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## Bribes Without Borders: The Challenge of Fighting Corruption in the Global Context

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# **SYMPOSIUM: BRIBES WITHOUT BORDERS: THE CHALLENGE OF FIGHTING CORRUPTION IN THE GLOBAL CONTEXT**

## **INTRODUCTION**

BEKA FEATHERS

Corruption is one of the world's most pervasive problems, affecting international trade, environmental protection efforts, human rights, national security, access to health care and justice services, economic development, and the legitimacy of governments around the world. Efforts to prevent or reduce corrupt practices have been just as diverse, and have met with varying degrees of success. Legal and policy solutions to the challenge of corruption have proliferated, but relatively recent legal developments such as the United Nations Convention Against Corruption have yet to be tested in practice. In addition, a significant gap continues to exist between laws on paper and implementation of anti-corruption policies in practice.

The 2013 *American University International Law Review* Annual Symposium examined the existing domestic and international frameworks that have been established to fight corruption and explored how these frameworks can be implemented for more effective enforcement. The distinguished symposium participants debated the role of the international community in preventing and reducing corruption and discussed strategies for improving public accountability. Legal practitioners explained the challenging experience of prosecuting corruption cases across jurisdictions and with a patchwork of domestic anti-corruption laws. Expert panelists described the current state of stolen asset recovery and other attempts to mitigate the consequences of corruption. Finally, a keynote address entitled "The Future of Anti-Corruption Enforcement" was delivered by Robert Leventhal, the Director of the Anticorruption and Governance Initiatives Office in the Bureau of International

Narcotics and Law Enforcement at the U.S. Department of State.

This issue of the *American University International Law Review* contains some of the academic work generated by the discussions at the symposium. In his piece “Rethinking the International Anti-Corruption Agenda: Civil Society, Human Rights, and Democracy,” John M. Ackerman examines corruption as a symptom of a breakdown in the relationship between society and the state, and considers the implications this conceptualization of corruption should have for anti-corruption programming. Reagan Demas, in his piece “Biting the Hands that Feed: Corporate Charity and the U.S. Foreign Corrupt Practices Act,” examines the complexities of corporate donations and corporate social responsibility initiatives in the context of combatting international corruption. Stuart H. Deming provides a critical analysis of Canada’s Corruption of Foreign Public Officials Act as compared to the U.S. Foreign Corrupt Practices Act and the UK Bribery Act in “Canada’s Corruption of Foreign Public Officials Act and Secret Commissions Offense.” Irma E. Sandoval-Ballesteros, in “Rethinking Accountability and Transparency: Breaking the Public Sector Bias,” explores the tensions between two growing trends—more transparency and access to information in the public sector, and increased privatization of previously public services—and discusses the consequences for accountability. Finally, Mark V. Vlasic and Peter Atlee explore how the Dodd-Frank Act can serve as a template for developing countries like Myanmar, in their piece “Myanmar and the Dodd-Frank Whistleblower ‘Bounty’: The U.S. Foreign Corrupt Practices Act and Curbing Grand Corruption Through Innovative Action.” Together, these five pieces address critical issues of accountability, responsibility, and the deeply entrenched relationship between corruption, economic growth, and political legitimacy in the world’s developed and developing states.

### **PANEL 1 AIDING CORRUPTION: THE ROLE OF INTERNATIONAL DONORS IN PREVENTING AND REDUCING CORRUPTION**

Over the last two decades, the World Bank, the IMF, USAID, and many other major donor organizations have conditioned funding on the adoption of anti-corruption policies, or have begun to aggressively implement corruption prevention programs related to

their own projects. Many of these new policies have helped to prevent or reduce the severity of corruption in developing countries. Anti-corruption organizations have much to learn from each other, and increased coordination at the international level generates both opportunities and new challenges. However, some initiatives have failed to realize their potential and, in some cases, may have unintentionally incentivized corrupt behavior.

In this panel, participants critically analyzed the role and impact of aid and donor organizations on anti-corruption efforts in developing states. Panelists discussed cross-organizational coordination, strategies for measuring the impact of anti-corruption efforts, the unanticipated consequences of anti-corruption programming, and the balance between international advocacy and domestic reform. The panel also considered the unintended impacts of international donors not working explicitly in anti-corruption, such as humanitarian relief, economic development, and peace-building organizations. These groups have the power to shape both perceptions and reality about corruption in a given context, but may not always be aware of, or interested in, the effect their actions have. Speakers on this panel included John Ackerman, Associate Professor, National Autonomous University of Mexico; Bruce W. Bean, Professor, Michigan State University School of Law; Laurence Cockroft, Co-Founder and Former Chairman, Transparency International – United Kingdom; and William Savedoff, Senior Fellow, Center for Global Development.

**PANEL 2 WHO GUARDS THE GUARDIANS:  
PUBLIC ACCOUNTABILITY, TRANSPARENCY,  
AND OVERSIGHT IN ANTI-CORRUPTION  
INITIATIVES**

Government officials who seek to use their public position for private gain violate public trust as well as anti-corruption law. Preventing public officials from accepting bribes or otherwise misusing their positions is a key challenge for anti-corruption initiatives. Should public officials who engage in corruption be punished more harshly, or in a different way, from private actors? Can government oversight bodies, independent auditors, or citizen-

powered reporting organizations deter corrupt officials? Have internationally-endorsed accountability mechanisms lived up to their potential? How can anti-corruption initiatives counteract the temptation of illicit profits from lucrative oil, mineral, timber, or other resource contracts?

In this panel, speakers discussed the role of public accountability and transparency mechanisms. They drew attention to the important role that public officials play in sustaining corrupt networks, and discussed the ways that public accountability mechanisms can counteract corrupt influences. The panel also addressed the question of whether anti-corruption laws are the most effective tool for fighting corruption in the public sphere, and considered how non-legal strategies intersect with laws in enforcement and prevention efforts. Speakers on this panel included Ling Li, Senior Research Fellow, U.S.-Asia Law Institute, New York University Law School; Marlon Paz, Partner, Locke Lord LLP and Adjunct Professor, Georgetown University School of Law; Irma Sandoval-Ballesteros, Professor, Institute for Social Research of the National Autonomous University of Mexico ("UNAM") and Director, Laboratory for the Documentation and Analysis of Corruption and Transparency, UNAM; and Anwar Shah, Advisor, World Bank and the Asian Development Bank and Director, Centre for Public Economics.

### *PANEL 3 THE FCPA VERSUS THE WORLD: PROSECUTING CORRUPTION IN A FRACTURED LEGAL LANDSCAPE*

Since the Foreign Corrupt Practices Act ("FCPA") was first passed in 1977, a profusion of domestic laws and international conventions have been enacted. The FCPA is the signature anti-bribery legislation, and has served as the model for similar statutes in other countries, but it is several decades old and may no longer account for new technology or new ways in which corruption has proliferated. The FCPA has also been joined by a number of anti-bribery laws promulgated by other states, many as the result of the OECD Convention Against Bribery, but others adopted independently. With the advent of the UNCAC, the universe of anti-corruption law is likely to grow even more crowded. These laws and agreements all seek to punish the use of bribery for illicit gain, but

they do not always use complementary approaches. The fragmented nature of bribery prosecution is further complicated by the fact that corrupt activity often crosses jurisdictions.

This panel examined the current international litigation environment for corruption cases, with a special emphasis on the challenges that face enforcement of the FCPA in prosecuting offenders, pursuing corruption cases in multiple jurisdictions, and reconciling disparities with foreign bribery law. The panelists also drew on their experience serving clients that operate in multiple jurisdictions to discuss the legal and practical challenges of complying with corruption laws that change from state to state, and which may not accurately reflect the situation on the ground. Speakers on this panel included Reagan Demas, Partner, Baker & McKenzie LLP; Mike Koehler, Assistant Professor, Southern Illinois University School of Law; Lucinda Low, Partner, Steptoe & Johnson LLP; James Parkinson, Partner, Buckley Sandler LLP; and Karen Popp, Global Co-Chair, White Collar Group, Sidley Austin LLP.

#### *PANEL 4* CAPTURE AND RECOVERY: RECOVERING STOLEN ASSETS AND MITIGATING THE CONSEQUENCES OF CORRUPTION

Punishing corrupt actors is a critical part of international anti-corruption activities, but punishment does not always repair the damage that the corrupt behavior has caused. Corrupt officials who embezzle government funds have stolen public money that could otherwise have paid for public services or national defense; companies who pay bribes to avoid health inspections, pollute, or violate safety regulations imperil their workers and the communities surrounding their operations. The international community is devoting more resources to the problem of recovering stolen assets and compensating victims of corruption, but theoretical solutions have rarely been tested in practice.

This panel considered the challenges and opportunities that currently exist for mitigating the consequences of corruption and restoring communities and states to their prior condition in the aftermath of corruption. Expert practitioners gave their analysis of

the legal and technical processes of recovering stolen assets which may have traveled around the globe and become enmeshed with other illicit networks. This analysis included discussion of the Stolen Asset Recovery Initiative, a framework under which international organizations and domestic officials collaborate to document and return assets stolen by corrupt actors. The panel also explored potential methods of providing restitution or compensation for individuals and communities who are the victims of corruption. One area of special focus was the challenge of quantifying and providing effective remedies for the damage that large-scale corrupt practices cause to individuals or communities. Speakers on this panel included Stuart H. Deming, Principal, Deming PLLC; Stuart Gilman, Retired Head, the United Nations Global Program Against Corruption and Deputy Director of the Stolen Asset Recovery Initiative; Larissa Gray, Senior Financial Sector Specialist, Financial Market Integrity Unit, World Bank; Eileen Radford, Director of Advisory Services, TRACE International; and Mark Vlasic, Adjunct Professor of Law, Georgetown University Law School, Senior Fellow, Georgetown's Institute for Law, Science & Global Security, and Principal, Madison Law & Strategy Group.