

1999

On the Threshold of the Adoption of Global Antibribery Legislation

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Barbara C. George, Kathleen A. Lacey, and Jutta Birmele, On the Threshold of the Adoption of Global Antibribery Legislation, 32 *Vanderbilt Law Review* 1 (2021)

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VANDERBILT JOURNAL OF TRANSNATIONAL LAW

VOLUME 32

JANUARY 1999

NUMBER 1

On the Threshold of the Adoption of Global Antibribery Legislation: A Critical Analysis of Current Domestic and International Efforts Toward the Reduction of Business Corruption

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TABLE OF CONTENTS

I.	INTRODUCTION	3
II.	DOMESTIC EFFORTS TO ERADICATE BRIBERY	4
A.	<i>Domestic Legislative History</i>	4
1.	Foreign Corrupt Practices Act, 1977	6
2.	Passage of Amendments to the FCPA in the Omnibus Trade and Competitive- ness Act, 1988	8
3.	Passage of Amendments to the FCPA in the International Antibribery and Fair Competition Act of 1998	11
B.	<i>Indicators of Change in Domestic Attitudes and Policies Toward Business Corruption</i>	12
1.	Widening Scope of SEC Jurisdiction	

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	Over Foreign Companies in FCPA Violations	14
2.	Increased Prosecution of Top Executives Directly and Indirectly Involved in FCPA Violations	15
3.	Harsher Penalties Available to DOJ and the SEC under the 1988 Trade Act and the 1998 International Antibribery Act	16
III.	FACTORS CAUSING CHANGES IN INTERNATIONAL ATTITUDES AND POLICIES TOWARD BUSINESS CORRUPTION	17
A.	<i>The U.S. Foreign Corrupt Practices Act as a Model</i>	18
1.	International and Domestic Criticisms of the FCPA.....	19
2.	Effectiveness of the FCPA.....	21
B.	<i>End of the Cold War</i>	22
C.	<i>Further Integration of Europe</i>	23
D.	<i>International Business Mergers</i>	24
E.	<i>Borderless Global Market</i>	25
1.	Technological Advances.....	26
2.	Deregulation	26
F.	<i>Recognition of the Economic Costs of Corruption</i>	27
IV.	INTERNATIONAL COOPERATIVE EFFORTS AND THEIR FUTURE DIRECTION	28
A.	<i>Financial Standard Setting Organizations and Financial Institutions</i>	29
1.	The International Accounting Standards Committee: The SEC Role in Formulating International Accounting Standards.....	29
2.	International Organization of Securities Commissions	31
3.	International Monetary Fund.....	32
4.	The World Bank.....	33
B.	<i>Multinational Organizations and Multilateral Agreements</i>	34
1.	Organization for Economic Cooperation and Development	34
2.	Organization of American States: Inter-American Convention Against Corruption.....	38
3.	United Nations.....	39
4.	European Union.....	39
5.	World Trade Organization.....	40
C.	<i>Non-Governmental Organizations Dedicated to</i>	

	<i>Eradicating Business Corruption</i>	41
	1. Transparency International	41
	2. Other Non-Governmental Organizations	43
D.	<i>Other Efforts</i>	45
V.	CONCLUSION.....	46

I. INTRODUCTION

As never before, current socio-political, economic, and technological changes are having an impact on domestic and international attitudes toward business corruption. This has precipitated a recent dramatic increase in anti-corruption activities within the United States and by international government and non-governmental organizations. A relevant question to consider is what factors have caused the current change in attitude. An answer to this question is found through an evaluation of a multiplicity of significant changes in the environmental framework for international business.

As the first antibribery legislation of its kind worldwide, it is necessary to start the examination of environmental changes with the 1977 Foreign Corrupt Practices Act (FCPA or the Act),¹ which, in response to criticisms from the U.S. business community,² was amended in 1988.³ Few legal actions were ever brought under the provisions of the 1977 FCPA by either the Department of Justice (DOJ) or the Securities and Exchange Commission (SEC) from the initial passage of the Act to the time of its 1988 amendments.⁴ Until recently no other country was willing to consider following the lead of the United States in adopting prohibitions against bribery. In fact, some countries continued

1. Foreign Corrupt Practices Act of 1977, Pub. L. No. 95-213, 91 Stat. 1494 (codified as 15 U.S.C. §§ 78a, 78m, 78dd-1, 78dd-2, 78ff) (amending scattered sections of the Securities Exchange Act of 1934, 15 U.S.C. §§ 77a-78kk (1976)).

2. See UNITED STATES GENERAL ACCOUNTING OFFICE, *IMPACT OF FOREIGN CORRUPT PRACTICES ACT ON U.S. BUSINESS: COMPTROLLER GENERAL'S REPORT TO THE CONGRESS* 6 (Mar. 4, 1981) (noting that many corporate officials believe the costs of complying exceed the benefits, and that complying caused U.S. firms to lose business) [hereinafter GAO REPORT].

3. The FCPA was amended in 1988 by the Omnibus Trade and Competitiveness Act, Pub. L. No. 100-418, 102 Stat. 1107, 1415-25 (1988) [hereinafter Trade Act].

4. See Dominic Bencivenga, *Anti-bribery Campaign: SEC Cracks Down on Illegal Payments Abroad*, N.Y.L.J., Apr. 10, 1997, at 5-6.

their practice of allowing the tax deductibility of bribery payments.⁵

Only since 1989 has the interplay of various dynamics led to a more negative global perspective regarding corrupt business practices and a marked increase in anti-corruption activity domestically and by international governmental and non-governmental organizations. Such dynamics include: the model provided by the FCPA since its adoption in 1977 and the more aggressive enforcement of it in the last decade; the transition of many former socialist countries to market economies at the end of the Cold War; the increased integration of Europe; the proliferation of international mergers; the advent of a borderless global market enhanced by technological advances; and a developing worldwide awareness of the economic costs of corruption.⁶

This Article will 1) briefly discuss domestic U.S. anti-corruption efforts through a review of the substantive content of the 1977 FCPA and its 1988 amendments; 2) evaluate indicators of changes in domestic attitudes and policies toward business corruption as evidenced by the breadth and scope of recent increased enforcement activities of DOJ and the SEC; 3) analyze the factors causing recent changes in international attitudes and policies toward business corruption; and 4) examine the resulting international efforts to combat business corruption by governmental and non-governmental organizations, financial standard setting organizations, and financial institutions.

II. DOMESTIC EFFORTS TO ERADICATE BRIBERY

A. Domestic Legislative History

It is important to examine the legislative history of the FCPA in order to fully understand the current domestic efforts—since the 1988 amendments—to eradicate bribery, as well as to analyze the statute's impact on international anti-corruption efforts.

5. See *OECD Initiatives to Fight Corruption*, Note by Secretary General to the OECD Council at Ministerial Level (May 1997).

6. See Peter Eigen, *Combating Corruption Around the World*, J. OF DEMOCRACY, VII(1), Jan. 1996, 158-68; Steven R. Salbu, *Bribery in the Global Market: A Critical Analysis of the Foreign Corrupt Practices Act*, 54 WASH. & LEE L. REV. 229 (1997); Evelyn Iritani & Stuart Silverstein, *The World Makes Business Go Round*, L.A. TIMES, May 10, 1998, at A1, A15; Josef Joffe, *The Euro: A Huge, Dangerous Gamble for Europe*, INT'L HERALD TRIB., May 20, 1998, at 7; Lucinda A. Low & Kathryn Cameron Atkinson, *Led by the U.S., The World Wages War on Corruption*, NAT'L L. J., Mar. 3, 1997, at B9.

U.S. attention first focused on business corruption with the discovery of massive bribery by the U.S. business community during the "Watergate" scandal in the early 1970s. During the investigation of illegal campaign contributions made to Richard Nixon's campaign for a second presidential term, it was discovered that at least twenty-five of America's largest companies were making illegal contributions, including American Airlines, Ashland Oil, Exxon, General Motors, Gulf Oil, International Telephone and Telegraph, Lockheed Aircraft, and United Brands.⁷

In addition to the discovery of illegal campaign contributions, the U.S. government⁸ discovered that the practice of offering kickbacks and making cash gifts in exchange for business was simply part of the *modus operandi*.⁹ When the Watergate scandal occurred, the United States had no laws prohibiting multinational companies from bribing foreign officials to obtain favorable consideration on contracts and other business transactions.

It is clear that after Watergate the American public needed some demonstration by Congress and other political leaders that they recognized that changes in government attitudes towards ethics and morality were imperative. The United States directed its efforts to eliminate corrupt business practices towards the adoption of a statutory prohibition against corporate bribery of foreign government officials for the purpose of obtaining or retaining business.¹⁰ In 1977, the Congress took strong legislative action by passing the Foreign Corrupt Practices Act (FCPA), which includes antibribery provisions and accounting provisions.¹¹ This statute was the first legislation worldwide to target the problem of business corruption by criminalizing the giving of bribes by business entities, in contrast to the approach of criminalizing the taking of bribes by government officials.¹²

7. See GEORGE C. GREANIAS & DUANE WINDSOR, *THE FOREIGN CORRUPT PRACTICES ACT: ANATOMY OF A STATUTE* 17-19, 22 (1982).

8. See generally REPORT OF THE SEC. AND EXCH. COMM'N SUBMITTED TO THE SENATE COMM. ON BANKING, HOUS., AND URBAN AFFAIRS, 94TH CONG., 2D SESS., QUESTIONABLE AND ILLEGAL CORPORATE PAYMENTS AND PRACTICES 54-55 (Comm. Print 1976) (finding that the problem of questionable and illegal payments is widespread, rather than an aberration limited to a few individuals).

9. See CHRISTOPHER ENGHOLM, *WHEN BUSINESS EAST MEETS BUSINESS WEST* 238 (1991) (describing pervasive system of kickbacks in Asian countries).

10. See 15 U.S.C. §§ 78dd-1, 78dd-2 (1997) (dealing with "issuers" and "domestic concerns" respectively).

11. See Foreign Corrupt Practices Act of 1977, *supra* note 1.

12. See *id.*

1. Foreign Corrupt Practices Act, 1977

The Act is divided into two sections: the first section specifically prohibits bribery of foreign officials,¹³ and the second section includes accounting provisions intended to deter and detect such illicit payments.¹⁴ The latter accounting provisions regulate corporate financial record keeping and internal control systems.¹⁵

To facilitate an understanding of the FCPA and its impact on governmental ability to curb business corruption, the substantive content of the statute and its amendments are reviewed briefly in the following sections.

a. Antibribery Sections

The antibribery provisions include: 1) A prohibition against the direct and indirect bribery of foreign officials by issuers and reporting firms under the jurisdiction of the Securities and Exchange Commission (SEC),¹⁶ and 2) a prohibition of direct and indirect bribery of foreign officials by domestic concerns, including any U.S. citizen, national, or resident, and any business entity organized under U.S. law.¹⁷

Through the use of the term "domestic concerns" both SEC registrants and non-registrants are covered by the Act.¹⁸ Prosecutors were given an advantage in carrying the burden of proof against a defendant for the intent element that is required for prohibited acts under the FCPA. The Act prohibited bribes to "any person, while knowing or *having reason to know* that all or a portion of such money or thing of value will be offered, given or promised, directly or indirectly, to any foreign official, to any foreign political party or official thereof, or to any candidate for foreign political office."¹⁹ "Facilitating" or so-called "grease" payments made to "foreign officials"²⁰ were exempt.²¹

13. See 15 U.S.C. §§ 78dd-1, 78dd-2.

14. See 15 U.S.C. § 78m(b)(2) (1997).

15. See *id.*

16. See 15 U.S.C. § 78dd-1(a) (1997).

17. See 15 U.S.C. § 78dd-2(a), (h) (1997).

18. See 15 U.S.C. § 78dd-2(h)(1) (1997).

19. See Foreign Corrupt Practices Act of 1977, *supra* note 1 (emphasis added).

20. A "foreign official" was defined by the Act as "any officer or employee of a foreign government or any department, agency or instrumentality thereof, or any person acting in an official capacity for or on behalf of any such government or department, agency of instrumentality." 15 U.S.C. § 78dd-1(f)(1). The term did not include employees of a foreign government whose duties are essentially ministerial or clerical.

b. Accounting Sections

The accounting provisions of the FCPA were passed as part of a series of amendments to the Securities Exchange Act of 1934 (1934 Act).²² Unlike the antibribery sections of the Act, the accounting provisions in section 102 of the FCPA apply only to “issuers” registered under the Securities Exchange Act of 1934.²³ Therefore, Section 102 applies to all corporations covered by the 1934 Act, and thus covers companies that are engaged solely in domestic businesses, as well as those engaged in international business. As a result, an American company does not have to be either foreign or corrupt to come within the FCPA’s jurisdiction.²⁴

The accounting provisions of the Act represent an attempt by Congress to address the overall problem of corporate concealment of illicit payments; such payments are often disguised through the use of improper accounting procedures by companies subject to SEC jurisdiction. The accounting provisions follow through with the ideas that first appeared in the SEC Report submitted to Congress in 1976 prior to the adoption of the FCPA. The Report noted that although deterrence of corporate bribery is an important goal, the most important goal of the FCPA is to establish a system of controls that will ensure general corporate accountability.²⁵

The accounting provisions of the Act are (1) section 13(b)(2)(A), which establishes record-keeping requirements by mandating that all corporations “make and keep books, records, and accounts, which, in reasonable detail, accurately and fairly reflect the transactions and dispositions of the assets of the issuer,”²⁶ and (2) section 13(b)(2)(B), which requires corporations to “devise and maintain a system of internal accounting controls sufficient to provide reasonable assurances” that transactions and assets are properly maintained.²⁷

The accounting provisions of the FCPA were considered by some to be the broadest application of federal law to corporate management and accountability since the 1934 Act.²⁸

21. See 15 U.S.C. § 78dd-2(2) (1977). Congress intended this exemption to cover nominal payments used to expedite a business transaction that were made to persons whose duties did not include policy-making functions.

22. See 15 U.S.C. § 78m(b)(2) (1997).

23. See *id.*

24. See LAMBERT H. SPRONK, *THE FINANCIAL EXECUTIVE’S HANDBOOK FOR MANAGING MULTINATIONAL CORPORATIONS* 264 (1980).

25. See GAO REPORT, *supra* note 2, at 70, 71.

26. 15 U.S.C. § 78m(b)(2)(A) (1997).

27. *Id.* at § 78m(b)(2)(B).

28. In the 1934 Act, the main objective of Congress was to prohibit misrepresentations and other wrongful conduct by requiring every issuer of

2. Passage of Amendments to the FCPA in the Omnibus Trade and Competitiveness Act, 1988

a. Amendments to the Antibribery Provisions

(1) Change in the "Scienter" Requirement

The language of the original FCPA created uncertainty because the requisite mens rea for a violation was established when the defendant knew or had reason to know that a corrupt act had taken place. As a result, Congress eliminated the phrase "having reason to know," in the 1988 amendments,²⁹ leaving a "knowing"³⁰ standard that incorporates only prohibited acts that involve "actual knowledge" of intended results.³¹ The requisite "state of mind" for these categories of offenses is satisfied when there is a "conscious purpose to avoid learning the truth."³² The effect of the amended Act is to remove the possibility that there might be a prosecution based on more ambiguous situations.

(2) Clarification of "Facilitating Payments"

As previously discussed, an exception existed under the original Act for "facilitating payments" made to foreign officials whose duties were "essentially ministerial or clerical."³³ This distinction was not easily made in countries where difficulties were encountered with language and cultural differences.³⁴

securities to file periodic reports disclosing financial information in order to facilitate informed decisions by investors. The prevailing principle underlying both the 1933 and 1934 Securities Acts was the emphasis on open, fair, and orderly markets.

29. The changes met with strong opposition from Senator Proxmire (D-Wis.), who was one of the authors of the original Act.

30. A separate provision in the Act defines "knowledge." The "knowledge" requirement is an awareness of a high probability of the existence of the circumstance. H.R. REP. NO. 100-576, at 920, reprinted in 1988 U.S.C.A.N. 1952, 1953 [hereinafter CONFERENCE REPORT].

The new definitions set forth in the amendments are derived from the Model Penal Code and have been interpreted in the courts under several criminal statutes. See John E. Impert, *A Program for Compliance with the Foreign Corrupt Practices Act and Foreign Law Restrictions on the Use of Sales Agents*, 24 INT'L LAW., Winter 1990, at 1009.

31. See CONFERENCE REPORT, *supra* note 30. This Conference Report was adopted by the conferees as the legislative history of the Amendments. However, in the Conference Report, Congress discussed that this standard encompasses the concepts of willful blindness and conscious disregard or deliberate ignorance of known circumstances that should reasonably alert one to the high probability of violations of the Act. See *id.* at 919-21.

32. See *id.* at 919.

33. 15 U.S.C. § 78dd-2(2) (1977). /

34. See Impert, *supra* note 30, at 1015.

In the amended Act, Congress sought to set forth exactly what constituted exempt acts under this provision. The Conference Report explained that it applied to payments for "routine governmental action," defined as "ordinarily and commonly performed" actions which do not include governmental approvals involving an exercise of discretion by a governmental official where the actions are the functional equivalent of "obtaining or retaining business for or with, or directing business to, any person."³⁵

(3) Addition of Affirmative Defenses

Congress considered several other exceptions, but in the end chose to categorize them as the following affirmative defenses: 1) Lawful under the written laws and regulations of the foreign official's country,³⁶ 2) Reasonable and bona fide expenditures.³⁷

(4) Penalties³⁸

As a balance to the more liberal provisions of the amended Act, Congress drastically increased the penalties for violations of the bribery section of the amended Act. As an example, the civil liability was increased from a maximum of five thousand dollars to a maximum of ten thousand dollars.³⁹ As provided in the original Act, corporations are precluded from indemnifying their employees against liability.⁴⁰

b. Accounting Provisions

(1) Deletion of the "Reason To Know" Standard

The 1988 amendments also deleted the "reason to know" language from the accounting provisions.⁴¹ The amended provision provides that there will be no liability for violation of the accounting provisions unless a corporation "shall knowingly circumvent or knowingly fail to implement a system of internal

35. CONFERENCE REPORT, *supra* note 30, at 921.

36. See 15 U.S.C. § 78dd-1(c)(1) (1988).

37. "If a payment or gift is corruptly made in return for an official act or omission, then it cannot be a bona fide, good-faith payment." CONFERENCE REPORT, *supra* note 30, at 922.

38. See 15 U.S.C. § 78dd-2(g) (1998).

39. See 15 U.S.C. §§ 78ff(c)(1)(B), 78dd-2(g)(1)(B).

40. See 15 U.S.C. §§ 78ff(c)(3), 78dd-2(g)(3).

41. See 15 U.S.C. § 78m(b)(5) (1997).

accounting controls or knowingly falsify any book, record, or account."⁴²

(2) The "Good Faith Effort" Requirement for U.S. Companies with a Minority Interest in a Foreign Subsidiary

A vital addition to the FCPA is the 1988 amendment that clarifies a corporation's responsibility for the financial record keeping and internal accounting controls of its subsidiaries. The amendment applies to all issuers of SEC registered securities with respect to the accounting practices of either a foreign or domestic subsidiary.⁴³ This particular provision distinguishes corporate FCPA responsibility of a parent company for its subsidiaries based on the percentage of ownership in the subsidiary.⁴⁴

(3) Clarification of the "Reasonable Detail" and "Reasonable Assurance" Standards on Record Keeping and Internal Control Compliance

The 1988 amendment attempted to clarify the meaning of the Act's requirements that financial records be kept in reasonable detail and that internal controls be maintained to provide reasonable assurances as to accountability for assets so that compliance could be more easily achieved.

The clarification consisted of defining the terms "reasonable detail" and "reasonable assurances" to mean that level of detail and level of assurance that "would satisfy prudent officials in the conduct of their own affairs."⁴⁵

42. *Id.* The Conference Report states that this provision was intended "to ensure that criminal penalties would be imposed where acts of commission or omission in keeping books or records or administering accounting controls" have occurred. CONFERENCE REPORT, *supra* note 30, at 916 (emphasis added). Deletion of the "reason to know" standard simply codified an SEC enforcement policy which had been implemented under the provisions of the 1977 Act. To give greater assurance to the business community that the SEC would only pursue serious misconduct, the Enforcement Policy provided that "inadvertent recordkeeping mistakes" and falsifications of which management "was not aware and reasonably should not have known" will not result in SEC enforcement proceedings. Foreign Corrupt Practices Act of 1977, Exchange Act Release No. 17,500, 46 Fed. Reg. 11,544, 1981 SEC LEXIS 2167, at *5 (Jan. 29, 1981) [hereinafter Enforcement Policy].

43. See 15 U.S.C. § 78m(b)(6) (1997).

44. If a corporation "holds 50 per centum or less of the voting power with respect to a domestic or foreign firm," the corporation is only required to "proceed in good faith to use its influence, to the extent reasonable under the issuer's circumstances," to cause the subsidiary to comply with the record keeping and internal control requirements of the Act. *Id.* (emphasis added). A corporation covered by the statute that owns more than fifty percent of the subsidiary would have to require that the subsidiary comply fully with the original 1977 financial reporting and internal control provisions.

45. 15 U.S.C. § 78m (b)(7).

3. Passage of Amendments to the FCPA in the International Antibribery and Fair Competition Act of 1998

The 1998 Trade Act expressed the sense of Congress that the U.S. President should pursue the negotiation of an international agreement among the members of the Organization for Economic Cooperation and Development (OECD) in an attempt to promote international cooperation in preventing bribery.⁴⁶ President Clinton delegated his functions under the Trade Act to the Secretary of State. Ultimately, the United States was successful in providing some impetus to the efforts of the OECD to obtain a multilateral antibribery agreement which resulted in the 1997 OECD Convention on Combatting Bribery of Foreign Public Officials in International Business Transactions (discussed in a later section).⁴⁷ The Convention was signed by twenty-nine OECD Members on December 17, 1997 and became effective February 15, 1999.⁴⁸

In October 1998, the U.S. Congress further amended the FCPA to conform to the OECD Convention in a statute known as the International Antibribery and Fair Competition Act of 1998 (International Antibribery Act). The relevant sections that were changed in the 1998 amendments are as follows:

a. Expanded Definition of 'Bribery'

In order to clarify the meaning of bribery, the amendment states that bribery covers illicit payments to obtain business contracts and adds a prohibition on payments to secure "any improper advantage."⁴⁹

b. Expanded Definition of 'Foreign Public Official'

The definition of 'foreign public official' has been amended to include officials of "public international organizations."⁵⁰ Among others, this definition is intended to include officials of

46. 15 U.S.C. § 78dd-1 (1988).

47. Organization for Economic Cooperation and Development (OECD), CONVENTION ON COMBATTING BRIBERY OF FOREIGN PUBLIC OFFICIALS IN INTERNATIONAL BUSINESS TRANSACTIONS, Dec. 17, 1997, OECD/IME/BR(97) 16 FINAL (visited Sept. 14, 1998) <<http://www.oecd.org/daf/cmisis/bribery/20nov23.htm>> [hereinafter OECD Convention]. See STUART DEMING, FOREIGN CORRUPT PRACTICES, 32 INT'L LAWYER (2) 463 (1988). See *supra* Part IV.B.1.

48. OECD Convention <<http://www.oecd.org/daf/cmisis/bribery/htm>>.

49. 15 U.S.C. § 78dd-1(a)(2)(iii) (1998); 15 U.S.C. § 78dd-1(a)(3)(iii) (1998).

50. 15 U.S.C. § 78dd-1(1)(1) (1998).

organizations such as the World Bank and the International Monetary Fund.⁵¹

c. Added Alternative Jurisdiction Provision

The alternative jurisdiction provision eliminates any U.S. territorial nexus requirement for FCPA applicability to U.S. domestic concerns and issuers. The language of the amendment now prohibits corrupt acts based on nationals being held responsible on a worldwide basis (the nationality principle) "irrespective of whether such issuer or such officer, director, employee, agent, or stockholder makes use of the mails or any means or instrumentality of interstate commerce in furtherance of such offer, gift, payment, promise, or authorization."⁵²

d. Added 'United States person' Provision (in implementation of the OECD Convention)

The OECD Convention⁵³ prohibited payments by "any person" acting in whole or part within the state's territory, not just issuers and domestic concerns like the 1988 FCPA.⁵⁴

e. Added Penalties for those Prohibited Foreign Trade Practices by Persons Other Than Issuers or Domestic Concerns

The 1998 amendments added a category (discussed in "d" above) of persons "other than issuers or domestic concerns."⁵⁵ When these persons engage in prohibited foreign trade practices, the penalties imposed on them are the same as the penalties imposed on issuers and domestic concerns.

B. Indicators of Change in Domestic Attitudes and Policies Toward Business Corruption

In the years subsequent to the 1988 amendments there has been an increase in the actual number of cases filed by the SEC and a widening of the scope of jurisdiction under the FCPA asserted by the SEC.⁵⁶ In the pursuit of alleged offenders, DOJ

51. Lucinda Low & Michael Burton, *Corruption is Target of Multilateral Efforts*, NAT. L.J., May 4, 1998, at C5.

52. 15 U.S.C. § 78dd-1(c)(1)(g) (1998).

53. Low & Burton, *supra* note 51.

54. *See supra* note 49.

55. 15 U.S.C. § 78dd-2(e).

56. *See Carolyn Hotchkiss, The Sleeping Dog Stirs: New Signs of Life in Efforts to End Corruption in International Business*, 17(1) J. OF PUB. POLY & MARKETING 108 (1998).

and the SEC have had the advantage of being able to threaten harsher penalties legislated in the 1988 amendments.⁵⁷

Additionally, more recent events and factors may indicate a continued increase in enforcement of the FCPA.⁵⁸ Commentators have linked this increase to the greater attention being given to white collar crime,⁵⁹ to the rapid growth of global competition,⁶⁰ and to the policy changes within the current presidential administration and U.S. government.⁶¹

The SEC recently reinforced the message that it is seriously prosecuting FCPA violations when Paul Gerlach, the Associate Director of Enforcement for the SEC, noted that "[w]hile we have not brought a lot of cases in the recent past, there will be more in the future."⁶²

The SEC has markedly increased the prosecution of violations of the accounting provisions in recent years. Significant cases that involve accounting provision violations, *SEC v. Montedison* (November 1996),⁶³ *In the Matter of David Gore* (February 1997),⁶⁴ and *SEC v. Triton Energy Corporation* (February 1997),⁶⁵ are reviewed in the next sections. The reasons for choosing the accounting provisions as the bases for civil enforcement were expressed by Gregory J. Wallace, a partner at Kaye, Scholer, Fierman, Hays & Handler:

There's a tendency to think of the FCPA as a criminal enforcement tool and to overlook the fact that the SEC can bring a[n] [accounting provision] charge There's a much lower burden of proof in doing so, and it gives the agency more flexibility. They don't have to prove bribery directly and don't have to prove the charge beyond a reasonable doubt.⁶⁶

There has also been aggressive activity in investigating and prosecuting violations of the antibribery provisions. Recently, Lockheed found itself in difficulties with the U.S. government for violations of the FCPA,⁶⁷ resulting in the largest fine in FCPA

57. The Department of Justice prosecutes criminal violations of the FCPA.

58. See Hotchkiss, *supra* note 56.

59. See James K. Lehman, *Foreign Corrupt Practices Act*, 7 S.C. LAW., Mar.-Apr. 1996, at 38, 39.

60. See Gabriel Escobar, *IBM is in Trouble in Argentina: Indictment Says Fraud Won Major Contract*, INT'L HERALD TRIB., Apr. 4, 1996.

61. See *id.*

62. Bencivenga, *supra* note 4, at 5.

63. C.A. No. 1:96CV02631 (D.D.C. 1996); Exchange Act Release No. 15,164.

64. Admin. Proceeding File No. 3-9262 (Feb. 27, 1997); Exchange Act Release No. 38,343.

65. C.A. No. 1: 97CV00401 (D.D.C. 1997); Litigation Release No. 15,396.

66. Bencivenga, *supra* note 4, at 5.

67. See *United States v. Lockheed*, 1-CR-226-01 (N.D. Ga. plea agreement filed Jan. 30, 1995).

history⁶⁸ and the first prison term for a company official.⁶⁹ Lockheed was fined \$28.4 million for violating the statute by paying an Egyptian official and her husband illegal commissions in order to obtain a contract with Egypt for the sale of C-130 planes.⁷⁰ According to the Criminal Division of the U.S. Attorney's Office, the fine was based on twice the profit Lockheed received on the sale.⁷¹ In addition, two high-level Lockheed officials in the Middle East sales group were indicted, with both eventually pleading guilty.⁷²

1. Widening Scope of SEC Jurisdiction Over Foreign Companies in FCPA Violations

*SEC v. Montedison*⁷³ is a very significant case that demonstrates the widening scope of SEC jurisdiction over FCPA violations. The SEC asserted jurisdiction over Montedison, a foreign company headquartered in Italy, in regard to bribes paid abroad.⁷⁴ The SEC claimed jurisdiction on the basis that Montedison traded its securities (ADR's) on the U.S. stock exchange.⁷⁵ This represents a clear shift in SEC policy from its former focus on domestic companies.⁷⁶

The potential jurisdictional implications of the *Montedison* case are immense when you consider the dramatic increase since 1993 of cross-border capital flows in which the securities of foreign companies are traded on other countries' securities exchanges.

If the SEC's claim of jurisdiction over foreign companies is successful, it will vastly expand the range of SEC authority. It is highly probable that the SEC will continue to assert jurisdiction over the approximately one thousand foreign companies that currently trade securities on U.S. exchanges, and the SEC will have increasing opportunity to claim such jurisdiction as the number of such companies continues to expand.⁷⁷

68. *See id.*

69. *See U.S. v. Nassar*, 1:94-CR-226-MHS (N.D. Ga. plea entered July 31, 1995); *see Low & Atkinson, supra* note 6, at B9, B14.

70. *See id.*

71. *See id.*

72. *See id.*

73. C.A. No. 1:96CV02631 (D.D.C. 1996); Exchange Act Release No. 15,164.

74. *See id.*

75. *See id.*

76. *See Bencivenga, supra* note 4, at 5.

77. *See* DIVISION OF CORP. FIN., SEC., CURRENT ISSUES AND RULEMAKING PROJECTS (1997).

A critical component of SEC success in filings against foreign companies, such as *Montedison*, is the SEC's ability to subpoena documents and secure employee testimony outside the United States and territory within the jurisdiction of the U.S. courts. The SEC has been successful in recent years in negotiating cooperation agreements, or memorandums of understanding, with approximately thirty foreign governments in order to establish official channels of cooperation to facilitate obtaining documents from foreign companies.⁷⁸ The SEC believes that these memorandums of understanding will result in cooperation from foreign regulators and law enforcement when the SEC issues subpoenas related to ongoing investigations of foreign corporations related to various securities law violations, including the FCPA. Paul Gerlach, the Associate Director of Enforcement for the SEC, notes that "[t]here is no question that it's harder to investigate and will take longer. But, it's not impossible. It can be done."⁷⁹

It is obviously imperative, based on the *Montedison* case, that top management, accountants, and attorneys of foreign companies that are currently trading securities on U.S. exchanges or that are anticipating doing so must immediately establish FCPA compliance procedures. These procedures, as with all other corporate financial reporting to the SEC, should be based on the United States Generally Accepted Accounting Principles.⁸⁰

2. Increased Prosecution of Top Executives Directly and Indirectly Involved in FCPA Violations

The related cases of *In the Matter of David Gore*⁸¹ and *SEC v. Triton Energy Corp.*⁸² illustrate the serious ramifications that can exist for top levels of management that have access to information regarding possible FCPA violations committed by their employees and fail to investigate and/or rectify the potential violation.

The cases concerned a number of alleged violations of both the FCPA bribery and accounting provisions by Triton Energy Corporation in Indonesia, its officers and its employees.⁸³ In each instance an improper payment was made to secure concessions from various government agencies in Indonesia, and false

78. See Bencivenga, *supra* note 4, at 6.

79. *Id.*

80. SEC Accounting Guide, Codification of Financial Reporting Policies, Accounting Series Release No. 150 (Dec. 20, 1973).

81. Admin. Proceeding File No. 3-9262 (Feb. 27, 1997); Exchange Act Release No. 38,343.

82. C.A. No. 1: 97CV00401, (D.D.C. 1997) Litigation Release No. 15,396.

83. See Admin. Proceeding File No. 3-9262; C.A. No. 1:97CV000401.

documentation was prepared to shield the nature of the payment. The SEC found that defendants Triton and Murphy violated Section 13(b)(2)(A) by creating and recording false entries in Triton's books.⁸⁴

Interestingly, senior management Gore and Puetz were also found in violation of the same section of the FCPA for receiving information that Triton was engaged in potentially unlawful conduct and for taking no action to investigate or halt such conduct. Evidence existed of an internal auditor's memorandum advising management of the illegal payment.⁸⁵

3. Harsher Penalties Available to DOJ and the SEC under the 1988 Trade Act and the 1998 International Antibribery Act

As an indicator of change in domestic attitudes towards business corruption harsher penalties are available to DOJ and the SEC under the 1988 Trade Act and the 1998 International Antibribery Act. The FCPA divides enforcement authority between DOJ and the SEC. The SEC has the authority for the investigation and civil prosecution of both the accounting and the antibribery provisions of the FCPA with regard to issuers.⁸⁶ The DOJ is the agency responsible for criminal enforcement of the antibribery provisions⁸⁷ (often based on evidence gathered by an SEC investigation) and for civil enforcement against domestic concerns.⁸⁸

Penalties have been added to the 1998 International Antibribery Act to include the category of persons other than issuers or domestic concerns that engage in prohibited foreign trade practices.⁸⁹ These penalties, both criminal and civil, are the same as the penalties for issuers and domestic concerns that engage in prohibited conduct under the 1988 amendments.⁹⁰

The first relevant penalty states that the criminal fine for individuals who are directors, officers, stockholders, employees, or agents who willfully violate the Act may be criminally fined not more than one hundred thousand dollars, an increase from the 1977 Act which authorized a fine of not more than ten thousand dollars.⁹¹ Second, a person who willfully violates a provision of the

84. *Id.*

85. *See id.*

86. *See* 15 U.S.C. §§ 78dd-2(d), 78dd-1, 78ff(c) (1997).

87. *See* 15 U.S.C. § 78dd-1 (1997).

88. *See* 15 U.S.C. §§ 78dd-2(d) (1997).

89. 15 U.S.C. § 78dd-2(d).

90. 15 U.S.C. § 78dd(2)(g) (1988). Note that the penalties for issuers and domestic concerns remain the same in the 1998 International Antibribery Act as they were in the 1988 Trade Act.

91. *See* 15 U.S.C. § 78dd-2(g)(2)(A) (1997).

Act may be imprisoned for not more than five years.⁹² A convicted person could possibly face both civil penalties and imprisonment.⁹³ Third, corporations convicted of willful violations are subject to a fine not to exceed \$2 million, an increase from the original figure of \$1 million in the 1977 Act.⁹⁴ Also, civil liability was increased from a maximum of five thousand dollars to a maximum of ten thousand dollars.⁹⁵ Fines imposed on corporate officers and directors may not be paid directly or indirectly by their companies.⁹⁶ The impact of this restriction is that companies can not indemnify their officers for this type of liability.

In addition, the SEC has the various traditional enforcement tools available for its use when violations of the 1934 Act occur. Examples include the commencement of administrative enforcement actions, the right to conduct investigations⁹⁷ (the results of which are sometimes used by DOJ), and the power to subpoena witnesses and require the production of any books, papers, correspondence, memoranda, and records.⁹⁸

III. FACTORS CAUSING CHANGES IN INTERNATIONAL ATTITUDES AND POLICIES TOWARD BUSINESS CORRUPTION

The FCPA, among other factors, has played a major role in changing international attitudes and policies towards business corruption by heightening awareness of the devastating social, economic, and political effects of business corruption. Its twenty-year history of successes and failures has helped to shape current global attitudes towards business corruption.

Another factor causing a shift in attitudes towards business corruption is an international awareness, brought about by the globalization of business and security transactions, that the economic costs of corruption are too high.⁹⁹ A further important factor influencing international attitudes is the transition of former Communist nations to free-market economies since the end of the Cold War; such nations must now compete for capital from international financial institutions who do not wish to support or participate in corrupt projects.¹⁰⁰

92. See 15 U.S.C. § 78dd-2(g)(2)(A), (B) (1997).

93. See *id.*

94. See 15 U.S.C. § 78dd-2(g)(1)(A) (1997).

95. See 15 U.S.C. § 78ff(c)(1)(B), 78dd-2(g)(1)(B) (1988).

96. See 15 U.S.C. § 78dd-2(g)(3) (1997).

97. See 15 U.S.C. § 78u(a) (1997).

98. See 15 U.S.C. § 78u(b) (1997).

99. See GEORGE MOODY-STUART, GRAND CORRUPTION: HOW BUSINESS BRIBES DAMAGE DEVELOPING COUNTRIES 41 (1997).

100. See generally Low & Atkinson, *supra* note 6, at B14.

Additionally, there has been a marked increase in the number of international business mergers, which forces those corporations involved into a broader business and legal arena. As a consequence of these factors, the international community has found it necessary to instill confidence in investors, business, and security markets by establishing a level playing field where business and security transactions may occur.¹⁰¹

A. *The U.S. Foreign Corrupt Practices Act as a Model*

As the world begins serious consideration of both costs of business corruption and of ways to eliminate such corruption, the FCPA naturally serves as an important factor in formulating attitudes and policies toward business corruption. It is certain that the FCPA has provided a relevant legislative model for other multilateral organizations and nations because it remains the sole statutory prohibition of bribery of foreign officials by business for the purpose of obtaining contracts.

One of the key reasons that the FCPA has been a significant factor in changing attitudes is that it has demonstrated an alternative approach to eradicating business corruption, by punishing the giver of bribes, rather than the recipient.¹⁰² Other nations have laws prohibiting government officials from receiving bribes, but the FCPA prohibitions focus on the corporations and the corporate employees that are actually paying the bribes.

This shift in focus allows the inherent problems of corruption to potentially be attacked on two fronts, by punishing both the giver and the recipient of bribes. Consequently, many of the multilateral and international coalitions now considering anti-corruption measures are able to review the effectiveness of the FCPA in prohibiting the corporate payment of bribes. The antibribery provisions of the FCPA are currently used as a model in conventions adopted by the Organization of Economic Cooperation and Development (OECD) and the Organization of American States (OAS), as well as in recommendations made by other non-governmental and multinational organizations.¹⁰³

Another key to the success of the FCPA is its accounting provisions, i.e., its record keeping and internal control

101. *See id.*

102. *See* 15 U.S.C. § 78m (1997).

103. *See, e.g.,* OECD Convention, *supra* note 47; Summary of the Organization of American States Inter-American Convention Against Corruption, International Trade Administration, Chief Counsel for International Commerce (last modified Apr. 22, 1998) <<http://www.ita.doc.gov/legal/oas2.html>> [hereinafter Inter-American Convention Summary].

requirements.¹⁰⁴ These provisions allow the government to more readily detect and deter bribery, and increase corporate accountability. It is interesting to note that the current efforts by the International Chamber of Commerce (ICC), OECD, and the OAS (discussed in further detail below) include the consideration of standards to seek transparency in financial disclosure and record-keeping practices, similar to those in the FCPA.¹⁰⁵

1. International and Domestic Criticisms of the FCPA

a. International Reactions

No other countries followed the example set by the United States in adopting the FCPA, despite repeated effort by the United States to get them to pass similar legislation. Instead of following the high moral path, they chose a more pragmatic approach because in some countries bribery is "a way of life" and the international companies doing business in those countries simply viewed bribery as a necessary evil.¹⁰⁶ The restrictions on bribery by U.S. companies gave an advantage to all of the other countries who were not hampered by legislative prohibitions against using bribes to obtain contracts. Some foreign countries allowed tax deductions for the "commissions" paid to obtain favorable treatment in contract negotiations.¹⁰⁷ Some countries had government officials who were designated to deal with the making of such payments in a discreet fashion. Critics, who grew weary of the United States promoting the passage of antibribery legislation similar to the FCPA in other countries, accused the United States of "ethical imperialism."¹⁰⁸

b. Domestic Reactions

Domestic dissatisfaction grew after passage of the 1977 Act as the U.S. business community began to argue that it was suffering from an unfair disadvantage by doing business in foreign countries in which companies from other nations, with

104. See generally 15 U.S.C. § 78m(b)(2) (1997).

105. See OECD Convention, *supra* note 47.

106. See Barbara Crutchfield George, *The U.S. Foreign Corrupt Practices Act: The Price Business is Paying for the Unilateral Criminalization of Bribery*, 4 INT'L J. MGMT. 391, 392 (1987).

107. See Recommendation of the Council of the OECD on the Tax Deductibility of Bribes to Foreign Government Officials, C(96)27/FINAL, Apr. 11, 1996, reprinted in 35 I.L.M. 1311.

108. See RICHARD T. DE GEORGE, *COMPETING WITH INTEGRITY IN INTERNATIONAL BUSINESS* 103-04 (1993).

which they were competing, had no legislative restrictions regarding bribery. This dissatisfaction eventually forced Congress to pass the amendments to the FCPA in 1988.¹⁰⁹

The primary bases for objections to the 1977 Act by international businesses were: 1) competition problems caused by the unilateral position of the United States prohibiting extraterritorial bribery;¹¹⁰ 2) vagueness of the statutory language causing a corporate inability to determine whether actions were legal;¹¹¹ and 3) broadness of the statutory language which made corporations responsible for acts of which they had no knowledge.¹¹²

SEC registrants subject to the Act complained that compliance with the Act's accounting provisions was costly and confusing because the amount of disclosure required by the Act was unclear.¹¹³ Extensive compliance efforts in financial record keeping and internal controls was (and is) quite expensive, and yet, insufficient compliance left a corporation vulnerable to an enforcement action by the SEC. The enforcement authority granted to the SEC under the Act was of even greater concern to businesses because of the potential statutory penalties and, in particular, the stringent criminal penalties.¹¹⁴

There were so many complaints from companies doing business abroad regarding the negative effect that the Act had on their ability to compete for international business contracts that Congress asked the General Accounting Office (GAO) to prepare a report on the impact of the FCPA on U.S. businesses.¹¹⁵ The GAO Report was submitted in 1981. The GAO Report stated that thirty percent of respondents experienced a decrease in overseas business, and approximately seventy percent rated the clarity of at least one of the antibribery provisions as inadequate or very inadequate.¹¹⁶

Critics in both the legal profession and business community¹¹⁷ voiced criticism against key words and phrases

109. See Trade Act, *supra* note 3. Even in the 1988 amendment, Congress included a provision instructing the U.S. President to enter into multilateral agreements with other countries which incorporated the antibribery approach used by the FCPA. See *id.* at § 5003(d), 102 Stat. 1424 (amending 15 U.S.C. § 78dd-1).

110. See GAO REPORT, *supra* note 2, at i.

111. See *id.*

112. See *id.*

113. See *id.* at i, 19, 21, 82.

114. See generally 15 U.S.C. §§ 78dd-1, 78dd-2, 78ff (1997).

115. See generally GAO REPORT, *supra* note 2.

116. See *id.* at i-ii, 6.

117. Former Texaco CEO and President, James W. Kinnear, argues that along with the economic and moral disincentives to offer bribes, U.S. corporations

that are not adequately defined.¹¹⁸ In particular, the “reason to know” provision caused a great deal of concern and was one of the most controversial of the provisions in both the antibribery and accounting sections of the FCPA.¹¹⁹ Malcolm Baldrige, Secretary of the Department of Commerce during the Reagan administration, voiced his criticism on this provision in his statement to a Congressional Subcommittee Hearing: “Businessmen do not thrive on ambiguities. They are fearful of ambiguities. And this act is causing them trouble unless it’s clarified.”¹²⁰ Companies particularly complained about not being able to determine under what circumstances a company should have “reason to know” that a prohibited payment would be made. Moreover, a company was never certain whether any steps it had taken were sufficient to defeat or at least minimize the likelihood that it had “reason to know” of a prohibited payment.¹²¹

As an indication of the level of dissatisfaction with the 1977 Act, amendments were introduced in Congress in 1980, 1981, 1984, and 1985.¹²² Finally Congress passed major amendments to the Act in 1988, which considerably reduced the harshness of the most stringent provisions.¹²³ Some examples include the elimination of the “reason to know” standard of liability, a clarification of the definition of “facilitating payments,” and a clarification of the meaning of the “reasonable assurances” and “reasonable detail” standards on record keeping and internal control compliance.¹²⁴

2. Effectiveness of the FCPA

An evaluation of the effectiveness of the FCPA in reducing the extent of bribery engaged in by U.S. corporations requires the consideration of two vital issues. First, it can be argued that compliance with the Act was costly and difficult for U.S. corporations that found themselves at a competitive disadvantage

can now use the FCPA as an excuse to foreign agents for why they cannot offer a bribe.

118. See GAO REPORT, *supra* note 2, at a.

119. See *The Business Accounting and Foreign Trade Simplification Act: Joint Hearings on S. 430 Before the Subcomm. on Int'l Fin. and Monetary Pol'y and Subcomm. on Securities of the Comm. on Banking, Housing and Urban Aff.*, 99th Cong., 2d Sess. 43 (1986).

120. *Id.*

121. See *id.* at 42 (statement of Malcom Baldrige, Secretary, Department of Commerce).

122. See generally Laura E. Longobardi, *Reviewing the Situation: What Is To Be Done With the Foreign Corrupt Practices Act?*, 20 VAND. J. TRANSNAT'L L. 431 (1987).

123. See Trade Act, *supra* note 3.

124. See *id.*

in obtaining foreign business, because until now they have been the only corporations subject to such restrictions. In fact, Commerce Department estimates put the cost to U.S. firms of competitor's bribery at \$15 billion in lost contracts.¹²⁵ The estimated loss in contracts serves as some evidence that U.S. firms have reduced the extent of their involvement in prohibited bribery and that the FCPA has therefore been effective.

Second, the current worldwide attention on the negative ramifications of corporate bribery should lead to the adoption of FCPA-type legislation by other nations. As discussed below, multinational organizations such as OECD and OAS have already adopted Conventions mandating such legislation for their members.¹²⁶ As other nations adopt such legislation, the effectiveness of the FCPA in reducing business corruption should increase.

Finally, it is important not to overlook the significance of the provision in the FCPA that mandates that the U.S. President pursue the negotiation of an international agreement prohibiting bribery among the members of the OECD and submit a report to Congress on the progress of the negotiations.¹²⁷

B. *End of the Cold War*

An important factor in the broadening of international support of measures to prohibit corrupt business practices was the end of the Cold War in 1989.¹²⁸ Without the worries inherent in the security threats of the Cold War and without the fear of creating internal political instability, national leaders were able to turn their attention to other matters, including corrupt political and business practices.¹²⁹ Former socialist nations transitioned to a more market-based economy, forcing them to attempt to meet traditional standards of accountability to compete for funds on

125. See Thomas Omestad, *Bye-bye to Bribes, The Industrial World Takes Aim at Official Corruption*, U.S. NEWS & WORLD REP., Dec. 22, 1997, at 39, 43.

126. See OECD Convention, *supra* note 47, at art. 1. Inter-American Convention Summary, *supra* note 103; Stuart Deming, *Foreign Corrupt Practices*, 32 INT'L LAW. 463 (1998).

127. See 15 U.S.C. § 78dd-1 (1997).

128. See Peter Eigen, Chairman of *Transparency International*, who though acknowledging the importance of the end of the Cold War, stated, "[t]he timing was propitious: international corruption had reached crisis-level proportion, and many countries that were undergoing political transition were in desperate need of stronger integrity systems." Eigen, *supra* note 6, at 158-59.

129. See Gail Edmondson et al., *Europe's New Morality*, BUS. WEEK INT'L ED., Dec. 18, 1995, at 26.

the same terms as other democratic countries,¹³⁰ and to enter the international business environment.¹³¹ With the former socialist countries moving towards democracy and a free market system, the United States found itself as the sole surviving superpower with an ideology of democracy and capitalism. Now, as the world emulates the democratic and capitalistic models, it finds itself moving towards the globalization of securities markets and business transactions.¹³²

C. Further Integration of Europe

Current integration developments in the European Union (EU) are also a factor influencing international attitudes toward business corruption. The recent Maastricht Treaty¹³³ and the draft Treaty of Amsterdam¹³⁴ significantly hastened the integration process. The treaty provisions cede some of the national sovereignty of the fifteen Member States to the EU institutions.¹³⁵ As centralized institutions of the EU are strengthened during the process of integration, there is an increased possibility that an anti-corruption Directive or Regulation will be issued which replicates provisions of the U. S. Foreign Corrupt Practices Act.

The EU has formally opened negotiations to extend membership to ten former Communist nations which will provide the EU with the opportunity to become involved in the reform of business practices as the countries change to a market

130. See generally Beverley Earle, *The United States Foreign Corrupt Practices Act and the OECD Anti-Bribery Recommendation: When Moral Suasion Won't Work, Try the Money Argument*, 14 DICK. J. INT'L L. 207, 235 (1996).

131. See Hotchkiss, *supra* note 56.

132. See generally Fareed Zakaria, *So Much for Globalization*, NEWSWEEK, Sept. 7, 1998, at 36.

133. Treaty on European Union, Feb. 7, 1992, 1992 O.J. (C224) 1/79 (official English text), 31 I.L.M. 247 (entered into force Nov. 1, 1993) [hereinafter Maastricht Treaty]. Also note that the designation "European Union" has been used after implementation of the Maastricht Treaty on November 1, 1993. The term "European Union" has political significance, the exact scope of which is not yet fully determined. The nationals of its fifteen Member States are now citizens of the Union. See P.F.R.F. MATHIJSEN, A GUIDE TO EUROPEAN UNION LAW 3-7 (6th ed. 1995).

134. The Treaty of Amsterdam, revising the treaties on which the EU is founded, is currently being ratified by the Member States. It was drafted by governmental representatives of the Member States at the Intergovernmental Conference in 1996.

135. See *Uncertainty Shrouds Vote on EU Treaty in Denmark*, INT'L HERALD TRIB., May 28, 1998, at 6; *Danes Accepting EU Pact*, INT'L HERALD TRIB., May 29, 1998, at 1; *Treaty of Amsterdam Amending the Treaty on European Union, the Treaties Establishing the European Communities, and Certain Related Matters*, (last visited Jan. 5, 1999) <<http://ue.eu.int/Amsterdam/en/treaty/treaty.htm>>.

economy.¹³⁶ It has been reported that the process will result in the EU having a market of a half-billion people producing more than twenty percent of the world's goods; "however, it will also bring to present and future members wrenching problems of adaptation."¹³⁷ Undoubtedly, conditions will be placed upon the billions of dollars given by the EU to the candidate countries for technical and financial reform. The conditions may well include stipulations as to accounting practices and transparency, as well as changes in the way in which they do business.

The recent establishment of the Economic and Monetary Union (EMU),¹³⁸ which will bring a greater integration of Europe, is an important factor that will increase the chances of the adoption of more uniform and perhaps more stringent rules governing corrupt business conduct. In May 1998, the EU ratified the European Commission's recommendation that the currencies of eleven EU member states will be changed to the Euro, a new single currency, effective January 1, 2002.¹³⁹ The eleven Member States will formally belong to the EMU on January 1, 1999.¹⁴⁰ In order for the monetary conversion to be a success, the Member States must forego more of their national sovereignty as they become more subject to the rules and regulations of a common governing authority of the bitterly-resisted European super-state.¹⁴¹ This places the participating Member States in the position of having to conform to the standards of business conduct promulgated at the central level, rather than having the independence inherent in national sovereignty.

D. *International Business Mergers*

With innumerable international joint ventures, direct investments,¹⁴² and mergers, it is undeniable that business is a

136. The countries that are being considered first are the Czech Republic, Estonia, Hungary, Poland, and Slovenia. The other five countries that have been promised serious consideration at a later date when their economic and political institutions are judged to have met EU standards are Bulgaria, Latvia, Lithuania, Romania, and Slovakia. See Joffe, *supra* note 6, at 6.

137. *Id.*

138. See Reginald Dale, *Euro Brings Need for Accountability*, INT'L HERALD TRIB., March 31, 1998, at 11.

139. See John Vincour, *Officially, the Euro Is On*, INT'L HERALD TRIB., Dec. 22, 1997, at 1.

140. See Robert A. Levine, *The Euro Will Arrive, but then Beware the Deluge*, INT'L HERALD TRIB., Apr. 25, 1998, at 6.

141. See Joffe, *supra* note 6, at 7.

142. A U.S. financial company, Travelers Group Inc., purchased a twenty-five percent share of Nikko Securities Co., Japan's third largest brokerage company. See Sandra Sugawara, *Putting Together Cultures*, INT'L. HERALD TRIB., June 2, 1998, at 13.

pervasive global force.¹⁴³ The recent increase in the number of international mega-mergers adds further impetus to the explosion of international business relationships. During the course of 1998, giants in the industries announced mergers—the United States' Chrysler Corporation and Germany's Daimler-Benz AG,¹⁴⁴ Germany's Allianz and Assurances Generales de France, Sweden's Nordbanken and Finland's Merita,¹⁴⁵ Germany's Bertelsmann AG and United States' Random House Inc.,¹⁴⁶ and British Petroleum of London and Amoco Corporation of Chicago.¹⁴⁷

The effect of these international mergers is to bring companies that may have only been subject to domestic laws into a broader legal framework in which there are regulations which affect the way the companies do business. Also, the broader business arena often forces companies to take a different approach to the way they do business because they must adhere to a more standardized code of conduct in order to retain the confidence of the marketplace and raise necessary capital.

E. *Borderless Global Market*

In today's world, goods, ideas, and capital move across national borders with ease.¹⁴⁸ "[T]he combination of explosive growth in world trade, direct foreign investment, and cross-border trading in stocks and bonds has created an ever tighter web of connections among countries, all of which are in very different stages of development."¹⁴⁹

The crises in Asia and Russia have served as a reminder of the interdependent international environment in which we now live. What might have been thought of as a regional crisis in the past is now viewed as a global crisis with far-reaching global challenges.¹⁵⁰

143. See Iritani & Silverstein, *supra* note 6, at A1.

144. See John Schmid, *Fast Lane for German Firms*, INT'L HERALD TRIB., May 8, 1998, at 1.

145. See John-Thor Dahlburg, *European Unions*, L.A. TIMES, Feb. 1, 1998, at D1.

146. See John Schmid, *German Media Giant Buys Random House*, INT'L HERALD TRIB., Mar. 24, 1998, at 1.

147. See Sallie Gaines, *Amoco-BP Merger Clears Final Hurdle*, CHICAGO TRIB., Dec. 30, 1998 (visited Feb. 22, 1999) <<http://chicagotribune.com/tools/search/archives/archives.htm>>.

148. See Iritani & Silverstein, *supra* note 6, at A14.

149. See Jeffrey E. Garten, *The International Financial System is Crisis-Prone*, INT'L HERALD TRIB., May 12, 1998, at 8.

150. See David E. Sanger, *A Year Old, Asian Crisis Just Keeps Deepening; Played Down at First, It's Now Threatening a Global Depression*, INT'L HERALD TRIB., July 7, 1998, at 1 (giving examples of the effect of the Asian crisis on U.S. manufacturers and farmers); John-Thor Dahlburg, *Asian Blues Make Way to*

Closely attendant to the rapid acceleration of many countries towards greater competition and free market capitalism is the necessity for a change in the way these countries operate in the global business environment. There has been recent conjecture, however, that if Russia's experiment with the Western economic model fails, the world may have reached its high-water mark of the age of globalization.¹⁵¹

1. Technological Advances

A primary reason for fundamental changes in the global environment surely lies in the enormous technological advances which have created a borderless global marketplace. With the advent of the amorphous and frontierless Internet, it is now possible to easily engage in transactions across international boundaries.¹⁵² Technological progress in computers and electronic communication has contributed to a complete revolution in transaction services.¹⁵³

One consequence of having such dramatic technological advances is the creation of a global capital market, in which good governance is necessary for successful functioning. Many in international business, financial, and banking organizations argue that corruption is injurious to the successful functioning of a global capital market.¹⁵⁴ Therefore, the need for legal prohibitions against corruption becomes apparent as a necessary mechanism in establishing a level playing field in global capital markets. In turn, this is essential to the economic stability of the world marketplace.

2. Deregulation

There have been massive efforts to deregulate the markets around the world in an effort to bring a maximum number of international businesses into a free market economy. The

Distant Shores, L.A. TIMES, Aug. 9, 1998, at A1 (noting the effect of the Asian Crisis on European industry).

151. See Zakaria, *supra* note 132.

152. See Holly Hubbard Preston, *The Ins and Outs of Trading Securities On-Line*, INT'L. HERALD TRIB., Mar. 28, 1998, at 17 (discussing the challenges associated with trading securities on-line for international investors).

153. See MICHAEL G. HADJIMICHALAKIS & KARMA G. HADJIMICHALAKIS, CONTEMPORARY MONEY, BANKING, AND FINANCIAL MARKETS 109, 110 (1995).

154. See Michael H. Sutton, Chief Accountant of the SEC, *Financial Reporting and Investor Protection*, Address at Baruch College (Oct. 20, 1997), available on the Internet at <<http://www.sec.gov/news/speeches/spch201.txt>> (commenting on the important role that the financial deputy plays in obtaining investor confidence and protecting investors).

position of a free market economy immediately exposes governments and businesses within the country to new kinds of restraints on their conduct.

In furtherance of the deregulation effort, the World Trade Organization (WTO) negotiated three major trade liberalization accords in 1997.¹⁵⁵ "In February, the WTO achieved a global telecommunications deal, and in March countries accounting for [ninety-five] percent of world trade in information technology products agreed to phase out all tariffs by the year 2000."¹⁵⁶ Finally, in December 1997, negotiators from 102 countries finalized a global financial-services accord at WTO headquarters in Geneva that "will liberalize trillions of dollars worth of trade in the banking, insurance and brokerage sectors."¹⁵⁷ The effect will be to lower investment barriers worldwide that until now have been heavily protected. The agreement applies to the 132 members of the WTO, covering \$10 trillion worth of global securities assets, \$40 trillion of world banking assets, and \$2 trillion in worldwide insurance premiums.¹⁵⁸

As a further example of deregulation occurring worldwide, there have been efforts by the EU to construct a single European market, which has led to the progressive dismantling of many of the legal and regulatory barriers to open competition.¹⁵⁹ Also, Japan, the world's second largest securities market, is undergoing drastic changes while its "Big Bang" financial deregulation unfolds.¹⁶⁰

The opening of formerly domestic or regional markets to the global environment necessitates a conversion of attitudes and business practices to suit the standards of fair play increasingly required in the world community. Transparency and comparability of financial statements becomes a necessity to ensure investors in the global capital market of corporate accountability.

F. *Recognition of the Economic Costs of Corruption*

There are indications that the scope and mounting cost of bribery in international business corruption have reached crisis dimensions and are now at a critical point, where the costs simply

155. See Alan Friedman, *World Pact in Finance is Reached*, INT'L HERALD TRIB., Dec. 15, 1997, at 1 (outlining the "global financial services pact" that will liberalize trade in the banking, insurance, and brokerage sectors).

156. See *id.*

157. *Id.*

158. See *id.* The agreement will become effective in March, 1999.

159. See Dahlburg, *supra* note 132.

160. See Sugawara, *supra* note 142.

cannot be borne any longer without having a detrimental impact on international trade.¹⁶¹ A recent publication, *Grand Corruption: How Business Bribes Damage Developing Countries*, states that: "Grand corruption has increased tremendously during the last decade. What used to concern a relatively small number of people working in a relatively small number of countries has now become a major world-wide problem."¹⁶² The author, George Moody-Stuart, claims that "by general consensus, there has been a tremendous deterioration in the last ten to fifteen years, with grand corruption becoming the general rule, rather than the exception."¹⁶³

According to a recent U.S. News & World Report, a survey by the World Bank of 3,600 firms in sixty-nine countries indicates that forty percent of businesses are paying bribes.¹⁶⁴ The same article states that "German firms spend more than five billion dollars a year on foreign bribes, and Commerce Department estimates put the cost to U.S. firms caused by overseas competitors' engagement in bribery at \$15 billion in lost overseas contracts per year."¹⁶⁵

This increased focus on the economic costs of corruption, as well as the other factors discussed above, further highlights international attention on the need for a level playing field in global capital markets and business transactions. This has resulted in worldwide antibribery alliances in which governments, the business sector, and NGOs have become active.

IV. INTERNATIONAL COOPERATIVE EFFORTS AND THEIR FUTURE DIRECTION

There are numerous governmental, quasi-governmental, and NGOs that are currently involved in international cooperative efforts to take action against those engaging in corrupt business practices. These agencies are important because they have the potential to provide substantial help in the fight against corruption.

According to one author there are five styles of intergovernmental cooperation in international organizations: coordination, cooperation, harmonization, association, parallel

161. See Salbu, *supra* note 6, at 236 (noting that despite efforts to curb bribery, "corruption in overseas markets remains a daunting problem").

162. MOODY-STUART, *supra* note 99.

163. *Id.*

164. See Omestad, *supra* note 125, at 42.

165. *Id.* at 43.

national action, and supra-nationalism.¹⁶⁶ Depending upon the nature of the organization and the extent to which its members are willing to become involved, most of the organizations could provide a viable forum for the promulgation of guidelines that harmonize prohibitions against corrupt business practices.

A. *Financial Standard Setting Organizations
and Financial Institutions*

The "combination of explosive growth in world trade, direct foreign investment and cross-border trading in stocks and bonds has created an ever tighter web of connections among countries," making it necessary for both governmental and quasi-governmental agencies to address the problem of business corruption and corporate accountability.¹⁶⁷

1. The International Accounting Standards Committee: The SEC Role in Formulating International Accounting Standards

Since the SEC has been an active leader in requiring a high level of corporate accountability from corporations trading securities in the United States, it can be anticipated that it will take an active role in encouraging international support and adoption of "initiatives by international bodies of professional accountants to establish appropriate international standards that might be used for multinational offerings."¹⁶⁸ The U.S. securities statutes, as implemented by the SEC, provide a successful model for establishing healthy capital markets.

A benefit of the disclosure requirements required by the U.S. capital market is that potential investors are provided "transparent portrayals of the risks and opportunities involved."¹⁶⁹ Comparable and transparent financial reporting that allows individual and institutional investors to make their

166. The five stages are described as follows: "Coordination is a way of producing common policies among actors which have legal, or formal competence in particular policy areas"; cooperation is "a limited involvement of [countries] in a joint enterprise" of limited scope, duration, and objective; harmonization involves a systematic harmonization of national laws and policies regarding a specific issue; association involves the solving of practical issues but does not attend to more difficult political issues; parallel national actions involve coordination of national policies in such a way that national policies remain different; and supra-nationalism involves the delegation of responsibility for policy-making and implementation in a specific area to an international organization. See Paul Taylor, *Co-Ordination in International Organization*, in FRAMEWORKS FOR INTERNATIONAL CO-OPERATION 12-14 (A.J.R. Groom & Paul Taylor eds., 1990).

167. See Garten, *supra* note 149.

168. 1996 SEC ANN. REP., ACCOUNTING AND AUDITING MATTERS.

169. Sutton, *supra* note 154.

own evaluations of a company's financial health protects the interests of investors,¹⁷⁰ and therefore facilitates the ease with which corporations are able to raise capital as necessary.

The SEC is currently a prominent member in the International Organization of Securities Commissions (IOSC). IOSC, in conjunction with the International Accounting Standards Committee (IASC), has agreed to the development of a comprehensive set of international accounting standards that would be utilized by multinational corporations in cross-border securities offerings in all global markets.¹⁷¹ The IASC's initial goal was to have this set of international standards completed by March 1998, however, work on the project still continues.¹⁷²

The SEC has taken the position, as noted by Chief Accountant Michael Sutton, that there are three key elements necessary for these international accounting standards to gain acceptance: 1) the standards must include a core set of accounting pronouncements that constitute a comprehensive, generally-accepted basis of accounting, 2) "the standards must be of 'high quality'—they need to result in comparability and transparency,"¹⁷³ and 3) the standards must then be rigorously interpreted and applied.¹⁷⁴

The SEC believes that these three elements are integral to the success of international harmonization of accounting standards because they "assure the quality of the standards promulgated and their acceptability to IOSC members."¹⁷⁵ If these three elements are met, "the SEC will consider accepting the core standards in securities offerings by foreign issuers in the U.S."¹⁷⁶ It is critical for foreign corporations, who are either listing their securities on U.S. Exchanges or anticipating doing so to remain aware and informed of the development of these standards.

Additionally, corporations need to consider the impact of the adoption of international standards on their compliance with the FCPA's accounting provisions. Currently corporate compliance with the financial record keeping and internal control provisions

170. *See id.*

171. *See id.*

172. *See* Michael H. Sutton, Chief Accountant of the SEC International Harmonization of Accounting Standards, Address at the American Accounting Association 1997 Annual Meeting (Aug. 17, 1997), available on the Internet at <<http://www.sec.gov/news/speeches/spch174.txt>>. *See also* IASC home page, <http://www.iasc.org.uk/news/cen8_133.htm> (stating that the IOSC project assessing IASC core standards is still underway).

173. *Id.*

174. *See id.*

175. Michael H. Sutton, Chief Accountant of the SEC, Address at the 1996 AICPA Conference on Current SEC Developments (Feb. 15, 1996), available on the Internet at <<http://www.sec.gov/news/speeches/spch076.txt>>.

176. *Id.*

is achieved by utilizing the body of generally-accepted accounting principles adopted by the private standard-setting entity known as the Financial Accounting Standards Board under the supervision of the SEC.¹⁷⁷

It seems that the SEC will continue to utilize GAAP as now known, even with the adoption of international standards. As stated by Michael Sutton, “[t]he sovereignty of national standard setters and regulators must be respected. It is likely that the need for national tailoring of accounting and disclosure rules will continue.”¹⁷⁸

The SEC can “make a tremendous contribution to the development of international accounting standards.”¹⁷⁹ The U. S. securities and accounting regulatory system has been specifically shaped to meet the needs of investors and capital markets.¹⁸⁰ A significant reason for the success of our capital markets is due to the high quality of the accounting and disclosure standards used by companies subject to SEC jurisdiction.¹⁸¹ For this reason the SEC can “make a tremendous contribution to the development of international accounting standards.”¹⁸²

The SEC needs to maintain a strong and influential role in ensuring that the international standards developed are as rigorous, thorough, and of the same high quality that the GAAP has been in order to ensure that these standards will result in the level of corporate accountability necessary for both healthy capital markets and global elimination of corrupt business practices.

2. International Organization of Securities Commissions

The International Organization of Securities Commissions (IOSC) is a non-profit association of securities regulatory organizations. It has 135 members, including twelve in the United States.¹⁸³ The SEC is a prominent member. The SEC sits on the IOSC Technical Committee, which is composed of sixteen regulatory agencies that regulate some of the world’s largest and most internationalized securities markets.¹⁸⁴ The Technical Committee is responsible for IOSC’s role in the development of

177. See SEC Statement of Policy on the Establishment and Improvement of Accounting Principles and Standards, Accounting Series Release No. 150 (Dec. 20, 1973).

178. Sutton, *supra* note 175.

179. *Id.*

180. See *id.*

181. See *id.*

182. *Id.*

183. See SEC REPORT ON PROMOTING GLOBAL PREEMINENCE OF AMERICAN SECURITY MARKETS (Oct. 1997).

184. See *id.*

internationally accepted accounting standards, with its attendant emphasis on the need for transparency and corporate accountability among corporations competing for capital in borderless markets.¹⁸⁵

3. International Monetary Fund

The Washington-based International Monetary Fund (IMF) was created after World War II in Bretton Woods, New Hampshire by the United Nations to help rebuild the global financial system.¹⁸⁶ It was specifically created to provide a central authority "for consultation and collaboration on international monetary problems."¹⁸⁷ The IMF, with its more than two thousand employees, has been described by some as a "global watchdog" to determine when and where a financial crisis may occur.¹⁸⁸ It then infuses money into the economy, acting as catalyst to restore the private sector's confidence in the system and to attract money from other sources.¹⁸⁹ It also takes the lead in trying to force the borrowing country to take steps necessary to fix the economy.¹⁹⁰ Thus, IMF money comes with many strings attached.¹⁹¹

The IMF has been involved in several well publicized bailouts in the last few years, including Mexico, Thailand, South Korea, and Indonesia.¹⁹² The IMF has the power to attach conditions on the money that it infuses into a country's economy; many of these conditions affect or eliminate corrupt business practices that undermine the economic stability of the country.¹⁹³ As an example, under the terms of an IMF agreement with Indonesia for billions of dollars of aid, the youngest son of former President Suharto was required to give up the monopoly he held on the production of cloves, a key ingredient in the sweet cigarettes that

185. *See id.*

186. *See* Tom Petrino, *The Financial 'White Knight': IMF Demystified*, L.A. TIMES, Nov. 22, 1997, at A1.

187. *Id.*

188. *See id.*

189. *See id.*

190. *See id.*

191. *See id.* The IMF funding pool is the sum of subscriptions by the IMF's 181 member nations, which essentially keep a share of their national currencies on deposit with the IMF. The agency deals only with a recipient country's central bank for financial authority, feeding money directly into that institution and thus bolstering the financial reserves ultimately backing the government.

192. *See* Paul Blustein, *Hard Part Begins for Seoul and the IMF*, INT'L HERALD TRIB., Nov. 24, 1997, at 1; Evelyn Iritani, *Pacific Blues, Asian Crisis to Dominate APEC Forum Agenda*, L.A. TIMES, Nov. 22, 1997, at D1.

193. *See IMF Issues Guidance Note on Countering Corruption*, TI Newsletter, Sept. 1997, at 8; IMF Newsbrief No. 97/15, Aug. 4, 1997.

are popular in Indonesia, in which he received tax breaks and other special concessions.¹⁹⁴ Close friends of then President Suharto lost lucrative cartels on plywood, paper, and cement distribution, as well as government support for an expensive and economically questionable aircraft building enterprise.¹⁹⁵

James Wolfenson, president of the World Bank, claims that "corruption is the biggest issue on the minds of voters and the single inhibiting factor" for private investment.¹⁹⁶ The World Bank and the IMF are increasingly vocal about refusing loans to countries who are unable or unwilling to rid themselves of bribery, kickbacks, and political payoffs.¹⁹⁷

The IMF adopted stringent guidelines for promoting public sector transparency and accountability in the service of creating a framework for sustained growth.¹⁹⁸ These guidelines came immediately after the IMF declaration, Partnership for Sustainable Growth of September 29, 1996, in which "promoting good governance in all its aspects, including ensuring the rule of law, improving the efficiency and accountability of the public sector, and tackling corruption" was identified as an essential element of a framework within which economies prosper.¹⁹⁹ The IMF is committed to a "more proactive approach in advocating policies and the development of institutions and administrative systems that eliminate the opportunity for bribery, corruption, and fraudulent activity in the management of public resources."²⁰⁰ As indicated by a recent article in the Wall Street Journal, entitled "Why America Needs the IMF," these efforts find much praise in the American press.²⁰¹

4. The World Bank

The World Bank, also known as the International Bank for Reconstruction and Development, was developed as a complement to the short-term capital strategies of the IMF.²⁰² It was

194. See Seth Mydans, *Suharto Agrees to End Monopolies: IMF Deal Would Dismantle Cartels of Family and Friends*, INT'L HERALD TRIB., Jan. 16, 1998, at 1.

195. See *id.*

196. Sougata Mukherjee, *Open Markets Spawn Corruption*, BUS. NEWS, Sept. 22, 1997, at 2.

197. See *id.*

198. See IMF Adopts Guidelines Regarding Governance Issues, News Brief No. 97/15 (Aug. 4, 1997) <<http://www.imf.org/external/np/sec/nb/1997/NB9715.htm>>.

199. *Id.*

200. *Id.*

201. Lawrence Summers, *Asia's Reckoning: Why America Needs the IMF*, WALL ST. J., Mar. 27, 1998, at A14.

202. The World Bank Group Homepage (visited Jan. 5, 1999) <<http://www.worldbank.org>>.

established at Bretton Woods at the same time as the IMF.²⁰³ The World Bank focuses on long-term development, leaving liquidity funding to the IMF.²⁰⁴ It helps finance banking and corporate reform and projects that provide a social cushion to the poor and unemployed in emerging countries.²⁰⁵ It stimulates productive investment in developing countries by lending capital for such projects as energy and transportation.²⁰⁶

Within the World Bank Group, entities such as the International Development Association (IDA) and the International Bank for Reconstruction and Development (IBRD), have issued anti-corruption guidelines.²⁰⁷ "The guidelines provide that, upon discovery of fraudulent or corrupt conduct by a bidder or borrower, the bank will reject the bidder's proposal for awards, cancel the remaining portions of loans . . . and debar the borrower from future World Bank financing for a stated period of time or indefinitely."²⁰⁸ Guidelines such as these, that are linked to specific economic and financial consequences when corruption is detected, reflect the growing reluctance of international agencies to provide capital to projects riddled with corruption.

B. *Multinational Organizations and Multilateral Agreements*

1. Organization for Economic Cooperation and Development

The Organization for Economic Cooperation and Development (OECD) was established in Paris, France in 1960 in order to achieve the highest sustainable economic growth and employment and a rising standard of living in member countries while maintaining financial stability, and thus to contribute to: the development of the world economy; sound economic expansion in member countries as well as non-member countries in the process of economic development; and the expansion of world trade on a multilateral, non-discriminatory basis in accordance with international obligations.²⁰⁹ Later, it also assumed the task of coordinating assistance to developing countries.

The twenty original members of the OECD included: Austria, Belgium, Canada, Denmark, France, Germany, Greece, Iceland, Ireland, Italy, Luxembourg, the Netherlands, Norway, Portugal,

203. *See id.*

204. *See id.*

205. *See id.*

206. *See id.*

207. *See Low & Atkinson, supra note 6, at B15.*

208. *Id.*

209. *Id.*

Spain, Sweden, Switzerland, Turkey, the United Kingdom, and the United States. Between 1964 and 1994 five more countries joined: Japan, Finland, Australia, New Zealand, and Mexico.

a. Recommendations on Bribery

Another determinant of global change in attitudes towards business corruption has been the efforts expended as a result of the mandate in the 1988 FCPA amendments²¹⁰ that the President of the United States negotiate an international agreement among the OECD members to prevent bribery of foreign officials.²¹¹ During President Clinton's term in office, the U.S. government complied with the 1988 mandate, and began to facilitate an international antibribery agreement among OECD members. This mandate resulted in the 1994 Recommendation of the Council of OECD on Bribery in International Transactions.²¹²

Although the Recommendation is not legally binding, it encourages OECD member countries to criminalize the making of bribes to foreign officials in connection with international business transactions.²¹³ A number of Member nations already prohibited bribe taking by providing a "basis for the prosecution of bribery of foreign officials, including Canada, Greece, Hungary, Korea, Mexico, Sweden, Turkey and the United Kingdom."²¹⁴ By comparison, the Recommendation promotes legislation targeting the bribe giver, such as a corporation paying bribes to a foreign government in order to obtain contracts.

Subsequent to the issuance of the Recommendation there have been a number of working groups within the OECD dealing with the problem of corruption.²¹⁵ The Working Group on Bribery, the most important of these groups, has given priority to the need to criminalize bribery of foreign public officials. The Group's most pressing issue was deciding whether such criminalization should be implemented as model legislation or multilateral convention. On May 23, 1997, the OECD Member countries took a further step in fighting corrupt business

210. 15 U.S.C.A. § 78dd-1 (1997).

211. See *id.*; ORGANIZATION FOR ECONOMIC CO-OPERATION AND DEVELOPMENT, OECD ECONOMIC OUTLOOK 57 (1995); CORPORATE COUNSEL'S INTERNATIONAL ADVISER, SPECIAL REPORT, Oct. 1988, at 4; Adam Fremantle & Sherman Katz, *The Foreign Corrupt Practices Act Amendments of 1988*, 23 INT'L LAW. 755, 764 (1989); Earle, *supra* note 130, at 208.

212. See *OECD Initiatives to Fight Corruption*, Note by Secretary General to the OECD Council at Ministerial level (May 1997).

213. See *id.*

214. *Id.*

215. See *id.*

practices by adopting a Revised Recommendation of the Council on Combating Bribery in International Business Transactions.²¹⁶

Since the adoption of the 1994 Recommendation and the 1997 Revised Recommendation, Belgium, the Netherlands, Norway, and Germany have drafted legislation to criminalize bribery.²¹⁷ For example, Germany has, in accordance with the OECD Convention, submitted a draft of legislation to parliament.²¹⁸ According to the German Ministry of Justice, the passage of the law is expected soon.²¹⁹

In addition to the above Recommendations, the OECD adopted a resolution in 1996 aimed at the few Member States which still permitted corporate tax deductions of bribery payments made by business.²²⁰ The resolution mandates that all OECD Members reject or abolish such tax deductions.²²¹

b. OECD Convention

On November 21, 1997 the OECD adopted the Convention on Combating Bribery of Foreign Public Officials in International Business Transactions (OECD Convention).²²² Five non-member countries, Argentina, Brazil, Bulgaria, Chile, and the Slovak Republic, joined as signatories.²²³ With their signatures on December 17, 1997, the participating countries committed themselves to ratify and implement the OECD Convention as national legislation by December 31, 1998.

The formal requirement for the Convention's entry into force was the ratification by five of the ten countries having the ten largest export shares of OECD countries, and representing at least sixty percent of the combined total exports of those countries. The OECD Convention entered into force on February

216. OECD, *Recommendation of the Council: Combating Bribery in International Business Transactions* (visited Sept. 14, 1998) <<http://www.oecd.org/daf/cmis/bribery/bribrecm.htm>>.

217. *See id.*

218. *See* Gesetzentwurf der Bundesregierung: Entwurf eines Gesetzes zu dem Übereinkommen vom 17. December 1997 über die Bekämpfung der Bestechung ausländischer Amtsträger im Gesetzentwurf der Bundesregierung: Entwurf eines Gesetzes zu dem Übereinkommen vom 17. December 1997 über die Bekämpfung der Bestechung ausländischer Amtsträger im internationalen Geschäftsverkehr (Gesetz zur Bekämpfung internationaler Bestechung-IntBestG).

219. Letter IIA4-4027-3-230234/98.

220. *See* OECD *Looking to Encourage Non-Member Countries to Adopt Anti-Bribery Laws*, Daily Tax Rep. (BNA) (Apr. 17, 1996).

221. *See id.*

222. *See* OECD Convention, *supra* note 47; *see also* Deming, *supra* note 126.

223. *See* OECD Convention, *supra* note 47.

15, 1999, following Canada's deposit of its instrument of ratification.

The Convention obligates the parties to the convention to make bribery of foreign public officials a criminal act.²²⁴ Similar to the provisions of the FCPA, "facilitating" payments are exempt.²²⁵ The general language agreed upon for penalties was "effective, proportionate and dissuasive criminal penalties" to those who bribe foreign public officials.²²⁶ Unlike the FCPA, the Convention does not specifically cover political parties. However, the Convention prohibits business-related bribes to foreign public officials made through political parties and party officials, and also includes bribes directed to political parties by public officials.²²⁷

Following the corporate accountability approach of the FCPA, the Convention provides that participating OECD countries must take necessary measures, within the existing structure of their laws and regulations, to prohibit the establishment of off-the-books accounts and similar practices used to bribe or hide the bribery of foreign public officials.²²⁸

The U.S. Congress²²⁹ has ratified and implemented the Convention in the 1998 International Antibribery Act.²³⁰ This Act became effective as public law on November 10, 1998.²³¹ The Working Group has also ascertained that Germany, the Czech Republic, and Belgium have submitted the Convention to their individual legislative bodies for review and vote.²³²

The Working Group also has considered that certain measures, in addition to those specifically targeting bribery, offer significant possibilities to fight business corruption including, accounting, record keeping, and auditing requirements similar to those incorporated in the FCPA.

224. *See id.* at art. 1, ¶ 2.

225. *See id.*

226. *Id.* at art. 3, ¶ 1. Countries whose legal systems lack the concept of criminal corporate liability must provide for equivalent non-criminal sanctions, including monetary penalties. A further requirement is that countries be able to seize or confiscate the bribe and bribe proceeds or property of similar value, or that monetary sanctions of comparable effect be applicable. *See id.* at art. 3, ¶ 2.

227. *See Deming, supra* note 126, at 464.

228. *See* OECD Convention, *supra* note 47, at art. 8, ¶ 1.

229. *See id.*

230. 15 U.S.C. § 78dd-1.

231. *See id.*

232. *See supra* note 220.

c. Involvement in Corporate Governance Issues

Recently, an international panel submitted recommendations to the OECD on international corporate governance issues.²³³ The panel is involved in trying to improve the accountability of non-U.S. companies to their shareholders. It should be noted that interest in the area of accountability has been further underscored by the release of an international survey entitled *Furthering the Global Dialogue on Corporate Governance* in which fund managers and more than 350 international investors in Australia, France, Britain, and the United States participated.²³⁴ A significant percentage supported the development of a global set of corporate governance standards.²³⁵

d. OECD Development Centre on Corruption Issues

In February 1999, the Centre is organizing a conference to examine the various anti-corruption measures of the private sector in developing countries, and to make aid and lending agencies sensitive to these issues.²³⁶

2. Organization of American States: Inter-American Convention Against Corruption

In 1996, the first multilateral legal framework to target business corruption was drafted by the Organization of American States (OAS). This agreement, known as the Inter-American Convention Against Corruption, requires signatories to attack the problem of bribery and corruption in international business by agreeing to adopt laws that are "roughly equivalent" to the provisions of the FCPA.²³⁷ The OAS has thirty-four Western Hemisphere members, including the United States.²³⁸

The Convention seeks to promote and strengthen cooperation to "prevent, detect, punish and eradicate corruption in the

233. See Kenneth N. Gilpin, *Shareholder Rights Go Global*, INT'L HERALD TRIB., Apr. 7, 1998, at 11.

234. The international survey was commissioned by Russell Reynolds Associates, an executive-search firm. See *id.*

235. See *id.*

236. See *La convention de l'OCDE sur la lutte contre la corruption entrera en vigueur la février 1999*, <http://www.OECD.org/news_and_events/communiquenw98-124f.htm>.

237. See Gilles Trequesser, *Inter-American Convention Signed Against Corruption*, REUTERS EUR. BUS. REP., Mar. 29, 1996.

238. See Low & Atkinson, *supra* note 6.

performance of public functions.”²³⁹ The Convention also supports asset seizure, extradition of charged parties, and evidence-gathering cooperation between signatories.²⁴⁰ The Convention is committed to seeking regularity and transparency in financial disclosure and record-keeping practices.²⁴¹ The Convention’s prohibitions extend beyond those of the FCPA by targeting illicit enrichment of the recipient, as well as the giver of the bribe.²⁴²

3. United Nations

In 1995, a United Nations committee drafted a code of conduct that addresses the problem of public officials accepting bribes in exchange for favorable treatment.²⁴³ In 1996, a U.S. delegation proposed a United Nations declaration calling for international transparency in accounting standards, elimination of tax deductions for corrupt payments, accurate record-keeping practices, and international cooperation in the investigation of bribery.²⁴⁴

The United Nations Resolution passed on July 21, 1997, based on the recommendation of the Economic and Social Council. The Resolution is by far the most extensive and significant declaration in support of the criminalization of bribery in international commercial transactions. It recalls and reaffirms five previous resolutions against corruption and calls upon member states to develop and ratify “where appropriate, international instruments against corruption.”²⁴⁵

4. European Union

Of great importance is the European Union’s Convention on the Fight Against Corruption Involving Officials of the European Communities or Officials of Member States of the European Union (EU Convention) of May 26, 1997.²⁴⁶ It criminalizes bribery of EU

239. Inter-American Convention Summary, *supra* note 103.

240. See *United States Signs OAS Convention on Preventing Bribery, Corruption*, Int’l Trade Daily (BNA) (June 17, 1996).

241. See *id.*

242. See *id.*

243. See Samia Nakhoul, *U.N. Wants Anti-Graft Code for Officials*, REUTERS WORLD SERVICE, May 1, 1995.

244. See Thalif Deen, *U.S. Seeks U.N. Declaration Against Bribery*, INTER PRESS SERVICE, July 23, 1996.

245. *International Cooperation Against Corruption and Bribery in International Commercial Transactions*, E.S.C. Res. 1997/25, 36th plen. mtg. (1997), available on the Internet at <gopher://gopher.un.org/00/esc/recs/1997/E-RES97.25>.

246. See OFFICE OF THE CHIEF COUNSEL FOR INT’L COMMERCE, U.S. DEPT OF JUSTICE, ANTI-CORRUPTION REVIEW 18; see also Deming, *supra* note 126.

officials, in addition to bribery of public officials of EU member states. However, it does not address transnational bribery with foreign officials of countries that are not members of the EU.²⁴⁷

It has been suggested that EU competition law designed to guarantee a market without obstacles to free competition might be used as a legal instrument against corruption, since corruption clearly "appears as a factor of distortion of trade flows and competition."²⁴⁸ Further, presently there are negotiations within the EU to criminalize bribery by the private sector.²⁴⁹

The Joint EU-United States Action Plan dedicated to "[p]romoting peace and stability, democracy and development around the world" expressly supports the OECD Recommendation on Bribery in International Transactions, which is identified as one way of "[c]ontributing to the expansion of world trade and closer economic relations."²⁵⁰

5. World Trade Organization

The World Trade Organization (WTO) is another international organization that has recently begun to take a position against bribery and corruption in government procurement practices.²⁵¹ The WTO, which is composed of 132 member nations, recently celebrated the fiftieth anniversary of the founding of the General Agreement on Tariffs and Trade, the forerunner to the World Trade Organization.²⁵² At the founding meeting, known as the Uruguay Round, the issue of targeting corruption in the government procurement process was raised.²⁵³

The WTO was formed at the end of World War II in order to create an international trade organization.²⁵⁴ An interim trade agreement was signed, the General Agreement on Tariffs and

247. See Low & Burton, *supra* note 51.

248. MOODY-STUART, *supra* note 99, at 69.

249. See Letter from the Federal Ministry of Justice of the Federal Republic of Germany to the Authors (on file with authors).

250. The European Union, *Joint EU-US Action Plan* (visited Sept. 18, 1998) <<http://www.eurunion.org/partner/actplan.htm>>. "We will combat corruption and bribery by implementing the 1994 OECD Recommendation on Bribery in International Transactions." *Id.*

251. See Salbu, *supra* note 6, at 235.

252. See WTO Director General Renato Ruggiero, WTO from Vision to Reality: The Multilateral Trading System at Fifty, Address to the Brookings Institution Forum "The Global Trading System: A GATT 50th Anniversary Forum" (Mar. 4, 1998).

253. See *id.*

254. See *id.*

Trade (GATT), on October 30, 1947.²⁵⁵ “The agreement was not a treaty, but was instead acceded to by means of a Provisional Protocol of Application.”²⁵⁶ The main purpose of the WTO is to create a framework for the regulation of international trade and to handle the supervision of the compliance of national policies within this framework.²⁵⁷ It has been deemed by some to be “the most significant event in the process of globalization in this half of the century.”²⁵⁸

Members commit themselves to abide by the trade agreements that are part of the documentary structure of the WTO. A mechanism is provided through which members can enforce compliance of others within the WTO.²⁵⁹

In 1996, the United States specifically included “the failure to enforce anticorruption laws in the government procurement context as a trade barrier in the Uruguay Round Agreements.”²⁶⁰ In so doing, the United States altered the perception of business corruption from a moral concern to an international trade concern.²⁶¹ As a consequence, the 1996 WTO Ministerial Declaration included establishing a group to study transparency in government procurement practices.²⁶²

C. *Non-Governmental Organizations Dedicated to Eradicating Business Corruption*

1. Transparency International

No other non-government organization is as prominent an international force in combating corruption than the Transparency International (TI). Established in Europe in 1993, TI is a Berlin-based “global coalition against corruption” that has branched out into countries throughout the world.²⁶³ It focuses on building systems that combat corruption.²⁶⁴

255. See Philip M. Nichols, *Corruption in the World Trade Organization: Discerning the Limits of the World Trade Organization's Authority*, 28 N.Y.U. J. INT'L L. & POL. 711, 711 & n.1 (1996).

256. *Id.*

257. *See id.*

258. *Id.* at 711-12.

259. *See id.* at 715.

260. *See* Low & Burton, *supra* note 51, at B14.

261. *See id.*

262. *See id.*

263. *See* Edmondson et al., *supra* note 129, at 103.

264. The Mission Statement includes a rationale which states: “Corruption is one of the greatest challenges of the contemporary world. It undermines good government, fundamentally distorts public policy, leads to the misallocation of resources, harms the private sector and private sector development and

TI is a conglomeration of business and government veterans from around the world who are trying to promote international business ethics. Combatting bribery and corruption is at the forefront of their list. Peter Eigen, TI's chairman and a former senior official with the World Bank, says: "We recognize the realities of international commerce and competition, and our approach must be evolutionary."²⁶⁵ According to Mr. Eigen, "[c]orruption has become a major world problem, standing alongside those of overpopulation, environmental degradation, AIDS, and poverty."²⁶⁶

TI, unlike most international banking, business, and governmental organizations, not only promotes a financial agenda (addressing the cost of bribery, impairment to free market exchanges, and competition), but also emphasizes the detrimental influence on democratic systems. In the words of Mr. Eigen, "[b]y undermining trust in political institutions and public officials and by distorting government policy against the best interests of the majority, corruption impairs the process of democracy."²⁶⁷ TI's phenomenal success is evident in the broad network of national chapters and international conferences and publications that focus on issues of corruption. Building coalitions based on influential elements of civil society, rather than establishing confrontational agendas, has proved to be an effective policy by which TI has gained the respect and cooperation of multinational organizations and governments.

One of its widely publicized activities is an annual survey ranking countries based on a corruption perception index, the TI Corruption Perception Index.²⁶⁸ This has been a very effective measure in exposing countries that are perceived as being corrupt. Although there are almost 200 sovereign states, fewer than 100 countries are included in the 1998 Index because there must be a minimum number of four surveys analyzed to be included.²⁶⁹ TI places the emphasis on the scores out of a maximum of ten points rather than on the ranking of the country.²⁷⁰

particularly hurts the poor." Transparency International, *Transparency International publishes 1997 Corruption Perception Index* (visited Sept. 26, 1998) <<http://www.transparency.de/documents/press-releases/1997/1997.31.7.cpi.html>>.

265. *Id.*

266. *Id.* at 168.

267. Eigen, *supra* note 6, at 160.

268. Transparency International, *Corruption Perception Index of July 31, 1997* (visited Sept. 18, 1998) <<http://www.transparency.de/documents/press-releases/1997/1997.31.7.cpi.html>>.

269. *See id.*

270. *See id.* The emphasis is on the scores because "in many cases a number of countries have virtually the same scores. Also the rank may have

The Index is published in cooperation with Johann Graf Lambsdorff at the University of Göttingen, and has become an internationally acknowledged instrument for measuring corrupt practices as perceived by business people.²⁷¹ The survey has produced evidence that no region of the world can claim moral superiority on the issue of corruption. In the 1998 Index released September 22, 1998, Denmark had a perfect score of ten with nine surveys used, and ranks number one among the eighty-five countries ranked.²⁷² The U.S. has a score of 7.5 with eight surveys used (with a standard deviation of .9), and is ranked number seventeen, tying with Austria in rank and score.²⁷³ The country that is perceived as the worst in terms of corruption is Cameroon, with four surveys used.²⁷⁴ The 1998 Index includes a standard deviation figure that has not been used before, and that indicates differences in the values of the sources; the greater the variance, the greater the differences of perceptions of a country among the surveys used.

TI has placed priority on developing a separate Bribery Index of Leading Exporting Nations that will measure the sources of international corruption, although there are concerns about both the high cost and reliability of the data obtained.²⁷⁵ According to a statement from TI, "this will shine the light on the countries that are the homes of the bribe-paying corporations."²⁷⁶

2. Other Non-Governmental Organizations

A pioneer in the fight for heightening awareness of corruption is the Hong Kong based Independent Commission Against Corruption (ICAC), which originated in 1974 as a law enforcement agency developed to combat the then widespread corruption in Hong Kong. ICAC started to convene international conferences (i.e., International Anti-Corruption Conferences) in 1981, and organized subsequent conferences in Washington D.C., New York, Sydney, Amsterdam, Cancun, and Beijing.²⁷⁷ ICAC has also

slipped from the prior year, but the score is actually higher out of ten than in the prior year.

271. See Peter Eigen, *The Role of the CPI*, Statement by the Chairman of the Board of Directors of Transparency International (visited Jan. 5, 1999) <<http://www.transparency.de/documents/cpi/cpi-role.html>>.

272. Transparency International, *Corruption Perception Index of Sept. 22, 1998* <<http://www.transparency.de/documents/cpi/index.html>>.

273. See *id.*

274. See *id.*

275. See *id.*

276. *Id.*

277. See Transparency International, *International Anti-Corruption Conference (IACC): Anti-Corruption Conference History* (visited Feb. 10, 1999) <<http://www.transparency.de/iacc/pastiaacc.htm>>.

worked towards the establishment of a network of investigative cooperation between countries.²⁷⁸ The conferences helped generate interest and galvanize cooperation in the exchange of intelligence between senior officials engaged in anti-corruption activities. The ICAC is credited with the reduction of business corruption in Hong Kong.

In many countries around the world, governmental and NGO units have sprung up to address issues of corruption and to find instruments for prevention and prosecution. One example is the Independent Commission Against Corruption.²⁷⁹ Its efforts have resulted in 115 formal investigations, and the release of the publication, *Practical Guide to Corruption Prevention*.²⁸⁰ Another example is the Anti-Corruption Agency of Malaysia (ACA) which began its operations in 1967. Its new mission statement of 1996 focuses on "a concerted effort in the fight against corruption, while at the same time to devise and to fine-tune other workable solutions."²⁸¹

The National Whistleblower Center (NWC), established in Washington, D.C., in 1988, deserves credit for becoming a major force in uncovering bribery. A non-profit organization that aims at protecting the employee's right to "blow the whistle" on major issues of public importance, it offers protection to those in the best position to go public about corrupt practices, i.e., employees of the paying company. Under the False Claims Act of 1863, such employees are entitled to a share of any savings made by the Federal Government as a result of their information.²⁸² According to Moody-Stuart, "such payments have run into millions of dollars."²⁸³

In an effort to support the OECD resolutions on business corruption, in 1996 the International Chamber of Commerce (ICC) rewrote its *Rules of Conduct to Combat Extortion and Bribery*.²⁸⁴ The ICC Recommendations to Governments and International Organizations on Extortion and Bribery suggests a range of preventive measures (mostly disclosure and auditing procedures), and calls on governments to cooperate and assist in investigation

278. See *id.*

279. ICAC was founded in 1989 in New South Wales, Australia.

280. See Independent Commission Against Corruption (visited Sept. 18, 1998) <<http://www.icac.nsw.gov.au>>.

281. Anti-Corruption Agency of Malaysia Homepage, *ACA's Vision* (visited Sept. 18, 1998) <<http://www.jaring.my/bpr/mission.htm>>.

282. See MOODY-STUART, *supra* note 99.

283. MOODY-STUART, *supra* note 99; see also National Whistleblower Center Homepage (visited Sept. 18, 1998) <<http://www.whistleblowers.org/hmbdy.htm>>.

284. See Mark Pieth, *Der Korruption wird der Kampf angesagt. Neue Massnahmen gegen die Bestechung fremder Amtsträger*, NEUE ZÜRCHER ZEITUNG, Feb. 28.-Mar. 1, 1998, at 15.

and prosecution efforts.²⁸⁵ The rules simulate the accounting provisions of the FCPA by mandating record-keeping requirements for all business transactions and by establishing internal control systems as a preventive measure against bribery. However, Moody-Stuart is rather skeptical in reviewing ICC's past history with regard to pressing its members to abide by its recommendations, although TI used the ICC voluntary code as a model for its Standards of Conduct.²⁸⁶

The Institute for International Economics follows developments in the area of outlawing and prosecuting corruption closely, and comments on the proposals of international organizations.²⁸⁷ Its own publication, *Corruption and the Global Economy*, makes a contribution to a better understanding of the stifling impact of pervasive corruption on economic and political development.²⁸⁸

The World Economic Forum emphasizes the central issue of good governance to the economic challenges for developing countries in its press releases. One example is the *Global Competitiveness Report 1997*, which surveys fifty-three economies, and is based on the expertise of leading international economists like Jeffrey D. Sachs of Harvard University, and Horst Siebert of the Kiel Institute of World Economics. The report advocates rigorous approaches to address corrupt practices that impact negatively on competitiveness and economic growth. The World Economic Forum, an independent not-for-profit foundation, is highlighted each year for its annual Davos Conference, attended by prominent leaders from business, government, and academia "committed to improving the state of the world."²⁸⁹

D. Other Efforts

Since 1985, an international journal, *Corruption and Reform*, has been published to engage in scholarly research on the social phenomena of parallel economies and organized crime, patron-client relations, the role of money in politics, and other issues connected with the topic of "political corruption, misconduct and

285. ICC Recommendations to Governments and International Organizations on Extortion and Bribery. ICC public documents.

286. See MOODY-STUART, *supra* note 99, at 60.

287. See generally CORRUPTION AND THE GLOBAL ECONOMY (Kimberly Ann Elliott ed., 1996).

288. See *id.*

289. World Economic Forum, *Global Competitiveness Report* (May 21, 1997) <<http://www.weforum.org/publications/gr/background.asp>>.

policies for reform, presenting a diverse range of viewpoints and emphasizing an international and comparative perspective."²⁹⁰

Also, the drafters of the treaty language of the North American Free Trade Agreement (NAFTA) tackled the issue of the transparency procedures for government procurement contracts.²⁹¹

The AFL-CIO has gone on record in support of OECD efforts to take effective steps against bribery in international business transactions, and has urged unions in other nations to press their governments to act against corruption.²⁹²

Unique among the organizations going on the record for their support of the fight against corruption is a non-trading organization, The International Federation of Consulting Engineers (FIDIC), which represents the consulting engineering profession from its base in Lausanne. Its *FIDIC Policy Statement on Corruption, 1996*, is one of the most clearly stated position papers on the subject of corruption: "the disease of corruption is unfortunately spreading at the very time when world communications are improving, as the economies of nations are becoming more interdependent, and as we move towards the global neighborhood. Corruption's taint includes the procurement of design and construction."²⁹³ The seven recommendations to their member associations and their members (firms and individuals) leave no doubt as to their obligations to curb and penalize corrupt practices.

V. CONCLUSION

Recent surges of anti-corruption activity caused by profound changes in domestic and global attitudes towards business corruption has placed the world on the threshold of a broad attack on corruption through the adoption of antibribery legislation by many nations. Current indications of changes in domestic attitudes towards business corruption are evidenced by the more aggressive enforcement of the FCPA and a widening of the asserted scope of jurisdiction that the SEC has over corporations subject to the FCPA.

Evolving global dynamics responsible for international changes in attitudes towards business corruption include the ending of the Cold War, technological advances which have

290. Editorial, *Aims and Scope*, CORRUPTION AND REFORM 7:1-18 (1992).

291. See *id.* at 235-36.

292. See Statement by the AFL-CIO Executive Council on Bribery in International Transactions, Feb. 20, 1995 (visited Dec. 19, 1997) <<http://www.aflcio.org/estatemts/bribe.htm>>.

293. MOODY-STUART, *supra* note 99, at 61, appendix 7 at 100-03.

created a borderless capital market, the rising specter of an integrated Europe, international mergers, and the growing international awareness that business corruption has economic costs.

The FCPA has played a catalytic role in influencing changes in international attitudes. The antibribery provision of the FCPA was the first legislation to criminalize the conduct of the corporate bribe-giver, rather than the governmental bribe-taker. The accounting provisions of the FCPA²⁹⁴ provided a model for a legislative mandate for corporate accountability, as utilized by the 1997 OECD Convention, for example.²⁹⁵ From 1977 to the mid-1990s, the FCPA has remained the sole legislative effort to eradicate bribery in business transactions. It has, thus, provided a functioning model for organizations and institutions now considering antibribery legislation.

These domestic and global factors, as well as the resulting changes in international attitudes towards business corruption, have had a number of ramifications. One important consequence is the formation of a network of organizations, such as Transparency International, dedicated to tracking and eradicating corrupt business practices. Tremendous credit must be given to TI for its pioneer work in spotlighting the perceived corruption levels of various nations through the widespread dissemination of its Corruption Perception Index. TI anticipates publishing a newly-conceived Bribery Index of Leading Exporting Nations.²⁹⁶ The Index will rank and score the perceived corruption levels of countries that are the home of the corporate bribe-payers.²⁹⁷

Additionally, the activities of international financial institutions, such as the International Monetary Fund and the World Bank, should be noted. Both of these institutions have begun to attach guidelines to the loans they make, requiring recipients to address and rectify bribery and other forms of corruption.²⁹⁸ Leaders in the recipient nations know that in order to receive necessary capital they will have to meet anti-corruption standards. This provides an indirect motivation for the recipient nations to promulgate measures that seek to reduce illicit business transactions.

Another ramification of changing global dynamics is the emergence of multinational agreements to combat business corruption from organizations such as the United Nations, the

294. See *supra* notes 22-28 and accompanying text.

295. See OECD Convention, *supra* note 47, at art. 8, ¶ 1.

296. See Transparency International, *supra* note 264.

297. See *id.*

298. World Bank Guidelines, Guidelines: Procurement under IBRD Loans and IDA Credits, Aug. 1996, at 7.

Organization of Economic Cooperation and Development, the Organization of American States, and the European Union. These organizations have been instrumental in developing prototypes of effective legal instruments and accounting standards for nations and multinational organizations to use in the prevention and elimination of business corruption.

This Article predicts that in the new millenium there will be an increased pace in the global momentum to eradicate business corruption through the continuing implementation of various multilateral anti-corruption agreements. As a result of these various multilateral agreements, signatory nations and/or member states will adopt corresponding national anti-corruption bills to present to their respective legislative bodies. As individual nations criminalize bribery in business transactions there will be a reduction in the level of corruption. Only then will the world marketplace become a level playing field which embraces the principles of fairness and transparency and enhances confidence in the arena in which international business and securities transactions occur.