

Corruption and the Challenge for Civil Society

– Niall Greene –

24

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Corruption and the Challenge for Civil Society

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Contents

Preface by Mahdi Abdul Hadi, Head of Passia, Jerusalem	4
Introduction	7
Part I - The anatomy of corruption	8
<i>Corruption knows no boundaries</i>	8
<i>The nature of corruption</i>	9
<i>The effects of corruption</i>	12
<i>Some exceptions to the rule ?</i>	14
Part II - Curbing corruption and the role of civil society	15
<i>The effects of corruption on citizens and civil society</i>	15
<i>Fighting corruption</i>	16
<i>But how do we get from here to there?</i>	18
<i>The role of civil society in the combating of corruption</i>	19
<i>How can civil society become engaged ?</i>	20
Part III - International actions against corruption	22
Part IV - What is to be done?	24
Bibliography	25
<i>Articles, papers and speeches</i>	26
<i>Websites</i>	28

Preface

Under the umbrella of EuroMeSCo, a working group on good governance was established in June 2001 to investigate the mechanisms required to create the conditions for good governance in the Euro-Mediterranean Partnership (EMP) area. Its activities, in the form of workshops, research papers and the promotion of dialogue seek to investigate the current nature of governance and institution building in the EMP area and then determine the appropriate legal infrastructure required to ensure the sustained growth of good governance and the flourishing of civil society. The group comprises civil society organizations from Palestine, Jordan and Morocco in the South, and Germany, Ireland and Sweden in the North. The results of their cooperation are being published as useful material for decision-makers, the political elite and academics to help establish a 'safety net' for civil society and social development. This paper is presented by an Irish scholar and outlines in general the nature, causes and effects of corruption as well as addressing the role of civil society in curbing the problem. It goes further by highlighting some examples of successful action against corruption and in its conclusion are suggestions for initiatives which might be pursued within the EuroMeSCo context.

Ireland and Palestine have witnessed many similarities in the way in which their national histories have unfolded, in particular in their struggles against colonialism and attempts to achieve self-determination and independence. Here a Palestinian is joining an Irish scholar in highlighting a social disease which has become a global phenomenon. With the spread of democracy, the rule of law and demands for accountability and transparency, individual awareness of this phenomenon has become more acute and with it increasing calls for action against it. Corruption has many faces and affects the lives of individuals with differing degrees of intensity. The main issue today is political, financial and moral corruption of the kind which distorts societies, states and individuals themselves. The recent UN "Arab Human Development Report, 2003" focused on the state of knowledge in the Arab World and argued that the degree of illiteracy, poverty, dictatorship, violations of human rights, unemployment as well as political and social corruption were all contributing to the decline of the Arab World.

In general calls to end corruption fall into one of several categories:

1. Demands based upon the ethical and moral codes of religion. Most religions contain within their code of ethics and morals a condemnation of corrupt practices and this often drives criticism of regimes.
2. Reformist demands for change. Activists calling for political change within certain countries demand an end to corruption as a necessary condition for effective reform. Such demands can be hampered by the lack of a free press. In many states government ministers own major media establishments, representing a conflict of interests and depriving campaigners of a platform for dissent.
3. Demands for change from political opposition groups. Opposition parties may use a call for an end to corrupt practices as a political slogan and a way of harnessing popular support.
4. Pressure for reform from Western countries. This is often put forward as a condition of further aid being granted to the country in question. However it is often motivated by selfish interests. For example the strong American and European pressure on the Palestinian Authority to end corruption was a legitimate demand and coincided with calls from grassroots Palestinians to "clean out the stables". Yet at the same time it

served an Israeli political agenda and helped to isolate and weaken the Palestinian leadership.

5. Calls from within the regime itself as a political 'slogan' and to preserve itself against rising discontent. Such anti-corruption drives by the Arab regimes have been described as 'comic phenomena' which few would take seriously, motivated as they are by a desire for survival by the rulers. Corruption is so ingrained and the elite gains so much from it that only external pressure is likely to be effective in the long term.

Within the Arab World, intimate individual and collective association with the regime has fatally compromised many of the key religious and intellectual figures who should be playing an instrumental role in the drive for change. For example, an important feature of Arab states is the lack of any notion of separation between Mosque and State, for Islam is not just a faith; it determines a whole way of life and plays a crucial role in shaping the nature and policies of individual Muslim countries and provides the foundation for their constitutions. In the Arab World however this deep-rooted interconnection between state and religion has resulted in the perversion of the latter in many cases, with corrupt religious figures 're-interpreting' texts in order to sanction or excuse official excess. This has meant that a key force in the drive for change has been neutered, with clerics seeking their own survival by allying themselves with the regime. Similarly, members of the intellectual class and business leaders have often sought to ingratiate themselves with the ruling class in order to preserve their wealth and their lives, thus further diminishing pressure for change.

As mentioned earlier, pressure from Western countries can have an effect on the level of corruption within a particular state. As a result of the American-led 'War on Terror' many countries have used security concerns as a pretext for curbing individual rights and press freedoms. This has made it more difficult for activists to monitor official abuses of power and has led to a flourishing of corrupt practices. Further more, any kind of Western pressure or action is often interpreted as an attempt to reshape the country in question to meet foreign ends, as has been, for example, the case with the Anglo-American-led invasion of Iraq.

Some Arab activists have argued that corruption is a consequence of the nature of Arab regimes and their political structure. They exaggerate the extent of corruption and claim that fighting it is like "fighting capitalism in America or Catholicism in the Vatican". They make the further claim that only by fundamentally altering the nature of Arab regimes, by changing their foundations, can corruption truly be combated. However, a point highlighted in the Niall Greene paper should be considered in relation to this position; "... in societies where family and other kinds of relations are very strong, and especially where existing moral or social codes require that one helps ones family and friends, the expectation that public employees will routinely apply 'arms-length' principles ... may be unrealistic". In other words it is arguably the case that the nature of social relationships in some countries, for example, within the Arab World, makes some forms of corruption both more widespread and harder to combat. Remarks in a report by the World Bank seem to support this idea, for it argues that, "...the causes of corruption are rooted in the particular economic, social and political conditions of each country and as such its causes are as complex as the types of conditions varied".

If the kind of position highlighted above is correct and corruption *is* the consequence of the nature of the incumbent regimes in the Arab World, then presumably those activists who argue that wholesale replacement of those regimes is the best way of fighting corruption are right to do so. However, if some forms of what is called corruption result from inherent social practices, such as close family or community ties, then an end to corruption can only be achieved by a process of gradual reform within the societies themselves, and replacing the elite will have little long-term effect. In other words, part of the debate focuses on whether corruption is purely linked to current political conditions, or whether there are pervasive social customs and practices which increase the

likelihood of corruption amongst state officials. As Niall Greene's paper argues, dominant social traditions, such as the closeness of families and communities, are likely to be reflected in the behavior of state employees. The World Bank report also seems to complement this claim – that corruption is often a product of, or at least exacerbated by, specific local customs and traditions.

The question of the effect of corruption on human development is not limited to one country, region or people. The various efforts and calls for reform that have been made have brought non-governmental organisations and a number of governments to coordinate their work beyond national boundaries in order to face the challenges posed by corrupt systems and societies. It is only as a result of joint action that lasting changes can be implemented. The promotion of further reflection upon the various views of the causes of corruption is extremely important, especially since those attempting to fight – if not to eradicate – this pervasive phenomenon need to improve their understanding of the many different contexts in which it flourishes. Only once this understanding has been attained will it truly be possible to achieve sustainable social development and the building of good governance within the EMP.

Introduction

There is a corruption pandemic afflicting societies at all levels of development irrespective of the form of political system or of ideological, cultural, religious or ethnic composition. Citizens and their civil organisations are among the most prominent victims of corruption, particularly but not exclusively afflicting those in developing countries. They suffer economic, social and political disadvantage as a result of the activities of corrupt officials and corporations. Civil society has, therefore, a major stake in seeing corruption eliminated or at least curtailed and action by civil society is itself an essential (but on its own not a sufficient) component in the fight against corruption.

The Euro-Mediterranean Partnership launched by the Convention of Barcelona in 1995 specifically seeks to confront issues of economic and social development in a sustainable and coherent manner. Consequently, the question of corruption should be a matter of greater concern to senior officials and other actors in the EMP. Further, the fight against corruption is inextricably linked with other complex problems such as money laundering, drug smuggling, organised crime and terrorism which were a focus of discussions between Euro-Mediterranean foreign ministers at Valencia in April 2002. Corruption is not an isolated, *sui generis* issue.

The recent UNDP/AFESD report on human development in Arab countries¹ lists the most important challenges facing the Arab states as “poverty, unemployment and mounting environmental problems, including depletion and degradation of natural resources such as water and land”.² These are all issues that are inextricably linked to the diversion of resources associated with corruption in developing economies.

This paper looks at aspects of corruption as it afflicts the generality of citizens and civil society. Part I outlines the nature, causes and effects of corruption. Part II addresses the effects of corruption on civil society, how civil society can make a practical contribution to curbing the phenomenon and how it might be assisted in this task. Part III contains a brief summation of international action against corruption and finally in Part IV are listed some of the actions which might be pursued in the EuroMed context to advance the fight against corruption, including the strengthening of the role of civil society.

¹ United Nations Development Fund / Arab Fund for Economic and Social Development, 2002, “Arab Human Development Report 2002: Creating opportunities for future generations”, New York, UNDP Regional Bureau for Arab States.

² Interestingly, and despite the emphasis which UNDP has placed on fighting corruption which is noted later in this paper, this extensive report makes only the most oblique references (e.g. “lack of accountability, transparency and integrity”) to corruption as an issue in the countries covered by the report.

Part I - The anatomy of corruption

Corruption knows no boundaries

It is less than half a century since Leys wrote that, in relation to corruption, "there is a widespread feeling that the facts cannot be discovered or that if they can, they cannot be proved, or that if they can be proved, the proof cannot be published"³. Things have changed: stories of corruption are now the daily fodder of news media in all but the most closed societies, there is an extensive academic literature on the subject,⁴ there are numerous NGOs devoted to fighting it, virtually every country has a panoply of laws to counter it and in many cases dedicated state institutions to uncover it and there are important, but to date not very effective, international conventions designed to stop it.

Within the countries of the Euromed process, corruption in and between the Northern participants is well documented and analysed. Within the past ten years virtually every member of the European Community has had to deal with significant instances of corruption and bribery either within its own borders (e.g. France, Italy, Belgium, Ireland) or in relation to a third country (e.g. Sweden/India/Bofors). The level of knowledge of corrupt activities in the South is much lower. It is noteworthy that in an extensive (but obviously not exhaustive) review of the English language literature Asia, South America, North America, Sub Saharan Africa and Europe all have their "schools" of commentators on corruption but not, apparently, the Maghreb and Middle East⁵. The annual *Global Corruption Report* of Transparency International⁶ does, however, present a useful overview of instances of (mainly grand) corruption, the steps being taken to eradicate it and the part being played by civil society. The most recent edition lists current cases in Algeria, Egypt, Israel, Jordan, Lebanon, Libya, Morocco, the Palestinian Territories, Syria, Tunisia, and involving the administrative, business and political elites of these states.⁷

Countries in the area also figure in the corruption perception indices published by various international organisations but data for only four Southern Mediterranean countries (Egypt, Israel, Jordan and Tunisia) appear in Transparency International's "poll of polls", the Corruption Perceptions Index, in the most recent addition of which are aggregated the conclusions of 15 surveys carried out by nine independent institutions.⁸

While they all share in the scourge of corruption, there is at least one important respect in which the liberal democracies to the North differ from most of the various governmental and political systems of the South (Israel being one notable exception): their greater ability through a strong media and vigorous civil society organisations to identify corrupt practices and to prosecute them through an independent judiciary. There is an important distinction to be made, therefore, between corruption in a system and a corrupt system when devising strategies for combating the phenomenon.⁹

³ Leys, C., 1965, "What is the problem about corruption?", *Journal of Modern African Studies*, Vol 3, No 2 215-230.

⁴ Naim, M., 1995, "The corruption eruption", *The Brown Journal of World Affairs*, Vol 2, No 2.

⁵ The author does, however, acknowledge that an analysis of, for instance, Arabic and French sources might have produced a different picture.

⁶ Transparency International has chapters in over 75 countries worldwide and has its International Secretariat at Otto-Suhr-Allee 97/99, 10585 Berlin, Germany. Email: ti@transparency.org. Website: www.transparency.org.

⁷ Global Corruption Report 2003, Transparency International, Berlin.

⁸ Transparency International, 2002, "The 2002 Corruption Perceptions Index", Berlin, Transparency International

⁹ I am grateful to Mark Heller of the Jaffee Centre for Strategic Studies for reminding me of this key distinction.

The nature of corruption

Of the many definitions of corruption that have been attempted since the 1960s, probably the now most widely accepted is that adopted by Transparency International: "Corruption is the misuse of entrusted power for private gain including both public and private sector corruption at petty and grand levels".¹⁰

A criticism of this definition is that, especially in cases of grand corruption, it by implication leaves the blame at the door of the "takers" and does not place sufficient explicit weight on the shoulders of the "givers" where the gain is invariably corporate rather than personal. This criticism applies to most modern attempts to define corruption.¹¹ The framers of the US Foreign Corrupt Practices Act¹² made no such distinction in 1977 when they made the briber the target of criminal prosecution (and of which more later).

To an extent corruption can be looked on as a form of covert privatisation of government functions since both at policy making and law enforcement levels corrupt practices involve officials acting in the best interests of private concerns (including themselves) rather than for the public interest.¹³

Gains from corruption may be direct or indirect. In a society where relations tend to be close and personal, it may be difficult to establish a direct link between an act that could be assumed to reflect corruption and a particular payment – or the payment may take place at a much later time with a generous gift which may even go to a relative rather than the favour granter. In societies where family or other kinds of relationships are very strong, and especially where existing moral or social codes require that one help family and friends, the expectation that public employees will routinely apply arm's-length principles in his relations with friends and relatives may be unrealistic.¹⁴

Corruption is obviously not the only form of malfeasance by officials but most of the others, such as outright theft, embezzlement and misappropriation, are so egregious that they are universally condemned. It is to some extent because it has been argued by some that, while it may be morally reprehensible, corruption can be rationalised economically, that there has been much analytical attention to its characteristics and effects and the means of combating it.

One feature that links North and South in the corruption nexus is evidence that the more corrupt the Northern partner country the more likely it is to have significant trade with corrupt partners to the South. The author of the first study of this phenomenon has remarked that "there is a popular excuse of industrial countries [that] their exporting business merely adapts to local standards of ethics when bribing the officials of the importing countries. This is clearly at odds with our findings"¹⁵. The study found that Belgium/Luxembourg, France, Italy, and the Netherlands and South Korea among the leading exporting countries show the most outstanding propensity to pay bribes for the acquisition of contracts in international trade; Australia, Sweden and Malaysia emerged as having the lowest propensity. Similar but not identical findings are to be found in a

¹⁰ Global Corruption Report, 2001, Transparency International, Berlin.

¹¹ See, for instance, Friedrich, C. J., 1974 "Limited Government: A Comparison", Prentice Hall, Englewood Cliffs NJ at p.74: "The pattern of corruption can be said to exist whenever a powerholder who is charged with doing certain things, ie, who is a responsible functionary or officeholder, is by monetary or other rewards not legally provided for, induced to take actions which favour whoever provides the rewards and thereby does damage to the public and its interest".

¹² 15 USC.

¹³ Passos, N., 1997, "*Causes and consequences of corruption*", paper to 8th International Corruption Conference, Lima, Peru

¹⁴ Tanzi, V., 1995, "*Corruption, governmental activities and markets*", Finance and Development, Vol 32, No 4, p. 24-26.

¹⁵ Lambsdorff, J. G., 1998, "*First enquiry into the bribery propensity of leading exporting nations*", European Journal of Development Research Vol 10 No 1 and earlier as a paper at the 8th International Anti-Corruption Conference, Lima, Peru September 1997.

recent Transparency International survey.¹⁶ These results, even if only partially correct, obviously have major implications for the intensification of efforts to import agreed international standards into the domestic legislation of both "source" and "host" countries but particularly the former. Similar considerations undoubtedly also apply in donor/receiver relations in respect of both bilateral and multilateral aid and trade programmes. These programmes often carry with them opportunities for the distortion of decisions to the benefit of parties far removed from the ostensible targets of the initiative.

Corruption is of necessity largely carried out in secret and accurate estimates of its scale are, therefore, difficult. One analyst has suggested that if only 5 per cent of foreign direct investment in the developing world were paid as bribes, the total (in 1996) would average \$2 billion annually and if a similar percentage of merchandise imports by developing countries were diverted into bribes the combined total would be \$50 billion¹⁷. When one considers that the total annual procurement market for developing countries was then approaching \$1 trillion, according to a 1996 US Department of Commerce estimate¹⁸, with all that implies for corrupt interventions, and that it excludes what we now know to be the nature, if not necessarily the extent, of corruption in the developed world, this is almost certainly a very conservative estimate of the scale of the rents extracted by well placed officials, whether in the political or administrative wings of government.

There is evidence that the incidence of corruption is rising world wide.¹⁹ This is largely because the underlying factors giving rise to corruption seem to be more wide spread. A UN report²⁰ has attributed this to a growing number of asymmetries and dysfunctions in the spheres of politics, culture, the economy and the law. Mismatches between the banking and tax regimes, in administrative systems (giving rise to "facilitation payments"); between cultural systems (some more and some less tolerant of certain practices); in economics and politics (forcing people to buy entitlements) and between legal systems with differing standards in relation to corruption (in, for instance, the tax deductibility of bribes mentioned elsewhere in this paper) all contribute to the growth of corruption in a globalising economy.

Among all of the predictive theories about corruption one is clear: bureaucratic procedure and red tape and government intervention in the market go hand in glove with corruption. Using data compiled by the World Economic Forum's *Global Competitiveness Report 1996*, involving 2 000 enterprises across 49 countries, Kauffman/Siegelbaum²¹ have calculated that in settings with higher regulatory and state bureaucratic interference in business, the incidence of corrupt practices is significantly higher. Similarly, in a study of twenty countries (all former Soviet Union republics or Warsaw Pact countries together with Slovenia and Croatia), the European Bank for Reconstruction and Development²² found a close correlation in the perceptions of senior managers in the domestic economies of each of the countries between high levels of state intervention and corruption. This is supported by more theoretical work such as that of Shleifer and Vishny²³ and Mauro.²⁴ And as far back as 1968 Gunnar Myrdal argued that corruption gave rise to even more bureaucracy as officials generated more hurdles from which to elicit bribes.²⁵

¹⁶ Transparency International, 2002, "Bribe Payers Index", Berlin, Transparency International.

¹⁷ Rose-Ackerman, S., 1996, "*Democracy and 'grand' corruption*", International Social Science Journal, No 149, p. 365-380.

¹⁸ As cited by Leiken, R. S., 1996, "*Controlling the Global Corruption Epidemic*", Foreign Policy No 105, p. 55-73.

¹⁹ Although Leenders and Sfakianakis make the case, in discussing developments in the Middle East and North Africa in the Global Corruption Report, 2002 (Transparency International, Berlin), that the incidence of grand corruption in that region may have declined in 2001-2 "owing simply to reduced opportunities for 'commissions' as a result of the economic recession".

²⁰ Passos, N, 1997, "*Regional Initiatives against International Corruption*", Report to the United Nations Crime Prevention and Criminal Justice Programme (E/CN 1 5/1997/3).

²¹ Kauffman, D. and Siegelbaum, P., 1996, "*Privatisation and corruption in transition economies*", Journal of International Affairs, Vol 50 No 2.

²² Hellman, J. and Schankerman, M., 2000, "Intervention, corruption and capture: the nexus between enterprises and the state", Working paper No 58, European Bank for Reconstruction and Development.

²³ Shleifer, A. and Vishny, R. W., 1993, "*Corruption*", Quarterly Journal of Economics, Vol CVIII No 3, p. 599-617.

²⁴ Mauro, P., 1995, "*Corruption and Growth*", Quarterly Journal of Economics, Vol CX No 3, p. 681-712.

²⁵ Myrdal, G., 1968, "Asian Drama: An enquiry into the poverty of nations", Vol 2, New York, Pantheon.

There is also strong support for the view that corruption is higher in countries with economies dominated by a small number of firms or where domestic firms are sheltered from foreign competition by high tariffs.²⁶ It may even be that governments influence market structures or erect barriers to trade in order to later extract bribes.²⁷

Further, there is evidence that corruption is higher in countries where judicial institutions are not well developed or are not independent of political influences.²⁸

Countries that are more fractionalised (whether of ethnic, linguistic or religious origin) tend to have more dishonest bureaucracies.²⁹ These are, however, structural phenomena rather than cultural ones and, indeed, cultural relativist rationales for corruption are being discredited. Kaufmann³⁰ draws attention to the fact that while there is in general a correlation between the level of a country's development and the degree to which it experiences corruption, it is also the case that there are large variations in the incidence of corruption among groups at similar levels of development. He instances Transparency International data that ranks Chile, the Czech Republic, Malaysia, Poland and South Africa as less corrupt than more industrialised and economically advanced countries such as Greece and Italy.

The elites of developing countries are not blind to the existence and effects of corruption. In a 1996 survey of 150 members of the elites of 63 developing and post communist countries, public sector corruption was identified as the single most important obstacle to development (and the second most important by public sector participants in the survey). The same group identified deregulation and liberalisation, the modernisation of the tax system and the budget and privatisation was almost equally important in the combatting of corruption.³¹ They also believed that the industrialized countries needed to reduce incentives for engaging in corrupt practices abroad.

These findings are mirrored in Middle East and North African surveys. A Council of Foreign Affairs survey of businesspeople throughout the area in 2002 found that red tape and corruption were among the most important hurdles to their operations together with high tariffs and taxes; Transparency Maroc found a similar result in that country as did the World Bank in Palestine.³² In Lebanon businesspeople believe that there is a correlation between widespread corruption in the country and low levels of foreign direct investment³³

Surveys conducted in Morocco³⁴, the Palestinian Territories³⁵ and Jordan³⁶ in recent years point to high levels of popular awareness and intolerance of corruption and its negative societal effects.

²⁶ Ades, A. and Di Tella, R., 1995, "Competition and corruption", Applied Economics Discussion Paper Series, No 169, Oxford, Oxford University.

²⁷ Ades, A. and Di Tella, R., 1996, "*The causes and consequences of corruption*", IDS Bulletin Vol 27 No 2, p. 6-11.

²⁸ Ades, A. and Di Tella, R., 1995, "The new economics of corruption: a survey and some new results", mimeo, Oxford, Oxford University.

²⁹ Mauro, P., 1998, "*Corruption and the composition of government expenditure*", Journal of Public Economics, Vol 69, No 2.

³⁰ Kaufmann, D., 1997, "*Corruption: the facts*", Foreign Policy, No 107, p. 114-131.

³¹ Kaufmann, D. and Siegalbaum, P., 1996, *op cit* at fn 21.

³² All cited by Leenders, R. and Sfakianakis, 2002, *Middle East and North Africa* in Global Corruption Report 2002 (Transparency International, Berlin).

³³ Mansour, A., 2001, The Views of Foreign Investors in Lebanon, (ESCWA, Beirut).

³⁴ *op cit* fn 32.

³⁵ Democracy Index, Palestinian Centre for Policy and Survey Research, 2002.

³⁶ Public Field Survey on Corruption in Jordan, Center for Strategic Studies, Jordan University, 2002.

The World Bank has noted³⁷ that the causes of corruption are rooted in the particular economic, social and political conditions of each country and “as such, its causes are as complex as the types of conditions are varied”. Nonetheless, there are sufficient features of the phenomenon and its effects to make some prescriptions for fighting it possible – even though results of those fights have historically been disappointing.

The effects of corruption

Some of the earlier modern commentators³⁸ on the effects of corruption argued that corruption might actually have the effect of raising economic growth. This was achieved through the speeding up of and the taking uncertainty out of the bureaucratic process by applying “grease” to it. But even in societies where there are a myriad of regulations constructed largely as opportunities for bribery there are also socially valuable rules (e.g. to do with the environment, building codes and the exploitation of natural resources), the circumvention of which may do serious damage to social aims.³⁹ For these and other reasons the benign view of corruption or, at least, to certain forms of it, have been comprehensibly rebutted⁴⁰ and few would espouse such an analysis today.

The former Director-General of Development at the European Commission, Dieter Frisch, has summarised the economic effects of corruption as follows:

- It raises the costs of goods and services;
- It raises the debt of the country;
- It leads to a lowering of standards as substandard goods are acquired and inappropriate and unnecessary technology is acquired;
- It results in project choices being made more on grounds of capital than manpower;
- When a country raises its debt to carry projects that are not economically viable the additional debt does not only include the 10 to 20 percent extra cost due to corruption; rather the debt of the entire project may be a burden because of decisions to proceed with unproductive and unnecessary projects.⁴¹

The only noticeable category of effects missing from this list is that of the political and social consequences as officials and entire regimes seek to protect their earnings either from the efforts of reformers or those seeking regime change – often to get access to their own source of corrupt income. This compounds social inequality, undermines the legitimacy of the state, threatens human rights and generally erodes the citizens’ sense that the system operates justly.

Much of what follows can be viewed against the framework posited by Dieter Fisch.

While there are interesting chicken and egg type discussions to be pursued around the issue of whether corruption begets poverty or *vice versa*, the fact is that mobile foreign investment is in general averse to locating in corrupt societies. This is not just because of the higher cost of doing business in such countries but because corruption brings with it other uncertainties, particularly if it is allied to political instability.

³⁷ World Bank, 1992, “Governance and development”, Washington DC, World Bank.

³⁸ Cf. for instance Leff, N., 1964, “*Economic Development through bureaucratic corruption*”, American Behavioural Scientist, p. 8-14 and Huntington, S. P., 1968 “Political order in changing societies”, New Haven, Yale University Press.

³⁹ Kauffman, D., 1997, *op cit* at fn 30.

⁴⁰ Cf. for instance Shleifer and Vishny 1993 *op cit* at fn 23 and Mauro 1995 *op cit* at fn 24.

⁴¹ Frisch, Dieter, 1994, “The effects of corruption”, speech to the African Leadership Forum, Cotonou, September 1994.

In a seminal study Mauro⁴² estimated the effect of corruption on the average ratio of total and private investment to GDP for the period between 1960 and 1985 for 67 countries. He found that corruption lowered investment, thereby reducing growth. The negative association between corruption and investment (and, therefore, growth) was significant.

He found, for instance, that if Bangladesh were to improve the integrity and efficiency of its bureaucracy to the level of that of Uruguay (not a hugely challenging target), its investment rate should rise by almost 5 per cent and its annual GDP growth by over one half per cent.

But corruption affects not just the level of investment but also its use and character.⁴³ Poor technological decisions are taken by corrupt bureaucrats who tend to favour non-standard, complex and expensive capital-intensive projects that make it easier to collect significant sums.⁴⁴ As a result expenditure on education loses out to large “lumpy” projects including, especially, to armaments purchases and in health expenditure emphasis is placed on the acquisition of sophisticated equipment rather than on essential primary care which involves employing more doctors and nurses.⁴⁵

The price that business pays in a corrupt environment is not confined to the extent of the bribe extracted but can include significant diversion of management effort. A 1996 enterprise survey showed that in Ukraine company owners who pay a lot of bribes have to spend three times more time with officials than firm owners who pay less bribes – they had to spend 75 staff weeks per annum of administrative time in dealing with officials as compared with an average of 22 staff weeks for low bribing firms.⁴⁶ Such a diversion of effort by owners and managers of small and medium sized companies imposes significant costs on them over and above the monetary cost of the bribes actually extracted.

The International Monetary Fund⁴⁷ found in a cross-country regression analysis for the period 1980-1997 that “high and rising corruption increases income inequality and poverty”. They calculated that a worsening in the corruption index of a country by one standard deviation (2.52 points on a scale of 0 to 10) is associated with a reduction in average secondary schooling of 2.3 years.

One study⁴⁸ has looked at data on investment flows from 14 source countries to 45 host countries and compared it with on data corruption levels in the host country measured on the Transparency International scale of 1 to 10. This found that a single point change in the scale could have the equivalent effect of a 3 per cent change in the marginal tax rate and a 16 per cent reduction or increase in foreign direct investment. The analysis showed Mexico to be at the equivalent of a 21 per cent marginal tax rate disadvantage compared with Singapore at that time.

It has been argued by some that a benign attitude can be taken to corruption at a petty level – that bribery that falls within the category of the “facilitation” of minor bureaucratic tasks can be ignored as an issue. But it is precisely at this level that the most serious direct effect on ordinary citizens may be observed. The aim of many social and anti-poverty programmes to allocate resources according to the needs of the recipients is subverted where bribes intervene as an allocative mechanism – they also undermine the rule of law, justice and equality before the law

⁴² Mauro, P., 1995 *op cit* at fn 24.

⁴³ Kaufman, D., 1997, *op cit* at fn 30.

⁴⁴ Kauffman, D., 1997, *ibid*.

⁴⁵ Mauro, P., 1998, *op cit* at fn 29.

⁴⁶ Kauffman, D., 1997, *The Missing pillar of a growth strategy for Ukraine: Reforms for private sector development* in “Ukraine: Accelerating the transition to the market” (eds Cornelius, P. K. and Lenain, P.), Washington DC, International Monetary Fund.

⁴⁷ IMF, 2002, “Does corruption affect income inequality and poverty”, WP/98/76-EA WP/98/76, IMF website

⁴⁸ Shang-Jin Wei, 1997, “How taxing is corruption on international investors?”, paper to 8th International Anti-corruption Conference, Lima, Peru.

and equality of opportunity. Further, it is at this level that corruption can set the conditions for its own perpetuation in the face of deregulation and other measures designed to eradicate it. Harris-White has described how “decades of tax evasion, black investment and corruption results in relations and institutions are now serious obstacles to reform”.⁴⁹ It has also been noted that low level officials often collect bribes and pass them on to higher level officials, perhaps in an upfront payment for the job itself.⁵⁰

Some exceptions to the rule?

Despite the wide consensus about the strongly negative effects of corruption on the economic health and welfare of societies, there remains a degree of ambivalence among some policy makers due in part to the so called “East Asian Puzzle”. Extensive surveys of business men throughout the world⁵¹ show that they consider China, Indonesia, Vietnam and Thailand to be among the most corrupt countries and yet these countries enjoy consistently stellar levels of growth based to a significant extent on inflows of private capital. But it may be that what distinguishes corruption in these countries is its predictability (ie that the favour, service or product being sought is more likely to be granted) and that, therefore, from the point of view of the investor it matters little whether he pays through a predictable tax or a predictable bribe.⁵² The way in which bribery is organised (and the more authoritarian the country the more rigidly it can be organised by corrupt officials) is, therefore, an important component in gaining some understanding of the Puzzle as does the fact that the private investment flows for many of these countries have large ethnic and emigrants remittance components. However, given equal levels of predictability, it is obvious that investment and trade will gravitate towards the country with the lowest or no level of corruption.

It may be argued that if predictability is a key issue for investors and if predictability tends to be accompanied by low or at worst moderate levels of corruption in respect of individual transactions⁵³ then we can arrive at some notion of tolerable or even acceptable rates of corruption. However, the same studies that looked at the predictability issue also concluded that it was precisely this characteristic which underlay the greatest aggregate levels of corrupt proceeds – the system is so efficient that nothing escapes the net and overall income from individual instances of corruption that may be quite low can be maximised. As a consequence the incentive for corrupt officials to protect their positions by inhibiting societal and political change is very strong in these systems.⁵⁴

⁴⁹ Harriss-White, B., 1996, “*Liberalisation and Corruption: resolving the paradox*”, IDS Bulletin, Vol 27, No 2, p. 31-37.

⁵⁰ United Nations Development Programme, 1997, Corruption and Good Governance, Discussion paper 3, New York, Management Development and Governance Division, Bureau for Policy and Programme Support, UNDP.

⁵¹ For example, those published regularly by Transparency International, Business International and the World Economic Forum.

⁵² Campos J. E., Lien, D. and Pradhan, S., 1999, “*The impact of corruption on investment; predictability matters*”, World Development, Vol 27 No 6, p. 1059-1067.

⁵³ Shleifer/Vishny, 1993, *op cit* at fn 23, Mauro 1995 *op cit* at fn 24 and Khan, M. H., 1996, “*A typology of corrupt transactions in developing countries*”, IDS Bulletin Vol. 27 No 2.

⁵⁴ Highly organised and predictable forms of corruption were also a feature of the Soviet Union and the Philippines under Marcos.

Part II - Curbing corruption and the role of civil society

The effect of corruption on citizens and civil society

As has been shown in the earlier part of this paper corruption particularly affects the development potential, the efficiency and the equitable operation of societies and especially those at lower levels of economic development. The main victims of these phenomena are those at the lowest levels of economic, social and political privilege and the beneficiaries are those high up and low down in the government bureaucracy who are able to extract a rent for access to services or for the distortion of decisions. Very often many of the exploiters are not significantly removed in conventional class terms from those whom they exploit.

This situation is well summarised in the following passage from Tanzi:⁵⁵

"If the well connected get the best jobs, the most profitable government contracts, the subsidised credit, foreign exchange at over valued rates and so forth, government activity is less likely to further the goals of improving the distribution of income and making the economic system more equitable....In all its ramifications, corruption is likely to have negative implications for the stabilisation role of government, if that role requires, as is often the case, a reduction of the fiscal deficit. This will occur because corruption will most likely raise the cost of running the government while it reduces government revenue. The allocation of disability pensions to people who are not disabled, the granting of government contracts to people who pay bribes to obtain them and thus raise their costs, and other corrupt practices that distort spending decisions increase the total cost of government services.... Government revenue falls when tax is not collected or is diverted...the effective tax burden may be greater than the official tax burden because some payments end up in the pockets of tax inspectors....Overall corruption has a corrosive effect. The belief that every one does it is likely to lead to a situation where many people, if not everyone, will do it. As with tax evasion, imitation will prove to be a powerful force".

It has been argued⁵⁶ that the transition from the anarchic rule of "roving bandits", to the more stable regime ushered in by "stationary bandits", to stable autocracy (whether of the superficially democratic kind or other), and eventually to liberal democracy brings with it a progressive lowering and eventually the elimination or the reduction to inconsequential levels of corruption. But along that continuum, while corruption exists, there is a powerful force operating in support of the *status quo* and regime change is more likely to be by another group of "stationary bandits" than it is by anti-corruption reformers (other than of the most rhetorical kind with either no or very short-term commitment to the project).

Citizens and their civil society organisations are, therefore, assailed on two fronts: by the economic and social impediments already referred to and by the oppressive actions of the regime whose adherents benefit from the corrupt arrangements – and these adherents include not just the bribe takers but the bribe givers who have privileged access to scarce state benefits and monopolies. These oppressive actions extend to the curtailment of free speech, controls on the media, lack of access to the judicial system and/or interference with its operation and limitation on the rights to form free associations. In a recent commentary on corruption in the Middle East and North Africa, Sa'eda al-Kilani has noted that "even regimes that seem most determined to introduce reforms will find it difficult to abandon control, while years of oppression and suspicion of intellectuals have left

⁵⁵ Tanzi, V., 1995, *op cit* at fn 14.

⁵⁶ Olson, M., 1993, "Dictatorship, Democracy and Development", *American Political Science Review*, Vol 87, No 3.

civil society weakly organised and vulnerable to penetration by the security forces in many instances".⁵⁷

It should not be assumed, however, that the oppressive actions visited on civil society are only to be found in autocracies. We need go no further than Italy to find a country where government and private sector beneficiaries of the corruption cycle used the state apparatus (including the judiciary) and criminal elements to stifle opposition.⁵⁸

Citizens and civil society have, therefore, a huge stake in seeing corruption curbed. They may not always, however, be well equipped to deal with it.

Fighting corruption

Examples of successful campaigns to eliminate or even seriously curtail corruption are limited but sufficiently broadly based to encourage rather than deter action. Hong Kong and Singapore are universally admired for having moved from being very corrupt to being relatively clean in a short space of time. There have also been successes in Botswana, Chile, Philippines, Bolivia, Poland and Uganda.⁵⁹ Successes have ranged from purging virtually the entire government system (as in Hong Kong, Singapore, Uganda and Botswana) to dealing with particularly egregious areas of abuse (as in the tax inspectorate in Philippines, the customs service in Peru and the social security system in Argentina) in a more piecemeal approach to reform.

One important feature of fighting corruption that has emerged from economic analysis of crime is that the optimal level of corruption cannot be zero (which would be the target of an entirely ethical or moral based approach) since the costs of attaining that would be prohibitive, especially at the margins. One study of anti-corruption programmes in the government of the New York city came to the conclusion that "more rules, procedures and organisational shuffles" had contributed as much to a crisis in public administration as it had to fighting corruption – indeed that the whole apparatus had grown so complex it may actually have made the crime more difficult to detect.⁶⁰

The instruments for reform have been extensively analysed and are now well understood. They all involve the identification and elimination of monopoly, unaccountable power over a good or service, reducing discretion in the granting of such a good or service and making the individual(s) responsible accountable. Klitgaard has summarised this in the formula:

$$C=M+D-A$$

In which C is corruption, M is monopoly, D is discretion and A is accountability.⁶¹

⁵⁷ Sa'eda al-Kilani, 2001, *"Middle East and North Africa"* in Global Corruption Report 2001, Berlin, Transparency International.

⁵⁸ Della Porta, D. and Vannucci, A., 1999, "Corrupt Exchanges: Actors, Resources and Mechanisms of Political Corruption", Aldine de Gruy, USA.

⁵⁹ Kauffman, D., 1997, *op cit* at fn 30.

⁶⁰ Anechiarico, F. and Jacobs, J. B., 1996, "The pursuit of absolute integrity: how corruption control makes government ineffective", Chicago, University of Chicago Press.

⁶¹ Klitgaard, R., 1997, *"International cooperation against corruption"*, Internet Centre for Corruption Research .

These high level factors must, for practical purposes be reduced to more programmatic elements. UNDP⁶² has proposed the following basic framework of measures:⁶³

- *Reducing incentives for payoffs* by reducing the level of benefits controlled by unaccountable officials and ending programmes, which are particularly susceptible to corruption. This needs to be done without eliminating programmes that have strong public justification and without simply shifting the decisions into the private sector;
- *Heightening competitiveness* through measures such as lowering controls on foreign trade, removing entry barriers for private industry and privatise state firms in a way that assures competition will contribute to the fight against corruption (and not just convert a state to a private monopoly);
- *Clarifying regulatory and spending programmes* by making rules more transparent and publicly justifiable;
- *Reforming the bureaucracy* through such measures as introducing multiple points for accessing state services, eliminating areas of exclusive jurisdiction.
- *Enforcing anti-corruption laws* through equalising penalties for both givers and takers, for active and passive participants. But tough laws are not enough and many highly corrupt countries have exemplary formal statutes. A country that is serious about reform must have effective investigation and prosecution bodies and a well functioning judicial system.
- *Reforming the civil service* through open recruitment processes, training, improved working conditions and adequate pay. Attacking the marginal benefit of corruption through penalties, including loss of employment, for bribe taking is also an essential feature of reform. Unfortunately, World Bank and IMF insistence on reducing civil service wage bills has fuelled the corruption cycle in many countries.
- *Inducing reform at all levels* will be difficult if low-level corruption is linked through hierarchical connections to corruption higher up in a pyramid type structure. If corruption is pervasive this may be very difficult to counteract.
- *Eliciting the help of international organisations* who can be especially helpful in providing resources and technical assistance to ease the transition to a competent, less numerous and better paid civil service.
- *Instituting check and balances* by allowing independent sources of power and information flourish outside of government. Essentially, this involves creating veto points within government, making information about policy making and administration publicly available, guarantees of fundamental human rights and protect whistleblowers.

The UNDP framework, of which the above is only a brief outline, is not unique. Transparency International in its model National Integrity System⁶⁴ may lay emphases in different places but comes to essentially the same conclusions about where reforms and actions are needed and

⁶² United Nations Development Programme, 1997, "Corruption and Good Governance, Discussion paper 3", New York, Management Development and Governance Division, Bureau for Policy and Programme Support, UNDP.

⁶³ What follows is the author's very brief summation of the UNDP material and is not a verbatim repetition of the much more comprehensive treatment in the discussion paper.

⁶⁴ Pope, J., 2000, "Confronting Corruption: the elements of a national integrity system", Berlin, Transparency International.

stresses the need to move from systems of purely vertical or hierarchical accountability to ones which have an equally strong horizontal component.

There is a good deal of debate about how essential Western style democracy and privatisation and competition are to the fight against corruption. Leiken has suggested that where corruption is systemic, market and administrative reforms may be counterproductive in that they loosen government controls, may facilitate illicit economic activity and lead to bureaucrats compensating for lost revenues by exacting new fees elsewhere.⁶⁵ Rose-Ackerman argues that democracy and competition are necessary but not sufficient factors in fighting corruption – democracy without rules on conflict of interest, financial enrichment and bribery and competition without reform of the state, risks creating severe pressures on officials.⁶⁶ In a similar analysis, Kauffman asserts that “half baked, poorly designed, inadequately implemented market reforms may indeed boost corruption. Well designed and properly executed market reforms do not”.⁶⁷

But how do we get from here to there?

But even the above small glimpse at the tools needed to fight, combat or even just curb corruption begs the question of how the entire process gets initiated. Obviously, this will be easier the more petty the average corrupt activity is and more difficult as the scale progresses into the area of grand corruption involving high officials of the state. The more closed the state the less likely it is that the media and civil society can exert an influence.

A 1991 study⁶⁸ looked at the contexts, stimuli, objectives, strategies and consequences of 24 clean up campaigns in 16 (mainly) Middle East and North African states⁶⁹ over a 17 year period. They considered five very different basic starting contexts for cleanup efforts: post coup, post revolution, incumbent, post succession and post election governments.⁷⁰ The conclusions were that cleanups were usually efforts by heads of state to consolidate their positions; that strategies were generally at the level of political rhetoric and legal cosmetics rather than at the level of the structural reforms really required; that the more insecure the head of state the faster and more intense the effort; immediately post revolutionary heads of state were more likely to target high officials and incumbents and successors more likely to target lower level miscreants; it was not possible to determine whether or not clean ups such as these actually reduced the incidence of corrupt transactions. This and others studies come to the conclusion that narrowly based, top down campaigns have severe limitations as mechanisms for achieving long-term change.

It is not unusual for official anti-corruption campaigns to have hidden (and sometimes not so hidden) agendas such as the elimination of business or political rivals. Recent examples of this are to be found in Syria, Tunisia and Iran.⁷¹

There is a wide consensus, led in terms of real action on the ground by Transparency International, that a broadly based coalition involving the government, the private business sector and civil society working together is needed to tackle corruption.⁷² Given the weakness of top down initiatives already noted above it is in fact essential to the creation of a long term, sustainable struggle against corruption (and it has been estimated that it took Britain 100 years to

⁶⁵ Leiken, R. S., 1997, “Controlling the global corruption epidemic”, Foreign Affairs, No 105.

⁶⁶ Rose-Ackerman, 1996, *op cit* at fn 17.

⁶⁷ Kauffman, D., 1997, *op cit* at fn 30.

⁶⁸ Gillespie, K. and Okruhlik, G., 1991, “The political dimensions of corruption cleanups”, Comparative Politics, Vol 24 No 1 p. 77-95.

⁶⁹ Afghanistan, Algeria, Egypt, Ethiopia, Iraq, Iran, Libya, Mauretania, Morocco, Saudi Arabia, Somalia, Sudan, Syria, Tunisia, Turkey, Yemen Arab Republic.

⁷⁰ Interestingly, and counter intuitively, 14 of the 25 cleanups were initiated by incumbent governments.

⁷¹ Leenders, R. and Sfakianakis, J., 2002, *Middle East and North Africa* in Global Corruption Report 2002 (Transparency International, Berlin).

⁷² Eigen, P., 2001, speech to the 10th International Anti-Corruption Conference, Prague, Czech Republic.

reach its current relatively clean status⁷³) that civil society be engaged, however tentatively, from the start. In some cases it may be the only possible starting point for efforts to overcome the disease.

The role of civil society in the combating of corruption

"Civil society" is a term well understood, if not perhaps so well defined, in liberal democratic societies. As it emerged in a specifically European context many scholars doubt that the term is applicable to other regions of the world where society evolved in an entirely different way.⁷⁴ The arguments on the issue run to both definition and legitimacy. But they may also concern, especially in areas of campaigning such as we are dealing with here, questions of how independent civil society is from government and how susceptible it may be to subversion and corruption. These matters will be touched on, but not resolved, in the paragraphs which follow.

UNDP, taking a worldwide perspective, describes civil society as "together with the State and the market, one of the three 'spheres' that interface in the making of democratic societies. Civil society is the sphere in which social movements become organised. The organisations of civil society, which represents many diverse and sometimes contradictory social interests, are shaped to fit their social base, constituency, thematic orientations and types of activities".⁷⁵ The World Bank sees it as encompassing "citizen groups, non-governmental organisations, trades unions, business associations, think tanks, academia, religious organisations and the media".⁷⁶ It is, therefore, clear that in one shape or another civil society exists throughout the wide variety of social, economic and political systems involved in the EuroMed process and that it is much more extensive than simply non-governmental organisations.

Described in the manner set out above, civil society has a key characteristic which distinguishes it from both the state and the business sector: unless it has itself been colonised or corrupted by one of the other two, civil society organisations have no material interest in the perpetuation of corruption. The citizenry and the organisations that represent their interests have real, vested social and economic reasons for participating in the struggle against it. This is of more than moral importance because it is the factor that gives some element of legitimacy to the unelected (and often internally undemocratic) organisations of civil society.⁷⁷

However, we should keep in mind that civil society does not occupy some high moral ground which sets it apart from other actors in society. Corrupt public officials are, in their other roles in life, often participants in civil society organisations and it is often members of the public who are themselves bribers to gain advantage over other citizens.⁷⁸ In addition, the phenomenon of civil society units that are more organs of government than truly independent advocates of the public interest is well known as is the fact that NGOs can be internally corrupt and designed more to serve the interests of their employees than their client group.⁷⁹

⁷³ Heidenheimer, A. J., 1996, *"The topography of corruption: explorations in a comparative perspective"*, International Social Science Journal.

⁷⁴ Reinhardt, U. J., 2001, *"Civil society cooperation in the Euro-Mediterranean partnership: from declaration to practice"*, EuroMeSCo Papers No 15, Lisbon, EuroMeSCo.

⁷⁵ Quoted in "Heavy hands, hidden hands, holding hands? Donors, intermediary NGOs and civil society organisations" by Bebbington and Riddell in "NGOs, states and donors – too close for comfort", London, Save the Children, 1997.

⁷⁶ World Bank, 2000, "Civil Society Participation" in "Anti- Corruption in Transition: a contribution to the debate", Washington DC, World Bank (available on World Bank website).

⁷⁷ Eigen, P., 1997, *"Civil society in the fight against corruption"* paper to the 8th Anti-Corruption Conference, Lima, Peru.

⁷⁸ Kisubi, M., 1999, "Involving civil society in the fight against corruption", Washington DC, Economic Development Institute.

⁷⁹ Holloway, R., 1997, *"NGOs: Losing the high ground – corruption and misrepresentation"*, 8th International Anti-Corruption Conference, Lima, Peru.

In many of its manifestations civil society finds itself demanding accountability from government and in reality raising basic questions about power, transparency, participation and democracy. As a consequence, closed structures of autocratic government in many countries have stunted the growth of civil society and permitted public officials to operate without public accountability or transparency.⁸⁰ Indeed, and not just in autocracies, civil society organisations are often viewed as rivals by the political and bureaucratic elites and their role resisted.

There has been an observable growth in civil society organisations throughout the Middle East and Maghreb countries during the 1990s.⁸¹ Not all of these are truly independent of government and in many countries there are strict legal controls over the formation and registration of civil organisations. In a number of countries governments have established parallel, “official” civil society organs to compete with the independent sector.⁸² This combined with wide ranging restrictions on the media⁸³ makes for great difficulties in establishing a people driven and bottom up movement against corruption.

But there are signs that progress is possible. At the end of 2001 Transparency International reported⁸⁴ that it had chapters in existence or being formed in Israel, Jordan, Lebanon, Palestine, Egypt, Algeria, and Morocco.

Fear of marginalisation and of failure to attract badly needed foreign aid and investment is leading many political leaders to the conclusion that they must make serious efforts to confront and curb corruption. This presents opportunities for civil society organisations to be both advocates of reform and active participants in that deepening of the reform process that is necessary if it is to be really effective.

How can civil society become engaged?

Just as there are no globally applicable models for fighting corruption, there are none for identifying a starting point for civil societies’ activities. There is also the obvious danger of positing prescriptions based on the experience of European non-governmental organisations whose origins and environment are very specific.

Nonetheless, certain basic frameworks have been chartered by Transparency International based on their work in the very different environments of Europe, Africa, North and South America, Asia and the Middle East. They have identified three basic tenets⁸⁵:

First, broad coalitions need to be built bringing together groups that are expressly non-partisan and non-confrontational. Given the fact that day-to-day experience of corruption in many societies is widely spread among citizens, it is often possible to put together extremely diverse groupings – journalists, business leaders, religious figures, academics, NGOs, members of chambers of commerce and other professional bodies.

Secondly, these coalitions need to evolve into national organisations (“chapters” in Transparency International parlance) which can interpret local conditions, adapt strategies to meet those conditions and win the confidence of often sceptical even if not hostile governments. In this respect two rules are of special importance: (1) they must not investigate and expose individual cases of corruption as such activity might undermine efforts to build coalitions which promote

⁸⁰ Pope, J., 2000, *op cit*, fn 54.

⁸¹ MERIP, 2000, No 214 as cited by Sa’eda al-Kilani *op cit* at fn 57.

⁸² *Ibid.*

⁸³ In 2000, Freedom House, categorised 14 out of 17 Arab countries as “not free”, the highest proportion of any region of the world, (cf Freedom House, 2000, *Freedom in the World 1999-2000*, New York, Freedom House).

⁸⁴ Sa’eda al-Khani, 2001, *op cit* at fn 57.

⁸⁵ Pope, J., 2000, *op cit* at fn 54.

professional and technical improvements of anti-corruption systems and (2) they must avoid party politics as partisan activity would damage and limit the credibility of the movement.

Thirdly, the development of civil society involvement has to be evolutionary. Rather than attempting dramatic, sweeping programmes that try to solve all problems of corruption overnight, there should be a concentration on achievable, specific plans of action in a step-by-step process. Large “boiling the ocean” projects, particularly in the early stages, are almost certainly destined to fail given the immensity of the challenge, the lack of experience of the initiators, the hostility of the environment and the scepticism of the audience.

Reform efforts have to be home-grown and locally-driven. Outside partners can encourage and foster development but the initiative has to be local, based on a firm understanding that there are no overall quick fixes. But international cooperation (rather than direction) may very well be a vital component in enabling civil society gain a foothold in combating domestic corruption. Technically, it gives organisations access to methodology, “tool-kits” and best practice but, perhaps more importantly, it politically emphasises the fact that corruption is itself an international scourge and not unique to any one country or political system. One of the more insightful commentators of corruption, Robert Klitgaard, has proposed cross border pooling and analysing of comparative data as a means of defusing national sensitivities to charges of corruption.⁸⁶

⁸⁶ Klitgaard, R., 1997, *op cit* at fn 61.

Part III – International action against corruption

Arguably the first significant international action to combat corruption was the enactment of the Foreign Corrupt Practices Act by the United States in 1977.⁸⁷ This legislation makes it a criminal act for an American citizen to bribe an official of a foreign government. The definition of what constitutes an official is widely drawn and includes, for instance, managers of otherwise commercial enterprises in which the foreign state is at least a significant shareholder. The Act also eliminated the tax deductibility of bribes under the US corporate tax code. The legislation was introduced in the aftermath of a series of scandals involving Lockheed Aircraft and a number of other major US companies. While the overall success of this comprehensive code has been debated and is certainly not measurable, there is no question that it has affected the behaviour of major American companies as is evidenced by their lobbying efforts to either have the terms of the Act diluted or to force the adoption of its principles in the domestic legislation of other major trading nations.

In the past ten years there has been increasing attention given by major world organisations to getting agreement on common policies and procedures on combating corruption, to a very great extent as a result of vigorous prodding by the United States. Among the more prominent results of this effort have been:

- United Nations Declaration and Corruption and Bribery in International Business Transactions (December 1996).
- United Nations Resolution on an International Code of Conduct for Public Officials (December 1997).
- United Nations Resolution on International Cooperation Against Corruption and Bribery in International Commercial Transactions (December 1997).
- Organisation for Economic Cooperation and Development Convention on Combating Bribery of Foreign Public Officials in International Business Transactions (December 1998). All thirty four member countries of the OECD have ratified the Convention and at a recent date thirty had implemented legislation to give effect to its terms.
- Council of Europe Criminal Law Convention on Corruption (January 1999).
- Council of Europe Civil Law Convention on Corruption (November 1999).

In general these measures have focused on the corruption of government officials but have shied away from dealing with contributions to political parties. This is widely considered to be a major lacuna in anti-corruption measures in both developed and developing countries but on which significant progress is only being made in the more advanced democracies. The logic of applying principles limiting the ability of corporations and wealthy individuals to buy influence over political decisionmaking in their domestic jurisdictions needs to be extended to their behaviour in other countries. Within the OECD ambit, however, considerable progress was made in the 1998 Convention by the introduction of a requirement that member states provide for the criminalisation of cross border corruption by persons and corporations in their jurisdiction and the abolition of the tax deductibility of bribes. Nonetheless, it is noteworthy that, as of a recent date, of the ten countries whose businesses are perceived to have the highest level of propensity to corrupt only five had signed the convention, whereas only one of the eleven with the lowest levels of such propensity had not signed.⁸⁸ At its 2002 Annual General Meeting, Transparency International "expressed its deep concern that the bright hopes raised by the adoption of the ground-breaking OECD Convention are being dashed". The meeting also called for the signature states to provide the funds necessary for the effective monitoring of whether the Convention's terms are being enforced.⁸⁹

⁸⁸ Transparency International, 2002, "Bribe Payers Index", Berlin, Transparency International.

⁸⁹ Transparency International, 2002, press release, 16 October.

The EU has tended until recent times to be something of a follower rather than a leader in international efforts to develop best practice. Even within the OECD process it has been difficult for the fifteen members states to coordinate positions.⁹⁰ However, the adoption of the Treaty on the European Union provided the legal basis for judicial cooperation in criminal matters and there has been considerable progress since then, initially focused on internal fraud and fraud affecting EC programmes (eg the Convention on the Protection of the European Communities Financial Interest⁹¹). This central concern has, however, expanded and the European Parliament and Council of Ministers' now have under consideration a draft Directive on the criminal law protection of the Community's financial interests which deals specifically with corruption – but only in relation to the EC's own officials. There are also proposals for the appointment of a European Prosecutor to deal with fraud issues⁹² and, of course, the EC anti fraud office (OLAF) has had a considerable impact on tracking down malpractice within the EC institutions and in programmes financed by the Community. Nonetheless it would not be unfair to conclude that while adopting rigorous efforts to stamp out corruption in its own corridors the EC is not yet fully convinced that corruption has a distorting effect on the trade within its own area and with third countries.

In addition a wide range of other multilateral organisations have adopted protocols and programmes in the combating of bribery. These include the G7 countries, the World Bank, the IMF, the World Trade Organisation, the European Bank for Reconstruction and Development, the African Development Bank, the Asian Development Bank, the Inter-American Development Bank and the Association of South East Asian Nations. It is impossible to measure the effectiveness of these initiatives but their cumulative effect over time must be beneficial.

There is considerable scope for the use of bilateral agreements with major trading partners and aid donors as a means of making measurable progress in fighting corruption. Typically the EC includes anti-corruption and anti-money laundering commitments in association agreements⁹³ but these tend to be phrased in very general terms leaving it unclear as to how the measures can be monitored or enforced. The World Bank has been no more successful in many of its efforts. It has been noted its "efforts to strengthen privatisation programmes in Algeria and Lebanon have done little so far to ensure fair or transparent bidding" although it has had some success in Jordan and Morocco.⁹⁴

It is clear that concern with corruption is not culture or system bound. Nonetheless, there is a standard, and not necessarily totally invalid, criticism made by academics and Third World activists which sees the efforts of organisations like OECD as merely expressions of self-interest by industrialised countries.⁹⁵ In this analysis the industrialised countries of (mainly) the North are seen as now caring about corruption in the developing world mainly because, in a globalising trade system, they believe that Southern corruption will effect them. It can, however, be counter-argued that it has to be beneficial to the population of a country if projects are no longer tailored to maximise "commissions".⁹⁶ This benefit accrues even if it is not the result of some new business morality but rather because the consequences for a company and its managers of being accused of bribery are such that it simply cannot be risked economically and socially – analogous to the "would you like to see this reported on the front page of the Wall Street Journal"-effect that so focuses the minds of large, publicly quoted American corporations.

⁹⁰ Nilsson, H. G., 1997, *"The development of a European Union policy against corruption"*, paper to the 8th International Anti-Corruption Conference, Lima, Peru.

⁹¹ OJ No C 316/48 of 27.11.95.

⁹² COM (2001) 715 Final, "Green Paper on criminal law protection of the financial interests of the Community and the establishment of a European Prosecutor".

⁹³ As of a recent date these included agreements with Israel, Morocco, the Palestinian Territories, Tunisia, Algeria and Lebanon.

⁹⁴ Leenders, R and Sfakianakis, 2002, *op cit* at fn 71.

⁹⁵ Rodrik in Elliot (ed), 1997, "Corruption and the Global Economy", Washington.

⁹⁶ Pieth, Mark, 1997, *"Contribution of industrialised countries in the prevention of corruption: the example of the OECD"*, paper to the 8th International Anti-Corruption Conference, Lima.

Part IV - What is to be done?

Out of this review of the phenomenon of corruption, its effect on the economic, social and political development of societies, the steps that need to be taken to fight it and the part civil society might play in that fight, there are a number of key actions to be taken by EU member states and Southern Mediterranean partner countries:

1. Corruption and the need to combat it must be raised to the top of the agenda of every leader of government, EU Member states and Southern partner countries, democrat or autocrat. For those in the North it is a question of quashing criminality within the corporate community, of ensuring that aid programmes serve the objectives for which they are being funded and of advancing the more rapid development of the countries to the South with all the benefits that will accrue from that for both sides; for those leaders in the South, it will bring more rapid development and, in the longer run, greater political stability. While corruption clearly is a global problem, the EMP provides for a good framework to tackle this issue in on a regional level.
2. The OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions should be imported into the domestic law of all partner countries of the EMP. For the EC to adopt measures effecting business practice it will be necessary for the Commission to establish that it has competence in the area. Given the distortive effect of bribery on the operation of the common market both internally and in trade with third countries this should not be an insurmountable obstacle if the political will to act exists.
3. The EC needs to be active in having the OECD Convention expanded to cover all forms of potential interference in governmental decision-making, including donations to political parties.
4. Bilateral and EC aid programmes, as well as economic liberalization and privatization programmes, need to be "corruption proofed" and priority given to the support of those governments which are demonstrably taking effective steps to combat it.
5. A specific initiative needs to be taken within the Euromed process to continuously evaluate the forms and extent of corruption in the area, its evolution in the face of efforts to combat it, to conduct comparative studies in the region, to disseminate experience and best practice and to support the development of civil society responses.
6. Civil society and its organisations have essential advocacy and watch dog roles to play in curbing corruption. While acknowledging the often valid sensitivities of many governments to foreign support for domestic NGOs, the EC needs to find mechanisms by which training, networking and basic seed funding can be provided to such organisations without undermining their legitimacy and credibility.
7. NGOs and other civil society organisations in the Northern partner countries need to continue to be active in pin pointing and highlighting corruption by their national corporations which is undermining the economic, social and political development of societies to the Southern Mediterranean partners.

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