Should the payment of bribes overseas be made illegal?

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Introduction

In a recent contribution to this journal, Professor Antonio Argandona has performed a double service; first, in navigating the conceptual minefield that surrounds the concept ‘corruption’; and, second, in a context where the bulk of discussion has related this phenomenon to the institutions of government, by highlighting the relevance of corruption to the private sector and the corporation. While there is a general recognition that corruption is a problem for government, the realm of politics and society at large, its consequences for the firm have received relatively little discussion in the by now extensive specific literature.

It is not necessary to restate in this context the negative consequences of corrupt behaviour for commercial operations as these have been dealt with more than adequately by Professor Argandona. However, having been established, it may be useful to elaborate upon the theme of corruption and look at a specific manifestation, overseas bribery, which for reasons given below, is highly topical in the area of international relations and business. Whereas bribery within national jurisdictions is invariably illegal, tendering bribes in another country is not. In fact in a number of European states bribing ministers, public officials and politicians overseas is, or has been until recently, tax deductible. But amid a growing international consensus that corruption is a major problem of the twenty-first century there has recently been growing support for the criminalisation of overseas bribery.

But before looking at the background to these developments it is worth asking whether there is anything wrong with overseas bribery? Most of us probably feel intuitively that bribery of its very nature, with its connotations of under-the-counter deals, unfair advantage, and the subversion of merit criteria, should be proscribed. Furthermore, if bribery is illegal within states ought it not to be so across national borders?

The argument against such views is that bribes in the form of facilitation payments are a normal and essential way of doing business in certain societies. These are states in which the wheels of bureaucracy turn very slowly for a whole range of reasons: overcentralisation making it difficult for low-level officials to take decisions, poor (or non-existent) salaries, lack of training and low morale. In many developing societies impersonal ‘bureaucratic’ relationships are regarded as alien and potentially threatening. In such circumstances it is normal to tender a ‘gift’ in order to transform an anonymous relationship to one based upon ‘friendship’ and a sense of personal obligation. Furthermore, it is sometimes held that the firm that is able to pay the biggest bribe is likely to be the most efficient, for the cost of the bribe must be recouped through economies elsewhere.

In relation to the last point it usually argued that cost reductions might not be for the benefit of the consumer; indeed they may require the delivery of inferior or sub-standard goods or services. In reality, since the main purpose of the transaction may be, and in some areas increasingly is, the securing of kickbacks for the senior politicians or civil servants, the goods or services may be entirely inappropriate to the needs of the country concerned – private jets, an airport in the president’s home town, roads that lead nowhere,
BMWs and Mercedes, crates of champagne, unnecessary or obsolete military equipment. Not only do such transactions distort national priorities and lead to a misallocation of scarce resources, they invariably lead to an escalation in the demand for corrupt payments. As global competition intensifies and private enterprises scramble for lucrative public sector contracts, so the demand for ‘commissions’ escalates, and competitive advantage is transformed into competitive bribery.

The basic problem is that we are increasingly confronting not simply demands for relatively small sums of money in the form of grease payments, but ‘grand corruption’ which is to say huge rakeoffs from often entirely legitimate contracts. Not only do such transactions lead to a misallocation of resources, they are almost certainly illegal in the country concerned. The fact that the law may not be enforced, at least against the powerful, is beside the point from an ethical point of view. There is also the knock-on effect through which widespread grand corruption is often diffused in an attenuated form throughout the public sector. The counterpart of the minister who creams off ten million dollars from an irrigation project is the ill-paid police officer or soldier who extorts a few dollars from hapless motorists at hastily contrived roadblocks.

Supply

The 1990s saw a gathering global consensus around the notion that corruption is a major threat to the world economic system. Towards the end of his first year in office World Bank president, James Wolfensohn, identified corruption as a major global problem. In the fifty odd countries Wolfensohn had visited during his debut year, corruption was the most predominant issue of public concern. In July 1996, whilst observing the G7 summit in Lyons, Wolfensohn warned that the extent of corruption in developing and transitional economies was undermining public support for spending on overseas aid. “When voters think that their money is going into a few peoples’ pockets or Swiss Bank accounts, that erodes the whole quality of the assistance package.”

The importance of combating corruption was also signalled in one of Kofi Annan’s early interviews after his appointment as Secretary-General of the United Nations. Economic development on the continent of Africa, the Secretary-General affirmed, “implies good governance, competent elites, and above all, the disappearance of corruption.” In December 1996 the United Nations adopted a declaration against international corruption and bribery enjoining member states to strive to eliminate these and associated pathologies. To this end, states should criminalise the bribery of foreign officials as well as end the situation in which bribes are tax deductible.

In fact since 1977 the United States has had on its statute book a Foreign Corrupt Practices Act. The Act was prompted by a number of scandals including illegal payments to Richard M. Nixon’s presidential campaign as well as the Watergate revelations. In the wake of Watergate, investigations by the Securities and Exchange Commissions revealed that some leading US companies had been making questionable payments to foreign officials that were then concealed in their official accounts. A wave of moral indignation at these revelations prompted President Jimmy Carter to launch an ethical foreign policy initiative. This included the passing of an anti-corruption law, the Foreign Corruption Practices Act (FCPA), one of the principal aims of which is to enhance the accountability of US companies operating abroad. A subsequent Securities and Exchange Commission (SEC) voluntary disclosure programme revealed that more than 400 US companies (117 of which were in the Fortune 500 list) admitted to having handed out payments of over US$300 million which would have been illegal under the terms of the Act. Most sensational was the revelation that around US$25 million had been paid to a Japanese official as well as to Prince Bernhard of the Netherlands by the Lockheed Corporation to secure the sale of its Tristar L-1011 aircraft. One significant consequence was the resignation and subsequent criminal conviction of one of the principal beneficiaries of the Lockheed largesse: the then Japanese prime minister, Kakuei Tanaka.

The FCPA makes it illegal for US companies to offer payments to officials of foreign governments...
in order to secure or retain business contracts. The Act is concerned with bribery which is to say payments which are made voluntarily in order to secure unlawful advantage. Extortion in the sense of payments made under duress is excluded. Also excluded is ‘grease’ or ‘speed’ money in the sense of small payments to low-level agents or government officials to get them to expedite an action quickly. Grease payments are held to differ from bribes in two important ways: the amount of money exchanged is small, and second, the transaction is not aimed at securing an unlawful competitive advantage. An amendment to the Act in 1988 required companies to establish accurate records of transactions as well as devise and maintain adequate systems of accounting controls. The FCPA is thus targeted at exorbitant payments to high-ranking politicians and government officials, that is, ‘grand corruption’. American managers can be prosecuted under the Act if it can be proved that they were aware of an illegal transaction or displayed conscious disregard or deliberate ignorance of a likely violation. If convicted, companies can incur substantial fines of up to US$2 million with individual offenders facing jail sentences of up to five years and/or personal fines of up to US$100,000.

With this kind of legislation on its statute book many businesspersons, politicians and other commentators became convinced that the US is at a disadvantage when competing internationally with firms from other countries. Most of the latter not only tolerate extra-territorial bribery but some allow such payments to be offset against tax. A 1995 CIA report claimed that US companies in that year had lost US$36 billion to overseas companies which were permitted to bribe foreign officials. This estimate is considerably higher than a 1996 Department of Commerce report which put the figure at US$11 billion worth of lost business over the previous two years.

However, by no means all US firms operating overseas, nor their CEOs, see themselves as penalised by the FCPA. Former Texaco CEO, James W. Kinnear, has made the interesting point that the FCPA actually benefits US corporations by insulating them from the costs and ethical complexities involved in bribing. Along similar lines some corporations – Colgate Palmolive, for example – feel that the FCPA may be a blessing in disguise in that it enables their representative to plead that their hands are tied when being solicited for side payments. In relation to its operations in China, Coca Cola has written the FCPA legislation into its code of conduct and supplies a copy in Chinese to all its mainland partners and employees. Former CEO of General Electric, Jack Welch, took a characteristically robust view of the legislation insisting that US companies’ inability to bribe effectively forces them to compete on price and quality alone. Certainly this kind of outlook was very much part of the ethos which produced the FCPA in the first place. Congress, that is to say, took the view that US companies would eventually be at a competitive disadvantage if the main means of competing were through the payment of bribes.

It is extremely difficult to reach any definitive conclusion as to whether the existence of the FCPA does place US corporations at a disadvantage. Overall, the academic consensus seems to be that it does not. Furthermore, with just over 50 cases in 25 years and only 7 reaching court, the US administration, it has been argued, has not enforced the Act as vigorously as it might have done. Among US business interests, however, the prevailing view seems to be that the legislation is something of a millstone and that something must be done to redress the balance. Accordingly, in 1988 Congress asked the Executive Branch to begin negotiations with major trading partners through the Organisation of Economic Cooperation and Development (OECD) with the aim of persuading its 29 members to criminalise the bribery of foreign officials and end tax deductibility within their own jurisdictions. Initially the Europeans, particularly France, Germany and the United Kingdom, objected to the initiative on a number of grounds, most notably that it infringed national sovereignty and that the primary responsibility for eliminating the practice lay with those states whose officials routinely demanded bribes. Gradually, however, the participants moved towards agreement. A key factor behind the new consensus is thought to have been the growing realisation among European statesmen that corruption could no longer
be dismissed as primarily a problem for the ‘third world’. In the light of a spate of fraud and corruption scandals in developed countries (DCs) during the 1980s and early 1990s such complacency was no longer sustainable. Thus it seems that the ‘embarrassment factor’ played a not insignificant role in bringing OECD members to agreeing a Convention on Combating Bribery of Foreign Public Officials in International Business Transactions in December 1997. The Convention required all 33 signatories to submit legislation to their respective parliaments by 1 April 1998 with a view to full implementation by December 1998.

We shall return to the question of the extent to which this timetable has been followed. In the meantime we turn to the key question of whether the FCPA actually works in the sense of being a serious deterrent to the payment of bribes by US corporate representatives. This is obviously related to the previous question of whether US corporations are disadvantaged by the legislation, for if they are losing business by not paying bribes then they are apparently abiding by the prescriptions of the Act. Unfortunately it is difficult once again to deliver an unequivocal reply to this question. The general view seems to be that although the incidence of bribery by American firms may have declined since 1977, firms still resort to such payments in highly competitive markets particularly in such areas as public works, construction and, of course, defence procurement. Hence, despite its embarrassing and costly involvement in the 1975 scandal, Lockheed was once more exposed to public obloquy in 1995 when it was found guilty of paying a US$ 1 million bribe to a member of Egypt’s People’s Assembly in an attempt to secure an order for three Hercules C130 aircraft. On this occasion Lockheed was fined US$21.8 million, the largest penalty levied since the FCPA was passed. In fact the United States is placed only ninth in a nineteen country ‘Bribe Payers Index’ published in 1999 by the international NGO, Transparency International. The index suggests that US companies are perceived to be more likely to pay bribes than those from Sweden, Australia, Canada, Austria, Switzerland, the Netherlands, the United Kingdom and Belgium. The key point is that none of these states had FCPA-type legislation on their statute books at that time and at least three of them (France, the Netherlands and the United Kingdom) allowed bribes to be written off against tax.

Part of the problem may lie in difficulties of enforcement, particularly in relation to the problem of identifying the locus of culpability in very large organisations. For example, in 1996 Argentine Federal Judge, Adolfo Bagnasco, travelled to New York to meet officials of the Justice Department and the Securities and Exchange Commission. The topic for discussion was whether IBM or any of its executives had breached the FCPA in relation to a US$259 million contract (by then cancelled) to computerise the 400 branches of the state-owned Banco Nacion. Local representatives of IBM had allegedly arranged for a bribe of US$27 million to be paid to employees of Banco Nacion in an effort to secure what was one of the biggest information technology deals in Latin America. The bribe had allegedly been concealed in a subcontract between IBM Argentina and a small local consultancy firm. Two months before arriving in New York Judge Bagnasco had already indicted 30 IBM and Banco Nacion staff as well as other Argentine government officials on suspicion of defrauding the state in relation to this contract.

Using local agents to expedite dealings is, of course, normal practice in international business. However, under the terms of the FCPA this does not constitute an escape route for companies intent upon paying bribes. Entering into a contract with an agent knowing that s/he will use part of her/his fee for side payments is a contravention of the Act. The key word here is, of course, ‘knowing’. How does one demonstrate, in a legally viable form, who knew what and at what level this knowledge was accessible? Accordingly, IBM New York executives denied any knowledge that the bribes had been paid, insisting that internal compliance procedures had not been followed by IBM Argentina senior executives (who were fired in 1995 after the payments had come to light). Two of these senior executives were subsequently to testify that their supervisors in the US had control throughout the contract negotiations. Accordingly in the middle of 1998, four years after the alleged offence had been committed, the case still rumbled on with
an Argentine judge threatening to seek the extradi-
tion of two present and two former executives if
they would not travel voluntarily to Buenos Aires
to testify. For its part IBM was insisting that the
four would be willing to give evidence to US but
not to Argentinian investigators. Not until De-
cember 2000 was the case finally settled when IBM
agreed to pay US$ 300,000 to settle charges that a
subsidiary had made illegal payments to foreign
officials in 1994.20

Whilst the IBM case may not be typical in terms
of its length and complexity, such procedural
wrangling has undoubtedly had a negative impact
upon the deterrent value of the FCPA. Never-
theless by the end of 1997 an international con-
sensus had emerged around the idea that OECD
members – ultimately as many countries as
possible – enact similar legislation within their
own jurisdictions. However, by the autumn of
1998 only four out of the 29 had met the April
deadline for submitting proposals to their respec-
tive legislatures and at least six were still allowing
tax deductibility.21

In our conclusion we shall examine the implica-
tions of this slow progress. Let us first be clear
about the fact that so far we have been dealing
with the supply of corrupt payments at the level of
international transactions. A full analysis of the
problem must take account of the demand side of
the equation, for the best efforts to reduce supply
are certain to be undermined by the continuing
high level of demand: “As long as there are willing
takers of bribes, there will be enthusiastic givers.”22

**Demand**

As we have seen it is now generally conceded that
corruption and fraud are problems which afflict
all types of societies and not just those of ‘the
South’. However, evidence would suggest that the
problem is more serious in less developed states
than in those of the industrial world. At this point
it would be helpful to refer back to the distinction
between ‘grand’ and ‘petty’ corruption. In the case
of grand corruption we are dealing with highly
placed and powerful individuals who exploit their
position to extract large bribes from representa-
tives of Transnational Corporations (TNCs), arms
dealers, drug barons and the like, who appropri-
ate significant pay-offs from contracts, or who
simply transfer large sums of money from the
public treasury into private (usually overseas)
bank accounts. Examples of grand corruption
are not difficult to come by: in the autumn of 1997
Pakistani investigators increased to more than
£3 billion their estimate of the funds siphoned out
of the country by the family of the former prime
minister, Benazir Bhutto. This figure, described by
some commentators as conservative, was based
upon assets identified in more than 30 secret bank
accounts in France, Switzerland, Poland, Luxem-
bourg and elsewhere. Much of this wealth arose
from accumulated bribes whilst in office, some of
the wealth allegedly flowing from the trade in
crackers.23

Former Indonesian president Suharto’s en-
forced exit from power in May 1998 raised the
question of what should be done about the billions
accumulated by ‘Suharto Inc’, the vast business
empire controlled by his six children, his half
brother, other relatives and legions of cronies. The
Suharto children were all reported to have become
multi-millionaires by trading on their direct links
with the presidential palace. Their involvements
spanned a host of activities from marketing clove
cigarettes to operating toll roads, from petro-
chemical plants to automobile manufacturing. So
pervasive was the reach of Suharto Inc. that it was
popularly held that in between arriving at Jakarta
airport and reaching your hotel you would have
been contributing at numerous stages of the trip to
the top family coffers.24

The body set up to unearth the missing Marcos
millions, the Presidential Commission on Good
Governance, had located by 1998 a mere US$ 560
million in a Swiss bank account. In August 2000
the Nigerian government asked Liechtenstein for
help in recovering part of the US$ 4.4 billion it
believes were embezzled by the late dictator, Sani
Abacha whose entourage had several bank accounts
in the principality.25 One Swiss banking source
has estimated that more than US$ 329 billion is
held in that country’s banks by African heads of
state alone.26 Such estimates do not include
property in the form of houses, chateaux, landed
estates, luxury apartments, yachts, nor the increasingly popular currency of international criminality, valuable antiques and paintings.

Clearly, powerful dictators such as Abacha, Marcos, Suharto and their ilk are not constrained by international bribery legislation as this relates only to bribe payers. Nor, it seems, are they overly intimidated by internal statutes relating to bribery, theft, the abuse of authority generally because they seem to be immune from prosecution as well as being extremely difficult to dislodge. Abuse of public office in the form of grand corruption can ultimately be countered only by greater openness and accountability in the governmental process. Greater openness means that heads of state, holders of senior governmental positions and office holders in general must be accountable not only to such legal and procedural rules as relate to their respective positions, but to society at large. This means that the actions of senior personnel must be subject to the scrutiny of legislatures, opposition parties, the media and other interested parties and groups, in short, of civil society. Much of current thinking on combating corruption has strongly emphasised the role of a vigorous civil society. Accordingly former Managing Director of the IMF, Michel Camdessus, commenting on the Asian crisis of late 1997, insisted that this crisis “has demonstrated in a very dramatic way how lack of transparency can feed market uncertainty and threaten macroeconomic stability. Irresistible civil society pressure was essential to bring about public sector accountability.”

In relation to the theme of grand corruption, it is no accident that regimes which have been the worst exemplars have invariably displayed a highly authoritarian character, and have often been personal dictatorships of the most oppressive kind, characterised by serious human rights violations together with minimal freedom of expression. However, the 1990s witnessed a tide of liberalisation which has swept across the world driven in part by the collapse of the Soviet bloc dictatorships. The percentage of formally democratic states in the world grew from a bare 25% in 1973 to 45% in 1990 to 68% in 1995. By 1983, after more than a decade of military rule, every government in South America, with the exception of Chile and Paraguay, had initiated or completed the transition to democracy. By the end of the decade Chile (and some would argue Paraguay) had also made the transition. In Asia by 1996, five previously non-democratic regimes – Bangladesh, Pakistan, the Philippines, Taiwan, South Korea and Mongolia – had democratised. In the five years that followed 1990 the number of sub-Saharan African countries holding competitive legislative elections had grown to 38 out of a total of 47. Of all the regions in the world only the Middle East seems to have remained largely untouched by this seachange. In the light of this apparent global shift Robert McNamara, former head of the World Bank, has claimed that “democratisation of countries, growing intolerance of their citizenry toward illicit payments and increased media scrutiny have produced a climate more conducive to address bribery than at any time in the past 40 years.”

However, McNamara’s welcome optimism should not encourage us to forget that in many parts of the world there are formidable impediments to the long-term institutionalisation of western-style democracy. As already noted many of these states have emerged from long periods of authoritarian government during which basic democratic practices such as freedom of speech and association were severely curtailed and in many cases did not exist at all. In fact certain parts of the globe, most notably Tropical Africa and the former Soviet Union and most of its erstwhile satellites, have had little or no previous experience of democratic government. Accordingly, in such countries civil society in the sense of a counterbalance to the power of the state is extremely weak. On the ground this means that ordinary citizens are not aware of their rights vis-à-vis representatives of the state, and even if they are, lack the power to do anything about it. Political parties and interest groups, the bodies that in developed democracies serve to express the interests of the people, are either weak or non-existent, whether because of repression or lack of resources, or a combination of both. Even in those areas of
the world that have a long tradition of vigorous civil societies, such as the more economically advanced and formally democratic states of South America, harassment and intimidation of the opposition has by no means disappeared.30

Conclusion

The principal aim of this article has been to argue that the reduction, let alone the eradication, of overseas bribery faces formidable difficulties, and that these difficulties are by no means confined to problems of investigation, proof and successful prosecution.31 Whilst considerable progress has been made with ratification and implementation of the OECD Convention, there is still a long way to go.32 An OECD monitoring group is currently engaged in a painstaking country-by-country examination of the institutional arrangements that are in the process of being set up to render the relevant legislation effective. Accordingly, it may be years before enough states have established satisfactory institutional arrangements to form a critical mass.

But tackling the problem of bribery is not just about the enactment of laws. As in other areas of social behaviour the law plays a symbolic as well as a deterrent role. In this respect the primary significance of the anti-bribery convention lies less in its ability to deliver prison sentences or fines, but in putting down a marker indicating that this kind of behaviour is unacceptable. As Professor Marc Pieth, chair of the OECD monitoring group, has observed, the aim of such legislation is not to send CEOs to jail but to encourage firms to promote an ethical culture.33

The notion of an ethical corporate culture can be related to the point made above that the problem of overseas bribery must take into account the demand for corrupt payments as well as their supply. In other words a realistic approach to the problem must incorporate social and political conditions in a wide range of societies. On this level we have seen that whilst the global movement to formal democracy and greater openness is to be welcomed, there is an enduring need for vigilance about continuing behind-the-scenes repression as well as recrudescence of authoritarian forms.34 This highlights the all-important link between anti-corruption strategies and the concern for basic human rights. The issue of human rights has hitherto been seen as primarily a matter for governments and for non-governmental organisations (NGOs) such as Amnesty International, Human Rights Watch and Transparency International. However, there is growing evidence of corporate interest and involvement in human rights questions. Under increasingly relentless scrutiny from the media, NGOs and ethical investment agencies, corporations are having to take account of unacceptable labour practices, sweatshop conditions and high levels of repression generally in jurisdictions where they operate. Following an appeal by Kofi Annan at a meeting in the General Assembly of the United Nations held in July 2000, the leaders of 50 companies along with international labour and civil society organisations gave their support to what became known as the Global Compact. The Compact embodies nine principles derived from the Universal Declaration of Human Rights, the International Labour Organisation’s fundamental principles of rights at work and the Rio Principles on the environment and development. Accordingly, the Compact registers support for basic human rights, freedom of association and recognition of the right to collective bargaining, the elimination of all forms of forced and compulsory labour, the effective abolition of child labour, and greater environmental responsibility.35

To what extent the signatories to the global compact and other firms translate formal commitment into action remains to be seen. A recent OECD study of codes of corporate conduct revealed that less than half recognised the right to freedom of association. Most codes, this study claims, represent a minimalist response to public pressure on selected issues, child labour being one of the most salient.36 In the light of this and other pieces of research it seems likely to be many years before an ethical corporate culture in the form of identifiable and consistent outcome takes root.37 For this reason the case for the kind of anti-bribery legislation that has been discussed here would seem to be a strong one. Notwithstanding the
difficulties of implementation and the numerous other complications, the combined impact of legislation boosted by the escalating pressure of public opinion should strengthen the international consensus against abuse generally by propelling corporations towards greater openness and transparency. Ultimately, bribery and other forms of corruption on the one hand, and human rights violations on the other, are but two sides of the single coin of abuse of power.

Notes

2. For an indication of the extent of the relevant literature see ibid. 174, 175 and especially Pope 2000, 337–350.
3. At the end of 1999 in Denmark, the Netherlands, France and, according to some opinion, in the United Kingdom, bribes were tax deductible. In March 1999 Germany ended tax deductibility (TI Newsletter, March 1999).
5. Among the more flagrant examples of the abuse of scarce resources are the huge basilica (modelled on St. Peter’s Rome) which the late president of the Côte d’Ivoire, Felix Houphouet-Boigny, had constructed at his home village of Yamassoukrou, and the complex of marble palaces built for ‘Citoyen’ Mobuto Sese Seko, ruler of Zaire for 33 years, at his home village of Gbadolite. In 1998 General Salim Saleh, half brother of Ugandan president, Yoweri Museveni, ordered a fleet of decrepit helicopter gunships in return for what was believed to be a massive kickback. The President forgave his brother for making an ‘honest mistake’. See ‘Corruption haunts economic success’, The Guardian, 23 December 1998.
9. See TI Newsletter, March 1997, 7. Other international organisations which have highlighted the evils of corruption are the International Monetary Fund, the World Economic Forum, the Organisation of Latin American States, the Organisation for Economic Cooperation and Development, the G7 group of industrialised nations and the European Union. In November 1997 the newly elected UK Government in a major policy document, Eliminating World poverty: a challenge for the twenty-first century, affirmed its support for World Bank and IMF efforts to curtail corruption. The document noted, inter alia, that it is the poor who bear the heaviest cost of corruption as a result of higher prices and fewer employment opportunities.
10. For reasons of space it is not possible to discuss in this context the Inter-American Convention Against Corruption which was approved in March 1996 by 21 of the 34 members of the Organisation of American States. See Low et al. 1998.
11. See Klich 1996.
12. Moody-Stuart has defined grand corruption as ‘the abuse of public power by heads of state, ministers and senior officials for private pecuniary gain’ (Moody-Stuart 1994, 1).
15. See ibid. and Pope 2000, 142.
17. See Argandona 2000, 173 and Moody-Stuart 1994. About half of the complaints about corruption received by the US Commerce Department are in the area of defence procurement. See TI Newsletter, September 1999, 2.
18. See Financial Times, 28 January 1995. The size of the fine in this case is explained by an additional piece of US legislation, the Alternative Fines Act, under which a fine may be set at twice the benefit sought (but not necessarily obtained) by making the corrupt payment. See note 13 above for US Department of Justice FCPA Website.
19. The ‘Bribepayers’ Index’ is to be found in TI Newsletter, June 1999. See also Transparency International’s annually published Corruption Perception Index at: http://www.transparency.org.
21. In 2000 the UK Government was claiming that its existing anti-bribery legislation covered bribery.
overseas. Transparency International (UK)’s legal advisers were strongly contesting this position. Transparency International (UK) Newsletter, April 2000.

25. See TI Newsletter, March 1999, 9. After Abacha’s death his wife was intercepted at Kano airport accompanied by 38 suitcases stuffed with cash.
27. See TI Newsletter, March 1998.
28. For an expanded definition of civil society see Pope 2000, 130: ‘the sum total of those organisations and networks which lie outside the formal state apparatus. It includes the whole gamut of organisations that are traditionally labelled ‘interest groups’ – not just NGOs, but also labour unions, professional associations, chambers of commerce, religions, student groups, cultural societies, sports clubs and informal community groups.’
29. See Klich 1996, 145.
30. According to the World Newspaper Association (WNA) of the 28 journalists killed in 1998 most were murdered during the course of investigations into corruption. Particularly dangerous were those cases that involved establishing links between public authorities and organised crime. See TI Newsletter, June 1999, 4 and June 2001, 11.
32. Of the 35 countries that had signed the Convention by June 2001, all but 7 (including the UK) had moved to the implementation phase. See relevant OECD website: http://www.oecd.org/daf/nocorruption
33. See ‘Goodbye Mr. 10%’ Financial Times, 22 July 1997.
34. According to Jonathan Fox a number of the states that held elections in the early 1990s have failed to reach a democratic threshold. Fox cites: Mexico, El Salvador, Guatemala, Colombia, Peru, Taiwan, Thailand, Malaysia, the Philippines, Nigeria, Ghana, Kenya, Serbia as well as several of the former Soviet republics (Fox 1994).
36. The OECD study is cited by Frankental 2001, 3. See also King 2000.

References
