

“The Global Effort to Contain Official Corruption”

A Presentation by

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We gather here today to examine the challenges posed to worldwide peace and stability by the specter of corruption. While we see an increasing commitment in many countries to democratic institutions, human rights and the free enterprise system, often on a kind of “two steps forward, one step back” basis to be sure, a clear consensus has developed that progress in each of these areas depends upon observance of the Rule of Law.

And one of the prime building blocks in creating societies committed to the Rule of Law must be an effective effort to deal with the challenge of official corruption. Corruption comes in all shapes and sizes, in all segments of all societies and at all levels of business and government. I propose today to review the variety of efforts being made to deal with official corruption, both at the country level and, perhaps more important, at the level of multi-national organizations.

I will address this subject on the basis of my experiences in government in dealing with official corruption within the United States and at the United Nations, the World Bank and the Inter-American Development Bank, as well as, more recently, in the conduct of numerous independent internal investigations into failures of corporate governance and transparency in the private sector.

I.

Let’s begin at the beginning. It must first be asked: “Why are we concerned with official corruption?” before we tackle the question of what should be done about it.

Anti-corruption efforts should not be regarded as some kind of moral crusade of concern only to starry-eyed reformers. Rather, these efforts must be viewed in practical terms, having real life consequences for the economy and quality of life in communities around the world. It helps, in fact, to view corruption on a strict cost-benefit basis.

What are some of the costs of corruption?

- Begin with the cynicism that develops about elected public officials who obtain office through notoriously corrupt and fraudulent means.
- Consider the fact that a corrupt legal environment can, in fact, create two separate systems of justice – one for those who pay and one for those who don't.
- Law enforcement itself breaks down when payoffs are made to police, prosecutors or judges to “protect” or overlook illegal activities.
- Free markets can be distorted by price-fixing and bid-rigging in procurement processes and kickbacks and payoffs in connection with the award of public contracts on a “pay to play” basis.
- Tax evasion skews the fairness of the taxing system and reduces revenues as well.
- Waste and corruption in government increases the bills of all taxpayers and makes them more reluctant to support needed public expenditures.
- Corporate wrongdoing, through accounting irregularities and insider trading, for example, can cause billions in shareholder losses and diminish retirement income prospects for employees and securities holders alike.

Moreover, all of these activities have the capacity to erode respect for the Rule of Law and the civil rights of all citizens.

The benefits of an effective anti-corruption effort constitute virtually the other side of the same coin. They are, for the most part, self-evident:

- Increased confidence in public officials
- Increased perceptions of true equality before the law
- More efficient and effective governance

- More efficient and effective market forces, and greater prospects for economic growth and jobs
- Lower costs to the taxpayer

Let's look at some specifics. Global corruption today has become an almost daily ingredient of newspaper headlines and evening television news programs:

- Consider recent news reports on major scandals plaguing military procurement worldwide, especially in the Middle East and Asia where, according to a report of Transparency International, "corruption has been rampant." The report specifically highlighted activities of BAE Systems, Europe's largest military contractor, which last year pleaded guilty to making billions of dollars of questionable payments in connection with business transactions in Saudi Arabia, the Czech Republic and Hungary.
- German authorities and the U.S. Securities and Exchange Commission (SEC) not long ago shared over \$1.6 billion in fines, penalties and disgorgements levied against electronics and industrial engineering giant Siemens A.G. on account of bribes paid in several countries. Similar charges against Daimler resulted in \$185 million in fines and penalties for illegal payments in China, Russia, Egypt, Greece and Nigeria.
- China, the world's fastest growing economy, recently expanded its crackdown on official graft partly in response to public clamor for mandatory asset disclosure by public officials, while a leading Chinese economist has stated: "Corruption is the greatest legacy and the greatest challenge for China's next generation of leaders."

- And in the United States Baker Hughes, Inc., the world's third-largest oilfield services provider, agreed to pay \$44.1 million to resolve charges over a bribery scheme in Kazakhstan. Earlier, the former CEO of the American engineering firm KBR, Inc., pleaded guilty to charges under the Foreign Corrupt Practices Act (FCPA) and the company and Halliburton paid \$579 million on account of FCPA violations, while in Russia, charges of corruption regularly thwart efforts to further the Rule of Law.

This is the framework within which I offer my remarks to you today

II.

Here a little personal history and background may be helpful. My own insights into international business corruption do not derive from these headlines or news reports. They actually began during the 1970's when I served as the head of the Criminal Division in the U.S. Department of Justice in Washington, DC during the administration of President Gerald Ford in the immediate post-Watergate era. It was during that time that the first criminal charges were brought against American companies for making illegal payments to officials in other countries to aid in getting business. We worked with the SEC to secure convictions of major American corporations and individuals within those entities for illegal overseas payments.

The exposure of these activities resulted ultimately in the passage of the FCPA in 1977. Interestingly enough, the passage of that law in a way made Americans the laughingstock of the rest of the world. Others viewed this law as a quixotic attempt to impose U.S. business morality and ethics on their countries. In fact, the law did produce competitive disadvantages for some American companies. Few countries followed our example and many even continued, for

example, to allow the deduction for income tax purposes of bribes paid to get business, leaving U.S. companies at a further disadvantage.

Later when I served at the United Nations, I learned that attitudes were similar within its bureaucracy. For example, one of the recommendations in my report to the Secretary General when I left the office of Under-Secretary General for Administration and Management in 1993 was to create a strong Inspector General function to combat fraud and corruption within the United Nations itself. My proposal was very coolly received. In fact, in some quarters, I was told, my report was actually shredded rather than even read! Only after the United States threatened to withhold a portion of its United Nations dues, was such an office finally created.

During this last two decades, however, we have seen a significant reversal in attitudes toward corruption and fraud in the international community. Among the leaders in that effort was President James Wolfensohn of the World Bank. In a 1995 speech, he first identified corruption as a priority target for the World Bank. In a given year this organization distributed some \$20-25 billion in loans and aid to developing countries. But until the last decade, it had no capability whatsoever to deal with what was perceived to be widespread corruption in those programs. In fact, we were told that an estimated fifteen to twenty-five percent of the amounts distributed by the Bank ended up in some public official's Swiss bank account as the fruits of bribery, extortion or other improper payments. Corruption, we were told, had been regarded until 1996 as a "political" problem with which the Bank should not become involved. Mr. Wolfensohn changed that, noting that "corruption and poor governance worsen poverty directly by diverting resources away from the needy and indirectly by harming the climate for private investment, the key to growth and poverty reduction."

In 1999, Mr. Wolfensohn asked me to head a team to create a credible anti-corruption mechanism within The World Bank. Following our report, the Bank's Office of Institutional Integrity (INT), came into existence in 2001 and new rules of the road were enacted for that organization. Now the World Bank has a fully staffed group of skilled investigators and auditors on the job to help root out program fraud and corruption and to further efforts by borrowers to bring corrupt public officials to account.

In 2007, an independent panel of experts under the chairmanship of Paul Volcker was asked to review INT's operations . The panel's report noted that while the office was staffed by dedicated and competent investigators and had achieved some notable success in its relatively brief life, there still existed frictions in operating relationships, management issues, and failures to coordinate effective responses to investigative findings. Volcker's report called for changes in structure, additional oversight, the development of "best practices" in the anti-corruption area and a separate preventive capability within the Bank. These and other lessons from our World Bank experience guided as well our later review of the Office of Institutional Integrity within the Inter-American Development Bank.

It thus appears that the issue of corruption has finally come center stage in the international community. Even to speak of corruption as a problem is emblematic of the changes that have taken place worldwide, but far more has occurred. In the words of Chairman Volcker, "Today, there is a strong sense in the broad development community generally that good governance and an attack on corruption must be key parts of efforts to sustain economic growth and attack poverty."

This flurry of operational activity at the international level during the last decade or so was further enhanced by the adoption of the UN Convention Against Corruption by more than

160 countries and similar activity by the Organization for Economic Cooperation and Development (OECD), the Council of Europe, the Organization of American States (OAS) and the African Union during the last decade. Meanwhile, private organizations such as Transparency International have served to focus greater attention on the problem of public corruption as well. The attitude worldwide today is in stark contrast to that which prevailed during the 1970s when the FCPA was passed.

But problems remain. For example, Chairman Volcker's investigation into charges of corruption in the \$64 billion oil-for-food program in Iraq found that the Office of Internal Oversight Services which had been established in 1994 by the United Nations to deal with the problem of corruption was simply not equal to the task due to insufficient backing from United Nations leadership and the lack of necessary skills on the part of those who were appointed to serve there.

Two subsequent reviews of that office found it to be plagued by leadership that demoralized its investigators and stymied the group's ability to function effectively as an anti-corruption watchdog. Clearly problems remain with the UN's capability in this area.

With the heightened insistence by major donors that the United Nations' weak capability for detecting fraud and corruption be beefed up, however, hopes are high that we will see a much improved climate for anti-corruption efforts in this organization despite the forces of lethargy, the status quo and human venality in opposition. The UN's future efforts, like those of the World Bank, will bear close watching.

At the same time, cynics still persist who deride efforts aimed at cleaning up corruption. Moises Naim, former Editor of Foreign Policy Magazine and a leading pundit, complained in a Washington Post opinion piece entitled "Tunnel Vision on Corruption," about what he termed

“the corruption obsession.” He alleged that this “obsession crowds out the debate on other crucial problems” while pointing out a number of countries where prosperity has coexisted with significant levels of corruption. Such an approach, I submit, begs the issue of whether rampant corruption can coexist in the long term with democracy, human rights and a better quality of life, not to mention the Rule of Law.

III.

All that being said, however, it remains clear that for all the commitments inherent in legislation, international treaties and conventions and the like, it is still execution that counts. In this regard, I would like to briefly discuss a checklist of the “nuts and bolts” required for executing an effective anti-corruption program, a list which I have shared with a number of countries and organizations around the world intent upon facing down this challenge.

First, it must be ensured that there are in place constitutional provisions and statutes that provide for transparent and accountable government. Criminal laws must be precise and straightforward, must define offenses such as bribery and extortion clearly and be subject to regular review so as to combat the ingenuity of the lawless element in devising new and more ingenious “scams.” Rules of legal procedure must equip law enforcement with adequate tools to carry out their responsibilities such as judicial warrants giving authority to effectively search suspect persons and premises for evidence. In addition, legislative bodies should provide investigators and prosecutors with witness immunity statutes to compel testimony against “higher ups” in conspiracy cases as well as court-authorized wire tapping authority and anti-money laundering and forfeiture procedures to help search out and recover ill-gotten gains and interrupt the financing of corrupt ventures. Adequate protection from intimidation must be

afforded witnesses and “whistle-blowers” and courts must be empowered to be vigilant in combating attempts to obstruct the proper administration of justice.

Second, law enforcement personnel – police and prosecutors – must be fully professionalized, adequately trained and compensated and protected from political influence. Evidence-gathering in these types of cases is often a painstaking task of following a complicated “paper trail” that can be extremely sophisticated and may require forensic accounting skills as well. Very seldom are prosecutions of corrupt activity initiated on the basis of “breaking down the door and seizing the evidence.” Offices such as inspector generals within government agencies can often provide a first line of defense against corrupt activities. Special investigative commissions, such as the Independent Commissions against Corruption in Singapore and Hong Kong and anti-corruption non-governmental organizations, can be useful as well. Sophisticated law enforcement efforts must strive continually to match the efforts of equally sophisticated criminal enterprises.

Third, and crucial to any effort to root out corruption, is a truly independent judiciary made up of judges equipped to hear and decide cases prosecuted on the basis of evidence developed by law enforcement personnel. Even the most effective investigative efforts will go for naught if even-handed and incorruptible judges are not in place to adjudicate resulting criminal charges. Judges must be non-political, selected on the basis of merit alone and enjoy the protection of tenure during good behavior. Adequate procedures must also exist for removal of errant judges so that overall confidence in the judiciary is maintained at a high level. While fully sensitive to due process requirements in corruption prosecutions, judges must be equally relentless in recognizing and punishing appropriately those who engage in all manner of such illicit activities.

Fourth, there must be public support for all anti-corruption activities. This may require a reworking of the entire political culture in some countries. But it can be assisted by a free and fearless press empowered to carry out its own investigations of suspect activities and by non-governmental organizations, which can act as “watch dogs” over governmental wrongdoing. A vibrant political process will also help to insure that the “checks and balances” inherent in a loyal opposition and the give and take of hard-fought election campaigns contribute to the exposure and uprooting of corrupt activities.

Finally, and perhaps of the highest importance, is the need for a strong, sustained and visible commitment by political leadership to the integrity of all governmental operations. In the absence of sufficient political will - the “tone at the top” - to combat corruption, even the most vigorous activities undertaken pursuant to these recommendations will be of little use. Courageous leaders dedicated to honest and efficient government must provide important role models for those with whom they serve in public life and for society as a whole. Without such leadership, even the best-designed anti-corruption efforts will fail.

There are pitfalls to be avoided as well. Often it is mistakenly thought that merely extending the work of existing audit and human resources units can substitute for the efforts of investigators and prosecutors with specialized skills. Then again, anti-corruption units are sometimes viewed as “dumping grounds” for dysfunctional officials or employees within the organization in question rather than putting a high emphasis on professionalism and integrity among its recruits. And finally, while anti-corruption units should always “follow the evidence wherever it leads,” special care must always be taken to see that investigations go no further, based on mere speculation, pure hypothesis or, even on occasion, personal or political animus or bias.

If these prescriptions are followed, can corruption be eliminated? Of course not. The worst instincts of humankind can never be reversed completely. As a young prosecutor I once put this question to a grizzled veteran of our FBI: “Can we ever stop corrupt officials from ripping off the taxpayers?” I asked. “No,” he responded, “We can never put them out of business. But the key question always is: ‘Are the good guys on the top and the bad guys on the bottom?’”.

With so much attention being focused on the high price of official corruption in so many countries around the world today, the timing could not be better for a vigorous and sustained international effort to focus more attention on the antidote to this particular poison in terms of a specific action agenda that will ensure a maximum commitment to better the lot of all concerned.

To fail to undertake effective efforts to combat this threat cannot help but frustrate this century’s unprecedented opportunity to move toward realization of the positive aspects of economic and political globalization with its promise of progress toward a better quality of life for all.

True it is that today nations around the world are preoccupied with the threat of internal upheaval and international terrorism. But, sooner or later, by whatever means necessary, today’s threats will be contained. We will then come to realize more fully that the absence of threats to our physical well-being and peace of mind are only a beginning.

Any message of quality of life in any country or region must include consideration of its quality of governance. In the long run, corrupt rulers cannot provide their constituents with fulfillment of their hopes and aspirations at a price they are willing to tolerate. Sooner or later, citizens worldwide will demand higher standards and more accountability from those who govern them. And that will hold out the promise of true progress for all.