

3. Globalizing the Anticorruption Regime

A. United Nations Organized Crime Convention

The United Nations has since its establishment (and continuing many activities that had their origin in the League of Nations before it) been engaged in promoting or facilitating cooperation by its member governments against various forms of crime. In the past few years, there has been a growing consensus among governments that corruption, in all of its many forms, is one of the forms of crime that governments should address through such a cooperative international mechanism. The remarkable extent of interest and level of participation in the Vice President's Global Forum on Fighting Corruption is a striking example of the extent to which this consensus that corruption is a timely, appropriate and important issue on the global policy agenda has in fact become general.

The specific problem of the illicit production, traffic and abuse of narcotics, psychotropic substances and other dangerous drugs and substances gave rise in recent years to a major transnational criminal industry. The rise of this pernicious form of transnational crime in turn prompted governments in the 1980's to negotiate the United Nations Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances. That Convention, which was completed in 1988, has gained general acceptance by the world's nations and has become the basis for a growing regime of international cooperation by governments against that form of crime.

In 1996, the Economic and Social Council, and then the 51st UN General Assembly, adopted a Declaration Against Corruption and Bribery in International Commercial Transactions, responding to an initiative by the United States. This Declaration was sent to the Crime Commission for follow-up. At the 53rd General Assembly, another resolution on this topic was approved by the Second Committee of the UN General Assembly.

Recognizing the threat that organized crime poses to the economic stability, democracy and security of every nation in the world, policy and criminal law experts began in 1997-8 to elaborate the concept of a comprehensive international convention against transnational organized crime. This effort was in part informed by experience of governments with the 1988 Convention, which demonstrated that agreement was both possible and necessary on a generally acceptable regime for international cooperation against a specific form of crime. This could occur, as in the case of illicit drug production, traffic and abuse, when governments agreed that the nature and extent of such crime had gained a scope and intensity sufficient to cause it to be a challenge and a danger to all. After a year of informal negotiations, the first formal session of the "Ad Hoc Committee on the Elaboration of a Convention against Transnational Organized Crime" (OCC) was held at the Vienna International Center, January 19-29, 1999.

Poland was a principal instigator of the OCC and hosted the first discussion at a Warsaw meeting in February 1998. In April 1998, the United Nations (Economic and

Social Council) Commission on the Prevention of Crime and Treatment of Offenders ("Crime Commission") endorsed the concept of the OCC, established the Ad Hoc Committee to negotiate it, and named Ambassador Luigi Lauriola, an experienced Italian multilateral diplomat, as its chair. Argentina hosted a second meeting of interested countries in September in Buenos Aires. There have been several "Friends of the Chair" meetings, most recently in November 1998 in Vienna.

The results of the efforts to date are drafts of an OCC and three accompanying protocols: illicit manufacture and trafficking in firearms, trafficking in women and children, and alien smuggling. The first week of the January 19-29, 1999 meeting was devoted to the OCC and the second week to discussion of its three protocols. Although negotiations are still at an early stage, there appears to be general agreement of the need to criminalize money laundering and conspiracy, provide mechanisms for the cooperation and exchange of information between law enforcement and for mutual legal assistance, and to establish authority for asset forfeiture.

The negotiators are aiming for completion by the end of the year 2000. Toward that end, several negotiating sessions are scheduled throughout 1999. Currently, a week-long session is planned in March, to be followed by three days during the annual meeting of the U.N. Crime Commission in April, another week in June, and two weeks in October. Additional sessions may be scheduled if negotiators deem them necessary.

In January 1999 session of OCC negotiations, the United States tabled the suggestion that for the Convention to comprehensively and effectively attack organized crime, it was also necessary that the Convention address the issue of corruption. In particular, the issue of corruption affecting the justice and security officials of governments that have responsibility for upholding the rule of law, directly impinges upon the implementation by governments of the obligations under the Convention in establishing and enforcing criminal law.

In 1999, the United States will pursue its suggestion that the Convention should contain measures to combat corruption. The United States will urge that governments should identify and implement a comprehensive regime of practices that are effective to promote public integrity and identify and punish acts of official corruption. The United States hopes that the report of the Vice President's Global Forum will help to consolidate and specify the consensus among governments in this regard. That report will contain a set of practices that experience has shown to be effective. These can guide governments in using the mutual evaluation mechanism that will be included in the Convention, or other appropriate means which they may agree in global or regional instruments, to assist each other in taking the actions necessary to attain this end.

Seeking by this means to begin to globalize a comprehensive and effective anticorruption regime to guide and assist governments is one of the most important diplomatic initiatives in the United States international strategy against corruption.

B. Global Programme Against Corruption

In February 1999, the Director of the United Nations Office for Drug Control and Crime Prevention at Vienna announced a "Global Programme Against Corruption". This program was developed by the Center for International Crime Prevention, and the United Nations Interregional Crime and Justice Research Institute (UNICRI), and is intended to enhance the capabilities of the United Nations to assist member states in efforts to curb corruption.

The Program suggested by the United Nations has two general parts. It offers a research component, to carry out a global study of the phenomenon of corruption, as well as the types of anticorruption measures and their effectiveness. This research program is to be carried out by the UNICRI. It envisions the development of a "Corruption Monitoring Protocol." A technical cooperation component is meant to assist member states to build or strengthen institutional capabilities to prevent, detect and punish corruption.

This United Nations program is still in its early stages of development, but its contents conform closely to the desired outcomes defined by the United States for the Vice President's Conference. It reflects the types of principles and practices that are effective in fighting corruption and promoting official integrity that are recognized by the international community. In 1999, the United States will cooperate closely with the United Nations Office for Drug Control and Crime Prevention to secure the greatest possible degree of global support for the further elaboration and implementation of this program.

C. Donor Coordination on Corruption

The United States, as is discussed further below, presently has among its bilateral and multilateral foreign assistance programs, and other programs for economic policy advocacy and diplomacy, numerous activities that are oriented toward preventing corruption. In recent years, the same has become true of other donors. International financial institutions now routinely include pertinent aspects of economic good governance, regulatory reform and privatization in their policy dialogues and lending activities, which also include substantial elements directed toward enhancing the capacities of institutions, especially the judiciary, which uphold the rule of law. Many other bilateral donors are becoming similarly engaged in this area of activity.

In other fields of international assistance and cooperation, mechanisms of various sorts have developed to promote the exchange of information and to facilitate optimum employment of scarce resources by assuring that the programs and activities of different bilateral and multilateral donors are carried out in compatible and mutually reinforcing fashion. The OECD has for decades promoted consultation and coordination by economic development assistance agencies in its Development Assistance Committee. The World Bank leads many donor consultative groups on specific countries. Donors of

international assistance for drug control formed the Dublin Group, and coordinate their policies toward multilateral drug control assistance in the UN International Drug Control Program Major Donors Group.

There is at this time no comparable mechanism for exchange of information and coordination of donor activities relating to preventing corruption, or to other areas of assistance related to the rule of law. In 1999, the United States will consult with other significant multilateral and bilateral donors whose activities relate to preventing corruption, with a view to calling for concerned governments and organizations to establish a group for exchange of information, consultation and coordination. Consideration will be given to whether such a group might be linked to one of the multilateral organizations whose activities include this field, or whether some separate and more informal consultative approach would be most appropriate. Within the United States Government, the Sub-Group on Diplomatic Initiatives and Institutional Development of the interagency Special Coordinating Group on Transnational Crime was requested in 1998 by the SCG to consider how United States bilateral training and assistance activities relating to the criminal justice sector and institutions involved in upholding the rule of law could be better coordinated. That Sub-Group could in the course of that activity consider also how an initiative to promote more effective donor coordination in assistance oriented to fighting corruption could best be advanced.

D. The G8 Economic Summit

At the G8 Summit held in Birmingham, England, in June 1998, the attending heads of government had an extensive discussion of the relationship between serious crime and corruption. They drafted and added to their Communique a sentence directing the G8 Senior Experts on Transnational Crime ("Lyon Group") to "explore ways of combating official corruption arising from the large flows of criminal money." The Communique directed that the Experts report back on their activities to the next meeting of the G8 Summit, to be held at Koln, Germany, in June 1999.

At the meeting of the Lyon Group in January 1999, the United States urged that other G8 countries attend and participate in the Vice President's Global Forum on Fighting Corruption at the highest appropriate level. It suggested that after the Conference, the Lyon Group might review and discuss its report. If it were agreed that the results of the Conference offered a useful elaboration of effective practices for promoting official integrity and fighting corruption, the Group might recommend that the G8 principals endorse those practices at Koln.

In 1999, the United States will suggest that the G8 continue and advance its initiative at Birmingham, by endorsing the concept that governments should oblige themselves to implement effective practices to fight official corruption, and should assist each other through mechanisms of mutual evaluation of their effectiveness in doing so. The United States will urge that the G8 consider and advance concrete steps to promote an agenda of measures of good economic governance and transparency that will

contribute to preventing and fighting corruption. It will urge that the G8 work to foster the development and broad application of global standards in key transparency and economic areas, including accounting, budgetary policy, bank lending, corporate governance, customs, public finance and procurement, etc.

E. The World Trade Organization

In his speech in Geneva in 1998 on the occasion of the 50th anniversary of the General Agreement on Tariffs and Trade (GATT), the President called on the World Trade Organization to give greater emphasis to anticorruption. To date, WTO activity in this regard falls in two trade-related areas:

1) The WTO Government Procurement Agreement (GPA), which has relatively few parties (26, of which 15 are EU members); and

2) the WTO Customs Valuation Agreement, which requires transparent procedures and approaches.

The Office of the United States Trade Representative (USTR) also has developed a draft code on procurement, which contains transparency-related measures but not the non-discrimination and national treatment commitments of the fuller GPA. The United States hopes to promote completion of negotiation of the code by the 1999 WTO Ministerial in Seattle (prospects for success are unclear, as numerous APEC countries oppose this code at this time). The United States will work in preparation and conduct of the Ministerial to bring greater public visibility to the corruption issue, focusing on the need for countries to sign the GPA or the new transparency code. The United States will continue to consider possible additional measures that could further advance the anticorruption effect of this organization, such as extension of the principles in the transparency code beyond procurement to such areas as the licensing of economic rights (where US firms face many difficulties). The United States will study a concept whereby WTO members would agree to require that public officials in trade and investment who make decisions affecting foreign persons would be subject to ethics codes and financial disclosure rules. Another anticorruption measure that will be assessed would be that any new laws and rules affecting trade, investment and other WTO-covered topics cannot be effective unless published, with notice and a prior opportunity for comment.