



# FOREIGN AFFAIRS

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SNAPSHOT

## The Fight Against Corruption Goes Global

The Year Protestors Said Enough

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*Corruption complaint box in Leh, India. (watchsmart / flickr)*

2011 was a turning point in the fight against corruption. Around the world, protest after protest had one common denominator: outrage at some form of corruption. In the Middle East, people took to the streets to oust political elites who had been building vast personal wealth while depriving citizens of the most basic necessities. Israel, too, saw its first mass middle-class economic protests ever. In India, meanwhile, the social activist Anna Hazare led several hunger strikes in a campaign against graft. And Chinese citizens staged protests against corruption. Following

seemingly fraudulent parliamentary elections in December, Russia also saw an unprecedented middle-class movement mobilized against the existing establishment. Even in the United States and Western Europe, citizens rallied against unemployment, corporate greed, and inequality.

As any student of history knows, corruption is an age-old problem. Attempts to solve it date back centuries, but the modern, more global battle started in 1977, when the United States first enacted the U.S. Foreign Corrupt Practices Act (FCPA). It was passed in response to a series of defense industry scandals involving the business practices of such firms as General Electric, Lockheed Martin, and McDonnell Douglas in Asia, Europe, and the Middle East. And for the first time in history, a law purported to be applicable beyond U.S. borders.

Before the FCPA, efforts against public corruption had been narrowly focused -- they were national or local -- and enacted piecemeal, routinely targeting only smaller acts of corruption. Rarely, if ever, did the United States cooperate with other countries to root out systemic inequity.

For decades after it passed, even the FCPA was not particularly widely enforced. U.S. companies despised it, because, they argued, it placed them at a competitive disadvantage with foreign companies. Non-U.S. businesses and governments reviled it, too, because the United States' claim of having jurisdiction on foreign territories seemed a violation of basic sovereignty.

But two long-standing pressures converged in the late 1980s and early 1990s. One pressure came from the U.S. government, which represented the frustrations of American companies that were long unhappy with their relative disadvantage compared to companies in other countries that were free from the "shackles" of the FCPA. The other pressure came from the increasingly empowered nongovernmental organization (NGO) community. It was best embodied by Transparency International, which was established in 1989 to combat corruption worldwide. So, in 1997, the Organization for Economic Cooperation and Development launched the Anti-Bribery Convention, an agreement aimed at leveling the anticorruption playing field by encouraging many nations to adopt laws similar to the FCPA forbidding the bribery of foreign officials, and 29 member nations signed on.

As of today, 38 countries (the original 29 members plus nine more, including Argentina, Brazil, and Israel) have enacted FCPA-like laws. In the last ten years, Germany and France, which had previously not only allowed their companies to offer bribes to foreign officials to gain or retain new business in foreign markets but also to claim tax deductions for them, finally outlawed both practices.

Recently, the U.S. government also got more serious about corruption. Under President Barack Obama, the U.S. Justice Department has been implementing an unprecedented international anti-bribery campaign and has focused much more on enforcing the FCPA at home. In the 35 years since the agreement was signed, the DOJ's criminal division has never been busier. The past year saw the most ever criminal penalties handed down in international bribery-related cases, with well over \$1 billion in fines. Today, the department has more 150 open anti-bribery investigations. This is compared to an average of five to ten annually in the past decade.

Last year, the United Kingdom adopted the most daring and broadest FCPA-like law to date: the U.K. Bribery Act. It criminalized not only official but also unofficial, international commercial bribery and imposed strict liability on senior executives who overlook bribery performed by their organizations.

Even quasi-democratic and authoritarian regimes have begun to join or entertain joining the OECD convention. The Russian Federation just signed the agreement in February this year. In May 2011, it became illegal in China to bribe foreign officials. To be sure, China has had an erratic track record on corruption -- sometimes it ignores graft, and sometimes it executes individuals found guilty of it. But the regime's latest effort is at least partly a genuine effort, partly lip service to domestic pressure, and partly a way to gain full acceptance into the international economic community, especially the World Trade Organization.

Civil society has been instrumental in the development of all of these international anticorruption efforts as well. Over the past two decades, Transparency International has gathered indispensable anticorruption data and developed many tools, such as the Corruption Perceptions Index, Bribe Payers Index, and Global Corruption Barometer, to track cases and provide practical insights. Companies, governments, and the research and NGO communities have widely adopted these tools to help develop their respective anticorruption programs and laws.

Finally, the business community has also joined the direct fight against corruption. Among notable private drives are the World Economic Forum's Partnering Against Corruption Initiative, the Extractive Industry Transparency Initiative, and the UN-sponsored Global Compact, which is made up largely of private companies. The private sector is responding to increased regulations and prosecutions, but it also recognizes that good governance can be good for business. Over the past decade especially, leading global companies have learned that good governance leads to higher revenues and a better corporate reputation. Company performance indices, such as the Dow Jones Sustainability Index and the FTSE for Good, have shown that companies with strong corporate responsibility programs often outperform peers without them.

In other words, the world has made much progress against corruption. But there is still a need to take local and national efforts global. Among some of the innovative measures the U.S. Justice Department has tried recently is stationing more legal attachés than ever at U.S. embassies around the world -- at last count in 75 foreign cities. No one is immune: Large corporations and private individuals alike have been swept up in the anti-bribery dragnet. Some important recent actions centered around the ABB Group, Alcatel-Lucent, BAE Systems, Daimler, Panalpina, and Shell. And notable individual convictions and punishment included the unprecedented 15- and seven-year jail terms meted out in 2011 to two executives from Terra Telecommunications for bribing Haitian telephone company officials.

The United States has also focused on helping other countries develop their own investigative capacity. In 2011, for example, the Justice Department partnered with the Indonesian attorney general's office to establish a 50-prosecutor anticorruption task force. And in the Middle East, the United States has recently started the Kleptocracy Asset Recovery Initiative (KARI). The initiative is focused not on stopping bribe makers (which make up most of the FCPA cases) but on stopping high-level foreign officials from laundering money through the United States. This

initiative is still in an early stage, so it does not yet have a measurable track record. Still, it is aimed at a side of bribery -- bribe-taking, rather than bribe-making -- that is too often ignored.

The United States should encourage other nations to adopt similar measures to the KARI. In addition, it should start coordinating its own investigations with local anticorruption forces. And it should make sure that its activities are properly publicized, to get the word out that the United States is assisting the emerging democratic forces to resolve one of the causes of previous regimes' downfalls -- the pillaging of national coffers.

Beyond those efforts, there are several other ways the United States could use this pivot in history for fighting corruption globally. For one, it could push all countries to adopt FCPA-type laws by 2020. To get there, key players such as the World Trade Organization and the World Bank could require that all member nations, all countries that want to become members, and all those that are seeking aid have such laws in place within a specified period.

Governments should also be encouraged to develop better guidelines for recognizing effective corporate compliance. The United States already has such a system in place under the U.S. sentencing guidelines -- Chapter 8 of those guidelines is the basis on which leading U.S. companies (and increasingly non-U.S. companies) build and maintain good internal ethics and compliance programs. For its part, the OECD recently adopted anti-bribery guidelines for companies within the jurisdiction of member nations. And leading nonprofits, including the Ethics and Compliance Officer Association (ECO) and the Ethics Resource Center, provide advice to both the public and private sectors on what an effective internal governance, ethics, and compliance program looks like. Companies (and their stakeholders) worldwide would benefit from knowing that there is not only risk but reward in establishing effective anticorruption programs.

Governments (through their executive or legislative branches) also need to ensure that there is a proactive, independent, and objective process to investigate government-level corruption allegations. This could involve the creation of independent watchdog agencies in each country, which would be empowered to investigate and prosecute the highest-level corruption. The devil would certainly be in the details of such a proposal, but the popular frustration seen around the world last year stems from official corruption and lack of accountability at the top.

Given the convergence of the public, private, and nongovernmental sectors on the issue of combating global anticorruption, 2012 might be the right time for parties to create a twenty-first-century "trilateral commission" focused on eradicating all forms of corruption. A couple of major powers (the United States, Germany), several leading corporations (General Electric, Siemens, Shell), and NGO leaders (Transparency International, the ECO) could initiate such an effort. It would eventually be constituted of equal parts government, nonprofit, and business representatives. An internal watchdog could receive complaints about corruption from anywhere in the world. An Interpol-like division could then coordinate anticorruption investigations and prosecutions with national justice systems and the International Criminal Court. And a think tank could develop new policies and tools to help eradicate the worst forms of corruption. Initially, the commission could be funded by government and business donations. But eventually, it would be sustained by whatever ill-gotten gains it recovers.

There are certainly many obstacles to overcome -- corruption is culturally different in each country, due process needs to be upheld for even the most despised authoritarian leaders and kleptocrats, funding for new initiatives may not be easy to come by, international cooperation is fraught with roadblocks, and assets may not be easily or quickly recovered or returned to their respective countries.

However, the world has reached a turning point in the global fight against corruption. Nations can take the high road and adopt some truly globalized approaches to fighting corruption or else go down the easy, low road that allows murky business to continue as usual, with bribe makers and takers misusing scant resources and depriving the public of basic human rights, economic progress, and real democracy.

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