic problem - a policeman trading in parking tickets, a revenue officer trading in reduced tax assessments, local government officials trading in licences for market stalls. Not so apparent, however, is the much deeper international corruption, which usually does not take place as openly and as unashamedly as does petty corruption.[2] But how can "international actors" have so much relevance to a country's domestic national integrity system as to be a significant part of it?

Part of the answer lies in the fact that a country must on occasions look to other countries, and institutions, for appropriate cooperation or intervention when enforcing its anti-corruption laws. Particularly is this so when it wants to extradite public officials or private sector bribers who have fled abroad, or, to recover the proceeds of corruption hidden off-shore.

Even once a wanted criminal is located abroad, the country that seeks the criminal must consider its options. Even where there is an extradition arrangement in force, the country where the criminal is wanted will generally have to establish to the satisfaction of the foreign administration or courts that the necessary preconditions for the return of the fugitive have been met. These conditions will be prescribed in the formal arrangements between the two countries.

But how are the charges going to be proved? In some cases, all the evidence will be located in the country where the person is wanted. With an increasing number of multi-national offences, how are the police in one country expected to conduct investigations with an international element?

In the past, the answer has been quite simple: frequently they have just given up. National police forces have no legal authority to go into another country and conduct searches or peruse official records. Nor do they have any right to arrest a suspect should they find one. In fact, quite the opposite is true. Countries are generally opposed to foreign police operations taking place on their own territory.

EU agrees to return the spoils of Africa's corrupt regimes

The European Union has agreed to return money stolen by corrupt African regimes and hidden away in European bank accounts. Billions of pounds of ill-gotten funds are believed to have been stolen by African regimes. Some of their successors are now trying to recover huge sums from banks for desperately needed development projects. At the request of the Nigerian government, Britain and Switzerland have already frozen hundreds of millions of pounds believed to have been taken by the family of the late dictator Sani Abacha.

Swiss judges yesterday laid the first money-laundering charges in connection with some £400 million in 140 different numbered accounts traced to Gen. Abacha. The Geneva state prosecutor, Bernard Bertossa, said one person has been charged regarding "false information given for the opening of a bank account" and further charges were likely.

The EU agreed a 130-point action plan at the first Africa-Europe summit in Cairo committing it to the principle that stolen money should be returned to the country of origin and to "take measures to combat corruption".

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Mutual international assistance arrangements

The fight against large-scale, international corruption in particular must involve more than the

1 The injunction here is addressed to the donor community as much as anyone else.

2 See S.J. Rubin in International Aspects of the Control of Illicit Payments, Syracuse Journal of International Law and Commerce, 1982, Vol. 9, at p. 315.

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African diplomats said the EU leaders had only grudgingly committed themselves. The EU initially preferred a pledge merely to "take note" of the situation, on the grounds that recovering funds from private bank accounts presented legal problems and could undermine banking secrecy. South Africa's Foreign Minister, Nkosasana Dlamini-Zuma, told the Johannesburg-based Star newspaper: "It was difficult to sustain [the EU's] position.. You can't talk about fighting corruption and then not return the money expatriated by corrupt people. This money was stolen from countries which badly need it for development. How can a rich country hold on to that?"
Senior South African officials remain privately cautious about the prospect of recovering large amounts of money soon. One negotiator said: The principle has been established, but there is a long way to go before anything happens. The matter has been referred to a committee of experts, who will make recommendations to a ministerial meeting but no date has been set.
A (UK) Foreign Office spokesman said: "Britain has already started to take action in the case of Nigeria. But a prerequisite is that there should be evidence from the country involved that bank accounts held in Britain are the fruit of corruption."
Electronic Telegraph (UK) 6 April 2000

successful detection and prosecution of offenders in one's own country. Why? Because, frequently, the corrupt official has partners in crime in industrialised countries who, as a general rule, consider themselves to be beyond the reach of local authorities. The proceeds of corruption are stashed in bank accounts in industrialised countries, and the techniques of money-laundering (perfected mainly by the accountants, lawyers and bankers who service drug traffickers) are brought in to play. Therefore, deterrence, no less than justice, dictates that a country should try to put itself in a position where it can successfully bring criminal or other proceedings against such persons through international assistance arrangements.

In the arena of international legal assistance, it is also important for law enforcement officials to stay abreast of recent international developments, and abandon the conviction that if moneys have fled the country, there is no one outside the country who can or will help recover them. Increasingly, forms of assistance are now being offered by some banking centres.[3] For example, the Swiss Government will now provide assistance where there is a court finding that moneys have been stolen.

The limits on obtaining international legal assistance

It is not normally possible for a state to provide assistance to another state which would not otherwise be available to its own investigation and prosecution authorities. Thus, special procedures or rights of investigation (such a compulsory interrogation) may not be available in a foreign country, even if they are at home.

Before most states can extend co-operation, a court or an administration in the country being asked to provide assistance needs to be satisfied "that the standards of justice and penal administration in the requesting state are such that it would be in the interests of justice to surrender a fugitive."[4] Certain matters of process must also be addressed, including: whether the courts of the country in question have a legitimate claim to jurisdiction over the events which have taken place; whether the investigation or prosecution of the crime is politically motivated; whether the ordinary court process is being used (i.e., not ad hoc military or other special tribunals); whether the offence being prosecuted was actually an offence at the time; and whether the Rule of Law is being observed. A number of countries also require assurances that the death penalty will not be imposed, or that corporal punishment will not be inflicted.

In addition, if a particular case is to warrant the provision of mutual legal assistance, the alleged misconduct must usually be recognised as constituting an offence in both of the countries concerned (the "dual criminality" test), and also be liable to attract punishment of a prescribed level, usually at least one or two years' imprisonment.

Organisational requirements

Expertise must be developed within the field of international mutual legal assistance. Clearly, there may be a role for a country's diplomatic service in the making and processing of such requests. Usually, police budgets and the institutional arrangements governing the conduct of foreign relations will not permit investigators to make requests for assistance from a foreign

3 Banking centres are under increasing pressure from the international community generally, in large part because of concerns about drug trafficking and money-laundering.

4 Extradition (Cmnd. 9421) (1985), p.15. A Command Paper published by the British Government.

country without any form of check. Generally, a "Central Authority" will be needed in each country, a desk in an appropriate department which handles all requests, both inwards and outwards, in order to ensure that the details being provided in support of requests are as required by the relevant laws, both local and foreign. Although such an "Authority" may already exist to service requests made under other treaties, its staff will, in most cases, require a significant level of training if the mutual legal assistance arrangements are to work as quickly and as effectively as they should.

Mutual assistance and combating money-laundering

The particular connection between money laundering schemes, under-regulated financial systems, and corruption has moved to the centre of the international community's attention. This is because the relevance of international actors to a country's national integrity system is also felt in circumstances when a foreign country has policies and practices which impact negatively on other countries – policies such as allowing tax deductibility for bribes paid abroad, or refusing to regard the corrupting of foreign public officials by their own nationals as constituting a criminal act.

Likewise, a foreign country can, by establishing itself as a "financial centre", position itself to facilitate the laundering of moneys stolen by public officials in other countries. Such centres have secrecy laws which make it difficult, if not impossible, to trace, the funds, and thereby create a safe haven for corrupt individuals in other countries. The spectre of numbered Swiss banks accounts has loomed large for several decades. More recently, with a proliferation of so-called "off-shore banking centres", the number of parking places for illicit money has multiplied, but to its credit the Swiss government has made some efforts (not always with the wholehearted support of its banking sector) to remedy some of the more flagrant abuses of the Swiss system, and to demystify its elements. Increasingly, Switzerland is being seen by the corrupt as being a less than completely secure corner in which to hide their illicit wealth.

All countries have bank secrecy laws, so that the legitimate privacy interests of individuals are protected. In many societies people like to keep the amount of their savings and their financial positions personal to themselves. These laws are not designed to enable the bank's customers to avoid, let alone evade, tax collectors, and the accounts are generally subject to inspection by local revenue authorities.

However, these laws can be ruthlessly exploited by professional advisers to drug traffickers and corrupt high-ranking officials. They capitalise on a long-standing international consensus that it is not for one country to help another to collect its taxation revenue. Tax-haven regimes have exploited this weakness in international cooperation, and even try to block knowledge of the beneficial ownership of accounts. At its extreme, the claim is made that, because e.g. a share register may be "secret" in a tax haven and disclosures of it subject to criminal sanctions, such a register cannot be demanded by the authorities of a second country (where a copy of register details may be) on the grounds that for the individual summonsed to do so, would give rise to self-incrimination.[5]

Money laundering methods are not only being used in a phase post delictum (after the crime), but also during, and even before, the bribe-money is actually paid. In order to camouflage the

5 See the proceedings of the Commission of Inquiry into the Cook Islands taxation arrangements (the "winebox" inquiry) conducted by former New Zealand Chief Justice, Sir Ronald Davidson. In that case, witnesses tried to shelter behind off-shore legislation (but were ruled out of order by the Judge). An off-shore company claimed the right to appear at the hearing and cross-examine witnesses, but refused to disclose who stood behind the company.

origin and destination of bribe money, the financial flows are directed through countries that do not possess a comprehensive and effective system to detect money laundering and similar illegal transactions. Financial sectors in these countries, are generally inadequately regulated and supervised, their legislation does not guarantee access by judicial authorities to information, and their company law allows the founding of shell companies and trusts, to conceal the true identity of the beneficiaries of transactions and the actual owners of funds.[6] Bearer shares (whereby ownership of company shares passes by delivery of share script, like money) and bearer savings books (and where possession of the account passbook and a numbered access code carry with them ownership of the account), are frequently used.

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An advertisement on the web site of "Safe Haven Offshore Limited", June, 2000. http://www.safehavenoffshore.com/10reasons.htm

Since the establishment of the Financial Action Task Force Initiative of the G7[7] in 1989, a series of international measures has been undertaken to make the "laundering" of funds which have their origins in drug trafficking "or other criminal activities" a criminal offence. As a result, at least forty countries, including nearly all members of the OECD, have implemented legislation and other administrative arrangements to trace the flow of such funds through their banking systems.

These arrangements require commercial banks to report the receipt of deposits, which may have criminal origins, to the Central Bank or to a national criminal intelligence office. In the case of the EU, these arrangements have been embodied in a directive which is binding on all member states. However, there remain countries who have not yet made money-laundering a predicate offence, and so are unable (or unwilling) to provide mutual legal assistance where money-laundering charges are being brought in another country.

Principles have been developed to counter these activities in the context of preventing money-laundering.[8] These principles, however, pursue the much broader agenda of establishing a paper trail for all (including all legitimate) business, and creating "structures of global control" in the financial sector. The principles include:

- "Know Your Customer" – Financial institutions should not do business with unknown customers;
- An obligation to apply increased diligence in unusual circumstances;
- An obligation to keep identification files, and records on the economic background of transactions;
- An obligation to notify suspicious transactions to the competent authorities.[9]

However, money laundering continues, seemingly unabated, not least because there is competition amongst the private banks to attract business, although there is increasing unease in the banking community about the handling of accounts for senior public officials and members of their families. There is a need for additional measures. Possible actions include:

- The revision of "red flag catalogues" to include transactions emanating from regions where corruption is endemic, where personalities involved include clients or beneficiaries holding high public office, and where clients are involved in high-corruption

6 Expert Group Meeting on Corruption and its Financial Channels, held in Paris in April 1999 at the OECD.
7 The Financial Action Task Force (FATF), housed in the OECD in Paris, issued a report (1990) containing a program of forty recommendations in this area . The FATF web site is at http://www.oecd.org/fatf.
8 See The Basel Statement of Principles of 1998, and Mark Pieth, The harmonisation of law against economic crime, European Journal of Law Reform, 1999 p.530 et seq.; idem in European Journal of Crime, Criminal Law and Criminal Justice, 1998, p. 159 et seq.
9 FATF 1996 R 11, 14, 12 and 14, 15.

areas of business, such as the arms trade.

- Sensitising financial operators: to encourage financial institutions to apply due diligence. "Integrity tests" can be run, whereby test transactions are conducted to ensure that financial operators are kept attentive, and to identify training needs.
- Identifying non-complying financial institutions and operators: a proactive approach could identify institutions who – be it for reasons of lack of will or for lack of capacity – are failing to comply with the international rules, and sanction them administratively.[10]

Colombia Cracks Down On Emerald Money Laundering

The Colombian Minister of Justice has ordered an investigation of all existing export permits for emeralds and declared that no new licences will be granted. Fake exports are believed to be being used in dollar laundering operations. In the 1992 "Green Ice" case, Californian jewellers registered inflated sales of Colombian emeralds to justify sending multi-million dollar transfers of cocaine earnings back to Colombia under the guise of earnings from jewel sales.

Financial Times, 1 September, 1995

It is not clear whether these legislative and administrative measures to combat money laundering will actually sweep up the proceeds of bribery. Countries who are not party to the present arrangements, and who may be a link (perhaps unknowingly) in the money-laundering chain, must introduce comparable legislation and couch it in such a way that it specifically encompasses the proceeds of bribery. The fact that drug trafficking is now affecting countries in the south which previously had no connection with the trade, confirms that almost any state can find itself used for the purpose of the temporary transfer of both goods and funds.

There is a likelihood that an international convention against transnational bribery will be introduced in the course of the next few years. Work on such a convention has begun at the UN office in Vienna. It would, of course, have much more rapid impact once it is concluded were as many countries as possible already to have enacted facilitating legislation.

International police cooperation and INTERPOL

INTERPOL (the International Police Organization), now based in Lyons, France, is popularly regarded as having international powers of law enforcement. This is not so. INTERPOL is first and foremost a communications network which enables national police forces to contact each other quickly, exchange information, and notify each other of wanted persons.

INTERPOL relies on its member countries' police forces to set up National Central Bureaux (NCB) to act as points of reference for international enquiries and provide swift and effective assistance to other police forces. INTERPOL does not provide the assistance itself, though it does provide a liaison service and is currently developing databases which the various NCBx can feed or draw on. The system is not wholly centralised, as the NCBx are free to communicate and liase directly among themselves.

From time to time, there are complaints from INTERPOL that some of its member countries are inefficient and ineffectual in providing assistance. Clearly, such a state of affairs is intolerable. The first step for any country combating corruption should be to check the efficiency and effectiveness of its NCB. If this link in the chain is weak, then new links forged with other anti-corruption forces will also be weakened.

"Red Notices" and extradition

One of the most conspicuous anti-corruption tools in the INTERPOL process is the "Red Notice". It is used by police forces to notify INTERPOL headquarters that a suspect is wanted and that, upon apprehension, an application will be made to extradite the suspect to face

10 Mark Pieth, Common Standards to Prevent and Control the Laundering of Corruption Proceeds, UNCICP Experts Meeting, Vienna, 13-14 May 2000.

charges. Once the suspect is apprehended, the normal rules of extradition between the countries in question come into play. If there is no arrangement for extradition - and if an ad hoc arrangement cannot be made - the suspect will be released. It is therefore essential that, in the initial stages of the anti-corruption effort, a country review the adequacy of its extradition arrangements, bearing in mind the effectiveness of denying "safe havens" to wanted criminals.

International conventions and other arrangements

Today, it is widely accepted that the internationalisation of crime (including drug trafficking, financial fraud and terrorism) dictates that nation states modify their traditional reluctance to enforce the criminal laws of other countries, and extend mutual legal assistance to each other in appropriate cases.[11] Such co-operation should be provided for by either treaty or by parallel legislation which reflects best international practice, including a compliance with international human rights norms.[12]

Many countries are moving towards the development of formalised international assistance agreements which can further tighten the noose on international corruption. For example, the Council of Europe introduced a framework for mutual legal assistance which was recast into a global setting by the Commonwealth in 1986.

Under the Commonwealth arrangements, procedures are provided which still respect the right of the accused, but greatly ease the task of prosecution authorities in cases where a witness or crucial evidence are in another Commonwealth country. The Commonwealth countries have agreed to assist each other in identifying persons, searching for and seizing evidence, and arranging for witnesses to give evidence either in their own countries or in the country where a trial takes place. In terms of combating corruption, provisions concerning the international freezing, seizing, and forfeiture of the proceeds of crime are incorporated into the arrangements. Commonwealth extradition arrangements were also streamlined under this new system of multi-national assistance.[13] This work was adapted by the United Nations to provide the centrepiece for the 1989 United Nations Convention Against Illicit Trafficking in Narcotic Drugs and Psychotropic Substances.

Since then, under the auspices of the Organisation of American States, the Inter-American Convention Against Corruption was adopted in 1996 and signed by 21 countries to battle against domestic and transnational acts of corruption. This treaty instrument not only facilitates the return of stolen moneys but also declares that corruption offences shall not be regarded as being "political" in character. Therefore those charged with them are subject to extradition to their home countries, without being able to shelter behind the familiar shield of "political persecution".

Corruption has been identified as an impediment for the enlargement of the European Union, and so has been an added factor in pan-European efforts to tackle corruption. These have resulted in a series of conventions within the Council of Europe, namely the:

- Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime, 1990;

11 "Informal" assistance, such as using immigration laws to deport wanted fugitives is generally unacceptable since it bypasses essential procedural safeguards and is frequently unconstitutional.

12 As an example, the German courts were only prepared to order the extradition and surrender of the fugitive British banker, Nick Leeson, in October 1995 to Singapore, when they were satisfied that he would receive a fair trial, that the Rule of Law prevailed there and that he would not be exposed to what Europeans would regard as cruel and unusual punishment (i.e., flogging), and therefore be in breach of the state's obligations at international law (i.e. the European Convention on Human Rights).

13 It is fully consistent with international best practice for a requesting country to be asked to meet the costs of a particular request where these have significant resource implications. To do otherwise would deter countries from joining in such arrangements.

- Criminal Law Convention on Corruption 1999;
- Agreement establishing the "Group of States Against Corruption – GRECO" 1998; and the
- Civil Law Convention on Corruption 1999

Under the Criminal Law Convention on Corruption, each party agrees to enact a range of measures at the national level to counter corruption in public life, in public administration and in the private sector. Corporations are to be rendered subject to the criminal law and measures introduced to facilitate the gathering of evidence and the confiscation of proceeds. Although these are essentially matters of national law, they will greatly facilitate the enforcement of criminal law internationally. The Criminal Law Convention's implementation is to be monitored by members of the Group of States Against Corruption (GRECO), who will monitor not only this Convention but also other measures developed by the Council of Europe as part of its action plan against corruption.

The Civil Law Convention on Corruption is a unique attempt to deal with questions relating to the civil law, providing remedies for victims through the civil process. It deals with such questions as compensation for damage and loss sustained by victims; liability (including state liability) for acts of corruption committed by public officials; validity of contracts; protection of employees who report corruption; and the clarity and accuracy of accounts and audits.[14]

In the US, a conference initiated by Vice-President Al Gore, held in Washington in February, 1999, has established a framework for governments to regularly monitor the implementation of their international obligations. The conference is planned as a biennial event, and is next to be held in The Netherlands in 2001.

The OECD Convention Against the Bribing of Foreign Public Officials in International Business Transactions

The industrialised countries have special roles to play in assisting in maintenance of the national integrity in a large number of developing countries and countries in transition. This is particularly so in the context of transnational bribery and in the related field of export credit guarantees. What should their attitude be when their own nationals have been bribing to obtain export orders?

During the 1980s, as business became increasingly global, it became more and more unrealistic to regard the bribery problem as being the preserve of developing countries. US business, in particular, became increasingly restive under the shadow of their country's Foreign Corrupt Practices Act of 1977. By 1990, the US government was pressing hard within the OECD for other member governments to take comparable action. In May 1994, a non-binding OECD "recommendation"[15] was reached, which asked for member states to take a series of specific steps to "deter, prevent and combat the bribery of foreign public officials in connection with international business transactions", and to report back to each other on the "concrete and meaningful steps" which they have taken in reviewing or reforming the following:

- criminal laws, or their application, in respect of the bribery of foreign public officials;
- civil, commercial, administrative laws and regulations governing bribery as an illegal act;

14 The texts of the Conventions may be seen on the Council of Europe's web site: http://conventions.coe.int

15 The principle of an OECD Recommendation is that, while it is non-binding, member states report back to each other on the progress they have achieved in implementing its various detailed provisions. It has proved an effective method of disseminating the adoption of various policy measures by member states over the last forty years.

- tax legislation, regulations and practices, in so far as they may indirectly favour bribery;
- company and business accounting requirements and practices in order to secure adequate recording of relevant payments;
- banking, financial and other relevant provisions so that adequate records are kept and made available for inspection or investigation; and,
- laws and regulations relating to public subsidies, licences, government procurement contracts, or other public advantages, so that such advantages could be denied as a sanction for bribery in appropriate cases.

Since then there has been an historic agreement leading to the coming into force of the 1997 OECD Convention Against the Bribing of Foreign Public Officials in International Business Transactions.[16]

This landmark Convention requires signatory states to criminalise the bribing of foreign public officials, and to provide mutual legal assistance to facilitate inquiries into suspected breaches. As well, the tax deductibility of such bribes (hitherto standard practice in most OECD countries) was to be ended.

In these ways, for the first time the problem of corruption is being addressed on the "supply side". As well as all member states of the OECD, a growing number of other countries are becoming party to the Convention, so broadening its reach. The Convention is accompanied by a highly intrusive and critical "evaluation" process, designed to ensure that countries do not sign the Convention and then continue to permit their exporters to act in their old, traditional ways. The stakes are obviously extremely high. The Convention applies to the bulk of world trade, and so it is essential that all the major players feel comfortable with the new arrangement. In others words, that they do not fell that they are not conceding advantages to less scrupulous competitors.

Although the response of the major industrial and exporting countries to this initiative will be important as the basis for meaningful action, the reactions of smaller national economies in the south and in the countries in transition, are also crucial. Without a strong matching response from countries where the negative impact of transnational bribery is clearly significant, the impact of the OECD initiative can only be modest. The co-operation of developing countries and the former centrally-planned economies through parallel initiatives is critical to curbing transnational bribery.

The OECD Convention requires criminal legislation to be extended to "extra-territorial" bribery. The US already had specific legislation (the 1977 Foreign Corrupt Practices Act), and other OECD members have begun to amend their legislation. For example, there is a precedent in countries with "civil code" laws (the majority of the EU states) to extend their provisions outside their frontiers. In the case of "common law" countries, such as the UK and Australia, there are also precedents for amending existing legislation to make it a conspiracy to commit an offence which would be criminal in the domestic context, regardless of where in the world the act actually took place.[17] Australia has now applied this to extra-territorial bribery. However, in both civil code and common law countries, it will be necessary to prove that the offence was also a criminal act in the country where the bribe or act of fraud actually occurred.

16 The Convention is contained in the Best Practice section on the website version of this Source Book. Progress reports on the implementation of the convention can be seen on the OECD Anti-Corruption Unit web site: www.oecd.org/daf/nocorruption

17 E.g. offences committed by paedophiles while abroad.

It is therefore highly desirable that national legislation be introduced, in as many countries as possible, which criminalises bribery planned within national boundaries, but executed elsewhere. Similarly, there is a good case for introducing legislation which specifies that any person offering a bribe to a public official, or his agent, while the official is outside his country, is also committing a criminal act in that country. The anti-bribery legislation of Hong Kong makes explicit provision for this.[18]

Export credit insurance guarantees

Industrialised countries often provide insurance for their exporters where transactions are large, there is a degree of political risk, and it is in the public interest that these be underwritten by the tax-payer. What, then, should the position be where a contract has been won through corruption, and is thus tainted by illegality?

The German Government, for one, after representations by Transparency International, has introduced a number of systematic changes in the administration of the Hermes Export Credit Insurance scheme which goes a long way toward meeting TI's demands. Germany has also (jointly with Belgium) introduced a specific proposal at the OECD Working Group to address this issue.

Domestically, the rationale for the changes is the effectiveness of the OECD Convention in Germany. Under existing "General Conditions", there is no obligation on behalf of the Government to cover insured losses if the payment claim under the export contract has no legal grounds.[19] However, after the criminalisation of bribery of foreign officials under the OECD Convention, and if during the claim process it transpires that criminal acts contributed to the winning of the export contract, the contract itself becomes null and void.

To meet this new situation, the existing Hermes rules have been expanded. From the outset, the applicant has to declare that the export contract has not been obtained through a criminal act, in particular through bribery. If the applicant is unable to submit such a declaration, the application will be rejected. If the applicant does submit such a declaration, but the declaration later turns out to be false, this would constitute a violation of the "truthfulness obligation" in the application process, and so result in the lapsing of the Government's obligations and the forfeiture of the fees already paid.

In cases of insurance coverage of a financial credit, the document stipulating the obligations of the Government will in future contain a clause that the Government will be freed of its obligations vis-à-vis the exporter, if the conclusion of the export contract has been obtained by criminal bribery. A similar clause will be inserted in the rules for revolving insurance coverage.

In all cases, where the Government is freed of its obligations, the fees paid are forfeited. In addition the beneficiary of the insurance coverage must assume that the Government will pass the facts leading to the lapse of the obligations to the State Prosecutors Office, and for repeated violations it will take additional measures.

This approach, if widely implemented beyond Germany, will go some way towards diminishing the role that exporting countries have been playing in activating international "grand corruption".

18 Section 4, para 1, of the Prevention of Bribery Ordinance, Hong Kong.

19 AGA Ausfuhr-Gewährleistungen Aktuell Report dated 16 March 2000

World Bank hotline – probing bribes in Argentina

The World Bank is probing allegations that former Argentine government officials took bribes from a firm involved in a project financed by the lending body. The World Bank got an anonymous tip last year, when former Peronist President Carlos Menem was still in power, via a special hotline in Washington for complaints. The caller alleged that government officials had taken bribes in a bidding process for an unspecified World Bank-backed project.

"From the time-frame, the alleged occurrence appears to have taken place under the former government," said senior World Bank official Myrna Alexander. After a preliminary study of the allegation, Alexander said it had been decided that "there is enough substance to warrant an investigation." Typically, such an investigation by the World Bank could take up to a year, the official said.

Since de la Rua's centre-left Alliance took power in December [1999], a new Anti-Corruption Office has started proceedings against former officials very close to Menem. Targets have included his Public Service Secretary Claudia Bello, state pensions chief Victor Alderete and Environment Secretary Maria Julia Alsogaray.

They all deny the charges. The most notorious bribe case in Argentina involved millions allegedly paid by International Business Machines Corp. (IBM) officials in 1993 to win a $250 million deal to install a computer system for state-owned Banco Nacion.

Reuters, 16 March 2000.

The role of donor agencies

For countries in receipt of significant flows of aid, the donors have a special role to play. In the past, some of these agencies were less than scrupulous in the way they went about their business. Just as it was for the private sector, pay-offs to government officials were the norm, and part of the cost of doing business. The international financial institutions, also, were none too fussy about where some of their money went, and saw "corruption" as being a "political" issue, and a hot potato that was fortunately off their particular menu.

These agencies have in the past been very much a part of the problem. True, their motives have been genuine - inspired by a desire to help ordinary people despite the predatory nature of their rulers - though this hardly has applied where aid was used as a lever to win business contracts[20]. However, the actions of the agencies can be seen, in retrospective, as feeding and enlarging the rapacious appetites of those officials who were more interested in becoming rich than in serving their people.

Today, the role of donors has changed. Corruption is high on the political agenda; it features in the discussions that donors have with government leaders at the highest levels. This is new. Until recently, the subject was taboo. Much greater use is being made of non-governmental organisations to deliver assistance to communities, often as a way of circumventing untrustworthy administrations, but not always, let it be said, with NGOs who are any more reliable.

Novel, too, is the fact that donors are having to move away from their traditional (and not always successful) mode of providing "expert" advice, becoming, instead, low-key facilitators and partners in containing corruption. The development banks are actively seeking complaints about corruption in the projects they are financing. The World Bank, for one, now not only maintains a global "hot-line" for this purpose but has created the office of Compliance Advisor/Ombudsman (CAO) to handle complaints and to engender confidence among all stakeholders that projects are planned and implemented within known, monitorable and enforceable guidelines, and to approved standards.[21]

No society is free from corruption, and each has to fine-tune its integrity system continuously to keep the menace in check. Now it is coming to be recognised that only those who live in a particular society can truly appreciate its nuances, and only they are in a position to judge both what is possible, and what may or may not be workable.[22] The donors' role should therefore be limited to facilitating internal discussions and assisting in building internal ownership of well-informed reform programmes. Donors should not attempt to dictate these from outside, or to impose conditionalities that are unrealistic or which are not supported by significant internal actors. This concept of partnership is now being embodied in multi-lateral agreements.

One example is the way in which this new spirit of partnership has been translated into legal language by the European Union and the African, Caribbean and Pacific (ACP) states. Ties with

20 The Bribe Payers Index, prepared for Transparency International by Gallup International in 1999, showed a widespread belief in emerging markets that aid conditionality was a major "unfair means" used to win or obtain international business.

21 Details on the CAO Office are at www.ifc.org/cao. NGOs participate in the selection of the office-holder. The first is a foundation member of Transparency International-Papua New Guinea.

22 For example, anonymous "hotlines" were suggested to countries in Central and eastern Europe, where societies still have an abiding distrust of any process of "denunciation" as a legacy from their immediate past.

the ACP countries, governed since 1975 by the Lomé Convention, are a particularly important aspect of the EU's development cooperation policy and, more widely, of its external action.

After major upheavals on the international stage, socio-economic and political changes in the ACP countries, and the deepening of poverty, a rethinking of cooperation became necessary. The expiration of the Lomé Convention in February 2000, provided an ideal opportunity for a thorough review of the future of EU-ACP relations. The new agreements, signed on 23 June 2000 in Cotonou, Benin, includes the following:

> "... Respect for human rights, democratic principles and the rule of law, which underpin the ACP-EU Partnership, shall underpin the domestic and international policies of the Parties and constitute the essential elements of this Agreement.
>
> In the context of a political and institutional environment that upholds human rights, democratic principles and the rule of law, good governance is the transparent and accountable management of human, natural, economic and financial resources for the purposes of equitable and sustainable development. It entails clear decision-making procedures at the level of public authorities, transparent and accountable institutions, the primacy of law in the management and distribution of resources and capacity building for elaborating and implementing measures aiming in particular at preventing and combating corruption."[23]

Donors should also ensure as best as they can, and as many now are, that their aid is untainted by corruption, whether in procurement on their home market, or in the countries of execution. Suppliers who act corruptly to obtain or execute aid projects should be named, shamed and publicly blacklisted. In the field, their own staff should be scrupulous in their conduct. Their agencies, too, should "walk the talk", and role model the conduct they expect from their beneficiaries. Where institutions are seen as being lax with their own arrangements to curtail corruption by their staff, they are clearly in no position to tell others how they should be behaving.

There is, however, the situation of emergency humanitarian aid. Situations where help is desperately needed and time is short. In such situations, officials in the affected country can be very well placed to extract enormous bribes in order to hasten supplies on their way – to get them cleared through customs, to provide over-flying and landing rights for aircraft, and so on. Humanitarian agencies can be held to ransom by such blackmailers. This is a clear point of vulnerability, and imaginative approaches are still required to find ways and means of circumventing the bottle-necks that create opportunities for such grand corruption.

Patterns of donor bribes help wreck roads

Along the [East African] highway, the bribery system is well entrenched. Kuria [the driver] never paid off weigh-station clerks himself [to enable his over-laden truck to continue, damaging the roads as it did so]. Rather, [his employer] sent "clearing agents" to deliver the cash ahead of the truck's arrival. When Kuria arrived, he would be waved through.

Humanitarian organizations and United Nations agencies such as the World Food Programme, which are often funded by international donors such as the U.S. government, can't submit bribes to donors for reimbursement. "What we do instead is to hire clearing agents," said Joern Lose, the logistics officer for the World Food Program in the Kenyan port of Mombasa. The clearing agents do their dirty work, and the cost is reported as an administrative fee.

Philadelphia Inquirer, 26 April 2000

The international private sector

The international private sector is a further major player. Its primary body, the Paris-based International Chamber of Commerce (ICC), has been pursuing the issue of containing international bribery for 25 years, and has developed its own Rules to combat bribery and extortion. As discussed in the chapter on the private corporate sector, it continues to work to this end with the OECD and other interested parties.

23 http://europa.eu.int/comm/development/cotonou/index_en.htm

Donors can also be part of the problem: Whaling 'extortion' denounced

Japan wields its huge foreign aid budget to coerce developing nations into supporting its whaling interests, even threatening to withdraw aid from small countries unless they vote with Tokyo at the International Whaling Commission (IWC), a former minister from Dominica alleged yesterday.

Atherton Martin, the environment and fisheries minister of the tiny Caribbean island until last month, denounced what he called "Japan's outright extortion", and the use of bribes to win Third World countries' votes for its pro-whaling position.

At the recent Whaling Commission meeting, which rejected the notion of a Pacific whale sanctuary, all the east Caribbean countries and Guinea changed their stance against previous expectations.

The accusations echo charges reported in *The Times* last week that Japan used foreign aid for vote-buying to secure the election of its candidate for the job of UNESCO Secretary-General last year.

These latest details of Tokyo's "cheque-book diplomacy" emerged as a Japanese whaling fleet in the north-western Pacific began killing some of the world's most endangered species.

Mr Martin, as an insider, has provided the most telling evidence yet of how Tokyo secures votes in the IWC and other international bodies by using its foreign aid programme to pressure poorer countries - something conservationists have long claimed.

Mr Martin resigned his post on July 4 in disgust after Dominica voted against the establishment of a South Pacific whale sanctuary.

Mr Martin said Japanese officials had visited the Prime Minister and had threatened to withdraw aid for a new fisheries complex if Dominica abstained on the critical sanctuary issue. Japan had given Dominica, which has a population of 70,000, about £4.5 million for fisheries facilities since joining the IWC, and Japan paid its registration fees at the commission, he said. He said five other islands - Grenada, St Vincent, St Lucia, Antigua, St Kitts and Nevis - had also "succumbed to the same extortionary tactics of Japan".

"They [also] actually buy off with cash the chief fisheries advisers to the governments, and fly them to Japan throughout the year."

Tokyo rejected Mr Martin's claims. A senior official said: "It's utterly without foundation. Japan provides overseas aid to 150 nations, [including] India and Brazil which do not vote with Japan [at the IWC]." The official, who accused Western countries of double standards and sentimentality over whaling, said: "Why are only whales so cute that Japan must be denied access to this sustainable resource?"

The Times (UK), 14 August 2000.

Some indicators for assessing the role of international actors as integrity pillars

- Are there mutual legal assistance arrangements with the most relevant countries? Has there been a recent 'needs analysis' for this area of international cooperation? Are any countries refusing to cooperate?
- Are requests for assistance being made, and are they being responded to satisfactorily? If not, are the requests being made in a proper form?
- Are requests being received from abroad? Are these being attended to promptly?
- Are foreign corporations, doing business in the country, aware of the provisions of the OECD Convention Against the Bribing of Foreign Public Officials in International Business Transactions?
- Where relevant, are donor agencies satisfied with the government's efforts to contain corruption?
- Are donor agencies, if any, adding to problems by their own practices in the country? Or are they providing relevant and effective assistance to strengthen the national integrity system?