



DELIVERING STRATEGIC SOLUTIONS ACCA'S 2000 ANNUAL MEETING

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AMERICAN CORPORATE COUNSEL ASSOCIATION

COMBATING INTERNATIONAL CORRUPTION: THE NEXT ROUND

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I. Introduction

- Progress report on fight against international corruption: a surprising success story
- When Transparency International was launched in 1993: widely regarded as windmill-tilting exercise
 - Had to be congenial optimist to become involved
- In 1993: 16 years after US passed Foreign Corrupt Practices Act, making foreign bribery a crime, not a single other country had followed US example
 - FCPA regarded abroad with amused derision: another case of misguided American moralism.
 - Foreign competitors happy to continue winning orders with bribes; treat bribe payments as tax-deductible business expenses
 - US companies lost billions of dollars in orders annually
 - World Bank and other international financing institutions: Corruption taboo subject, too controversial to touch
- Seven years later: situation transformed
 - TI has become influential NGO, with national chapters in about 80 countries; growth has exceeded most optimistic hopes
 - OECD Convention, making foreign bribery a crime, became effective February 15, 1999.
 - World Bank President Jim Wolfensohn makes fight against "cancer of corruption" high priority issue
 - IMF calls corruption major cause of Asian financial crisis
- Presentation will cover following topics:
 - Why corruption is important issue
 - TI and its role
 - OECD Convention
 - Status of other major initiatives
 - Look ahead: Is progress real, what are prospects for lasting reforms?

II. Why Corruption is Important Issue: Multiple Effects

- US Competitiveness: Commerce Department estimate: \$30-50 billion/year loss of orders
- Failure of Development Programs in Third World
 - Huge amounts siphoned off in bribes
 - Large share of unpaid debt caused by white-elephant projects
 - Story about two third world energy ministers: first points out \$200M project, brags he pocketed 25%; second points to horizon where nothing is visible, brags he collected 100% on \$300M on project never built.
 - Loss of support for aid programs in donor countries
- Effect on transition to democracy and market economies in Russia and other former Communist states. Corruption erodes support for privatization and deregulation; discredits leaders of reform movement. Same story in India and Pakistan.
- Bribery scandals undermine political stability in highly industrialized as well as developing countries
 - Massive scandals in Germany, Italy, Japan, Korea, France and Belgium have discredited myth that bribery is serious problem only in third world
 - US clearly not immune: campaign financing, Salt Lake City Olympics, S&L scandals

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- Asian economic crisis: Clear that corruption was major factor in creating sea of bad debt in Indonesia, Thailand and Korea.
 - Claims regarding "Asian values" debunked: no longer possible to maintain that in Asia rapid economic growth can continue notwithstanding endemic corruption.
 - Because bribery is conducted in secrecy, it cannot be effectively controlled, and will sooner or later spin out of control. Equally true in Italy, Mexico, Korea and Indonesia.

IV. Growth of Transparency International

- Founded in May 1993 by Peter Eigen; headquarters in Berlin
 - Eigen spent 25 years with World Bank, last position: director of East African programs, stationed in Nairobi.
 - Frustrated by World Bank unwillingness to confront corruption
- Two organizational concepts:
 - First, coalition building: broad-based support required: (a) business community; (b) public sector: government leaders committed to reforms; international financing agencies; (c) civil society: professionals including lawyers, accountants, economists and political scientists; unions, environmental and human rights groups.
 - Second, national chapters: establish base of local political support because key reforms require national action. TI can be catalyst for change, success will depend on effective local follow-up. Broad-based coalition approach also needed at national chapter level.
 - TI now has:
 - Headquarters staff in Berlin with top officers from Germany, New Zealand, Chile, Hungary and UK
 - Broad-based Board of directors: Chair Peter Eigen, other directors from US, England, Malaysia, Kenya, Tanzania, Australia, Colombia and Argentina.
 - Even more broadly-based International Advisory Council; members include President Obasanjo of Nigeria, one of TI's founders, President Festus Mogae of Botswana, as well as three former Presidents, Jimmy Carter, Richard von Weizsaecker of Germany, and Oscar Arias of Costa Rica. Also Judge Noonan from the Ninth Circuit, author of the classic "Bribes: The Intellectual History of a Moral Idea", which chronicles efforts to control corruption from the time of the ancient Egyptians and Babylonians until the Foreign Corrupt Practices Act.
 - TI has about 80 national chapters: Africa: 20; Asia 10; Latin America 16; Europe: 15, plus US, Canada, Australia, Papua-New Guinea. Some strong; many still in start-up mode. Very impressive leaders:
 - S.D. Sharma, India: Filed mandamus petition in Supreme Court; led to order to reopen suspended corruption investigation; Supreme Court demanded monthly progress reports from Law Minister. Resulted in down fall of Prime Minister Rao.
 - Luis Moreno Ocampo-Argentina; former district attorney of Buenos Aires; concluded progress required independent base, outside legal system.
 - Sir Anthony Siaguru-Papua-New guinea; mediated conflict between president and head of military; avoiding military takeover
 - Roberto Eisenman-Panama, publisher of La Prensa, leading paper; supervised privatization of national telephone system, assuring transparent bidding process.
- TI-USA
 - Supporters include over 30 major corporations. GE, Bechtel, Exxon, Enron, Texaco, AIG, GM, Ford, Lockheed Martin, Rockwell, Motorola, Pricewaterhouse Coopers, Arthur Anderson, Bank of America and Citigroup.
 - Substantial contributions have been obtained from US AID and from the Ford, and MacArthur Foundations.
- TI Program Objectives
 - Consciousness Raising: Work with media and academics
 - Demonstrate damage done by corruption
 - Overcome cynicism: Corruption around since dawn of history and nothing can be done about it.
 - Key tools: TI Corruption Perceptions Index annual rating of corruption of public officials. 2000 index rated 99 countries Denmark at top, and Nigeria at bottom. Receives extensive worldwide publicity.
 - Last year new Bribe Payers Index: rates relative levels of corruption of 19 major exporting countries. Objective: establish benchmark for measuring effectiveness of OECD Convention, which became effective in 1999. Sweden best; China worst.
 - Surprising result: US in middle 9 out of 19, tied with Germany. Possible explanations: Limited effectiveness of FCPA, unilateral controls not good enough; need multilateral OECD approach. Questions about small and medium sized companies, foreign subsidiaries. Some anti-US bias by respondents.
 - International Anti-Corruption Conferences: Durban October 1999: 1400 participants from over 100 states.
 - Build Effective Integrity Systems
 - TI Source Book: Recipe book of anti-corruption programs covering such subjects as procurement reforms, conflict of interest rules, freedom of information laws, requirements for independent judicial systems, asset disclosure requirements by senior officials.
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- National Integrity Workshops: TI national chapters develop national strategy using TI Source Book
- Integrity Pacts: ground rules covering bidders for major projects.

III. OECD Convention on Combating Bribery of Foreign Public Officials

- Major breakthrough after prolonged efforts. TI worked closely with OECD's Working Group on Bribery and US Government.
- OECD is ideal forum for curbing supply side of corruption. 34 signatories are home based of practically all major international companies.
- Convention provides sound framework for international anti-bribery regime
 - Bribery very broadly defined; more broadly than FCPA
 - Foreign public official broadly defined
 - Administrative, legislative and judicial officials
 - Appointed and elected
 - Government-controlled corporations covered, after strong resistance. Important because procurement in major sectors, such as transportation, telecommunications, energy, frequently done by government-controlled corporations
 - Only serious gap: failure to cover political parties and party officials. Too controversial to reach consensus in 1997. TI developing new proposals. Kohl scandal provides good opening.
- Sanctions: must be comparable to penalties for bribing domestic officials
- Accounting: prohibition of off-the-books accounts
- Mutual legal assistance, including extradition. Important because investigations often stymied by lack of cooperation

III. When will OECD Convention have practical impact?

- Many treaties never develop any traction. Senator Helms' skepticism well founded. Confident that OECD Convention will be different. Persuaded Helms; June 1998.
- Monitoring and Follow-up Process
- Critically important to assure effective and consistent implementation
- Helms approved ratification and arranged prompt Senate action. Required annual report on monitoring process.
- Monitoring off to good start. Conducted by Working Group that drafted Convention. TI actively involved
- Phase 1: Ratification and Implementation
- 23 out of 34 ratified
- Monitoring group reviewed implementing legislation of 16 countries. Germany, Canada and US received good grades. Over half asked to strengthen their laws.
- Japan and UK flunked. Demonstrates effectiveness of monitoring process. What other international body flunked two of biggest members in first year?
- Phase 2: Enforcement
- Starts 2001: country visits; six each year
- Ground rules being drafted: TI pressing for more open process.
- Ending Tax Deductibility of Bribes
- Covered by 1997 Recommendation, almost all 34 have acted
- Germany: long fight while Kohl in power, came to successful conclusion after Social Democrats came in. TI-Germany key player.
- US Implementation
- FCPA amendments to conform with Convention passed October 98. TI-USA led business coalition.
- Foreign companies covered for acts on US territory.
- Broader definition of bribery: "other improper advantage", added to "obtain or retain business"
- Nationality jurisdiction: US nationals can be prosecuted for acts abroad without nexus to US territory.
- Bribery of international agency official covered

III. Other Major Initiatives

- World Bank, IMF and other IFIs
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- Stronger controls on WB-financed projects, e.g. all payments to agents must be disclosed to WB. Corrupt contractors blacklisted: over 40 so far.
- Assistance to governments to promote reforms
- TI participated in developing WB anti-corruption strategy
- IMF: pressing for action against corruption; IMF programs now going beyond traditional macro economic focus
- Other international financing institutions—Inter-American, European and Asian Development Banks—following WB lead
- Inter-American Convention Against Corruption
 - Adopted March 1996: 26 signatories: broader than OECD, covers extortion by public officials—demand side as well as supply side. But no monitoring process.
 - 19 ratifications ratified this year
 - TI pressing for monitoring process; OAS considering proposals.
- International Chamber of Commerce
 - Paris-based international business organization
 - Focus on improving corporate self-regulation: new, stronger Rules of Conduct to Combat Extortion and Bribery issued in 1996
 - Published "Fighting Bribery: A Corporate Practices Manual" covering ICC Rules and OECD Convention
 - New project to address bribery within private sector. What is proper balance between corporate self regulation/civil law remedies/ criminal sanctions? Is there need for international treaty or will national remedies suffice?
- Extortion by public officials: Need to tackle demand side of corruption
 - All countries have laws prohibiting extortion, but enforcement frequently inadequate
 - World Bank, IMF, TI national chapters are pressing for better enforcement.
 - WTO should be appropriate forum, but reluctant to get involved; initiative to promote transparent procurement rules was making progress until Seattle derailment.

IV. Looking Ahead: What are Prospects for Lasting Reforms?

- Promising start, but long-term effort required
- Entrenched interest in continuing corruption: many beneficiaries: corrupt officials, corrupt companies, legion of middlemen
 - No one defends corruption openly;
 - Delaying tactics till public and media lose interest
 - If necessary, pass laws but don't enforce
- Perseverance essential and prospects for success are good because post-Cold War world is different
 - Spread of democratic institutions
 - Opposition parties anxious to expose corruption of ruling party
 - More independent prosecutors and judges
 - Government process becoming more transparent
 - Stronger press in many countries
 - More investigative journalism
 - Corruption is prime target
 - Global economy
 - Need for uniform rules
 - Pressure for leveling up, not down
 - OECD Principles of Corporate Governance, joint program with World Bank.
 - Spread of international accounting standards: TI-Big Five accounting firms
 - Anti-Money Laundering Project: TI working with leading private banks
- No silver-bullet solutions, multi-prong strategy required. But individual reforms interact and reinforce each other
 - Adoption of OECD Convention will drive foreign adoption of corporate compliance programs
 - Making foreign bribery crime undermined defenders of tax deductibility of bribes
- Conclusion: Lots of work needed on many fronts.
 - TI needs all the help it can get. Hope many of you here will be interested in participating.
 - Great satisfaction working on critical issue where strong tide is flowing in right direction!