

INFLUENCE MARKETING

Paper based on all input received for the
Saxion-Tiri/Pien Conference
On 8 and 9 April 2010, SAXION, Deventer, the Netherlands

This paper is based on all text received since the conference was announced late in 2009. Prospective participants were informed that no individual papers were expected but that the conference would be structured around one document, baptized 'Lead-paper', that would go through several rounds of amendments, additions, criticisms and alterations in the months ahead, aiming at a discussion document that would already represent views of participants and would allow us to begin our conference with a common knowledge based on our exchange of data, views, and questions, making the conference the more fruitful.

This proposition led to a 1st version of the Lead-paper (5 pages, 2000 words) December 30, 2009, going through a 2nd edition (31 January 2010, 12 pages, 5152 words), a 3rd edition (1 March, 50 pages, 17.850 words) and a 4th edition (70 pages plus 14 pages attachments, 29.777 words), e-mailed on March 26, 2010, to all participants and distributed in Deventer at the opening session on 8 April 2010 in print. This 4th edition 'Lead-paper' was used as the substantial agenda for the conference on 8-9 April 2010 in Deventer.

This 5th edition incorporates substantial thoughts, criticism, questions and remarks contributed in writing by Paul Arlman, Nadia Barriga, Martine Boersma, Petrus C. van Duyne, Frans Eijkelhof, John Hatchard, Erik Hoenderkamp, Michael Johnston, Jorge Malem, Bryane Michael, Konstantin Pashev, Oksana Popovych, Xavier Sisternas, Willeke Slingerland, Tay Keong Tan, Johan Wempe, other participants in the Conference, and Michel van Hulten. Information obtained from websites of GRECO, OECD, TI Secretariat, and from UNODC (Maria Adomeit) has been added.

For additional information see the attachment:

Keeping foreign corruption out of the United States
with a *reaction* by Human Rights Watch.

The present edition of this document is the so-called 5th edition of the Lead-paper as used during the Deventer-conference, prepared by Michel van Hulten, (no one else is responsible for its contents), as issued on 1st of June 2010.

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Introduction

Not everything bad and not all injustices qualify as corruption. Thus, we would be correct in not trying to fold terrorism and international organized crime; bad governance as the possible misuse by Bush of the 9/11 attack; and situations of lawlessness into our discussions: corruption may aid and abet all, and can result from all, but it remains a distinct and different concept.

We know, however, that earnings made by corrupt behaviour in legal national and transnational transactions (BAE, Siemens, others) may end up in organized crime and vice versa. In any case, we should not restrict our deliberations to linking transnational corrupt transactions to 'organized crime'.

The subject is already broad enough as corruption is everywhere, and always present.

Corruption is in the first place recognised as misusing entrusted power for private gain. As such it is primitively seen as handing out gifts in exchange for unjustified favours. The 'brown envelope filled with banknotes' is everywhere synonymous to corruption. However, it is not only money that can be exchanged for favourable decisions. Gifts can take many forms. What is received in return can also have many faces. If someone has authority, has power of decision making, he learns quickly that such power has a value that can be exchanged for goods, services and privileges. This is 'Influence Marketing'.

It is assumed that the world is full of influence peddling. Some maintain, and they are probably right, that democracy is nothing else but influence peddling. Those who have it market their power, and use their influence to reach for them desirable goals. We see this happening everywhere, it is a worldwide phenomenon. Historically, this has not been different. What might differ, regionally and over time, is the source of power and authority, and the way the trading in influence is handled and judged.

Is making use of power, influence, authority, wrong? Isn't it quite normal that authority and the connected power and influence are used to reach the intended goal(s)? Or is this wrong? If so, is it always wrong? Why would it always be wrong? If not, what makes eventually the 'use of authority' into 'abuse of authority', abuse of power, or abuse of influence? And when is that not the case?

It is difficult to present a legal definition for justified and unjustified influencing. Nevertheless we need this definition in order to distinguish 'right' from 'wrong' behaviour, in order to enforce and prosecute, and to measure the effect of policies designed to tackle this form of corruption and how to eradicate it. Across the world, legislation is still chosen as the main instrument to fight corruption but it does not seem to be effective enough to fight the influence market corruption. It is often difficult to distinguish an act and prove the causal connection with the effect of influencing.

The < influence market corruption syndrome > is not a single act and therefore it will be difficult to criminalize this syndrome.

In what is probably the most widespread definition of corruption (see later in this paper) the concept ‘abuse of power’, is linked to the concept ‘for private gain’. Does this mean that ‘abuse of power’ - if not ‘for private gain’ - is not corruption?

At SAXION, Johan Wempe and the author wondered already for some time how it is possible that the rich countries of the world always top the poor countries in the famous ranking of countries according to their corruption perceptions scores (*Corruption Perceptions Index – CPI*) issued yearly by Transparency International (TI) in Berlin¹ based on research executed by professor Johan Graf Lambsdorff at Passau University² (Germany) from 1995 till 2009.

Could it be that perceptions of corruption have developed in such a way that these cannot (sufficiently) reflect corruption modes existing in the rich countries of the world? Could it be that ‘influence peddling’ is such a corruption mode? And, that this is the corruption mode that is prevalent in the rich countries of North-western Europe? Could it be that politicians and national administrations in the rich countries are happy with that outcome, which does not favour critical reviews of the chosen methodology?

Simplified our question became: could it be that the mode of corruption that gives countries a high and negative perception score based on the number of ‘brown envelopes with banknotes’, does not compare well with the mode of corruption based on the ‘misuse of authority’ that we observe, or at least assume, to exist in the rich Western world?

Did we miss in the perceptions by the many observers involved in various surveys that offer their results to establish the TI CPI, the abuse of entrusted authority that translates itself into misuse of power for private gain?³

These considerations led nearly automatically to the central question that came up again and again in the preparatory phase of this paper, and during the conference in Deventer:

Can we define corruption in a universal way?

Subsidiary questions:

1. Do we need a universal definition of corruption? Is it useful?
2. If not, why?
3. If so, what would be your definition?
4. Why?

¹ Transparency International (TI), the global civil society organization leading the fight against corruption, Secretariat Transparency International (TI), Alt Moabit 96, 10559 Berlin, Germany. Phone: +49-30-34 38 20-0/ Fax: +49-30-34 70 39 12 E-mail: ti@transparency.org, Web: <http://www.transparency.org>

² Prof. Dr. Johann Graf Lambsdorff, Chair Economic Theory, University of Passau, Germany, Senior Research Adviser Transparency International <http://www.uni-passau.de/lambsdorff> and <http://www.ICGG.org>, Tel: +49 851 509 2551, jlambsd@uni-passau.de

³ *Ten years of Corruption (Perceptions) Indices* as established by Prof. Dr. Johann Graf Lambsdorff³ (University of Passau) and yearly published by Transparency International in the years 1995-2005, *Methods – Results – What next?* An analysis by Dr. Michel van Hulten, Individual Member of Transparency International, 31 January 2007, ISBN 978-90-811048-2-1, see www.corruptie.org

5. What definition do you eventually use in research and teaching?
6. Is it better not to define 'corruption', but to define 'good governance'?
7. Other questions that came up:
 - What definitions/qualifications have you met already?
 - Which ones of those (please quote!) should not be used?

Research proposal: a study is proposed on the usefulness of definitions of 'corruption' as asked in question 7. This should help to answer the questions 1-6.

Is seeking to define 'corruption' useful?

UNODC answered:

There is no real point in seeking to define corruption as no single, universally-accepted definition exists. UNCAC, rather than defining the phenomenon, provides a wide range of acts of corruption and requires States to establish them as criminal, civil or administrative offences. Is this UNCAC-approach preferable: the development of 'good governance', over the one criminalizing 'corruption' / bad governance [are these synonyms?]. Prevention is preferred over repression? If prevented, there is no need for definition? On the contrary, a definition is needed for repression, investigation and prosecution?

UNODC continued with a further explanation:

During the negotiations of the United Nations Convention against Corruption, UN Member States carefully considered the opportunity for the global anti-corruption treaty to provide a legal definition of corruption. Concluding that any attempt at a comprehensive definition inevitably would fail to address some relevant forms of corrupt behaviour, the international community reached global consensus on a large number of manifestations of corruption while leaving each State free to go beyond the minimum standards set forth in the Convention.

The point of view as represented by UNODC above is commented upon as not measuring the strength and losses caused by a fire, but as establishing the facts about the fire-fighters.

Rather a political solution between states than a solution that will appeal to researchers.

Before answering the question in the heading of this paragraph, we observe that the UN conventions are notorious as far as their definitions are concerned: whether it concerns organised crime, money laundering, or corruption.

The analytical level of discussion is usually lamentable. The only excuse for their shortcomings can be that they are not scientific papers, but the result of political negotiations. So it is understandable that people get tired of the definition discussion. But the consequence is that if one forsakes a proper formal analytical approach one ends in fuzziness. However, when all sorts of respectable official bodies or universally accepted conventions maintain a fuzzy definition, there is no reason for anybody to accept that fuzziness as valid.

Either, one has to resume the definition task or, one has to recognise that some of the elements like exerting improper influence do not have a suitable line of demarcation. Then be it so!

UNCAC, the minimum standards

The solution found for lack of a universal definition for corruption in the Convention is that the ratifying States call to outlaw, at a minimum, bribery of public officials, embezzlement, trading in influence, abuse of function, and illicit enrichment by public officials; and bribery and embezzlement in the private sector, as well as money laundering and obstruction of justice.

These corrupt actions are spelled out under the chapter of the Convention devoted to criminalization and law enforcement, denoting that corruption is first and foremost a crime.

Correctly UNODC explains⁴ in its *Legislative Guide* commenting on the UN Convention: An innovation of the Convention against Corruption is that it addresses not only basic forms of corruption, such as bribery and the embezzlement of public funds, but also acts carried out in support of corruption, obstruction of justice, *trading in influence* and the concealment or laundering of the proceeds of corruption. (italics added by MvH).

A complication is that problems arise such as:

- How do companies know the local law if there are no universally accepted definitions of a wrong as corruption?
- Sometimes it is hard for them to find out whether an act is forbidden or not.
- Are the comments of UNODC understandable as also in other cases and with other concepts as e.g. 'terrorism', the international community could not consent?

The contrary view: defining is a challenging task

To study, to discuss, to investigate and to prosecute a phenomenon like corruption requires a clear and unambiguous delineation. Otherwise fuzziness is the result. The negative consequences of such fuzziness can be observed in the organised crime and money-laundering debate. Corruption is about conduct and it is that conduct that must be defined.

Finding a globally applicable definition of corruption is an extremely challenging task. The more so as one of the complexities while defining corruption is the (sometimes extreme) variation in causes, implications and the way the phenomenon reveals itself in different country settings. It might need to bring together all parties concerned: researchers, practitioners, experts, governments, etc. It might imply searches which are cross-country in geographical sense; cross-sectoral in terms of trades where corruption

⁴ From § 6, *Criminalization*, in the *UNCAC Legislative Guide of UNODC*, ISBN: 978-92-1-133755-6, New York 2006

occurs; cross-level within the country and beyond its borders in terms of scope; cross-disciplinary in terms of research.

Undoubtedly, the process of corruption definition will further evolve. It will primarily develop at the level of international organizations, dealing with anti-corruption activity and promoting good governance.

Since often those policies depend on the corruption definition, concerned international organizations might adjust the concept definition from time to time or even change it substantially. From this perspective, to define corruption is politically sensitive. Where does corruption stop and begins politics (or vice versa)?

This leads to the alternative solution defining corruption at a country specific level. This is particularly suitable for practical reasons (to know what to investigate and to prosecute and judge), since it grants an opportunity to use appropriately the concept of ‘good governance’ and, in the same time, overcome the blurred nature of both concepts. Defining corruption in a certain country context and developing a specific good governance strategy applicable to it will make anti-corruption efforts more concrete and directed.

International comparability will go lost. Such a country-specific approach of corruption will make it impossible to score countries on a scale of less to more corrupt, and to rank countries according to the prevalence of corruption as observed.

“Undefined” does not mean “Unknown”

When we discuss the importance of defining corruption we need to distinguish between defining the concept for (1) the purpose of academic research in order to gain knowledge and to promote prevention; and for (2) the purpose of investigating and prosecuting in order to better fight corruption and eradicate it (repression).

(1)

It is suggested that there is a growing consensus both in the literature and among practitioners that the importance of definition for academic (knowledge) and policy (prevention) purposes should not be overestimated.

In the words of Tanzi:

...like an elephant, while it may be difficult to describe, corruption is generally not difficult to recognize when observed. In most cases different observers would agree on whether a particular behaviour connotes corruption. Unfortunately, the behaviour is often difficult to observe because acts of corruption do not typically take place in broad daylight.⁵

In this case “undefined” is not equivalent to “unknown”. It is neither good for teaching nor for fighting corruption to present it as some kind of a mystery only because there is no universally accepted definition that all textbooks adhere to. In this context all

⁵ Vito Tanzi “*Corruption around the world: causes, consequences, scope and cures*” IMF Staff Papers, V. 45, No 4, Dec 1998.

definitions, referred to in this paper, even though incomplete, are good enough for research and policy purposes.

Actually most academic courses and texts use the definition: ‘abuse of (public) office for (undue) private gain’. Those who find the concept of “abuse of office” undefined, use the principal-agent setting to specify that the agent acts in his own interest at the expense of the interest of the principal (which in the case of corruption in the public sector means at the expense of the public interest).

Furthermore, there is a growing emphasis on the sector approach to controlling corruption. Corruption risks, practices and consequences differ across sectors as well as across levels of responsibility. The wide-spread definition stresses on the motivation (benefit) on the bribe-taking side. But it makes important difference whether the bribe-giver receives undue benefit as well (as is the case in most practices related to law enforcement and control), or s/he is only a victim in the act of bribery (as is the case of corruption related to public services, e.g. healthcare). One-size-fits-all approach to assessing and fighting corruption is far from optimal. Then why do we need so much one global definition? Policy design depends on the specifics rather than the commonalities?

(2)

It is quite different, however, when the aim is to investigate and to prosecute in order to better fight corruption and eradicate it, repression rather than prevention of corruption. The legal definition might be far more crucial for law-enforcement than for identifying and reducing corruption risks. But it has quite different purposes. The legal definition is not interested in the risks and drivers, in the institutional flaws that allow corruption. It is interested only in the act of bribery or embezzlement and how it can be proved. But then again, if the courts enforce the letter rather than the spirit of the law, the definition will never be perfect and comprehensive.

In a way of illustration, there is a growing number of cases in Bulgaria, where it is obvious that the person in charge has acted at the expense of the public interest, but as undue private gain is hard to prove, they walk away unpunished. A growing number of cases escape justice because “even though they raise questions on moral grounds, there is no breach of the law”, implying that it is not law-enforcement, but that it is the law that is to blame for allowing corrupt officials to walk away unpunished. It is hard to believe that this is because of the incompleteness of the definition.

If law enforcement hinges so crucially on the completeness of the definition, where is the role of the competitive trial? Is it so difficult for the magistrates to recognize the elephant when they meet him without a comprehensive legal definition? The arguments that the concept is “undefined and unknown” and therefore perhaps corruption is hard to prove and punish grease the wheels of what is called “legal corruption”.

Could it be that the scope of definition, as we try to establish, is too wide and ambitious. Do we want to include not only the definition of the act of corruption (abuse of office for private gain), but also the determinants (sources and drivers) of corruption.

Many questions are fundamental for knowing and fighting corruption, but they can hardly be incorporated in one definition. Look at some of those in this paper regarding ‘weak government versus strong firms and vice-versa’ and ‘the costs of corruption’ (“is corruption a threat?” see later).

A solution could be to define corruption according to the specific sector: e.g. corruption in healthcare is abuse of the rights of the patients for undue benefit; such as corruption in the outpatient sector and corruption in the hospital care; corruption involving the provider of healthcare services and the patients from corruption involving the hospitals and the health-insurance funds, or corruption in medical procurement, which is in fact a type of fiscal corruption. Then try to identify the sources and drivers of those different types of corruption, as well as the stakeholders and the cost borne by them. The same goes about corruption in the tax administration, where corruption relates to fraud and evasion from corruption related to taxpayer services. A similar approach is possible to corruption in procurement or in the police etc., etc. In brief, the sector approach weakens the case for an all-embracing definition of corruption. Therefore, use the working definition, quoted above as a narrow base on which to expand the concept.

The broad spectrum of corruption practices has eluded the discussion because it is biased towards what is known as grand corruption or corruption at the upper levels of decision-making, where influence market type of corruption thrives.

Rationality of corruption

Corruption supposes a rational use of resources on the part of the corrupt agent. It is a tool or mechanism to be successful in any social project. In the market it is useful to eliminate competition, in politics to increase power, in housing promotion to obtain requalification of land, etc., but always in the corrupt agreement one side looks for an aim in exchange of the expectation of the other side to obtain an undue benefit. When anyone is corrupted there is always a rational calculation of costs and benefits.

As any mechanism or instrument the efficacy of corruption is contextual. There are contexts in which the aims fulfilled with corruption are better met than with any other method. This explains partly why some countries have a higher index of corruption than others.

Three basic elements help to favour a context of corruption:

- Impunity,
- Lack of adherence to the juridical and moral rules, in the social relations among citizens,
- Inadequate institutional design.

What should a definition of corruption encompass?

In all societies people know what ‘corrupt behaviour’ is. Considerations include:

- That it is ‘bad’, nobody else should know. This is everywhere a predominant feeling. In any case it is included in what is considered to be fraud (a much broader concept). However, in a corrupt case those involved think that both win,

- in a fraud case on the one side is a loser, on the other a winner. For instance: the thief wins what he wants, the other party (the robbed or defrauded) loses. This helps repression as the loser is more willing to talk and to inform investigators. On the contrary, both parties in a corrupt transaction believe that they win. The payer gets what he wants in exchange for what he pays. The payee gets also what he wants, money, a service or a product. Both love secrecy and do not want to talk to investigators as they can only lose,
- It is bad, but who is culpable? Is it the payer or is it the payee? Is it corruption or is it extortion?
 - It is bad, as corruption means that people placed in authority use their power not in accordance with the purposes for which they received it. Often a distinction is made between 'public' and 'private' corruption. The (ab)use of public power is considered to be different in character, purposes and means, from what happens in the private sphere.
 - There are two sides, the briber and the bribed, the one who pays and the one who receives. In particular in international development cooperation (donors supplying poor nations with financial assistance) there maybe three parties involved, the reciprocal (local/national) briber and bribed, and the foreign country or organization that pays, the donor,
 - These two sides can play many roles: public officials (appointed), politicians (elected), entrepreneurs in small, medium and big companies, people holding positions in the so-called 'third sector', such as the International Red Cross, the International Olympics Committee, the FIFA (soccer), the Churches, Greenpeace, Amnesty International, Plan International, Caritas, and other charities, etc,
 - The origin of corruption is domestic ('local culture'?) or is imported from abroad, an expression of (neo)-colonialism or of the dual economy?
 - corruption may be active or passive, actively pursued or passively undergone (but see later!), respectively asking or accepting a bribe,
 - there is always a reward, often for both sides: pecuniary or non-pecuniary, direct or indirect, given in advance, during or after the fact,
 - the reward is either small or grand (the smaller ones are often acceptable to society, the so-called 'facilitation payments'),
 - Views differ on the qualification which should be attached to behaviour: is it corrupt or is it not corrupt? Is it criminalized or not criminalized? Is it seen as 'normal concerning the circumstances', or 'blameworthy'? Do these qualifications differ in object, time and place?
 - Corrupt behaviour may be rather blunt: giving and taking of an envelope with money, or more sophisticated by clever falsifying the books, hiding non-delivery of products or services, whitewashing through banks, etc.

A full definition of corruption should encompass all or at least most of these elements. This can easily result in long texts for defining the issue. However, any definition should be as short as possible, but also not be too broad or too narrow.

Definitions of corruption

Transparency International, ('the global coalition against corruption').

TI in its early years defined corruption as

'The abuse of public office for private gain'.

And TI explained: 'includes in its understanding of corruption not only bribery of public officials, but also kickbacks in public procurement, embezzlement of public funds or questions that probe the strength and effectiveness of anti-corruption efforts, thereby encompassing both the administrative and political aspects of corruption'.

[Note that '*trading of influence*' is not mentioned].

Soon **TI** changed its definition of corruption into:

'The abuse of entrusted power for private gain'.

In this way TI includes 'private' as well as 'public' corruption in one definition.

Certainly, this is an improvement. The question remains why TI does not include explicitly 'trading of influence' in its definition?

The Dutch Professor **P(etrus). C. van Duyne** defines 'corruption' as:

'an improbity or decay in the decision-making process in which a decision-maker consents to deviate or demands deviation from the criterion which should rule his or her decision-making, in exchange for a reward or for the promise or expectation of a reward, while these motives influencing his or her decision-making cannot be part of the justification of the decision.'

The word 'process' in the first line of this Van Duyne definition narrows the concept as it does not cover anymore 'facilitation payments'⁶. Or should we not understand 'facilitation payments' as corruption?

Is his definition practical and not too broad for use in research and prosecution?

Imagine the situation in a developing country with a system of free medical care when a citizen is forced to pay a bribe to the doctor in order to get his surgery in time. In this case, the Van Duyne definition is indeed applicable when applying it to the doctor who supposedly demands payment for quick treatment and therefore deviates from the criterion which might rule his decision making. However, it is difficult to apply this definition to the patient, who neither deviates nor demands deviation from criterion of free medical treatment. Can we say that a moral/ethical criterion is deviated here by the patient? Is this deviation? Is it meant in the aforementioned definition?

The **Dutch police** (Rijksrecherche - National Police Internal Investigation Department) while researching corruption of government and other public officials, make use of a rather strict definition if compared to the ones quoted above:

⁶ 'Facilitation payments', also known as "expediting payments" or "grease payments," are bribes paid to induce foreign officials to perform routine functions they are otherwise obligated to perform. Examples of such routine functions include issuing licenses or permits and installing telephone lines and other basic services. See also the *TRACE Facilitation Payments Benchmarking Survey*, October 2009.

<https://www.traceinternational.org/documents/FacilitationPaymentsSurveyResults.pdf>.

‘The intentional use by an official of his formal or implied powers, or of opportunities and/or knowledge available to him due to his position in a manner not consistent with the contents and intentions of those duties and by doing so passing or granting advantages to third parties or promising to do so.

UK - new bribery laws 9 April 2010: what constitutes a bribe?

British companies must comply with tougher corruption laws after the Bribery Bill was passed by Parliament – the first significant overhaul of the country's bribery laws for a century. They were based on legislation passed before 1916, with a 2001 amendment making it illegal to bribe foreign officials.

The biggest change for businesses under the Bribery Act will be the new offence of corporate failure to prevent bribery. Companies will have to show they have ‘adequate processes’ in place to prevent bribery, or face prosecution along with the individuals responsible for the bribe.

The punishments which could be handed down under the new act include companies having to hand back all the profit made from a contract won as a result of a bribe, unlimited fines and individuals facing up to 10 years in jail.

As well as the offence of corporate failure to prevent bribery, the new Act sets out exactly what constitutes a bribe, both paying and receiving, and creates a discreet offence of bribing a foreign public official.

The UK government is aiming to tighten up the area of bribery law⁷. Alex Beal discusses the contents of the bill, see www.lg-legal.com: Broadly speaking, a ‘bribe’ may occur where a ‘financial or other advantage’ is given or received where this is associated with an ‘improper performance’ of a work related function. As a result, the Bill would cover not only cash inducements, but gifts or other advantages as well.

In addition to creating offences that can be committed by individuals, the Bill proposes to create an offence that can be committed by "commercial organizations".

UK - four new offences:

[Quote]

1. Promising or offering a bribe, which will be known as "active bribery". This offence will concern the conduct of the payer. The payer must be proven to have offered or promised an advantage to the recipient to induce the recipient to perform a relevant function irrespective of whether the person to whom the advantage is offered is the same person who it is intended will perform the function improperly.

⁷ See article by Alex Beal, *United Kingdom: The Bribery Bill - Dealing With Bribery At Home And Abroad at Mondaq*, 4 March 2010. The UK government is aiming to tighten up the area of bribery law. It is hoped that the Bill will enable the UK to enhance its international reputation for the highest ethical standards. The Bribery Bill was presented to the House of Lords on 19 November 2009 [.....]. This article reflects on the Bill and its implications in its current state as at today's date, bearing in mind that the Bill has not as yet received Royal Assent. The author discusses also: What Is Bribery?

2. Requesting, agreeing to receive or accepting a bribe will be known as "passive bribery". As opposed to active bribery, passive bribery concerns the conduct of the recipient and they must be shown to have requested or agreed to receive an advantage intending that a relevant function be performed improperly.
3. Bribing a public official. Under the bill "public official" is defined broadly and will include individuals who exercise a public function to countries other than the UK. In other words a discrete offence of bribery has been created.
4. Corporate offence of "negligent failure to prevent bribery" by persons working on behalf of a business. This corporate offence will be limited to instances of active bribery on the part of a person associated with the business with the intention to secure or retain business. This offence will be committed if the company's employees or agents bribes another person, the bribe was made in connection with the company's business and members of the company's anti-bribery compliance function negligently fail to prevent the bribe.

[Unquote]

There is no need for the employee or agent to have been prosecuted for bribery, provided that the employee or agent is or would be guilty of the offence of giving a bribe or of bribing a foreign public official. Thus, the offence creates a form of vicarious liability in order to deter companies from giving direct or indirect support to a culture of bribery on the part of those with whom they do business.

The Act broadly defines the term "relevant commercial organisation" to include any organisation in the UK, or company or partnership which carries business in the UK. However, companies are not left completely exposed by the introduction of this new provision as it is proposed that there would be a defence to this offence where a company has 'adequate procedures' to prevent persons performing services for the company from committing bribery.

UNCAC - United Nations Convention against Corruption

Uncac.publications_unodc.convention-e.pdf

<http://www.un.org/documents/ga/res/51/a51r059.htm>

In the text of the UN Convention Against Corruption (UNCAC), the concept 'corruption' is not defined. Obviously, the description of the offence is left at discretion to national authorities.

[Quote]

from § 20, *implementation of the UNCAC*, in the *UNCAC Legislative Guide of UNODC*, Article 30, paragraph 9, of the Convention reiterates the principle that the description of the offences is reserved to the domestic law of States parties (see also art. 31, para. 10 and chap. III of the present guide, on criminalization)[. ...]

[End of quote]

In *chapter B, Use of terms*, §2 and §3 'explains' (which may be understood as 'defines?') the terms '(foreign) public official', 'official of a public international organization',

‘property’, ‘freezing’ or ‘seizure’, ‘predicate offence’, ‘controlled delivery’, ‘proceeds of crime’, and ‘confiscation’.

In any case, of these terms is documented what they ‘shall mean’. The more it is remarkable that no definition is to be found of ‘corruption’, neither of ‘influence trading’. Although the word ‘corruption’ figures dominantly in the title of the Convention, and is used frequently in the text of the Convention, a definition of the concept ‘corruption’ is not given.

Research proposal

Find a universal definition for the concept of ‘corruption’, useful for UN-needs?

Dutch Government

How difficult it is to define corruption is also proven by the many objections against article 12 in the Council of Europe Convention which deals with ‘trading in influence’.

The *Criminal Law Convention on Corruption* (Council of Europe) is ratified by the Dutch Government with the reservation that *trading in influence* is not an offence as such in the Netherlands. The Government declared:

‘In accordance with Article 37, paragraph 1, the Netherlands will not fulfil the obligation under Article 12’.

Research-proposal

As many more countries ratified the Law making exemption for this article 12, the motives given by the various governments could become an interesting study-object, in particular as the question may be raised why all these governments, partners in writing the law, did not write this article in a way that made it acceptable?

Council of Europe, GRECO defines ‘trading in influence’

GRECO adopted the *Third Round Evaluation Report* (Greco Eval III Rep (2007) 8E) on the Netherlands at its 38th Plenary Meeting (Strasbourg, 9-13 June 2008) Theme I, *Incriminations* (ETS 173 and 191, GPC 2)

[http://www.coe.int/t/dghl/monitoring/greco/evaluations/round3/GrecoEval3\(2007\)8_Netherlands_One_EN.pdf](http://www.coe.int/t/dghl/monitoring/greco/evaluations/round3/GrecoEval3(2007)8_Netherlands_One_EN.pdf)

The *Incriminations Report* opens with definitions and clarifications of concepts used, such as ‘active bribery’ (promising, offering or giving) and ‘passive bribery’ (request or receipt, acceptance of an offer or promise), ‘domestic public official’, ‘undue advantage’ (material and immaterial and also including services). Gifts do not have to have a monetary value. All gifts, including customary gifts of little value (for example representational gifts) potentially fall within the scope of the provisions on bribery.

Article 12, Trading in influence

The full text of this article 12 of the *Criminal Law Convention on Corruption*, European Treaty Series - No. 173, Strasbourg, 27.I.1999, is:

Article 12 – Trading in influence

Each Party shall adopt such legislative and other measures as may be necessary to establish as criminal offences under its domestic law, when committed intentionally, the promising, giving or offering, directly or indirectly, of any undue advantage to anyone who asserts or confirms that he or she is able to exert an improper influence over the decision-making of any person referred to in Articles 2, 4 to 6 and 9 to 11 in consideration thereof, whether the undue advantage is for himself or herself or for anyone else, as well as the request, receipt or the acceptance of the offer or the promise of such an advantage, in consideration of that influence, whether or not the influence is exerted or whether or not the supposed influence leads to the intended result.

See: <http://conventions.coe.int/Treaty/en/Treaties/Word/173.doc>

Dutch position

The Dutch authorities maintain that *certain forms of influence (whether financial or not) over decisions of public officials or politicians may be lawful* [quoted below, MvH], for instance where representatives of interest groups perform lobbying activities. It is only when the lobbying or the attempt to exert influence results in holding out the prospect of specific advantages to public officials who are involved in the decision-making process, that the bounds of propriety are overstepped. The Dutch authorities contend that at that moment the regular bribery provisions – whether or not in the form of an attempt or in combination with the forms of participation set out in Articles 47 and 48 Criminal Code – come into play, which leads the Dutch authorities to conclude that these provisions already sufficiently provide for adequate protection against unauthorized and actual exertion of influence on the administrative system and no separate offence needs to be established in order for this to be a criminal offence.

As regards the argument of the Dutch authorities that to regulate this issue would encroach upon legitimate lobbying and free speech, reference is made to the *Explanatory Report to the Convention* (paragraph 65) which states that “the acknowledged forms of lobbying do not fall under the notion of ‘improper’ influence which must contain a corrupt intent by the influence peddler”.

Recommendation by GRECO: criminalize trading in influence

Nevertheless, as the establishment of trading of influence as a criminal offence permits the authorities to reach the close circle of officials, or the political party to which they belong, and to tackle so-called ‘background corruption’, the GRECO Evaluation Team recommends to the Dutch Government in its Incriminations Report, 9-13 June 2008, to consider criminalizing trading in influence in accordance with Article 12 of the Criminal Law Convention on Corruption (ETS 173) and thus withdrawing or not renewing the reservation relating to this article of the Convention.

Trading in Influence in Switzerland (including discussion on art. 12)
(text received from Nadia Barriga)

Trading in Influence is generally legal in Switzerland. Switzerland ratified the United Nations Convention on Corruption, but the implementation of trading in influence (art. 18) is unfortunately not mandatory.

Switzerland also ratified the *Criminal Law Convention on Corruption* of the European Council, but made a reservation to art. 12, hence trading in influence is lawful in Switzerland.

Trading in influence means the intentionally promising, giving or offering, directly or indirectly, undue advantage to anyone who asserts or confirms that he or she is able to exert an improper influence over the decision-making of a public official.

Consequently the corrupter can buy the influence of a public official through another person⁸, but not the public official. Therefore this behaviour cannot be interpreted as bribery in most cases.

Criminalization is necessary?

As explained ‘trading in influence’ is legal in Switzerland. However several situations exist in which the Swiss Criminal Code (SCC) covers trading in influence⁹:

- The influencer is a public official

In most cases the public official who takes an improper advantage can be charged for passive bribery (Art. 322quater SCC) or at least for acceptance of benefits (Art. 322sexies SCC). The giver of the advantage can be charged for active bribery (Art. 322ter SCC) or for granting an undue advantage (Art. 322quinqies SCC).

The advantage must be given relating to the public official’s exercise, that means if the advantage is given because of another reason, e.g. because the public official is a member of a sport club, then the said provisions cannot be applied.

- The influencer is a private person

In some cases charges can be made based on active bribery¹⁰, as indirect active bribery, that means bribery through an intermediary, is illegal. If the intermediary is a private person, the public official can be charged for active indirect bribery, if he accepted an improper advantage.

Even though the SCC covers some situation of trading in influence, there was a discussion during the ratification process of the Criminal Law Convention on Corruption of the European Council whether or not trading in influence should be an offense in Switzerland.

The Swiss lawmakers decided not to, because they did not want to expand the corruption offences to more and more acts¹¹. They believed that prevention and disciplinary

⁸ JOSITSCH, DANIEL : Das Schweizerische Korruptionsstrafrecht Art. 322ter bis Art. 322octies StGB (2004), page 21.

⁹ Botschaft über die Genehmigung und die Umsetzung des Strafrechts-Übereinkommens und des Zusatzprotokoll des Europarates über Korruption (2004), page 7014.

¹⁰ CANDRIAN, ANDREA: Die Umsetzung der UNO-Konvention gegen die Korruption in das Schweizerische Recht, in Les traités internationaux contre la corruption pages (2004), page 24.

¹¹ Acceptance and granting of undue advantage (Art. 322quinqies and Art. 322sexies SCC) are in force since 2000.

sanctions are more efficient¹². For example art. 16 of the Parliamentary Act obligates parliamentarians to disclose their potential conflicts of interests.

Another argument used by opponents was, that in practice a differentiation of legal lobbying and illegal trading in influence would be very difficult¹³.

It is difficult to understand why 'trading in influence' should not be criminalized, as decisions of the public official must be made exclusively based on objective grounds¹⁴ and also because such acting is difficult to value as legally and ethical correct. Also because a recent study illustrated that marketing of influence is an often used way to influence public officials¹⁵.

Corruption remains undefined and unknown

This is not otherwise in many corruption-related studies and publications. Corruption is identified as a socio-economic phenomenon that remains undefined and unknown.

Corruption is a term, which changes with time. The meaning of the word corruption was definitely different twenty years ago. So we should concentrate on the corruption today and we can define this, through the acts. We might chose to concentrate on what *makes* corruption in stead of on what *is* corruption.

It surely is fraud. It is also abuse of power. However, under both qualifications we find also other crimes and misdemeanours.

UNCAC definition-indications for the concept 'corruption'

Nevertheless, we find in the text of the UNCAC, in *Chapter II, Preventive measures, Article 8, Codes of conduct for public officials*, sufficient indications how to deduct the meaning of the word 'corruption'. [The text is shortened, MvH]

In order to fight corruption, each State Party shall

1. Promote, [.....] integrity, honesty and responsibility among its public officials, [.....],
2. Endeavour to apply, [.....] codes or standards of conduct for the correct, honourable and proper performance of public functions,
3. Take note of the relevant initiatives of regional, interregional and multilateral organizations, such as the *International Code of Conduct for Public Officials* contained in the annex to General Assembly resolution 51/59 of 12 December 1996,
4. Consider, [.....] establishing measures and systems to facilitate the reporting by public officials of acts of corruption to appropriate authorities, when such acts come to their notice in the performance of their functions,

¹² Botschaft (Fn 2), page 7015.

¹³ Botschaft (Fn 2), page 7016.

¹⁴ ANDROULAKIS, IOANNIS N. : Die Globalisierung der Korruptionsbekämpfung (2007), page 457.

¹⁵ QUELOZ, NICOLAS : Processus de corruption en Suisse (2000), page 377.

5. Endeavour [.....] to establish measures and systems requiring public officials to make declarations to appropriate authorities regarding, inter alia, their outside activities, employment, investments, assets and substantial gifts or benefits from which a conflict of interest may result with respect to their functions as public officials,
6. Consider taking [.....] disciplinary or other measures against public officials who violate the codes or standards established in accordance with this article.

That mode of corruption known as *Influence Trading* is still more interesting, see what the International Code of Conduct for Public Officials (mentioned above under 3) mentions about 'conduct':

QUOTE

II. CONFLICT OF INTEREST AND DISQUALIFICATION

(<http://www.un.org/documents/ga/res/51/a51r059.htm>)

1. Public officials shall not use their official authority for the improper advancement of their own or their family's personal or financial interest. They shall not engage in any transaction, acquire any position or function or have any financial, commercial or other comparable interest that is incompatible with their office, functions and duties or the discharge thereof.
2. Public officials, to the extent required by their position, shall, in accordance with laws or administrative policies, declare business, commercial and financial interests or activities undertaken for financial gain that may raise a possible conflict of interest. In situations of possible or perceived conflict of interest between the duties and private interests of public officials, they shall comply with the measures established to reduce or eliminate such conflict of interest.
3. Public officials shall at no time improperly use public moneys, property, services or information that is acquired in the performance of, or as a result of, their official duties for activities not related to their official work.
4. Public officials shall comply with measures established by law or by administrative policies in order that after leaving their official positions they will not take improper advantage of their previous office.
5. Public officials shall, in accord with their position and as permitted or required by law and administrative policies, comply with requirements to declare or to disclose personal assets and liabilities, as well as, if possible, those of their spouses and/or dependants.
6. Public officials shall not solicit or receive directly or indirectly any gift or other favour that may influence the exercise of their functions, the performance of their duties or their judgement.

7. Matters of a confidential nature in the possession of public officials shall be kept confidential unless national legislation, the performance of duty or the needs of justice strictly require otherwise. Such restrictions shall also apply after separation from service.
8. The political or other activity of public officials outside the scope of their office shall, in accordance with laws and administrative policies, not be such as to impair public confidence in the impartial performance of their functions and duties.

UNQUOTE

Can corruption **not** be seen as a threat?

An interesting question is whether corruption needs to be regarded as a problem that needs addressing? Without rule of law and acceptance by head and heart of certain values by rulers and population alike, corruption at the regional, national or local level can flourish without being seen as a threat? Do we have to take into consideration local traditions and relations between rulers and their subjects – even if these traditions and relations themselves seem incompatible with values and norms prevailing in the Northern hemisphere or in the international community?

The answer could be ‘partly correct’. If there are no decision rules, there is no corruption. However, there will be arbitrariness. To counter this arbitrariness, decision rules are designed. That is how in Western Europe bureaucracy developed and with bureaucracy and formulated decision rules, corruption slipped in.

Do exist one or more ‘corruptions’?

If a universal definition of corruption is impossible (unwanted?), a solution that might be acceptable is the middle ground that has been found by those who deny the possibility of one global valid definition for corruption, but instead stress cultural differences that make what looks like ‘corruption’ in one country, is not seen as crime or misdemeanour in another country.

The intention(s) behind behaviour become important. Is a gift meant to ‘buy a favour’, or is it no more than a ‘token of friendship’?

‘Culture’ is here a very wide concept: ‘ways people behave’. One of those defining more than one corruption is, recently, Michael Johnston in his book *Syndromes of corruption; wealth, power, and democracy*¹⁶.

He concludes (p.35):

‘we can identify and compare major syndromes of corruption originating in underlying patterns of political and economic participation in the ways people pursue, use, and exchange wealth and power and in the strength or weakness of the institutions that sustain and restrain those diverse social activities’.

¹⁶ Cambridge University Press, November 2005, XIII en 267 p., ISBN-13 978-0-521-85334-7 hardback and 61859-5 paperback, and ISBN-10 0-521-85334-6 hardback/ 61859-2 paperback, For more information, see www.cambridge.org/9780521618595

Johnston clearly denies the possibility of one global, valid definition for corruption.

Four syndromes of corruption

His line of thinking leads him to ask the question:

‘What are the underlying developmental processes, and problems, of which a society’s corruption is symptomatic? (p. 38).

And he concludes to four different categories which he calls ‘syndromes’ (he borrows that word and concept from medicine where they are used for complex health situations and processes that are characteristic for a particular state of health or illness):

- *Influence markets*, examples Western Europe, Canada, Japan, USA
- *Elite Cartels*, examples Central Europe, Chile, Botswana, South Korea
- *Oligarchs and Clans*, examples Russia, Turkey, India, Philippines, Thailand, Ghana
- *Official Moguls*, examples China, Indonesia, many Sub-Saharan and Middle Eastern states like Jordan, Emirates.

He baptized his categories as ‘syndromes of corruption’. As far as we know, up till now no one has come up with a valid additional 5th syndrome, although Johnston does not exclude that possibility, neither that his four could not become three.

Research proposal

Is the final conclusion that we have to do with four syndromes? Or can we develop more syndromes using the available data?

One suggestion for a 5th syndrome is raised in the form of the ‘failing state’, or actually the vacuum of power and lawlessness left by it. This is certainly a depressingly common situation. Examples given are Somalia, areas in Afghanistan and tribal zones of North Western Frontier province of Pakistan. However, where power comes out of the barrel of a gun, the situation will be fraught with injustice, to be sure, but it is not corruption.

This suggested 5th syndrome and the examples given, miss too many of the constituent components of the concept ‘corruption’: there is no acknowledged *decision-maker*, accepted *rules and criteria* by which his decisions ought to be made got lost, *de facto ability* of the decision-maker *to deviate* from these rules and criteria is missing, as is also missing *accountability* of the decision-maker for his decision-making to another authority, and the *exchange relation* between the decision-maker and the person interested in the decision is of *hidden, improper* nature.

A logical problem, not solved by Johnston, is the question: syndrome of what, if ‘corruption’ as such remains undefined?

In the second place, these ‘syndromes’ represent loosely described - rather listed - power structures in a number of countries between which there may be more differences than similarities. There are also overlaps, for example between ‘elite cartels’ and ‘oligarchs’.

Moreover, corruption is an accompanying or a resulting phenomenon which must be differentiated from the power structure itself. How?

A very special case is the place where church and state overlap in powers. In which category would one put the Vatican state? Is the Pope the Great Mogul? Actually there is no rule of law, as there is only a divine rule whose law nobody knows. Can the Pope be bribed? No, because he is in the last resort unaccountable, or only to God. Still, he rules over his tiny state as an absolute Mogul and over a billion of believers as an absolute godly Prince. Still, he cannot be bribed, because the Pope is not subjected to decision rules. So here Johnston's 'theory' fails?

Similarly, this question can be asked in cases where state and political party overlap in powers, as is e.g. the case with states in which the communist party is the dominant power. The Secretary-General of the Party has more power than the Prime Minister or the President of that country, as the Party is the avant-garde of the workers.

Other kinds of abuses – those resulting from privilege, nepotism, university connections, and the like, similarly aren't corruption as such, though again they may be related to it in specific cases.

In real situations, corruption requires some sort of state or regime in which there are limits on the ways wealth and power are pursued, used, and exchanged.

Setting, changing, enforcing, and building legitimacy for those limits is a systemic political process, and for that reason corruption may be conceptualized as a systemic dilemma – differing in detail depending upon the kind of regime we're considering. It is a dilemma no society has ever really resolved, precisely because setting those limits is a political process: the assertion of some interests as a way of checking the activities of the powerful.

Looked at that way, corruption is not a specific attribute of a particular action, but rather resides at that level of a systemic dilemma: one of fixing acceptable limits on power and wealth. It is a contested concept, in political terms. That is why attempts to define corruption by parsing out the attributes of a particular action ultimately do not succeed

Influence Market Corruption

This difficulty is particularly pressing in the case of < Influence Market Corruption >, because of the regime type in which it tends to occur: democracies, usually market-based and liberal to varying degrees. In his book Johnston categorizes 18 countries as such, including more detailed case-studies of Germany, Japan and the USA, listing among the 18 also all countries from North-western Europe. Johnston writes (p. 3):

Influence Market Corruption involves efforts on the part of private interests to rent access and influence within well-institutionalized policy processes, often through political figures acting as middlemen.

The specific kinds of behaviour and actions characteristic of < Influence Market Corruption > are in many cases indistinguishable from those of liberal democracy in a market setting. They involve persuasion and efforts to amass political influence processes we would not want to drive out of a democratic society. When they become corrupt it is either as a matter of degree (spending too much money in an election campaign, as just one example), because they involve or create conflicts of interest (defying accountability, again a basic democratic value), or because they are violations of standards of fair play designed to keep those processes of influence, and of political and economic competition, sufficiently open and fair. The corruptness of the actions therefore doesn't reside in the actions themselves but rather in their broader systemic significance.

Thus, trying to isolate a set of influence-related activities as inherently corrupt will be difficult or impossible. The democratic societies of which < Influence Market Corruption > tends to be characteristic don't try to prohibit all influence, but rather set "rules of the game" intended to regulate the process and protect both those involved in it and the broader citizenry who are not. The best we can do is judge those activities against broader democratic values, Mark Warren's notion of illegitimate exclusion¹⁷ comes to mind here, as a way of arguing that the inclusiveness that is supposed to characterize democratic processes is being undermined or disregarded.

Unclear features of wrongful acts

The different syndromes of corruption do resemble in some way, the state of development of the countries involved. In some way you could connect this typology to Maslow's hierarchy of needs. When basic needs are assured in society the needs become of a different character and involve things such as status, achievement and respect of others. These aspects seem to play a role in the influence markets. Here people do not try to guarantee their food or safety but other interests. Every syndrome requires a different action to abolish. Therefore different instruments have to be in place depending on the development stage of the country involved to fight the specific syndrome of corruption.

The debate on Influence Market Corruption can be compared with the debate on sexual harassment. Both are widely recognized as morally wrong and as offences, nevertheless

¹⁷ *What Does Corruption Mean in a Democracy?* by Mark E. Warren © 2004 [Midwest Political Science Association](#).

Abstract

Despite a growing interest in corruption, the topic has been absent from democratic theory. The reason is not a lack of normative issues, but rather missing links between the concepts of corruption and democracy. With few exceptions, political corruption has been conceived as departures by public officials from public rules, norms, and laws for the sake of private gain. Such a conception works well within bureaucratic contexts with well-defined offices, purposes, and norms of conduct. But it inadequately identifies corruption in political contexts, that is, the processes of contestation through which common purposes, norms, and rules are created. Corruption in a democracy, I argue, involves duplicitous violations of the democratic norm of inclusion. Such a conception encompasses the standard conception while complementing it with attention to the dynamics of inclusion and exclusion within democratic politics. By distinguishing the meanings of inclusion and exclusion within the many institutions, spheres, and associations that constitute contemporary democracies, I provide a democratic conception of corruption with a number of implications. The most important of these is that corruption in a democracy usually indicates a deficit of democracy.

they both can best be described as syndromes, with on the one hand clear features of wrongful acts but on the other hand with manifestations for which it is not so straightforward to distinguish unjustified from justified acts. In many countries employers are responsible for creating a climate in which sexual harassment of employees is prevented. If an incident occurs employers have to act, investigate and enforce. Here, the instrument of legislation is in place and so are many others such as: corporate codes on sexual harassment, prevention policies etc. A similar set of instruments is necessary to fight influence market corruption. It is the responsibility of all actors involved to prevent and enforce.

Transition from one syndrome to another?

Interesting was a discussion in SAXION with international Final Year students on this issue of one or more modes of corruptions, and on what basis of evidence eventually to introduce a 5th syndrome?

They concluded that some countries are found *in between the syndromes*. They lie in the so-called *transition stage from one syndrome to another*.

Among these countries, two cases were distinguished:

1. The countries undergoing transformation from one syndrome to another. For instance, Bulgaria, sits in transition from 'Oligarchs and Clans'-syndrome to 'Elite Cartels'-syndrome, as claimed by Bulgarian students Antoan Dinchev and Rosen Dimov.
2. The category of countries which are by definition situated in between two syndromes due to their constellation of institution and participation. For instance, Belgium, as argued by Belgian student Pierre Roland, consisting of two parts, considerably differing from each other, and containing the characteristics of both syndromes ('Influence Markets' and 'Elite Cartels').

In addition, the world is changing. Countries develop, somewhere gradually, somewhere extreme changes happen. Therefore, carrying out the same investigation *over a certain period of time* might bring different results for some countries. For instance: Ukraine, which was classified by Johnston as 'Official Moguls' when part of the Soviet Union, became 'Oligarchs and Clans' when an independent state.

Research proposal

Describe for more countries how < Influence Market Corruption > manifests itself in these countries. Is this mode of corruption locally recognized as corruption? Is it represented in the corruption perceptions of the population and/or the business community? In what form(s) does it occur? Does that imply that other forms of corruption do not exist?

Pro Memoria Research Proposal

Xavier Sisternas did not feel happy with the classification by Johnston of Spain in the syndrome 'Elite Cartel corruption'. He assumes that similar feelings concern the look

alike classification of Belgium, Greece, and Italy, all four from the original 15 EU-countries. He proposed already for all four countries to study the data and conclusions as formulated by Johnston and to evaluate the results.

Power relates to wealth. And to other factors in society?

Johnston is quite focused on 'wealth' in relation to power and democracy in all his four syndromes. Is it our European way of observing our social and economic environment, and is it our interpretation of the facts, that we ask whether Johnston's approach is maybe too much American in placing 'wealth' so central in the concepts that he uses?

Origins of power

If we think of power, and the origins of power, we see many more factors that can explain power to corrupt. Lineage/birth (in feudal systems, but still also in the most developed modern countries, see the Kennedy- and Bush-clans), education ('nurture', position of alumni of Ivy-league universities and Oxford/Cambridge or Polytechnique and 'les Grandes Écoles'), talent ('nature'), organization and position in organizations (Secretary-General in Communist Party), sex (males have more power than females, does this explain why females are less corrupt?), religion, knowledge (languages) in multicultural societies, tradition.

Culture

Johnston argues himself that he did not explicitly use culture to *define* [italics by Johnston] the four syndromes' (p. 191).

If, we try to judge corruption as an inherent attribute of an action, clearly wealth is often beside the point. It is not difficult to think of corruption situations in which money, as such, plays little or no role. But at the level of a systemic dilemma - particularly, one of setting key limits and lines of accountability in the democratic societies under consideration here - wealth will be a basic concern. It is often the goal of corruption, or the means of its execution; it is often a source of the very power that concerns us in terms of limits and accountability. The observation is probably right that a US scholar is likely to talk about the role of wealth somewhat to excess, but still it should be recognised that it is deeply embedded in the systemic dilemma that constitutes corruption.

Research proposal

Is it only wealth that is at the origin of power that leads to corruption, or do other factors play an equally or even more important role?

Eventually, we need examples of misuse of power based on other factors than wealth.

Is wealth → power → corruption a continuum?

Is it possible to identify other factors that are stronger than wealth?

If so, which ones? Which factors are strongest or stronger than others?

Examples of Influence Marketing

Yes, there are sufficient examples: what about the bestowment of knighthoods in the UK? Berlusconi perverting justice just to avoid trial; US senators bending to the Jewish lobby from fear not being re-elected. In the Netherlands: the big fraud fraudster Gerrit Kroes

who got a false letter of non-execution of his sentence by a Public Prosecutor what nobody in the Ministry of Justice wanted to investigate.

Maybe we should also think of a negative influence trading: “if you do not meddle with the skeletons in my closet, I will leave yours in your closet”. Another negative influence might be: Position and reputation and the mutual fear of disclosure.

Cultural determinism was a dangerous idea which academics have widely rejected (well, qualified) due to its use as a new form of bigotry. The social sciences have numerous models showing when methodological holism (the institutionalist’s name for culture) has significant effects in individual behaviour. Is it enough, when we need to explain a large-scale social or cultural phenomenon, just “to follow the money”?

Donations by corporations

Is it encouraging for business corporations to buy favours from politicians and political institutions since the recent judgment in the USA that donations by corporations to political parties cannot be outlawed as has been the case for many years?

Is this ‘Influence Marketing’?

The question to offer examples of misuse of power based on other factors than wealth provoked the following reaction:

Networking

Networking is a strong factor. The relations between people in positions (politicians, entrepreneurs, business, governmental officials, even sometimes NGO-representatives) are established, kept and maintained in order to stay in touch for further interactions and to keep influence, power or wealth. Can we consider these networks as normal working environment, or is here corruption in place? [See in the next paragraph ‘Lobbyism’.]

For developing and less-developed countries, though, corrupt networks are means for survival. The question arises, again, is anything wrong with such networks?

Does it matter whether, as a country, you are poor or rich if you want to define corruption? Is there a difference between actors and their deeds depending on where they live and work?

‘Undue personal benefit’ or gifts

The definition of undue personal benefit, and especially the role of gifts, deserves special emphasis.

In any case corruption relates to a gift from one to another which is reciprocated. The gift does not have to be of a physical nature. It can be making a decision possible or just the contrary, impossible. Someone who has power, influence, may turn the tide, may make things work, not forgetting a profit for him-self, a profit not earned correctly.

What role do presents play?

Is a world thinkable without presents? Are all presents someone might receive to be understood as corrupt payments?

Does this depend on the intention behind the present?

If a present is only a sign of attention, is it allowed?

The corruptive function of presents depends on the decision situation and outcome. If in a culture it is common to give little 'attentions' as a token of appreciation, there is not necessarily corruption.

This changes if the outcome of the decision is dependent on the giving of a present. For example, if the doctor must provide a treatment for free, but declines to do so if no such present is given, then one has a corruptive situation. If he serves the patient irrespective of the given present, though a present will make him friendlier, then there is a normal situation.

The core of the issue is again the decision making and the applicable rules. If there are no or fuzzy decision rules there will be a problem in determining whether there is corrupt conduct. This also applies to the 'attentions': where is the demarcation line?

The presenting of little presents to make the recipient a bit 'friendlier' is evoked too often without referring to the given that it may just be the beginning of a favour-trading.

First, it is important because in most cases prosecution depends crucially on proving the bribe, for instance by marked money, etc. And most of the time it fails to punish corruption, because it is hard to prove the bribery.

Unlike the definition of Petrus van Duyn, the definition of the Dutch Police refers only to an intentional act of the official to the benefit of a third party inconsistent with the contents and intentions of his/her duties. It says nothing about the personal gain of the official. This might be good for risk management and investigation, but is it good for effective sentence? Is it easier to prove intent than to prove illegal gain?

Second, it might be counterproductive to treat all gifts as abuse of office, because this qualifies many civil servants as corrupt, and may discourage whistle-blowing. This is especially relevant if the tradition of giving gifts of gratitude (to the doctors for instance) has deep cultural roots.

A recent survey in the Bulgarian tax administration indicates strong support for specifying in the code of ethics a value threshold above which the gift challenges the norms of ethics (when the gift turns into a bribe). Of course the problem of enforcing this threshold is not to be ignored, but it may increase the intolerance to corruption in the organization if the definition of corruption meets better the ethical norms of the tax officers.

Is this better than trying to change the ethical norms and convince them that the smallest gift is a crime, which is the dominant trend in all anti-corruption projects?

Finally, sometimes the borderline between bribery and marketing seems fairly elusive. Consider a courier company, which rewards the office manager of a client for choosing their services with a gift voucher for EUR 30 or EUR 50 according to the value of sales. Or, a travel company gives away a free air ticket to the office manager for choosing their services. These would enter the books as marketing expenses. Is it a bribe because it aims

to influence consumer's choice away from what it would have been without the voucher or the award ticket? Is there a difference if the office manager is in the public sector? Does what is considered marketing in the private sector become a bribe in the public sector?

These questions about presents raise many others: e.g.

- about the legality of facilitation payments,
- is there consent of the principal?

Research proposal

What size and differentiation has the 'economy of presents' in the Netherlands? In a village, voluntary association, work-organization? Motivations? Givers and receivers?

Lobbyism

Lobbying can improve policy making by providing valuable insights and data, but it can also result in unfair advantages for vested interests if the process is opaque and standards are lax. In other words, the demarcation-line between 'lobbying' and 'influence peddling' is thin. All those in power, having authority to take decisions, should be aware of the distinction between the two and this awareness should help them to remain honest, reliant, transparent, and accountable.

Lobbying is resource intensive

The financial services sector in the United States spent USD 3.4 billion lobbying the federal government between 1998 and 2008, principally promoting the deregulation of the financial sector. Legions of lobbyists provide "guns for hire" worldwide. In 2008, there were over 5,000 registered lobbyists in Canada at the national level, while the European Commission in Brussels had over 2,000 registered as of August 2009.

The non-partisan *Center for Responsive Politics* reported that more than 15,600 companies spent at least \$3.2 billion on federal lobbying last year. Number of those involved: five hundred thirty-five members of the House and Senate, more than 13,000 registered lobbyists in DC. [The mathematics of these figures are that on average per company was spent \$ 200,000, per Member \$ 6 million, and per lobbyist \$ 246,000].

In the context of the current financial and economic crisis, the stakes of lobbying are higher than ever, particularly given the scale of government bailouts and stimulus packages and plans to rewrite regulations.

Setting rules for enhancing transparency in lobbying is challenging because the border between giving sound advice and promoting vested interests is thin, and practices often fall in grey areas.

OECD on lobbying

The OECD published on 16-11-2009, *Lobbyists, Government and Public Trust, Increasing transparency through legislation*, Volume 1, ISBN 978 9264073364, 190 pages.

This report reviews the experiences of Australia, Canada, Hungary, Poland, the United Kingdom and the United States with government regulations designed to increase scrutiny for lobbying and lobbyists. Current approaches, models, trends and state-of-the-art solutions are examined to support a deeper understanding of the potential. Obviously, someone felt a need for such a comparative study.

Limitations of existing norms

The report also presents building blocks for developing a framework for lobbying that meets public expectations for transparency, accountability and integrity.

This report is part of OECD's groundbreaking efforts to promote integrity in the public sector by mapping governance and corruption risks – e.g. procurement, conflict of interest and revolving door – and setting standards for cleaner, fairer and stronger economies. Volume 2 in this series will focus on options for self-regulation by lobbyists (forthcoming).

Obama limits lobbyists more?

From the [Messenger Post](#) (Posted Feb 06, 2010) Canandaigua, N.Y., USA, is quoted Michael Winship, senior writer of the weekly public affairs program "Bill Moyers Journal," which airs Friday night on PBS.

QUOTE

This week, White House Special Counsel Norm Eisen blogged about President Obama's plans to further crack down on lobbyists by updating the Lobbying Disclosure Act and getting Congress to mandate "low-dollar limits on the contributions lobbyists may bundle or make to candidates for federal office."

UNQUOTE

Mr. Winship, nevertheless remains worried: Good luck with that, Norm. As we've seen, lobbyists are brilliantly devious at figuring out ways into the inner sanctums, and whoever's behind the door tends to welcome them with open arms, as long as they've arrived with the secret password - "Cash."

Networking conferences

How it may work becomes clear from looking at some details about conferences involving Democratic and Republican members of Congress and business representatives.

On the business side a meeting held in early 2010 was organised by the *Congressional Institute* which describes itself as

"a not-for-profit corporation dedicated to helping Members of Congress better serve their constituents and helping their constituents better understand the operations of the national legislature."

The meaning of this description is not shared by the *Center for Media and Democracy's Source Watch* which reports on its web site, that the *Congressional Institute* is

"..funded by corporate contributions and run by top Republican lobbyists."

A list of the Congressional Institute's financial contributors reads like a Who's Who of corporate America: among them have been General Motors, Lockheed Martin, Time Warner, UPS, Merck and tobacco giant Altria.

Both descriptions about the same organisation cannot be true at the same time.

QUOTE

The second one is more likely to be true given the findings by Lee Fang, a researcher for the progressive *Center for American Progress Action Fund*, who paid a visit on the Republicans at their Baltimore hotel. In the time before Congressional Institute representatives told him to scram or face arrest, he found out quite a lot.

The Institute's chairman Dan Meyer was on his way to the retreat. As a lobbyist his clients include Goldman Sachs, BP, HealthNet and AHIP, the health insurance industry trade group that fought tooth and nail against the public option in the health care fight. Also in attendance, according to Fang, was Institute board member Michael Johnson. A lobbyist at the OB-C Group, Johnson "touts himself as a 'Republican heavyweight' whose firm represents the BlueCross BlueShield Association, JPMorgan Chase, and the health insurance giant WellPoint."

Meanwhile, Democrats chose to bask in sunnier climes, and some select lobbyists decided to grab their towels and Jamba Juice and enjoy the balmy weather with them. A dozen senators headlined the *Democratic Senatorial Campaign Committee's* winter retreat at a Ritz Carlton resort in Miami Beach, a cozy little hideaway with 375 guest rooms, "sumptuous" marble baths, a spa and a \$2 million dollar art collection. Riding in the wake of the senators' surf were 108 lobbyists — special guests who shared meals, receptions and "informal conversations" with the legislators. According to the Web site Politico.com, among those attending were "top lobbying officials for many of the industries Democrats regularly attack: Represented were the American Bankers Association, the tobacco company Altria, the oil company Marathon, several drug manufacturers, the defense contractor Lockheed, and most of the large independent lobbying firms."

The price of admittance wasn't released but the maximum contribution to the DSCC [Democratic Senatorial Campaign Committee] for similar events is \$30,000 a head.

Hearing all this makes me think we should stage a national intervention and ship the entire 111th Congress off to a different kind of retreat, a sort of political rehab facility. They would be kept isolated from lobbyists and special interests for as many weeks as it takes for them to be weaned from money and pork and made to pay attention to the needs of their constituents — and the nation.

[UNQUOTE]

Clinton's networking

The William J. Clinton Foundation holds Millenium Network meetings for which a simple entry (example London, Friday 30 October 2009, 09.00 PM – 11.00 PM) can be bought at £100, or for £1,000 if you want to become 'host', or £2,000 if Co-Chair, or £3,500 if Chair, or to become 'Ambassador', you pay £7,000. It is only open to individuals age 45 and under. A similar occasion in Chicago, 11 November 2009, lowest fee was \$150. On both occasions the program announced 'Remarks by President Clinton'. A picture at the

website shows what you get: a place in a crowd behind a police-line look-alike string to allow him to speak with some distance from his audience.

As hundreds come to these occasions it is clear they do not come to speak with Mr. Clinton. The investment of buying a ticket is the key to open contacts with peers that can allow to frequent this kind of occasions. This is network-building.

Discussion

Are these meetings 'lobbyism', and/or 'Influence Market Corruption'? Is it (il)legal?

It is making use of celebrity as former or present politician, which might turn into abuse of celebrity as invited (and paying) participants hope to get better contacts for later use. As a politician, it is not part of Mr. Clinton's duties, to build those networks. He and others in similar circumstances do not intend fraud or misuse of power but openings are created for those who want fraud, or misuse of power.

Illustrative example of civilised corruption?

It is not only (former) politicians that create opportunities. See for instance next.

Lobbyist event by Washington Post (090702)

Publisher of the Post Katharine Weymouth offered lobbyists and association executives off-the-record access to a Washington Post Salon at July 21, 2009 6:30 p.m.: 'Obama administration officials, members of Congress, and even the paper's own reporters and editors'. Motivation: access to 'those powerful' as The Post sees 'bringing together Washington figures as a future revenue source.'

As was said, the paper had planned a series of dinners with participation from the newsroom "but with parameters such that we did not in any way compromise our integrity. Sponsorship of events, like advertising in the newspaper, must be at arm's length and cannot imply control over the content or access to our journalists'. 'You cannot buy access to a Washington Post journalist.'

The offer by the Washington Post would have cost per sponsor, per Salon, \$25,000. Participation in the discussion by the underwriters' CEO or Executive Director, guaranteed. Underwriters appreciatively acknowledged in printed invitations and at the dinner. Annual series sponsorship of 11 Salons offered at \$250,000.

The reservations expressed by Post staff after this announcement became public, make clear that the top of the company was very much aware that presenting such an opportunity came close to bribing the powerful, or at least close to influence marketing, or at least was a dangerous way of lobbying and selling its platform to those who could afford to pay for close contacts with lawmakers and administration officers.

The first dinner was announced in a draft of the invitation as ‘An exclusive opportunity to participate in the health-care reform debate among the select few who will actually get it done.’

But the company was quick in recognizing the inherent danger of such an advertisement:

‘This draft does not represent what the company's vision for these dinners is, which is meant to be an independent, policy-oriented event for newsmakers. As written, the newsroom could not participate in an event like this. We do believe there is an opportunity to have conferences and events, and that The Post should be leading these conversations in Washington, big or small, while maintaining journalistic integrity. The newsroom will participate where appropriate.’

Comments

This news from the Washington Post provoked strong feelings among writers to the Post with their comments.

- This, to me, represents corruption of the most vile sort ...
- That main stream media is in the pocket of corporations is not news.
- We must look for that lady and her aides to be fired summarily, so that the integrity of the "newsroom" be supported.
- The decline and fall of journalism, the fall of the WashPost. Truth is stranger than fiction.
- Good for the Washington Post, at least they have the balls to show where the money and the power are. Voters and tax-payers be damned, this is a New America.
- Weymouth and Brauchli will have to resign immediately. Otherwise, the WP has lost its integrity.
- They need a new CEO who will know the difference between integrity and whatever it is these powers that be tried to do.

And many more.

Research proposal

Establish the size of lobbying, numbers of (recognized) lobbyists, budgets involved. What quantitative and qualitative data can be found? Define the dividing line between lobbying and corrupting.

Corruption is a way to get things done – at a price.

It is clear that it is not only wealth that is at the origin of power.

In the Dutch situation, the Dutch police research is also based on the assumption that corruption is just one of the means available to influence the way in which the administration / government acts or refrains from acting.

If alternative ways to get things done are either more costly in terms of money, or other sacrifices, or are not available at all, chances are that corruption will flourish. What is to be done is not necessarily related to wealth and varies from case to case and from stakeholder to stakeholder. In quite a few cases studied, wealth was not a leading factor. For some stakeholders it was about enhancing social status (access to prestigious

meetings, clubs, events, influential circles), satisfaction of personal lusts (drug use, sexual services), or recognition (as a response to a frustrated career or limitations in power which were felt as too restrictive).

Two examples:

- The wife of an inmate promises a guard he can sleep with her if he makes her husband escape. He accepts. She is not driven by wealth, nor is the guard.
- A criminal is sentenced after his hiding place was disclosed to the police. The criminal is furious and asks his good friend and nephew who is employed at a police station to reveal the identity of the witness who reported to the police. The detained criminal has the witness traced down and threatened through an accomplice. His drive is revenge.

In short, in the context of corruption, power does not relate so much to wealth but to the ability to buy influence on interests regarded as important by stake holding third parties.

Wealth is an important example of such an interest. Where wealth is scarce, or unevenly distributed, the struggle to obtain some of it might even be an important factor leading to corruption.

Income and influence

A well-known Dutch journalist (Frits Wester) asked in a TV-talk-show on 5 February 2010, an equally well-known finance and investment specialist (De Vries), after the latter one complained about the lack of quality of Members of Parliament in financial matters (it was a debate on the global economic crisis) whether he would be available to become MP and for which party? The immediate and firm answer was an absolute ‘no, never’. The journalist’s reaction was ‘they do not earn enough?’, implying that as an independent finance advisor the specialist can earn much more. Do we see here ‘influence marketing’?

No. The aim of influence marketing is to influence a public official. The independent finance advisor doesn’t want to do this.

Earlier that same week, in a televised interrogation by a Parliamentary Committee (also about the economic crisis) a former Dutch Prime Minister (1996-2002), also former leader of the largest Dutch Federation of Trade-Unions (FNV, over a million members), Mr. Wim Kok, a question was raised about remuneration decisions at the ING-bank, the second bank of the country. The pay for the President of the bank, at the time Mr. Michel Tilmant, rose from the €1 million for his predecessor in 2002, to €4.3 million in 2006. As the *Volkskrant* (a national newspaper with a large circulation) wrote on 31 March 2007, this was ‘an unprecedented wage-explosion of 316 percent’.

The question was intriguing as Wim Kok had become in the meantime one of the Bank’s Supervisory Committee-members and had decided in favour of this pay-rise. As a Prime Minister, with a strong reputation from his time as a social-democratic trade-unionist and politician, he had condemned this kind of remuneration and had called this ‘exhibitionist’. At that time he defended limits and controls on bonuses and pay rises.

When the bank leadership engaged Wim Kok as one of their top, did they ‘buy influence’ more than anything else?

Yes, because of his prior position, he could easily influence some politicians.

Size of corruption

UNODC is convinced that

Corruption is illegal and a largely clandestine activity, thus its full size is unknown.

Worse is that UNODC is so much convinced of the secrecy of corruption that its conclusion is, that it is impossible to know the size of corruption. On this assumption it advises not to try to establish the size of corruption, but to try to establish what states do against it and whether this is enough, or is at least in compliance with international treaties.

At its third session, held in Doha, Qatar from 9 to 13 November 2009, the *Conference of the States Parties to the UN Convention against Corruption* agreed to a mechanism to measure, rather than the degree of the corruption, States efforts to implement the global response to corruption, such as the Convention. Under this mechanism, all countries will be monitored every five years to see how they are living up to their obligations.

Findings, based on self-assessments and peer review by governmental experts, will be compiled in country review reports. The country reports will identify gaps in national anti-corruption laws and practices. Strengths and weaknesses will also be revealed by a self-assessment checklist based on new software developed by UNODC. This analysis will enable more effective delivery of technical assistance and help States in their efforts to curb corruption.

[end of quote UNODC]

Facts

Facts are that BAE, Siemens and Daimler have recently been forced to pay gargantuan fines. BHP Billiton, a giant mining company, has admitted that it may have been involved in bribery. America’s Department of Justice is investigating some 150 companies, targeting oil and drugs firms in particular. Etcetera.

On Friday April 30, 2010, editor NG CHENG YEE (chengyee@thestar.com.my) from the Star newspaper, titled his interview with the TI-Malaysia president Datuk Paul Low with ‘Illegal logging linked to political funding by timber companies’.

Paul Low said that ‘political funding was a grey area in Malaysia in that it was not necessary for political parties to declare their financial sources’. ‘Political parties have to look for funds from the private sector or individuals’. He also said ‘corruption was not just limited to paying bribes but also the abuse of entrusted power for personal gain. It may not involve money but it is also about showing favouritism as well as granting concessions without proper evaluation or tender.’

World Bank

Based on global economic figures, Daniel Kaufmann, at the time heading the anti corruption unit of the World Bank Institute, calculated/estimated the global corruption figure at US\$ 1 trillion (twelve zero's), but mentioned also a wide range of uncertainty as between US\$ 0.6 and 1.6 trillion. His figures included [quote].

Bribes paid by firms to enable their operations, such as licenses and regulations, as well as bribes for public procurement. It also extrapolates bribes paid by household members for public services. Due to the nature of bribery, it was acknowledged that these figures represent rough estimates [unquote].

A colleague of us did some arithmetic on the World Bank data. [Quote]

To look at the figures from a different perspective, the annual private-to-public-sector bribery of US\$ 1 trillion is the equivalent of each of the world's 6.5 billion (nine zero's) people paying a bribe of US\$ 155 per year. If we apply these figures to the 64.000 transnational corporations of OECD-countries, the bribery expenditure per corporation would be US\$ 15.625 million per year. Though these figures cannot be equally distributed among individuals or corporations so simply, the calculations provide an indication of the scale of private-to-public-sector bribery alone. These figures would increase significantly if the direct costs of other forms of bribery and corruption, and the indirect costs of corruption were available.' [Unquote]¹⁸

However, also Dani Kaufmann acknowledges that his calculations are not fully based on facts alone, but that he estimates like others do.

It seems that it is impossible to know exactly what the size of corruption in the world is.

Therefore we have to ask: What do we know? How do we know?

It seems that we know more about perceptions of corruption than about the real facts.

And what we know about corruption-facts or -perceptions, is it only about countries, or also about organizations, companies, and individuals?

Known facts relate to registered judicial investigations, prosecutions and judgments.

Statistics on these facts show in general rather low figures. Do these statistics only show the tips of the icebergs? As we lack a good universal definition of corruption, this makes it still more difficult to measure, to calculate, and to establish totals.

Cameroon

Sometimes (?) governments know more than they will publish. As an example may serve the reluctance met in Cameroon in 2008, where the Government refused to give access to a Government report written in 2007 by the 'Services du Contrôle supérieur de l'Etat' (Ministry of State Control) about the abuse of public funds (distractions des deniers publics). A request to make the report available was lodged, but to no avail. In press reports at that time the loss of money for the state between 1998 and 2004 was said to be - according to this report - 1.845 milliard Francs CFA, or per year more than 300 milliard F CFA (€460 million per year). For reasons of comparison it helps to know that the total

¹⁸ See: Cathy Stevulak and Jeffrey Campbell, *Supply-side Corruption, Perspectives on a Trillion-Dollar Problem*, pages 34-35 in the *Journal of Corporate Citizenship*, Spring 2008, 29.

State budget of Cameroon in 2006 was about as large, 1.861 milliard F CFA, as the total losses over six years through abuse of public funds.

How could advisors to the Government on corruption eradication and safeguarding of integrity, give the best quality advise to the top of the political/governmental hierarchy if the best available facts are not made available? Too much depends already on rumors about the extent and depth of corruption in Cameroon. Seemingly, facts about corruption in Cameroon are available, but they are not disclosed. Is the interpretation correct that the so-called '*political will*' to fight corruption, in reality does not exist?

Research proposal

Begin to produce better statistics about what is known (this is also a regularly repeated recommendation by GRECO). What research and what research results based on corruption facts, do we have readily available? In other words: what do we really know?

At least in some countries, companies know exactly how much they spent in corrupt payments. In any case this is known where bribes are recognised as company business expenses before net results that are taxable, are established. However, these data are not publicly known. They are considered as private individual information not to be disclosed to the general public. What to do with 'influence marketing' in which one favour is exchanged for another one? What, if one or both decisions do not create any money-transfer, and nevertheless the one and/or the other can be a crime? Is this measurable? How?

Johnston evades the 'size'-problem with regard to his 'syndromes' as he remarks:
it is variations in kind, rather than the ultimately not measurable variations in amount. [...] The syndromes do not measure. They distinguish variations in a phenomenon. They do not help us in defining the size of the corruption-phenomenon.

Instead, he confirms that the TI-index crops up in a few tables for two specific reasons:

- Reviewers of the manuscript wanted to know how the four categories would rank on the TI scale, so he reported means by group; and
- Reviewers asked whether the four syndromes were not just variations in terms of more or less corruption, going by another name.

For that latter point he used the TI and WB data to suggest that such was not the case. He did not, in his own analysis, rely on the TI or WB data to make any points.

Secondly, some suggested that while he looked at 100 or so societies, another 100 are "dropped out" of the analysis.

In fact he did not eliminate and would have loved to have those countries included but data limitations kept him from putting them into the statistical analysis that produced the first distinctions among groups. That data analysis was, of course, a first approximation, a way to define groups by something other than his assumptions. The groupings were then

subjected to the subsequent case-study tests involving key countries from each cluster that got called ‘syndromes’.

He has since run the data using more recent figures, allowing the inclusion of a few more societies, another dozen or so, at least--and the basic categories continue to stand up very well. (This information comes from Johnston, who also mentions that a follow-up publication on the ‘syndromes’ is in preparation).

Is the size of corruption different in various circumstances?

Lack of knowledge of the universal corruption phenomenon does not exclude that we have such knowledge for segments of the global society. Several researchers have tried this line of thinking and have been looking for more insider-knowledge in fields like:

- a) Weak or strong governments and firms, are they more corrupt?
- b) The South is more corrupt than the North?
- c) Are the poor more corrupt than the rich?
- d) Are men more corrupt than women?
- e) Religious people are less corrupt than non-believers?

Ad a) Governments and Firms: Weak or Strong? Makes it a difference in corruptness?

Is the thesis true that in countries with weak governments, corruption is the accepted and acceptable mode of behaviour to circumvent the law?

The complement to this thesis is putting ‘the blame’ not on the government being weak or strong, but on the firms: See in *Anti-Corruption Research News*: Issue 2, the review of *Strong Firms Lobby, Weak Firms Bribe* by Morten Bennedsen, Sven E. Feldmann, David Dreyer Lassen, November 2009.

Using business survey data to analyze firm-level determinants and effects of political influence and bribe paying, this paper finds that strong, established firms tend to focus their influence on shaping laws and regulations in their favour, whereas weaker firms are more prone to use bribery to circumvent rules and regulations.

http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1503028

A quote from this study:

Firms that are larger, older, exporting, government-owned (...) have more political influence, perceive corruption to be less of a problem and pay bribes less often; influence increases sales and government subsidies, and in general makes the firm have a more positive view of the government.

(Morten Bennedsen, Sven E. Feldmann, David Dreyer Lassen)

A cautionary remark is here in place: the thesis is a too simple statement.

Citizens in countries with weak or corrupt governments like Italy or Bosnia know very much that corruption is costly and in principle unacceptable. And usually it is not a matter of circumventing the law, but of circumventing a decision maker, who refuses to apply the law on the relevant services he has to deliver. However, that judgement is neutralised by the realisation that the chances of being served without corruption are slim. So: ‘I have to pay a bribe otherwise I do not get a licence’.

The acceptability of such a conduct increases if the briber has in return also a service to sell to recoup the corruption expenses he had to make earlier. Then the argumentation becomes a matter of balancing corruption expenses against corruption income. But at the bottom of this corruption pyramid are the citizens who have nothing to sell for re-compensation. To them a corruption evoking system of law or a civil servant tradition which condones corruption/extortion is simply an extra illegal taxation.

On the contrary, the thesis is:

There is no need for this behaviour in countries with strong governments, as in those countries laws are written in such a way that the powerful are best served? This eliminates the need to trespass the rules?

What is here meant by rules? Is it a breach of the criminal law, or of codes of conduct / regulations?

If so, does this explain the role of lobbyists?

Ad b) Is 'the South' of the world more corrupt than 'the North'?

The 'South' is not inherently more corrupt than the 'North'.

It might be that in our 'Northern' view – based on a mixture of traditional values and modern influences from the age of rationalism that matured for several hundreds of years in democratic, wealthy and hegemonic states – the 'South' is more corrupt. These values and influences are to a considerable extent included in the prevailing body of international law and in policies of international institutions.

However, if one considers corruption departing from other sets of values and traditions, a strict application of 'Northern' principles might sometimes be felt as corrupt as they can be both alien to and incompatible with existing local traditions. These traditions can involve important matters such as decision-making, distribution of power, freedom and content of thought, speech and religion, administration and valuation and distribution of private and shared wealth.

Corruption is not a natural catastrophe, it is a human calamity. It depends on human rational actions and in this sense the South is not more corrupt than the North, not even men are more corrupt than women. North - south, men - women are not useful categories for the analysis of the corruption. By the way, is Mexico north or south?

- USA and Italy are more corrupt than Chile. But Italy is more corrupt than Finland.
- Winnie Mandela was more corrupt than Nelson Mandela.
- In Argentina, current president Cristina de Kichner is as corrupt as her husband, the former president Néstor Kichner.

[The foregoing paragraph contains quite some judgments on ranking countries according to the existence of the social-economic phenomenon of corruption in those countries. Which facts prove that these judgments are correct?]

Ad c, Are the poor more corrupt than the rich?

If it is not South as opposed to North, could it be that we have to look at different behaviour between the poor and the rich? Or, asked differently: are 'the poor' more corrupt than 'the rich'? Or is the answer that poverty and wealth have little to do with being more or less corrupt?

The rich have a higher baseline from which they start trading interests.

The idea that the poor are more corrupt than the rich seems rather strange. In many developing countries, we see that well-paid high-level public officials engage in revolting self-enrichment, at the expense of their citizens. Also, is it not strange that the poor world is often described as corrupt whereas much more money is involved in contracts in the North?

Ad d) Are men more corrupt than women?

First reaction received: "It will take a brave person to tackle this one! What does it matter in any event?"

Over the past years, numerous efforts have been made to find relationship between greater involvement of women in politics and lower levels of corruption. The World Bank Institute, for example, claims that more women in political and public offices would result in less corruption and better governance. This is evidenced by two WB papers: (1) A Swamy, S. Knack, Y. Lee and O. Azfar. (2000) *Gender and Corruption*, and (2) D. Dollar, R. Fisman, and R. Gatti. (1999) *Are Women Really the "Fairer" Sex? Corruption and Women in Government*.

Hence, are women indeed less corrupt?

Apparently, this thesis meets a considerable body of critique.

In her paper *Political Cleaners: How Women are the New Anti-Corruption Force. Does the Evidence Wash?* Anne Marie Goetz (University of Sussex) argues that

Corruption functions primarily through all-male networks and in forums from which women are socially excluded.

Political systems with high levels of female participation might be less corrupt, not because of the gender balance, but because these systems, often found in liberal democracies, are cleaner themselves.

By this Ms. Goetz explains low levels of female corruption, or women's low levels of positive response to opportunities for illegal behaviour. However, according to mentioned paper, when workplaces become more feminized or when women take top leadership positions, this enables them to re-direct networks of illicit exchange to their own benefit.

On their turn, authors V. Alatas, L. Cameron, A. Chaudhuri, N. Erkalb and L. Gangadharanb in the paper *Gender and Corruption: Insights from an Experimental*

Analysis, challenge the WB thesis differently. They investigated the attitudinal perspective of men and women on corruption in 4 countries: Australia, India, Indonesia and Singapore. They concluded that while in Australia women tolerate corruption less than men, there are no significant gender differences in attitudes towards corruption in India, Indonesia and Singapore. Therefore, it is argued that gender differences towards corruption showed by different studies may not be considered as universal and may be culture-specific. In addition to it, Alatas et al. explored larger variations across the mentioned countries in women's attitudes towards corruption than in men's.

The Institute of Development Studies (UK), Council of Europe and Transparency International put the WB concept of less corrupt women under doubt as well. The Institute of Development Studies (UK), for instance, calls to pay attention to the impact of corruption on women/men and to how anti-corruption measures are founded on particular assumptions of gender roles and relationships. Council of Europe, on its turn, claims that promoting women in political life is not sufficient to reduce corruption. Transparency International opts that correlations between decreasing corruption levels and the growing involvement of women in politics, can not be confirmed.

Although it is not liked to define corruption as gender-specific, there are several issues explaining why women are often perceived to be less corrupt than men.

First issue is concerned with the nature of both genders. For centuries, women carried out the 'primary role of gender' - being mothers, caring for the family, children, and house. It is, thus, suggested that women (more than men) fear offending societal norms due to higher sense of societal good. For centuries, men have kept the responsibility to be dominant and to support the family. Although nowadays things are to a great extent changed in direction of gender equality and shift of responsibilities (especially in 'Influence Markets' countries), men are still carrying a great deal of responsibility of backing-up the family whilst woman is the one to bring the child into the world. Therefore, due to the mentioned responsibility, men find themselves more often in a situation where corruption might be an additional means to achieve a goal.

Second, indeed, men have noticeably higher representation in high social, political, business positions than women. Since still few women find themselves in positions where corrupt practice is more likely to happen, this may create a false impression that women are less corrupt.

Ad e) Are religious people less corrupt than non-believers in God?¹⁹

Are Catholics more corrupt than Protestants? Does this explain why Scandinavian countries are perceived as less corrupt than for instance Spain and Italy?

How is this with Buddhists, Muslims, Hindus, other religions?

(Do the perceptions of Scandinavian countries correctly reflect the facts?)

¹⁹ The work of Osborne already sets out the views on corruption by various religions. See: OSBORNE, DENIS, *Corruption as counter-culture: attitudes to bribery in local and global society*, in Barry Rider (ed.), *Corruption: the enemy within* (The Hague/London/Boston: Kluwer Law International, 1997), 9-34. This work reveals that in many traditions, bribery is considered to be wrong.

How is this in/of countries with no religion?

Whether a certain religion furthers corruption depends very much on their dogmas and their ideas of the relationship to (a) god(s).

A salvation religion, freeing the mortal from sin and damnation if he performs certain religious activities or believes certain things, tends to corruption. Strictly speaking, the believer is constantly buying favours from the Saviour, lest he might be lost. By offering gifts, going on a crusade, fasting, wearing funny hats, not working on Sunday etc. one tries to influence the decision making of the Highest.

If this is considered to be normal behaviour, than it is also normal to influence the decision making of the earthly authorities by offering gifts. [? MvH]

If you can bribe god, why cannot you bribe the bishop? And if you can bribe the bishop, why shouldn't you bribe the mayor?

The Catholic religion is more characterised by a trading-off services: absolution against so-and-so-many prayers, good works or gifts.

From the Calvinist predestination angle that is impossible: one is either 'chosen' or 'damned' and good works do not help to soften the Ultimate Decision Maker, because the outcome is fixed. So, bribes are irrelevant.

In non-salvation religions, like Buddhism, there is nothing to bribe. Salvation is delivered by the 'Highest' but comes from ones own lifestyle and efforts in which all earthly stimuli are subdued until one reaches the highest state in which no suffering can be felt anymore.

Should some of these questions not be examined from a good governance / bad governance perspective?

Measuring corruption

'More' in 'more corruption' can mean many different things: higher frequency of cases, more high-level involvement, more political or economic costs, more money involved, more links to violence (see Johnston, p. 194). A question might also be: do we want to measure the damage, or to measure the damage which could be avoided?

Research proposal

What is our goal in measuring corruption? Can we use (or do we/others) use more criteria in order to distinguish 'more' from 'less' corruption? More from less damage? More or less costs avoided? More or less fighting corruption results?

More corruption can effectively mean: more cases of corruption, or more costs of corruption. They are two independent criteria. Its classification use depends on the aims that are targeted. It is difficult to choose prioritising criteria in abstract.

Existing measurements

We already have no less than 8 measurements of corruption at the national and sub-national level (TI, Global Integrity, WB, national surveys, NGO surveys, ACA surveys, internet surveys, factor and clustering analysis, estimates based on social welfare analysis, imputed estimates, and so forth).

We no longer need to discuss this issue in the abstract. As academics, we need to look at the data and see what conclusions we can draw (that is the scientific method after all which we all must agree to).

The ‘social capital’-revolution is recalled as a bad example. So many measurements came out that scholars decided to ditch ‘social capital’ altogether. We should leave this alone for now. But is that our conclusion?

Projects of measuring social phenomena, in this case corruption, are frequently undertaken in a light-hearted and irresponsible way often commissioned by amateurs who expect miracles from such exercises. When that predictably fails, you get statements like ‘science is no good’. In any case measuring requires a very strict methodology and you do not do that off the cuff. Never spend a dime or a minute on measuring if you do not have defined what you want to measure.

If all this may be too much or too demanding, do not do the measuring. But then do not complain that you do not know anything.

When we talk about measuring corruption we need to distinguish between at least three dimensions:

1. Measuring of corruption risks and drivers;
2. Measuring the spread and incidence of corruption practices;
3. Measuring the cost of corruption.

Ad 1. Measuring of corruption risks and drivers

Most quantitative studies of corruption try to measure its level. This is understandable, as the first measurements served mainly the purpose of informing investors and helping them assess their investment risks. It is only at a later stage that these international rankings were used to inform policy. They are not best tailored for anti-corruption policy formulation and assessment and even the *TI Corruption Perceptions Index*, which has been called poll of the polls, suffers to some extent from the investment risk bias of the underlying rankings.

Ad 2. Measuring the spread and incidence of corruption practices

Of course the spread of corruption is the most important dimension. But reducing corruption levels is the final long-term objective. A far more direct assessment of the effect of anti-corruption policy should come from measuring corruption risks and drivers, as this is the immediate object of policy intervention. Policy-makers should have mid-term benchmarks to know if policy is effective and efficient.

Ad 3. Measuring the costs of corruption.

It is also important to evaluate the costs of corruption. *Konstantin Pashev* has tried to do so recently²⁰ for corruption in public procurement in Bulgaria (http://www.gma-bg.org/upl_doc/reducing_corruption_in_pp.pdf), as an element of ex-ante and ex-post evaluation of the benefits of reducing corruption.

We tend to spend too much money in anti-corruption projects without taking into full account the benefits and costs of the policy intervention. Fighting corruption comes at a cost; if the costs are higher than the benefits of reducing corruption, we are wasting public resources.

See this abstract of Pashev's paper:

Abstract: This paper looks at the drivers and deterrents of corruption in public procurement, drawing on the experience of Bulgaria. It discusses its sources, forms, incidence and cost to society, and provides evidence that Bulgaria's accession to the EU was associated with a shift of corruption up from the middle (expert) to the high (political) levels of public management with better structured political-business networks. In this context the paper discusses remedies at three levels of responsibilities: procurement legislation; procurement management and control; and the political environment which shapes public-private interface. It argues that the clues to reducing corruption in procurement are in improving control rather than further revising the legislation and discusses related policy implications.

Measuring the effect of direct outputs of policy – such as the efficiency of checks and balances, the size of corruption risks is more conducive to countering corruption than measuring mainly its level.

Soft survey data

Another problem with measuring corruption levels is that it relies mainly on soft (survey) data. Measuring corruption risks and the effect of checks and balances can integrate hard data together with soft data.

Surveys are mainly on the bribe-giving side; responses being based either on perceptions, or on the respondent's personal experience with corruption pressure or practices.

Perceptions of corruption may grow if more people are convicted of bribery, even though this should be used rather as an indicator of effectiveness of detection. Perceptions of the spread of corruption are hardly a reliable direct evidence of the effect of policy.

Therefore quantitative evaluations of the levels of corruption often resort to experience-based metrics, which is known as "corruption victimization" (as it borrows the methodology from the crime victimization surveys).

²⁰ see "*Reducing Corruption Risks and Practices in Public Procurement: Evidence from Bulgaria*" (28 pp). GOVERNANCE MONITORING ASSOCIATION GMAWP 2009/3, December 2009, Governance Monitoring Association; and New Bulgarian University, Sofia, kpashev@nbu.bg, http://www.gma-bg.org/upl_doc/reducing_corruption_in_pp.pdf

Who are the victims?

The problem with it is that it treats bribe-givers as victims, which inevitably distorts the overall picture. In most cases of corruption related to non-compliance the bribe-giver is an accomplice rather than a victim. Undue benefit for the bribe-giver may exceed the size of the bribe (so s/he has a net gain). This is even truer in the case of trade in influence.

This victimization bias is reflected in such categories of measuring corruption as the World Bank's concept of the "bribe tax"²¹, even though in these cases the bribe is rather a "commission" than a tax. This victimization bias has negative practical implications as well. In the practice of fighting corruption it leads for instance to losing money by assigning hot lines for signals against corruption in cases of corruption related to non-compliance (when such signals can come in most cases from third parties who cannot prove the act of bribery; the parties to the mutually beneficial deal are not supposed to use these hotlines).

In contrast to experience based studies of corruption, most penal codes adhere to the opposite strong assumptions treating bribe-givers as criminals rather than victims irrespective of whether they could choose to give or not to give. If the law qualifies bribe-giving as a crime why should we expect that respondents would readily confess their guilt?

The limitations of measuring corruption through surveys are even larger in the case of influence markets. The level of corruption at the top of decision-making is not well captured by victimization surveys, as the direct participants are not so many. Therefore it can be measured rather through perceptions. Perception surveys provide a "mirror" measure of grand corruption but have other limitations: e.g. success in detecting and punishing corruption may affect perception scores worse than doing nothing. It is not just a matter of measuring.

Corruption monitoring through perceptions may also have adverse effect on anti-corruption policy as it encourages agencies to invest money in image washing (often disguised as PR campaigns for increasing the public trust in institutions which are financed under administrative-capacity building EU aid) rather than in fighting

²¹ See Cheryl Gray, Randi Ryterman, and Joel Hellman, *Anticorruption in Transition 2: Corruption in Enterprise-State Interactions 1999-2002*, published by the World Bank in 2004.

This World Bank report—based on two rounds (1999 and 2002) of the *EBRD-World Bank business environment and enterprise performance survey*, covers more than 10,000 firms in 27 countries, focuses on 'corruption that taints relations between businesses and the state'. 'Indicators of corruption include the frequency of various types of bribes (both bribes paid for regular administrative dealings with the state and bribes paid by businesses to influence laws and regulations, known as state capture), the share of annual revenues paid in bribes (the "bribe tax"), and managers' perceptions of the extent to which corruption is an obstacle to business and capture has an impact on the firm'. In the same study 'bribe tax' is also defined as 'cost of administrative corruption'.

corruption. The rewards of putting corruption under control in terms of improved perception scores might be slower to come than the campaigns seeking direct effect on perceptions.

Conclusion

To sum up, the purpose of measuring corruption is far more than the answer of the question whether the South is more corrupt than the North, or whether for instance Bulgaria is more corrupt than Estonia. This might be important for investors, or for scholars who are interested in cultural and religious roots of the divide. The essential normative question in terms of institutional flaws is what makes one country more corrupt than the other and what should be done apart from labelling it as higher risk? In this setting measuring the direct outputs, and hence the effectiveness and efficiency of policy intervention is far more instrumental for reducing corruption than measuring its spread and level.

For an empirical illustration of a sector approach of measuring risks and drivers and estimating the effect of policy (wage incentives and internal monitoring) see a recent paper on corruption in the revenue administration²², where we try to estimate the corruptibility of tax officers and explain it by difference in incomes, administrative function and level of decision-making, gender, age, years of service, place of residents etc. Apart from its use for evaluating the effect of wage policy for reducing corruption it can also be used for risk management in human resource allocation.

Use of perceptions

Most of the public judgments on the size of corruption in the world are based on research that makes use of perceptions by observers. How subjective can these be? How reliable are their observations?

Their perceptions qualify mostly a country, a trade or a profession. Subsequently, these qualifications ('scores') are ranked and give us some idea about the relative size of corruption as perceived by – at least sometimes – biased samples of respondents that do the qualifying per country, trade, or profession. It is already difficult to observe the outright 'cash corruption of the policeman who wants a bribe', it is still more difficult for these observers to see the influence peddling. How does this influence their perceptions?

Nevertheless, in the media but also among authorities in governmental institutions, and among entrepreneurs, taking decisions for instance by governments about aid allocations, and by entrepreneurs about business investments, this leads often to qualifications answering the question:

Which country is most or least corrupt in the world? And: which country is improving integrity and which one is sliding down the slippery slope of growing corruption?

The judgment leaps from perception to fact.

²² http://www.gma.bg.org/upl_doc/gma%20wp1_2010.pdf

The annually issued Transparency International *Corruption Perceptions Index* (CPI) is probably best known. As the name says rightly, the Indices as being measured are not more than the results of measurements of the *perceptions* or *images* as seen by a biased sample of mostly western-oriented businessmen and researchers. The resulting scores and rankings of the state of corruption per country as is reported do not present *facts*²³. However, many outsiders, in particular governments, react as if they are confronted with the facts.

Measurement Tools in Sub-Saharan Africa

Since December 2007, we dispose of a study-report commissioned by UNDP to the Oslo Governance Centre and prepared by Corinna Zöllner and Isabel Teichman, *Mapping of Corruption and Governance Measurement Tools in Sub-Saharan Africa*. This study covers 42 types of tools in 28 countries most of them implemented since 2004.

Such an inventory for the countries of Europe would also be useful.

To establish National Integrity System Assessments in Europe

It looks like as if we do not have to take an initiative at this point today as the TI-Secretariat is being contracted by the European Commission to do what is called *National Integrity System Assessments* in the countries member-states of the European Union.

Under this contract, in 2010-11, Transparency International will conduct in-depth evaluations of the governance systems in 23 EU member states²⁴. These evaluations will provide the basis for targeted advocacy and policy reform initiatives at country and EU level seeking to address major transparency, accountability and integrity gaps. The assessments will examine the thirteen main integrity ‘pillars’ of each country’s governance system in terms of their resources, internal governance mechanisms and their overall contribution to the system of integrity.

The National Integrity System (NIS) assessment approach provides a framework which anti-corruption organisations can use to analyse both the extent and causes of corruption in a given country as well as the effectiveness of national anti-corruption efforts. This analysis is undertaken via a consultative approach, involving the key anti-corruption agents in government, civil society, the business community and other relevant sectors with a view to building momentum, political will and civic pressure for relevant reform initiatives.

The assessment makes use of the concept of the National Integrity System (NIS), which has been developed and promoted by TI as part of its holistic approach to countering corruption. The NIS consists of the principle institutions and actors that contribute to integrity, transparency and accountability in a society.

²³ See footnote 3.

²⁴ See www.transparency.org/nis. (From TI, *Anti-Corruption Research News*, ISSUE 2, February 2010, p. 7, see http://www.transparency.org/policy_research/nis, ACRN News is edited by Marie Chêne, E-mail: mchene@transparency.org)



A well-functioning NIS provides effective safeguards against corruption as part of the larger struggle against abuse of power, malfeasance, and misappropriation in all its forms. However, when these institutions are characterised by a lack of appropriate regulations and by unaccountable behaviour, corruption is likely to thrive with negative ripple effects for the societal goals of equitable growth, sustainable development and social cohesion. Strengthening the NIS promotes better governance across all aspects of society, and, ultimately, contributes to a more just society overall, as depicted in the NIS Temple.

The NIS approach underpins many aspects of TI's work, including much of the national and international advocacy undertaken by the TI movement. It also provides the conceptual basis for many TI publications, including the *NIS country assessments*, the *TI Source Book*, and the *Anti-Corruption Handbook: National Integrity Systems in Practice*²⁵.

Cross-border corruption

Measurement of corruption cannot be limited to that part of corrupt behaviour that is 'national'. From strong economies (including strong emerging economies) major efforts may emanate that lead to corrupt behaviour among (for those economies foreign) public officials and politicians.

Also needed is measuring their involvement as 'accessories' to corruption related crimes through the laundering of the proceeds of corruption.

²⁵ For information about the NIS approach, contact TI at nis@transparency.org.

The text above on NIS is borrowed from: http://www.transparency.org/policy_research/nis

Research proposals

1. Should we put a lot of money, precious time and scarce capacity for scientific research into measuring corruption, taking into account limited chances of success and the limited value of results?
2. Would it not be more useful and urgent to focus research instead on the way corruption works and how it affects the administration/government and its stakeholders alike?
3. Which type of officials and official bodies are affected or run a particular risk to be affected?
4. Who are stakeholders and what is their stake?
5. Can we identify triggers that turn risks into reality?
6. Can those triggers be found in other sectors, institutions or persons than in cases included in the research?
7. And the one million dollar question: which measures must be taken by entities such as stake holders, officials, administration and government, societies and international governmental or non governmental institutions to avoid these risks or to avoid that these risks actually result in corruption?

Corruption and integrity?

Often it is difficult to get people interested in corruption prevention. The word 'corruption' has a negative connotation. 'Corruption fighting' is replaced by 'safeguarding integrity'. The use of the word becomes a semantics issue.

Does it matter whether in the formulation of policies the concept 'integrity' is used instead of the concept 'corruption'?

It is difficult to make public servants as well as those in the private sector enthusiastic about a corruption prevention project. It is also seen as a form of criticism, even as an offence.

At the moment that you ask public servants as well as those in the private sector to participate, they will have the feeling that there is something wrong in the organization or with their behaviour. Sometimes managers chose not to use the word 'corruption', but the word 'integrity'. This has a positive connotation. However, this concept is much broader. Perhaps it even masks the real problems in a society or organization.

We have to admit that even if we use a properly defined definition of corruption, there remains a circle around it which is relevant but still is outside the corruption definition. It has everything to do with honesty in dealing with people and situations. Not questioning this outer circle may lead to neglecting the seedbed from which corruption grows. Addressing corruption from this conceptual and behavioural outer circle is therefore correct, apart from aspects of social-psychology to make it acceptable for those involved in programs.

Corruption is a very serious infringement of integrity both of the perpetrator and of his entourage affected by it. However, on a more abstract level, the question is raised whether a clear distinction can and should be drawn between ‘integrity’ (which at least in the Netherlands has a very wide range of meanings) and the professional level and qualities that are necessary requirements for officials in general.

Is not it true that an official acts only in a proper and professional way if he has at his disposal all the knowledge and abilities needed to perform the tasks he is charged with and applies these solely in conformity with both the formal and informal requirements set by the public scope, meaning and intention of his tasks?

A high level of integrity of both himself and his environment (organization, stake holders) is a prerequisite for this, but it is by no means all that makes an official a professional and the body he serves an effective and just administration or government.

The concept of good governance is broader

The good governance strategy could involve a wider spectrum of activities, including the anti-corruption policy. This has its particular importance because often anti-corruption policy is ineffective due to a one-sided approach. In some country settings it is not enough to approach corruption via mere anti-corruption strategy, but more complex approach is needed. This approach can become a good governance strategy, presupposing reforming of different state sectors, including, for instance, public administration reform. Such strategy might be developed on a specific country basis considering its particular local context and problems.

Safeguarding integrity is at the core of what Tiri (Making Integrity Work) is doing. Instead of focusing on corruption and its causes, consequences and counter-measures, many organizations (including universities) would do well to devise methods and interventions to strengthen integrity at the organizational level and in individual conduct.

The organizational integrity approach can be operationalized into formulae that guide Tiri’s work:

$$I = f(ACCCL)$$

Organizational Integrity is the alignment of the following factors:

1. Accountability: responsiveness to stakeholders (openness, transparency).
2. Institutional Competence: ability to deliver its mission and mandate and undertake internal justice and oversight activities
3. Corruption control: enforcement and prevention activities within an organizational context
4. Core Values – ethics infrastructure that promotes desired conduct and sanctions bad behavior
5. Leadership – the political will within organizations to undertake integrity reforms and incentives for good governance.

Teaching and training of corruption prevention

How is it possible to make public servants as well as those in the private sector and students aware of corruption? Especially the topic of *Influence Market Corruption* is difficult to discuss in training and in educational programs. When things go wrong, this is seen as an incident and as something that is caused by some bad apples. Situations and developments that do not reach the front page of the newspaper are often seen as business as usual.

Teaching and training of corruption prevention should be focused on awareness of the position an official holds as a representative of administration or government. He (or she) should be made or kept aware that this requires the adoption of a certain state of mind that is leading in his response to put pressure upon him to influence the way he acts in his official capacity. He should be aware that loyalties as an official are likely to conflict with loyalties he feels as a person but that nevertheless his official loyalties must prevail.

Only after this message of awareness gets through and sunk in, the nature and extent of applicable rules etcetera will find a place to land and take root in the mind of the officials targeted by such training.

An official who is on duty often does not carry around a sheaf of legal books or detailed codes of conduct. However an alert and well biased state of mind always travels along with him and can serve as a pilot in unknown or unforeseen waters.

What to teach?

Different students have different needs. For example, an approach with law students will be somewhat different to one when doing anti-corruption / integrity training courses with public servants.

The needs of everybody leaving school, with regard to his or her integrity in the fifty years and over to come in the remaining life-time, vary considerably.

The question what to teach is the more so difficult as also 'trading in influence' and 'integrity' are not or badly defined.

Should at least 'awareness of the existence of corruption' be taught? And how to deal with this phenomenon in our direct social-economic environment be left to everyone's life experience?

Researchers, governments and scientists have not universally defined 'trading in influence', which makes it difficult to teach what is justified and what is unjustified influencing. The causal connection between an act and the influencing effect is not so straight forward. It is the element of 'intention' that we want to raise awareness about in corruption prevention.

When?

Start at early age. (Why not start in primary school?)

The key to corruption prevention is to start raising awareness at an early age. Especially when unjustified influencing is involved, the element which makes the behaviour corrupt is the 'intention' to influence. Whether you look at influencing from an active or passive point of view, we condemn acts as being corrupt when parties involved have the intention to influence decision making. Moral awareness in general is something which children are taught first of all by their parents. In addition to that, this theme should be discussed and taught from secondary school onwards. In my opinion integrity should be a central theme in secondary and higher education. We want employees to be aware of their behaviour before they become an employee. We can raise awareness by teaching students to reflect on their thoughts and behaviour. Although one might want to adapt training and classes according to the type of study and (future) profession, it is a state of mind which we want to help develop and which should be suited to deal with every situation a professional comes across now and in the future. Although situations vary, the state of mind is to be the same and should be the point of reference in behaviour, communication and decision-making.

Schools short of integrity training

At present, most universities, even professional schools that are committed to practice-oriented curriculum do not have anticorruption courses or ethics modules in their programmes. Implicit in this is the assumption that graduates will go into the "clean" work place without corruption threats. In reality, many graduates face severe ethical dilemmas and temptations of corrupt practices when they start work. The work of promoting the teaching integrity at universities, civil service colleagues and schools around the world is hence an important one.

The teaching of integrity in institutes of higher learning is underpinned by applied teaching, training and empirical research, and this process of introducing integrity curriculum in universities can be facilitated through partnerships and conferences introducing the universality of the problem.

SAXION's integrity education programme

At SAXION's School of Governance & Law, we have incorporated 'integrity' as a subject in the curricula. During the first and the second year all students have to study the general reading material on integrity and corruption (Manual written by Michel van Hulten) and in class the subject is being applied and taught custom-made to student's specific discipline. This gives them a basis to hold on to when they start as a professional. In the beginning of their studies, students are often sceptical about these moral dilemma's and ethical questions, but along the road students start to realize the necessity of these considerations in their work life and feel less insecure and less vulnerable when working as an intern, trainee or professional.

Public servants training in Catalonia

(Text contributed by Xavier Sisternas)

Theme: training should be focused on awareness of the position an official holds as a representative of administration or government.

It is important to prioritize and to use the adequate sequencing. In Catalonia we have started our courses with medium and high level managers and, in the next months, we will begin to offer courses for low level employees. Our approach: focus on viewing corruption as a managerial responsibility, which should be assumed and managed by top and medium officials. The title of our course of public managers is: “Managing corruption risks: a managerial responsibility”.

We have identified a weakness in our courses: a lack of attention to the difficulties of the relationships between managers and politicians (especially because in Spanish public administrations the extent of political nominations is very important).

“Disseminated” training (open courses for civil servants from different organizations) is not really worthwhile. We have begun with this type of open courses, but our strategy is to “enter in the organizations” with tailor made courses for all the managerial staff and/or for specific units as a whole. These tailor made courses, to be fully effective, should be backed with the involvement of top management.

Situations that do not reach the front page of the newspaper are often seen as business as usual. We share this problem, very acutely (especially after some big corruption scandals that created the perception that corruption is a question of many thousands of euro...). Our courses’ participants express a low awareness of the corruption risks in their organizations. To cope with this problem we start the courses with an exercise on short cases of usual situations in the limits of corruption (some of them unclear, to give room to discussion on the possible details of the real case...).

There is also a specific need of specialized training for members of specific units such as law advisers, accountants, procurement specialists or HR specialists.

After the next municipal elections, to be held in 2011, we would like to offer a specific training session for new mayors and local councillors.

We have started a collection of divulgation leaflets mainly addressed to public servants, as an instrument to facilitate easy-to-use instruments to generate minimal necessary knowledge and awareness on corruption and integrity. First leaflet is “Identifying and managing corruption risks”.

We will work also to ensure proper knowledge of corruption-related issues of candidates to occupy positions in public administration, through introduction of contents and questions in competitive examinations to enter Administration.

Training for university students in Catalonia

Next July the Universitat Pompeu Fabra (Barcelona), in collaboration with our Office will offer a summer course, mainly addressed to law students; the course will present corruption from different points of view, with a practical approach on corruption in public and private sector.

For next course we will offer some contents, materials and case studies to be used mainly by MBA, economics, law, political science and criminology studies.

Training for secondary school students in Catalonia

We are beginning to define an offer for teachers of various subjects which could include different educational strategies to work on values and responsibilities in a democratic society. The idea is to reinforce commitment of students with personal ethics and to create awareness of what should be required from those occupying public offices.

In the long term, our strategy is to try to involve all educational community (teachers, parents and parents' associations and students' associations).

In order to guarantee the results we will try to commit schools with the project pushing them to integrate this project into the so called School Strategic Plan (Projecte de centre) which plays the role of a "sheet of route" for the director and the teaching staff.

Documentation

See *Anti-corruption Training Programmes in Central and Eastern Europe*, in:

http://www.amazon.com/Ant-corruption-Training-Programmes-Central-Eastern/dp/9287155046/ref=cm_pdp_rev itm_title_1 \$20.00, ISBN 978-92-871-5504-7.

Regretfully, this is temporarily out of stock at Amazon. It is available at the Council of Europe Online bookshop for €13 and \$20.

http://book.coe.int/EN/ficheouvrage.php?PAGEID=36&lang=EN&produit_aliasid=1957

Awareness of corruption

It is sure that law students learn the law, which means the repression side of corruption. Governance, Integrity, Awareness this is more something that students of sociology etc. are supposed to learn. It is time to re-orientate law-students so that they learn more to look for prevention than for repression?

Since February 1999, is in effect the *OECD Convention on Combating Bribery of Public Officials in International Business Transactions*. Soon a knowledge gap emerged. Surveys of senior business executives found that only small percentages of those sampled, claim to know something about the Convention. It seems to be quite normal that about half of the respondents claim to be 'totally ignorant' of their own country's laws pertaining to foreign bribery, and a quarter claims 'vague awareness'.

Without awareness of the existence and the disguises of corruption, it is difficult to have correct perceptions, let alone to have factual information.

Target Groups

Split dealing with "awareness" over 5 target groups: enterprises, NGOs, citizens, public servants, and media. Each group should be approached with different strategies and concepts.

1. Enterprises

The perception is maintained that ‘Spanish enterprises have very low corruption awareness levels’. Unfortunately we have not enough data to support this statement. The huge majority of our companies, especially in Catalonia, are SME, and nearly all of them have anti-corruption policies established. A lot of big companies in Catalonia and Spain are introducing Corporate Social Responsibility (CSR) and Corporate Governance concepts, and we will work to motivate them to introduce anti-corruption policies through these concepts.

Ernst & Young, *European Fraud Survey 2009*

According to this report:

- There is an “alarming tolerance for unethical behaviour”.
- Spanish companies are always under the European average on anticorruption measures and, in general, on corruption awareness.

See: [http://www.ey.com/Publication/vwLUAssets/European_fraud_survey_2009_-
Is_integrity_a_casualty_of_the_downturn/\\$FILE/Ernst%20&%20Young%20European%20fraud%20survey%202009.pdf](http://www.ey.com/Publication/vwLUAssets/European_fraud_survey_2009_-_Is_integrity_a_casualty_of_the_downturn/$FILE/Ernst%20&%20Young%20European%20fraud%20survey%202009.pdf)

2. NGOs

Some NGOs have recently paid attention to transparency. A guide was published last year on *Transparency and accountability tools for social NGOs*. It should be said that in recent years various scandals have affected some foundations and associations in Catalonia (i.e. Intervida).

3. Citizens

EU citizens’ awareness of corruption is growing, as demonstrated by the comparison between last *Eurobarometer* on corruption compared with previous *Eurobarometer* surveys in 2005 and 2007. But data should be analyzed in detail. For instance, the comparison Spain-EU shows that Spaniards perceive corruption to be much higher among politicians at all levels; in contrast the percentages of Spanish people interviewed that perceived “widespread corruption” in different public services were quite similar in comparison with EU, and even lower in some areas (Education, Health, Inspectors and Public Tenders). The only apparent explanation comes from the high discredit levels of politicians and the presence in the media of cases of corrupt politicians, in contrast to the absence of information about administrative petty corruption.

Documentation

Attitudes of Europeans towards Corruption, November 2009

http://ec.europa.eu/public_opinion/archives/eb_special_en.htm

In the *Antifraud Office of Catalonia*, we are now preparing a survey on citizens’ perceptions. Before, we will conduct five focus groups to have some qualitative data to orientate the questionnaire. From the results of these studies we will try to elaborate an awareness strategy. Regarding that we are initially not favourable to launch a public

opinion campaign. Probably we will try to focus on certain actors, as we have initiated with secondary school students.

4. Public servants

As stated in the training point, we are trying to create corruption-resistance in our public servants through an exposure to ethical dilemmas. In a “legalistic” but Latin country like ours there is a tendency towards hypocrite attitudes: “if it is legal, it is not corrupt...”

5. Media

We are aware of the key role played by the media; probably we will try to contribute to the training of journalists, who very often present distorted information related to corruption.

Is awareness of corruption growing?

Are the assertions made above (‘about half of the respondents claim to be “totally ignorant” of their own country’s laws pertaining to foreign bribery, and a quarter claims “vague awareness” ’) still accurate?

Recent cases involving BAE/Al Yamamah, Siemens, etc., and the very active steps being taken by the USA under the Foreign Corrupt Practices Act, and the fact that senior company officials can be extradited to the USA for trial, has certainly raised knowledge about the issue throughout the corporate world. Also the work of the ICC/GRECO etc. should not be underestimated.

How is awareness elsewhere? New Zealand?

The following report from New Zealand does not seem to prove that companies are aware of what may be going on as bribery and other corruption risks.

Awareness of corruption seems to be at a low level

Top firms face bribery, corruption risk

NZPA Stuff.co.nz Business Day of 8 February 2010

Last updated 14:29, 08/02/2010

Many of New Zealand's top listed companies lack policies on preventing bribery and corruption and are falling behind international best practice on the issue, Transparency International New Zealand says. The organisation's *As Good As We Are Perceived?*-report, released today, assessed NZX50 companies' policies preventing corrupt acts.

The report's contents were developed from data collected by an Australian think tank. Only 44 percent of NZX50 companies had specific policies preventing bribery, compared with 72 percent in the UK, 69 percent in the United States and 50 percent in Europe as a whole.

Transparency International New Zealand chairman Gerald McGhie said New Zealand had an excellent record as a country relatively free from bribery and corruption, but ‘complacency about our performance has the potential to damage New Zealand's reputation’.

Only 18 percent of NZX50 companies had policies regulating facilitation payments, while 24 percent of companies failed to meet a limited rating for codes of conduct and ethics.

Twenty NZX50 companies were operating in high-risk bribery and corruption sectors. Nearly half of those companies had no policy guidelines for dealing with corruption or bribery and fewer than half provided training for employees on the company's code of conduct.

‘A significant number of our NZX50 companies do not adequately recognise the seriousness or impact of corruption,’ Mr McGhie said.

As Good As We Are Perceived? New Zealand.

A review of New Zealand business’ approach to Bribery and Corruption

<http://www.transparencynz.org.nz/>

Executive Summary²⁶

In 2006, CAER (Corporate Analysis. Enhanced Responsibility) published research that they had undertaken into the approach taken by Australian companies in restricting bribery and corruption. CAER’s research focused on companies listed on the S&P/ASX 100.

In 2009, CAER undertook similar research with respect to companies listed on the NZX 50 as part of a review for ethical and responsible investors. Much of the data in this report has been provided by CAER and we are grateful to CAER for sharing the results of their research with Transparency International (New Zealand). Much of CAER’s research was undertaken by reviewing publicly available information particularly code of conduct/ethics related policies.

According to Transparency International’s annual Corruption Perceptions Index, New Zealand is perceived as the least corrupt nation in the world. We were interested to see if CAER’s research data for New Zealand supports this perception.

Of the companies on the NZX 50, 44% have policies prohibiting bribery and 18% have policies on regulating facilitation payments. This does not compare favourably with the percentage of companies prohibiting bribery in comparable markets overseas. Of the top 100 companies by market capitalisation in the UK, 72% have explicitly prohibited giving and receiving bribes. In Europe the figure is 57% and in the US it is 69%.

Few companies augment their policy with an adequate system to encourage a culture of compliance with anti-corruption policies. Out of the NZX, only 16% of companies have a code of ethics system that CAER rated as ‘advanced’. Only 5 companies had a code of ethics that prohibited facilitation payments.

²⁶ Full text at:

<http://www.transparencynz.org.nz/index.php/indices-reports/new-zealand/report-qas-good-as-we-are-perceivedq>

The NZX should seek to increase the number of companies that address the issue directly. Companies are far more likely to include ethics elements suggested by the NZX than those that are not.

Corruption can have uncertain consequences for investors that stem from the additional types of risk corruption introduces. Investors have a role to play in encouraging companies to prohibit bribery and corruption by including this type of risk in investment decisions.

The bottom line of this research appears to be that many of New Zealand's largest listed businesses don't pass some fundamental best practice ethics tests. Transparency International (New Zealand)'s message is that the laggards need to take action and get the ethical dimensions of their businesses sorted out if they are to justify the confidence of their stakeholders including shareholders and the public. As the global financial crisis highlighted, there is a lot at risk including shareholder wealth, employees' jobs and New Zealand's reputation. We need more ethical leadership from New Zealand business in relation to these issues.

Conclusion by TI New Zealand

New Zealand TI-chapter was interested to see if the research data on facts for New Zealand supports the perception of a very 'clean' New Zealand.

From the results is concluded that the prohibition of bribery by companies in New Zealand compares unfavourably with comparable markets overseas. Also is concluded that few companies augment their policy with an adequate system to encourage a culture of compliance with anti-corruption policies. But what does this say of the facts? The conclusion can only be that New Zealand firms are lagging behind with the formulation of policies. The actual state of affairs is not researched.

Lack of awareness or lack of political/professional will?

Awareness programmes in today's Internet age may be a waste of resources. In many societies, the people who can be reached through these awareness programmes are saturated with studies, scandals and information from the web. Raising awareness alone may create frustration and compromise integrity if the target audience is not prepared to deal with the realities of community and organizational life in challenging governance environments.

For these awareness programmes to have sustainable results, they must be followed by changes in capacities to cope with ethical dilemmas and corruption threats, incentives for better behavior, or reforms to promote organizational change.

What do companies know?

A change is taking place in big companies, as the DOJ (USA-Department of Justice) enforces the FCPA (Foreign Corrupt Practices Act) very strongly, and as subsidiaries and contractors are covered and investigated by the DOJ too. Also non-US companies must comply with the US Anti Bribery law.

Lack of knowledge of local law can be overcome by researchers and teachers/trainers that can help companies to comply with the law, help them with corporate governance, and can give local information about the law situation.

What should be our next step?

The media apparently do already a big part of it. Researchers and teachers/trainers should offer their help. They could organize workshops, publish and make criteria for corporate governance better known, investigators and prosecutors have to do their job.

Companies know. There is no lack of awareness

It is obvious that companies know that

‘bribe-paying does not create wealth. In fact, it does the opposite, siphoning off potential profits to the recipients of bribes. If an enforced consensus could be reached, rational companies would choose not to pay bribes at all’

(See also footnote 18, Cathy Stevulak and Jeffrey Campbell, p. 41).

Self-Interest is adding a strong argument for western countries to become increasingly in favour of supporting the OECD and UNCAC initiatives fighting corruption and strengthening integrity. This is a solid economic reason: i.e. to stop emerging economies from continuing to pay bribes and obtain business at the expense of western states.

In 2007, Heimann and Dell of *Transparency International* reported ‘a serious lack of political commitment by over half of the signatories’ [of the OECD Convention]. This is understandable as the sentiment is wide-spread among those companies that fear the loss of business to competitors who choose not to comply. Obviously, this sentiment is communicated to their political representatives and governments.

Also the Heimann and Dell report is on this issue quite clear. Same for a 2009 PWC study. We have the factual information on the table. We can know whether companies in Western countries are now better informed than in a recent past, about their expected behaviour.

Some factual information delivered by the New York Times²⁷ making reference to continued work by Heimann and Dell, is added to prove this point.

Patchy enforcement is jeopardizing the success of international anti-bribery accords that were reached more than a decade ago, according to a report published Tuesday by Transparency International, which evaluated 36 countries and found that only four — Germany, Norway, Switzerland and the United States — actively enforced the OECD’s anti-bribery convention, which they have all signed.

“Whether through antiquated bribery laws, outright political obstruction of investigations, lack of adequate funding for prosecutors, or curtailing the powers of investigative magistrates, the OECD convention is facing grave challenges,” TI said.

²⁷ See NYT TI report on OECD, *Efforts to Curb Foreign Bribery Lack Vigor, Report Finds*, by Matthew Saltmarsh, Paris, June 24, 2009.

The Organization for Economic Cooperation and Development's anti-bribery convention was signed in 1997 and entered into force in 1999. It represents a collective commitment to ban foreign bribery by the leading industrialized countries, which account for the majority of global exports and foreign investment.

It has been adopted by 38 countries and has helped bring changes in national legislation. For example, until a few years ago, many European governments let companies deduct "commissions" paid to win foreign contracts from their taxes. France outlawed such practices in 2000 and Germany followed suit in 2003.

One major obstacle to further progress is 'the use of national security considerations as a reason for not prosecuting foreign bribery'.

In 2006, for example, the British government ordered the Serious Fraud Office to drop an investigation into BAE's Al-Yamamah contract with Saudi Arabia.

Britain's highest court of appeal upheld that decision based on national security grounds.

"It needs to be said there is an area where we are really struggling, fighting, and that's in my view the defence industry," said Mark Pieth, chairman of the OECD working group on bribery.

Over all, the situation in Britain has improved, as it has concluded four foreign bribery cases in the past year, and about 20 investigations are under way. Britain was identified along with 10 other countries, including France, Japan, South Korea, Spain and Sweden, as "moderately" enforcing the pledges.

The report said 21 countries had little or no enforcement, including Argentina, Australia, Brazil, Canada, Ireland, Israel, Poland, South Africa and Turkey.

In Germany, there are more than 150 ongoing investigations into foreign bribery, while there have been 16 convictions under laws enacted since the convention entered into force. In the United States, 21 cases were opened last year and 120 have been initiated since the convention entered into force.

Israel and South Africa joined the convention during the past year. China, India and Russia also need to be brought into the fold to make it more effective.

Another voice draws attention to needed incentives and reforms after awareness education has been done. See Bryane Michael, *The Role of Incentive Design in Parliamentary Anti-Corruption Programmes*²⁸.

Abstract:

The "first wave" of donor sponsored anti-corruption programmes usefully focused on elaborating recommendations for parliamentarians or tried to train them (develop human capital) in anti-corruption. Now it is time for these programmes to take into account parliamentary incentives to adopt these recommendations and/or use this "knowledge". This paper will discuss these incentives and the ways these programmes should and can help build political capital by managing voter demands, political competition, patronage, and enforcement. The paper also

²⁸ Bryane Michael, Stockholm School of Economics, and Aare Kasemets, University of Tartu, *The Role of Incentive Design in Parliamentary Anti-Corruption Programmes*, December 2005. Keywords: anti-corruption, parliamentary, incentive design, JEL Classifications: H1, Working Paper Series, Available at SSRN: <http://ssrn.com/abstract=853944>

reviews some basic theories from formal political economy which may be of interest to practitioners interested in bridging the theory/practice gap.

OECD 2010 Initiative to raise global awareness of corruption

Obviously, the OECD is still more in the phase of anxiously raising the standard of awareness about corruption in the world. In 2010 the OECD begins a three year awareness programme.

QUOTE

OECD Foreign bribery - Initiative to raise global awareness

Last updated: 5 February 2010. Permanent url www.oecd.org/corruption/initiative
http://www.oecd.org/document/32/0,3343,en_2649_34859_43938976_1_1_1_3744_7,00.html

Who pays the price for foreign bribery? We all do

But we all have the ability - and responsibility - to stop this extremely harmful conduct.

Every year, millions of dollars are squandered on bribes paid to public officials in exchange for business advantages. The result: shoddy roads, crumbling bridges, sub-standard hospitals and schools, and food and drugs that don't meet safety standards.

Too few realise bribery carries a price. The more everyone knows about this crime, the less likely companies are to offer bribes, the less likely public officials are to receive or solicit them, and the more likely law enforcement authorities are to investigate foreign bribery allegations.

Initiative to Raise Global Awareness of Foreign Bribery

With this in mind, the OECD has launched an Initiative to raise Global Awareness of Foreign Bribery. The goal of the OECD Initiative is to:

- raise awareness of foreign bribery as a crime,
- illustrate the negative impact of foreign bribery,
- increase interest in anti-bribery measures for every country.

This Initiative comes 10 years after the entry into force of the OECD Anti-Bribery Convention, one of the world's most effective anti-corruption instruments, and the only one focused directly on foreign bribery.

Plans for the three-year Initiative include a worldwide media outreach campaign, a foreign bribery impact study, and working with business and law schools to include course materials on foreign bribery to educate the next generation of business leaders about this corrupt practice.

Who is part of the Initiative?

All 38 state parties to the Anti-Bribery Convention—including all 30 OECD member countries plus Argentina, Brazil, Bulgaria, Chile, Estonia, Israel, Slovenia and South Africa—are part of the Initiative.

We invite any international organisations, NGOs, corporate networks or governments with similar anti-corruption agendas to be a part of this global Initiative.

OECD's longstanding fight against foreign bribery

The OECD Anti-Bribery Convention requires that the 38 states parties criminalise the bribery of foreign public officials to obtain advantages in international business, and subject companies and individuals who engage in such bribery to effective, proportionate and dissuasive sanctions. States parties are also required to disallow tax deductions for bribe payments under the [2009 Recommendation on Tax Measures for Combating Foreign Bribery](#)

Email the OECD for more information at anti-corruption.contact@oecd.org

END OF QUOTE

SAXION University of Applied Sciences will contribute

For us at SAXION this call comes at a very welcome moment. We informed the OECD Office about our activities and look forward to the requested collaboration.

We concluded at the end of the Deventer-held Conference on *the Market of Power and Influence* that we would like to be involved as a group, and to become with one or more of us, in whatever form of collaboration and cooperation, or individually, part of this global Initiative.

As a result of the SAXION-Tiri conference of 8 and 9 April 2010, a new anti-corruption network is created consisting of researchers, practitioners, governments representatives, future international law and business specialists, etc. We aim in particular at participants in this Network living and working in North-western Europe (as we described this in our invitation letter 'countries bordering the Baltic and North Seas and along the eastern coast of the Atlantic'). The Network will still have to find its organizational form and to define core objectives for its further dialog. The primary distinguishing characteristic of the Network will be the focus on Influence Market countries.

SAXION University of Applied Science will contribute to this network by means of both, research and education. In the University a 'scientific circle' deals with research on corruption prevention and promotion of integrity.

This research is directly connected to educational purposes. For instance, within the program called *Final Year* and consisting mostly of international students, two closely related subjects are provided. The students follow a theoretical course, dealing with 'accountability and responsibility in international business', while their practical skills

and experience is developed within the 'integrated case study ethics' course. Among others, the Final Year group investigates corruption in their home countries, compares their findings with Michael Johnston's four syndromes of corruption, and tries to develop corruption measurement systems.

SAXION organised already various events on the mentioned topics, involving participation of its students.

- (1) Participation by SAXION-Final Year-students and -staff in the International conference 'Corruption and Human Rights', Maastricht Centre for Human Rights, Maastricht University, Maastricht, the Netherlands, October 2009;
- (2) Meeting with Michael Johnston aimed at discussion of the book on syndromes of corruption, 7 April 2010;
- (3) International week in SAXION, main topic of which was defined in 2010 as Social Responsibility, April 2010;
- (4) Conference on Influence Markets corruption, 8-9 April 2010, SAXION University of Applied Science.
- (5) May 2010, publication of 'State of Anti-Corruption and Integrity in the Netherlands, International & Comparative, 2010. © SAXION - Michel van Hulten, ISBN 978-90-811048-4-5, www.corruptie.org, www.saxion.nl, www.saxion.edu P.O.Box 70.000, NL-7500 KB Enschede, the Netherlands.

Therefore, by means of aforementioned activities, awareness of future legal and business specialists is raised about corruption, its causes, implications and effects.

Within the framework of newly created *Influence Markets Anti-corruption Network*, research and practical developments in education may become significant for renewed course materials or study programs in order to educate the next generation of business leaders and public officials about corruption.

Attachment

http://hsgac.senate.gov/public/index.cfm?FuseAction=Press.MajorityNews&ContentRecord_id=9a9a2e09-5056-8059-76f6-1b9eb33b29b2

“Politically exposed persons” or PEPs have found ways to use the U.S. financial system to protect and enhance their ill-gotten gains using the services of U.S. lawyers, lobbyists, real estate and escrow agents, and other professionals. How is this in Europe?

Question: Is this a report on < Influence marketing >?

Keeping foreign corruption out of the United States (with four case studies)

United States Senate, Permanent Subcommittee on Investigations Committee on Homeland Security and Governmental Affairs

** Carl Levin, Chairman, Tom Coburn, Ranking Minority Member

Press

Contact: Leslie Phillips, (202) 224-2627, February 4, 2010

Investigations Subcommittee Holds Hearing on Keeping Foreign Corruption Out of the United States: Four Case Histories

WASHINGTON – Corrupt foreign officials and their relatives have used gaps in U.S. law and the assistance of U.S. professionals to funnel millions of dollars in illicit money into the United States, an investigation by the Senate’s Permanent Subcommittee on Investigations has found.

“For the United States, which has so much riding on global stability, corruption is a direct threat to our national interest,” said Sen. Carl Levin, D-Mich., subcommittee chairman. “That’s why the United States is engaged in a relentless, worldwide battle to stop the flow of illegal money into and within places like Iraq and Afghanistan. Laundered money is used to train and provide support for terrorists and terrorism. If we want to credibly lead efforts to stop illegal money abroad, we’ve got to stop it here at home as well.”

A 330-page bipartisan report to be released by Levin and subcommittee ranking member Sen. Tom Coburn, R-Okla., at today’s hearing shows that politically powerful foreign officials, and those close to them, have found ways to use the U.S. financial system to protect and enhance their ill-gotten gains. The report exposes how those powerful

individuals – known internationally as “politically exposed persons” or PEPs – have used the services of U.S. lawyers, lobbyists, real estate and escrow agents, and other professionals who currently have no obligation under U.S. regulations to establish anti-money laundering (“AML”) programs, know their customers, or evaluate the source of funds transferred into the United States. Banks, in contrast, are subject to AML obligations and for the most part have honoured them. But glaring gaps have undermined the overall effectiveness of U.S. AML laws.

Four Case Histories. The report presents four case histories, each with multiple stories exposing the tactics being used by PEPs to use our financial system to protect and enhance their illicit funds.

QUOTE

This Report examines how politically powerful foreign officials, their relatives, and close associates – referred to in international agreements as “Politically Exposed Persons” or PEPs – have used the services of U.S. professionals and financial institutions to bring large amounts of suspect funds into the United States to advance their interests.

[.....]

A. FINDINGS

This Report makes the following findings of fact.

(1) **Lawyers.** Two U.S. lawyers helped Teodoro Obiang, son of the President of Equatorial Guinea, circumvent anti-money laundering and PEP controls at U.S. banks by allowing him to secretly use a series of attorney-client, law office, and shell company accounts to be used as conduits for his funds.

(2) **Realtors.** Two realtors helped Mr. Obiang buy and sell multi-million-dollar residences in California, and a real estate escrow agent facilitated his purchase of a \$30 million property by handling millions of dollars wire transferred from Equatorial Guinea, without verifying the source of the funds, since they had no legal obligation to do so.

(3) **Escrow Agents.** After one U.S. escrow agent, as an AML precaution, refused to complete the purchase of a Gulfstream jet without obtaining information on the source of \$38.5 million to be paid for the aircraft, another U.S. escrow agent stepped in and completed the transaction with no questions asked. The escrow agents had no legal obligation under current law to inquire about the source of the funds.

(4) **Lobbyist.** A U.S. lobbyist helped President Omar Bongo of Gabon obtain six U.S.-built armored cars and U.S. government permission to buy six U.S.-built military cargo aircraft from Saudi Arabia to support his regime, while allowing his U.S. bank accounts to be used as a conduit for \$18 million in suspect funds in connection with those transactions, with no questions asked.

(5) **Offshore Corporations.** Jennifer Douglas, a PEP through her marriage to Atiku Abubakar, former Vice President of Nigeria, used a series of U.S. bank accounts to bring

over \$25 million in suspect funds into the United States via wire transfers from offshore corporations.

(6) **University.** A U.S. university accepted over \$14 million in wire transfers from unfamiliar offshore shell corporations to pay for consulting services related to development of a university in Nigeria founded by Mr. Abubakar.

(7) **Personal Accounts.** Pierre Falcone, a PEP through his close association with the President of Angola and appointment as an Angolan Ambassador, was able to use personal, family, and U.S. shell company accounts at a U.S. bank in Arizona to bring millions of dollars in suspect funds into the United States and move those funds among a worldwide network of Falcone accounts, despite his status as an arms dealer and a long history of involvement in criminal proceedings in France.

(8) **Government Accounts.** Dr. Aguinaldo Jaime, using his authority as head of the Angolan Central Bank, attempted without success, on two occasions in 2002, to transfer \$50 million in government funds to a private account in the United States.

(9) **Correspondent Accounts.** Banco Africano de Investimentos, a \$7 billion private Angolan bank that caters to PEPs, is not treated as a PEP client subject to enhanced monitoring by its U.S. correspondent bank.

(10) **Vendor PEP Lists.** Some vendors relied on by U.S. financial institutions to screen clients for PEPs used incomplete and unreliable PEP lists.

See on this same issue and report the following reaction of
Human Rights Watch:

100204, USA to adopt anti-corruption Aid proposals

<http://www.hrw.org/en/news/2010/02/04/us-adopt-corruption-proposals>

US: Adopt Anti-Corruption Proposals

Senators' Investigation Follows the Hidden Money Trail from Foreign Kleptocrats

February 4, 2010

It's time for the US to stop allowing corrupt officials to use their countries as personal ATMs and the US as a shopping mall. Kleptocrats need to know that the US is not open for business.

Arvind Ganesan, director of business and human rights at Human Rights Watch.

(Washington, DC) - The Obama administration should adopt recommendations in a report issued today [4 February. 2010] to help stop the flow of stolen money into the United States, Human Rights Watch said. The report is the result of a detailed investigation by Senators Carl Levin and Tom Coburn into corruption in abusive, resource-rich states and the “enablers” that allow officials to funnel money out of their impoverished countries to spend lavishly abroad.

The 330-page report *“Keeping Foreign Corruption out of the United States: Four Case Histories,”* details how officials in Angola, Equatorial Guinea, Gabon, and Nigeria funneled millions of dollars into the US with the help of a network of facilitators, including lawyers, realtors, banks, and other individuals and institutions. The Senate investigation exposed the infrastructure that allows corrupt officials to steal their countries’ wealth, denying their populations vital resources that should be used to secure basic rights, Human Rights Watch said.

“It’s time for the US to stop allowing corrupt officials to use their countries as personal ATMs and the US as a shopping mall,” said Arvind Ganesan, business and human rights director at Human Rights Watch. “Kleptocrats need to know that the US is not open for business.”

The report was released in conjunction with a hearing today by the Permanent Subcommittee on Investigations of the US Senate, which Levin, a Michigan Democrat, chairs and of which Coburn, an Oklahoma Republican, is the ranking minority member. Many of the subcommittee’s findings reinforce investigations into corruption and mismanagement that Human Rights Watch has carried out in some of these countries. The Senate report made several key recommendations to help curb kleptocracy and the use of US financial institutions to facilitate it, including new laws, better use of existing statutory authority, and more demanding professional standards.

In one case the Senate report detailed how Dr. Agualdo Jaime, Angola’s former central bank governor and deputy prime minister, attempted to transfer \$50 million from the central bank to private accounts in the US on two occasions in 2002. According to the Senate report, “[t]he transfer of the Angolan funds was characterized at the time as an investment to produce humanitarian aid for the people of Angola, but other documents indicate the transfer was part of a fraudulent ‘prime bank’ investment scheme that likely would have resulted in the funds being lost or stolen.” Those efforts failed because US banks found the transactions suspicious and returned the funds.

In another case, the Senate investigation highlighted how Teodoro Nguema Obiang, son of the president of Equatorial Guinea, was able to spend almost \$70 million for luxury houses and a luxury jet in the US with the help of lawyers, real estate agents, and escrow agents. The report says that lawyers helped circumvent anti-money-laundering bank controls. An escrow agent facilitated the purchase of a \$38.5 million jet even after

another agent refused due to money laundering concerns. The Senate report noted that the real estate agents did not do any due diligence to determine how Obiang obtained the funds for a multi-million-dollar purchase because they had no legal obligation to do so.

The investigation also revealed how Atiku Abubakar, Nigerian vice president at the time, and his wife managed to bring \$40 million in “suspect funds” into the US between 2000 and 2008. It also uncovered the fact that American University, in Washington, DC, accepted \$14 million from offshore corporations in return for consulting with Abubakar on his plans to establish a university in Nigeria. American University accepted the payments even though it did not know the identity of the corporations or the source of their funds. University officials told the subcommittee that they believed all of the funds came from the vice president’s personal wealth. Under current US law the university had no obligation to inquire further.

The Senate subcommittee has the power to subpoena and compel evidence for its reporting. Several of the individuals identified in the report were called under oath in front of the subcommittee today, although some invoked their fifth amendment right against self-incrimination and refused to testify.

However the evidence gathered during the investigation reveals much about the respective roles and the compensation received by several individuals, Human Rights Watch said. For instance the report alleges that Michael Berger, a California lawyer who worked for Teodoro Nguema Obiang, helped his client circumvent US anti-money laundering controls. The report documents that along with other compensation for his services, Berger sometimes enjoyed being a member of Obiang’s entourage. In emails obtained by the subcommittee he thanked the president’s son for ensuring that he received “VIP treatment” at exclusive parties, including one at the Playboy mansion, where he claimed to have met “many beautiful women.”

Human Rights Watch research supports many of the findings of the Senate report. Human Rights Watch detailed massive mismanagement and corruption by the Angolan government in a January 2004 report that detailed how the Angolan government could not account for approximately \$4.2 billion between 1997 and 2002, a sum almost equal to all of the social and humanitarian spending in the country during the same time. For that report, Human Rights Watch extensively interviewed Dr. Jaime in his capacities as central bank governor and deputy prime minister.

Human Rights Watch has also documented widespread patterns of government corruption and mismanagement in Nigeria as well as the links between these problems and pervasive political violence and the collapse of government services in the country.

Most recently, in July 2009, Human Rights Watch released a report detailing widespread human rights abuses and corruption in Equatorial Guinea. For example, Human Rights

Watch documented that between 2004 and 2006, the president's son spent almost \$44 million on luxury houses and cars in the US and South Africa, while the entire education budget of the country was \$43 million in 2005.

The government should adopt the recommendations in the Senate report, Human Rights Watch said.

"For too long abusive and corrupt leaders have benefitted from secrecy and lax regulation," Ganesan said. "The reforms proposed in the Senate report would make things much more transparent and make corrupt officials and their collaborators more accountable."
