

**INTERNATIONAL EFFORTS TO COMBAT CORRUPTION
2017 ANNUAL CONFERENCE
AMERICAN SOCIETY FOR PUBLIC ADMINISTRATION
ATLANTA, GEORGIA (March 17-21, 2017)**

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INTRODUCTION

Ethical conduct by government officials and corruption abatement in all of its public and private sector activities has grown from national concerns to a relatively high level of international cooperation and collaboration. Apprehension about the growing impact of corruption in all its aspects on economic development, particularly among evolving economies, has resulted in the nations of the world recognizing the need to combat and reduce corruption and to positively impact on international bribery. International efforts to effectively abate corruption have necessarily focused on compliance measures. Improving ethical behavior in this effort is viewed as a goal rather than a means. Compliance measures combating corruption are comparatively more visible, more susceptible to measurement, more easily explained to the public, and more quickly evaluated. However, actions beyond simply legislating laws and adopting rules and regulations making specific behavior illegal, although viewed as the first step toward abating corruption, may not be sufficient if the adopted rules are not enforced.

As a matter of reality, perceptions of corruption may be increased when the public understands that rules are in place but that they are ignored, or not applied fairly to the public, or that they favor special interests. Rules fostering transparency may be meaningless where complex decision-making procedures and opaque negotiations take place, or simply increasing the public's lack of trust in governmental institutions if the rules are not fairly and adequately enforced.

Commendable efforts by advanced societies to adopt rules to uncover and deter corruption and build integrity can be ineffective in implementation, demonstrating that the challenge is to ensure that it is a continuing crusade, as Leo Huberts notes.

The success of efforts to combat corruption is complex and multifaceted. The usual response to addressing a recognition of a crisis in integrity, or attempts to improve a nation's standing in the international community in response to a low ranking by Transparency International (TI), is a legal response, with the passage of more laws and regulations enacted. New rules cannot create a culture that encourages ethical and responsible behavior.

Among remedies is to increase punishments for illegal conduct. The reality is that incarceration and other severe punishments have little effect in achieving behavioral change. The perception of the probability of being exposed is the real deterrent rather than the severity of the penalty. The controlling factor is the willingness of societies to bear the cost of effective monitoring by a workforce that might be productive in performing other needed tasks in a balance of costs and results.

Compliance programs have been created to encourage ethical behavior, including codes of conduct and financial disclosure systems, of articulating a government's acceptance that ethical behavior by employees is desired. Addressing conflicts of interest, codes of ethics and disclosure systems are relatively passive and not effective in changing the culture of an organization.

A more dynamic system is one that focuses on the core values and mission of the organization. A values-oriented approach is consistent with the mission of government. Regardless of a recognition of the advantages of a values orientation (Lestrange & Tolstikov-Mast, 2013; Huberts, Dwivedi & Mau, 2012; Maesschalck & Jurkiewicz, 2008; Garofalo, Gueras, Lynch & Lynch, 2001), compliance measures will continue to be critical to the success of anti-corruption efforts. Once compliance systems are in place, however, there is a need to respect the intent of the legislation. Maintaining a values-based approach should support and provide integrity to compliance measures.

In *Corruption in a Global Context*, Chris Aulich and Roger Wettenhall point out: An integrity system is a series of institutions and practices that collectively aim to build integrity, transparency, and accountability in the public sector. This involves a mix of institutions, laws, regulations, codes, policies and procedures which provide a framework of checks and balances to

foster an environment of high-quality decision-making and to identify and address inappropriate behavior including corruption.

The word ‘integrity’ has meaning beyond ethical conduct. It includes the notion of the system being complete, requiring a range of interlinked processes that create an active culture of integrity. It's more than establishing compliance agencies, or adopting codes of conduct, or creating new institutions for investigating breaches of ethical behavior. It is the sum of these, or as TI has recommended, a system of institutional pillars (Pope, 2000).

International Cooperation and Universal Acceptance of a System of Ethics Management

Chris Aulich and Roger Wettenhall, again in the *Corruption in a Global Context* book, state that accountability of governments requires more than an effective electoral system, but also independent media, active and involved civil society organizations, institutional checks and balances and internal anti-corruption mechanisms. Numerous measures have been implemented across a range of countries for reducing corruption.

In many nations, democracy and the rule of law frequently are in conflict. Constitutions may declare that all people are created equally and entitled to full liberty, but writers on the subject accept that there is a conflict between liberty and equality. The right in a democracy to privacy, on the one hand, and a collective right to security from terrorism on the contrary. This frequently leads to a conflict between an individual's right to personal privacy and a network of informers, wire tappers, and sting operations carrying out government's authority to investigate, prosecute and punish.

Governmental and non-governmental international organizations, including the United Nations, the Organization for Economic Cooperation and Development (OECD), and Transparency International (TI) have created mechanisms to enhance anti-corruption programs on an international basis. The principal international conventions, treaties, and agreements that have recently been implemented through a progression of international and regional conferences will be discussed in the following section.

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UN Efforts to Combat Corruption:

Recognized as the first step toward a response to the growing global awareness of corruption, in 1989 the UN *Crime Prevention and Criminal Justice Program* raised the questions whether action could begin against corruption at the international level. The Program organized a seminar, which proposed the preparation of an international code of conduct for public officials and a UN program to promote compliance with that code. The seminar also provided the opportunity to present a draft of a manual on measures against corruption. The following year (1990) the Eighth UN Congress on the Prevention of Crime and the Treatment of Offenders was held, resulting in resolutions on action against corruption, calling for the preparation of a *Draft Code of Conduct for Public Officials* and the finalization and publication of a manual on practical measures against corruption.

In 1992, *The UN Commission on Crime Prevention and Criminal Justice* was formally established. Under the Commission's guidance, the *International Code of Conduct for Public Officials* was adopted by the UN General Assembly by its resolution 51/59 on 12 December 1996. The General Assembly then recommended it to the member states as a tool to guide their efforts against corruption. Subsequently, in its resolution 51/191 of 16 December 1996, the General Assembly adopted the *UN Declaration Against Corruption and Bribery in International Commercial Transactions* (UN, 1996).

With 71 Articles, the UN Convention is a comprehensive treatise on corruption and has helped to create a common framework for organizing cooperation among all nations in the fight against this malaise. It was an important first step in achieving a universal agreement, notwithstanding the lack of an efficient and workable mechanism to promote compliance and to monitor it.

The UN Convention Against Corruption was the first actual instrument—a formal legal document—with the stated intent to prevent and combat corruption, which was established as a broad international consensus in the fight against corruption. However, in the light of subsequent international agreements, such as the *OECD Convention Against the Bribery of Foreign Public Officials*, the UN Convention has several noteworthy shortcomings. The most critical of which were the failure to make bribery in obtaining contracts a criminal offense, and the failure to make corruption in political party funding in the private sector a criminal offense. Thus, the difficulty with the *UN Convention* is that of implementation and enforcement. There are many

reasons for these shortcomings, but the diversity of economies and cultures in the UN arrangement made certainty in the criminalization and enforcement of principles difficult if not impossible.

OECD Efforts to Combat Corruption:

The *OECD Convention Against the Bribery of Foreign Public Officials* came into force in 1999. Today, 35 countries are active members of the OECD. The Convention, which was signed by all members of the OECD (29 Nation members in 1997), recognized the criminality of bribery in international commerce, making bribery of government officials (a recognized common practice until 1999) a criminal offense in member nations.

The OECD, comprising of developed nations with advanced economic systems and democratic institutions, provided a more realistic platform for effective implementation of principles for establishing effective ethics management systems with enforcement instruments for combating corruption. As of May 2013, some 41 countries have ratified or acceded to the *OECD Convention Against Bribery of Foreign Public Officials (35 OECD member states and six non-OECD nations: Argentina, Brazil, Bulgaria, Colombia, Russia, and South Africa)*. The OECD monitors the progress of the signatories in creating legislation to make bribery a crime. Of equal or greater importance, the OECD monitors the effectiveness and implementation of the relevant laws for each member state.

The *OECD Convention* has proven to be a surprisingly successful international agreement, primarily because of its rigorous peer review system. By example, members of the *OECD Convention* must submit to an extensive and invasive peer review, in successive phases. Members cannot veto or prevent disclosure of the resulting reports. To the latest report in 2014, 427 foreign bribery cases have been concluded since the entry into force of the *OECD Anti-Bribery Convention*. The cases took place between February 1999 and June 2014. Almost two-thirds of the cases occurred in just four sectors: extractive (19%); construction (15%); transportation and storage (15%); and information and communication (10%) (OECD, 2014). Accordingly, as a result of the OECD's rigorous and professional country reviews, there has been steady progress in strengthening enforcement. This progress has been tracked by TI, which has published annual progress reports on the state of OECD enforcement.

Transparency International Efforts to Combat Corruption:

Transparency International (TI), established in 1993, is a non-governmental organization. Its mission is clearly stated: "to stop corruption and promote transparency, accountability, and integrity at all levels and across all sectors of society. Our Core Values are transparency, accountability, integrity, solidarity, courage, justice, and democracy." (TI, 1993). In 1995, TI initiated its *Corruption Perceptions Index* (CPI), which ranked 45 countries on their perceived level of public sector corruption. The following year, the World Bank made anti-corruption performance a condition of its assistance, and the OECD initiated meetings on prospects to deny tax deductibility of foreign bribes, leading to the *OECD Anti-Bribery Convention*. In a landmark agreement, the Organization of American States adopted a first-of-its-kind regional anti-corruption convention.

TI's The Global Corruption Report:

In 2001, TI began publishing the *Global Corruption Report* (GCR), The Global Competitiveness Report 2016-2017 assesses the competitiveness landscape of 138 economies, providing insight into the drivers of their productivity and prosperity. Each Report brings the anti-corruption movement to focus on a specific corruption issue. By example, in 2015, the focus of the GCR was in international sports, while previous reports focused on education, climate change, the private sector, water, judicial systems, health, construction, politics, and access to information. Included in each GCR is research on lessons learned and practical and proven solutions to improve governance and accountability in the subject fields.

TI's Global Corruption Barometer:

In 2003, TI initiated the *Global Corruption Barometer*, which is the largest public opinion survey on corruption focusing on the impact of corruption on the lives of citizens. Last conducted in 2013, citizens in 107 countries were surveyed. It might well be argued that increased discussion and awareness by citizens creates a negative impression regarding progress in overcoming corruption, for 53 percent of respondents surveyed thought that corruption has increased or increased a lot over the previous two years, and only 18 percent that it has decreased (TI, 2013a, p.6).

TI's Corruption Perception Index:

For over 20 years, TI has published its CPI ranking of countries (176 countries in 2016) according to how corrupt they are perceived to be by a group of selected experts in each country. The 'experts' approach was selected instead of the difficulty of measuring actual corruption and the expense of running broad national surveys. Although perceptions are not facts evaluators are very serious and deeply committed people involved in the reporting of opinions, judgments and opinions. With that proviso, the latest CPI report ranked the following as the top least corrupt countries: Denmark and New Zealand as top scoring, followed closely by Finland, Sweden, Norway, Switzerland, Singapore, Netherlands, Canada, Germany, and Luxembourg. The top eleven 'cleanest' states were also the top eleven the previous year. That group of exemplary countries can be contrasted with the eleven most corrupt nations, starting with Somalia, as the most corrupt state, followed by North Korea, Sudan, Afghanistan, South Sudan, Iraq, Turkmenistan, Uzbekistan, Libya, and Eritrea.

The greatest strength of the CPI is that it brings the issue of corruption and its causes to the attention of the press and to investors, who see the rankings as a first test of the level of corruption in a country. As Charles Garofalo, a CPI evaluator has suggested (Garofalo, 2001), the self-sustaining nature of corruption requires a strong shock from external sources such as CPI's rankings and subsequent world media exposure. Moreover, generally when top managers are part of a corrupt system, then radical change requires the involvement of outsiders who have not been part of the system.

When the CPI was initiated, it was one of the few tools for suggesting the degree of corruption in a country. With the growing awareness of corruption and the availability of additional sources of information about compliance effectiveness, the CPI has perhaps become less influential. Notwithstanding a growing understanding about the depth and complexity of global corruption over the two-decade period, the CPI remains a starting point for focusing on the intensity of corruption in a given country. With increasing attention to the adoption of compliance measures by most states, the CPI is the first step for private organizations seeking partners for investments. However, most private investors as well as the International Monetary Fund and the World Bank, now utilize additional resources to determine the effectiveness of a

nation's compliance measures to determine as best as they can the actual effectiveness of such efforts in a given country.

TI's rating played an enormous role in targeting anti-bribery programs in the early period of its ranking system availability. If a country were at the lowest percentile range, it would drop off a list of possible locations. Today, investors will go into a venture knowing whether a particular state needs an anti-bribery compliance program. Aggressive enforcement of international anti-bribery regulations has also had the positive effect of forcing companies to utilize an ever-increasing amount of their expertise to assist nations requiring a strengthening of their compliance performance.

A particularly poor country CPI score may mean putting in place a company policy compelling its executives to receive pre-approval before having dinner with any government official. A poor ranking may mean that employment of third-party contractors in a country will be more highly scrutinized to make sure they are not intermediaries for bribes. Such precautions by investors are useful should authorities in an investor rich country investigate possible misconduct, whereby a company's compliance staff can maintain that it has documented its audit choices that were guided by accurate perception index numbers.

Although concern has repeatedly been expressed regarding the aggregating of its national sources (Andersson & Heywood, 2009), TI's CPI lacks any claim to or assumption of the diversity of its evaluators. The correlations between the various components reportedly run very high, between 80 and 100 percent, because overwhelmingly the same kinds of people are being asked for their perceptions. However, such sources, when aggregated, do not produce a picture of a country's reality regarding the public's perception of corruption in a given country. However, success is largely a matter of its utilization of a network of experts and highly placed insiders, rather than a movement representing protestors or activists eager to expose specific instances of corruption. TI's clear strategy is to be a coalition builder working to reform corrupt systems and cooperating with existing international organizations also working to build useful tools for fighting corruption. TI's role as the secretariat for the *International Anti-Corruption Conference* (IACC) is an example of its facilitator strategy.

The International Anti-Corruption Conference (IACC):

The IACC is a series of international conferences organized in association with Transparency International and representatives of local and national governments and private sector organizations concerned with fighting corruption. The first IACC Conference was held in 1983 in Washington, D.C., and has since been held every two years in a different host country. The last IACC was held in 2016, in Panama City.

The IACC draws attention to corruption by raising awareness and stimulating debate. It provides a global exchange of experiences and methodologies utilized in controlling corruption and promotes international cooperation among agencies and citizens by providing the opportunity for face-to-face dialogue and direct liaison between representatives from the agencies and organizations taking part.

The Bribe Payers Index:

As a means of addressing and bringing to light the importance of bribery, beginning with the first publication in 1999 to the most recent one in 2011, TI has periodically presented a report on bribes by private companies engaged in international contracts. The Index is based on reports by business executives and ranks 28 of the world's largest economies according to the perceived likelihood of companies from these countries paying bribes abroad. The countries and territories ranked in the Index cover all regions of the world and represented almost 80 percent of the total world outflow of goods, services, and investments. The *2011 Bribe Payers Index* report draws attention to the role that both the private and public sectors can play in tackling this issue (TI, 2011). It also makes some actionable recommendations, for both businesses and governments, on how they can strengthen their efforts to make substantial progress in reducing the prevalence of foreign bribery around the world.

The problem identified by the Index is the recognition that many of the industrialized states turn a blind eye to bribes by firms from their countries operating in other jurisdictions. The Index indicates the degree of complicity in such activities by industrialized countries. Also included are the different types of bribery across sectors, which, for the first time in the 2011 report, encompasses bribery among companies ('private-to-private' bribery).

Engaging in bribery creates instability for the companies involved and presents ever-growing reputational and financial risks. There are recent anti-bribery reforms in some key countries around the world, such as in China and the United Kingdom, and such improvements

are reflected in comparisons in the Index over the years. Companies from Russia and China, which invested US \$120 billion overseas in 2010 and are at the bottom of the list, are seen as most likely to pay bribes abroad, while companies from the Netherlands and Switzerland are seen as least likely to bribe.

TI has been exceptionally successful. Its message has been clear and profound. As simple as a ranking may be, it successfully tells a story. Corruption has been so imbedded in the cultures of the world that explanations and arguments have been contradictory and confusing. The universal utilization of the Index has served as a motivation for additional attempts to explain and analyze corruption.

World Bank Efforts to Combat Corruption

The World Bank Institute has been active in promoting enhancements to integrity systems by actions such as disclosing assets and incomes of public officials and political candidates, and political campaign contributions. Also, the World Bank has promoted the banning of further contracts with firms involved in bribery, has advanced transparent procurement systems, and supported high transparency standards for public financial reporting. In 1996, the World Bank made anti-corruption performance a condition of its assistance.

Public procurement in many states presents a particularly high risk for corruption. The OECD projects procurement spending averages between 13 and 20 percent of the world's gross domestic product. The World Bank alone currently spends \$42 billion on procurement in 172 countries and has made collecting information regarding the true identity and ownership of bidders for public procurement a requirement. Accordingly, TI and the World Bank are encouraging countries to require bidders for public procurement contracts to register the actual owners of a bidding company.

SUMMARY: INTERNATIONAL EFFORTS TO DEFEAT CORRUPTION

Many writers have examined the fog of culture, transparency, accountability, and citizen trust with a clear message that explains and clarifies the damaging erosion of the human spirit that corruption causes. But TI's creation was well coordinated and effective in presenting a measure of corruption read as a ranking. TI's efforts have been effective in many additional

efforts to review and examine the complexities of corruption, while again bringing attention to levels of corruption in a clear and succinct manner. TI's accomplishments, building on the pervasive work accomplished by the UN in gaining agreement among the nations of the world that corruption was a problem that had significant negative impact on development, democracy and the continued economic and social development of progressive international relations. The integration of the accomplishments of the UN, as well as the OECD, opened the door to a further advancement into a comprehensive march toward effectively dealing with corruption.

Individual states are slowly realizing that financial information is critical to commerce and investment. Following the Enron scandal in 2002, the U.S. government responded with new regulations directed to restore the confidence of investors in accurate, reliable financial statements of private companies. Their objectives were to reinforce corporate governance, limit conflict of interest, enhance accountability, and increase the number and the severity of criminal and civil penalties. *The Public Accounting Reform and Investor Protection Act of 2002*, also referred to as the Sarbanes-Oxley Act, established the Public Company Accounting Oversight Board to provide independent and effective oversight of external corporate auditors (frequently internationally ranked accounting firms), and to expand and increase criminal penalties for destroying, altering, or fabricating records to mislead federal investigations or to defraud shareholders.

Nonetheless, there are still problems to solve. Tom and Cynthia Lynch have noted that "Corruption is best understood as a continuing process rather than a fixed phenomenon, that it both grows and declines as a social reality, and accordingly, the continuing practical challenge is to curb its growth when discovered and ideally to prevent it from even gaining a foothold (2001). Bribery has been addressed on an international and national level, but it continues to be prevalent, in all nations. Infrastructure improvement projects continue to be plagued by greed and by the failure of governmental systems to monitor effectively the multiple numbers of transactions and the details of major mega projects. Despite concerted efforts to implement a broad range of anti-corruption measures the problem of malfeasance persists. This is as true in places like Canada, New Zealand, Denmark, and Singapore, which are perceived as being amongst the least corrupt countries in the world and have long embraced efforts to reduce political and administrative corruption.

Global anti-corruption initiatives, especially those led by the UN and TI, have been hugely influential. States across the globe are aware of their existence, and there has been a widespread endorsement of these conventions leading to tangible state responses, even if many of countries continue to struggle with living up to the provisions contained therein. For example, the majority of the African, Arab and Latin American states have ratified the United Nations Convention Against Corruption (UNCAC). However, global indices continue to indicate a widespread manifestation of corruption in the Latin American, African and Arab regions.

Scholars have examined corruption in its various forms, on all continents, and produced a voluminous body of work. Researchers also continue to debate the prominence of ethical behavior as the key to successfully creating a professional public workforce, and whether laws and regulations as the backbone of compliance systems can effectively be comprehensive enough to foresee every deviant behavior in a continuing circle of more laws and regulations seeking a perfect administrative state. However, the goal may be the establishment of a system of ethical management that blends both reinforcement of integrity and ethical behavior in the governmental workforce and compliance systems that maintain control of the pervasiveness of greed. Critical to the success of a system of ethical management, however, is leadership; a recognition of the importance of the right values among the world's leaders.

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